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PREFACE

The Iowa Administrative Bulletin is published in pamphlet form biweekly pursuant to Iowa Code Chapter 17A and supersedes Part I of the Iowa Administrative Code Supplement.

The Bulletin contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies [continue to refer to General Information for drafting style and form], all proclamations and executive orders of the Governor which are general and permanent in nature; and other "materials deemed fitting and proper by the Administrative Rules Review Committee."

The Bulletin may also contain economic impact statements to proposed rules and filed emergency rules, objections filed by Administrative Rules Review Committee, Governor or the Attorney General, any delay by the Committee of the effective date of filed rules, regulatory flexibility analyses and agenda for monthly committee meetings.

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

The ARC number which appears before each agency heading is assigned by the Administrative Rules Coordinator for identification purposes and should always be used when referring to this item in correspondence and other communications.

The Iowa Administrative Code Supplement is also published every other week in loose-leaf form, pursuant to Iowa Code section 17A.6. It contains replacement pages for the Iowa Administrative Code. These replacement pages incorporate amendments to existing rules, new rules or emergency or temporary rules which have been filed with the administrative rules coordinator and published in the Bulletin.

PHYLLIS BARRY, Deputy Code Editor
LAVERNE SWANSON, Administrative Code Assistant
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PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
9	Friday, October 4, 1985	October 23, 1985
10	Friday, October 18, 1985	November 6, 1985
11	Friday, November 1, 1985	November 20, 1985

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Iowa Administrative Bulletin

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Fourth quarter	April 1, 1986, to June 30, 1986	\$ 33.00 plus \$1.32 sales tax

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Iowa Administrative Code

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

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Pages 700 to 768 include ARC 5994 to ARC 6021, ARC 6023 to ARC 6027, and ARC 6029 to ARC 6041

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Schedule for Rulemaking 1985

FILING DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 11	Jan. 30	Feb. 19	Mar. 6	Mar. 27	May 1	July 29
Jan. 25	Feb. 13	Mar. 5	Mar. 20	Apr. 10	May 15	Aug. 12
Feb. 8	Feb. 27	Mar. 19	Apr. 3	Apr. 24	May 29	Aug. 26
Feb. 22	Mar. 13	Apr. 2	Apr. 17	May 8	June 12	Sep. 9
Mar. 8	Mar. 27	Apr. 16	May 1	May 22	June 26	Sep. 23
Mar. 22	Apr. 10	Apr. 30	May 15	June 5	July 10	Oct. 7
Apr. 5	Apr. 24	May 14	May 29	June 19	July 24	Oct. 21
Apr. 19	May 8	May 28	June 12	July 3	Aug. 7	Nov. 4
May 3	May 22	June 11	June 26	July 17	Aug. 21	Nov. 18
May 17	June 5	June 25	July 10	July 31	Sep. 4	Dec. 2
May 31	June 19	July 9	July 24	Aug. 14	Sep. 18	Dec. 16
June 14	July 3	July 23	Aug. 7	Aug. 28	Oct. 2	Dec. 30
June 28	July 17	Aug. 6	Aug. 21	Sep. 11	Oct. 16	Jan. 13 '86
July 12	July 31	Aug. 20	Sep. 4	Sep. 25	Oct. 30	Jan. 27 '86
July 26	Aug. 14	Sep. 3	Sep. 18	Oct. 9	Nov. 13	Feb. 10 '86
Aug. 9	Aug. 28	Sep. 17	Oct. 2	Oct. 23	Nov. 27	Feb. 24 '86
Aug. 23	Sep. 11	Oct. 1	Oct. 16	Nov. 6	Dec. 11	Mar. 10 '86
Sep. 6	Sep. 25	Oct. 15	Oct. 30	Nov. 20	Dec. 25	Mar. 24 '86
Sep. 20	Oct. 9	Oct. 29	Nov. 13	Dec. 4	Jan. 8 '86	Apr. 7 '86
Oct. 4	Oct. 23	Nov. 12	Nov. 27	Dec. 18	Jan. 22 '86	Apr. 21 '86
Oct. 18	Nov. 6	Nov. 26	Dec. 11	Jan. 1 '86	Feb. 5 '86	May 5 '86
Nov. 1	Nov. 20	Dec. 10	Dec. 25	Jan. 15 '86	Feb. 19 '86	May 19 '86
Nov. 15	Dec. 4	Dec. 24	Jan. 8 '86	Jan. 29 '86	Mar. 5 '86	June 2 '86
Nov. 29	Dec. 18	Jan. 7 '86	Jan. 22 '86	Feb. 12 '86	Mar. 19 '86	June 16 '86
Dec. 13	Jan. 1 '86	Jan. 21 '86	Feb. 5 '86	Feb. 26 '86	Apr. 2 '86	June 30 '86
Dec. 27	Jan. 15 '86	Feb. 4 '86	Feb. 19 '86	Mar. 12 '86	Apr. 16 '86	July 14 '86

20 days from the publication date is the **minimum** date for a public hearing or cutting off public comment.

35 days from the publication date is the **earliest** possible date for the agency to consider a noticed rule for adoption. It is the regular effective date for an adopted rule.

180 days See 17A.4(1)"b." If the agency does not adopt rules within this time frame, the Notice should be terminated.

NOTICE

Beginning on June 14, 1985, the deadline for filing rules with the office of the Administrative Rules Coordinator will be **12 o'clock noon** rather than 4:30 p.m.

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.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
AGING, COMMISSION ON THE[20] Long-term care ombudsman, amendments to ch 4 IAB 10/9/85 ARC 6037	Conference Room Correction Department 250 Jewett Bldg. 914 Grand Avenue Des Moines, Iowa	November 6, 1985 10:00 a.m.
Grants to area agencies, 9.1 IAB 10/9/85 ARC 6038	Conference Room Aging Commission 236 Jewett Bldg. 914 Grand Avenue Des Moines, Iowa	November 5, 1985 10:00 a.m.
AGRICULTURE DEPARTMENT[30] On site containment of fertilizers, soil conditioners and pesticides, ch 9 IAB 9/25/85 ARC 5951	Conference Room First Floor Wallace State Office Bldg. Des Moines, Iowa	October 16, 1985 1:00 p.m.
BEER AND LIQUOR CONTROL Private wine sales, 14.7 IAB 9/25/85 ARC 5956 (See ARC 5955)	Conference Room Central Office 1918 S.E. Hulsizer Ave. Ankeny, Iowa	October 22, 1985 1:00 p.m.
COMMERCE COMMISSION[250] Regulatory flexibility analysis, energy conservation, ch 30 IAB 9/25/85 ARC 5992 (See IAB 7/3/85 ARC 5671 and ARC 5670)	Hearing Room First Floor Lucas State Office Bldg. Des Moines, Iowa	October 16, 1985 10:00 a.m.
CONSERVATION COMMISSION[290] Motor regulations, 40.4 IAB 9/25/85 ARC 5965	Conference Room Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	October 15, 1985 10:00 a.m.
Cost-sharing to acquire natural areas, ch 78 IAB 9/25/85 ARC 5979	Conference Room Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	October 15, 1985 10:00 a.m.
Wild turkey spring hunting regulations, ch 111 IAB 9/25/85 ARC 5966	Conference Room Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	October 17, 1985 10:00 a.m.
HEALTH DEPARTMENT[470] Magnetic resonance imaging services, 203.12 IAB 9/25/85 ARC 5987	Conference Room Third Floor Lucas State Office Bldg. Des Moines, Iowa	October 15, 1985 10:00 a.m.
Fee for registration of certificate of birth, 95.1 IAB 10/9/85 ARC 6003	Conference Room Fourth Floor Lucas State Office Bldg. Des Moines, Iowa	October 29, 1985 1:00 p.m.
Advanced emergency medical care, 132.14 IAB 10/9/85 ARC 6012 (See ARC 5996, herein)	Conference Room Third Floor Lucas State Office Bldg. Des Moines, Iowa	October 30, 1985 10:00 a.m.
HUMAN SERVICES DEPARTMENT[498] Payment for foster care and foster care training, amendments to ch 156 IAB 10/9/85 ARC 6013	Des Moines DHS County Office Conference Room 409 North Fourth Burlington, Iowa	October 30, 1985 2:00 p.m.

HUMAN SERVICES DEPARTMENT[498] (cont'd)

Carroll DHS County Office Conference Room 611 North West Street Carroll, Iowa	October 30, 1985 1:00 p.m.
Cedar Rapids District Office Conference Room - 6th Floor 221 4th Avenue S.E. Cedar Rapids, Iowa	November 1, 1985 10:00 a.m.
Council Bluffs District Office Conference Room A, 3rd Floor 12 Scott Street Council Bluffs, Iowa	November 1, 1985 10:00 a.m.
City Council Chambers City Hall 116 W. Adams Creston, Iowa	October 31, 1985 10:00 a.m.
Davenport District Office 5th Floor Conference Room 428 Western Avenue Davenport, Iowa	October 31, 1985 10:00 a.m.
Winneshiek DHS County Office Conference Room 1111 Paine Street Decorah, Iowa	November 5, 1985 10:00 a.m.
Des Moines District Office District Office Conference Room 3609½ Douglas Des Moines, Iowa	November 4, 1985 1:30 p.m.
Dubuque DHS County Office Town Clock Plaza Nesler Centre 3rd Floor Conference Room Dubuque, Iowa	October 31, 1985 10:00 a.m.
Webster DHS County Office 23 North Seventh Fort Dodge, Iowa	October 31, 1985 10:00 a.m.
Marshalltown Annex Office 206 West State Street Marshalltown, Iowa	November 5, 1985 10:00 a.m.
Mason City District Office Mohawk Square 22 North Georgia Avenue Mason City, Iowa	October 30, 1985 10:00 a.m.
Ottumwa District Office Fourth Floor Conference Room 226 W. Main Ottumwa, Iowa	October 31, 1985 10:00 a.m.
Sioux City District Office 2nd Floor Conference Room 808-5th Street Sioux City, Iowa	October 31, 1985 7:00 p.m.
Bethany Lutheran Church 15 W. 14th Street Spencer, Iowa	October 30, 1985 7:00 p.m.
Waterloo District Office Black Hawk County Conference Room 2nd Floor - KWWL Bldg. 500 East 4th Waterloo, Iowa	October 30, 1985 4:00 p.m.

INSURANCE DEPARTMENT OF[510]

Accident and health insurance,
35.20
IAB 10/9/85 ARC 6016

Insurance Dept.
Conference Room
Lucas State Office Bldg.
Des Moines, Iowa

October 31, 1985
1:30 p.m.

LIBRARY, STATE OF IOWA[560]

State library of Iowa, ch 1
IAB 10/9/85 ARC 6023

Conference Room
State Library
Historical Bldg.
East 12th and Grand
Des Moines, Iowa

November 12, 1985
10:00 a.m.

MERIT EMPLOYMENT DEPARTMENT[570]

Definitions, pay plan, certification and
selection, probationary period, promotion,
transfer, temporary assignment and
voluntary demotion, separations,
disciplinary actions, grievances and
appeals, vacation and leave;
amendments to chs 1, 4, 7, 9, 10, 11, 12, 14
IAB 10/9/85 ARC 6036

Conference Room
South Half
First Floor
Grimes State
Office Bldg.
Des Moines, Iowa

November 14, 1985
9:20 a.m.

PAROLE BOARD[615]

Mandatory minimum
sentences, 4.9
IAB 9/25/85 ARC 5962

Parole Board Office
234 Jewett Bldg.
914 Grand
Des Moines, Iowa

October 17, 1985
10:00 a.m.

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Fire marshal, school and
college buildings, 5.651
IAB 9/25/85 ARC 5986
(See ARC 5985)

Conference Room
Third Floor
Wallace State Office Bldg.
Des Moines, Iowa

October 18, 1985
10:00 a.m.

RACING COMMISSION, STATE[693]

Greyhound and mutuel
rules, trifecta,
amendments to chs 7 and 8
IAB 9/25/85 ARC 5961
(See ARC 5960)

Auditorium
Wallace State Office Bldg.
Des Moines, Iowa

October 16, 1985
9:00 a.m.

TRANSPORTATION DEPARTMENT[820]

Registration of motor vehicle
weighing 55,000 pounds or over,
[07,D] 11.20
IAB 9/25/85 ARC 5953
(See ARC 5952)

Department of
Transportation Complex
800 Lincoln Way
Ames, Iowa

November 5, 1985

Denials, cancellations,
suspensions and revocations,
[07,C] ch 6
IAB 10/9/85 ARC 6001
(See ARC 6000, herein)

Department of
Transportation Complex
800 Lincoln Way
Ames, Iowa

November 19, 1985

OWI implied consent,
driver licenses, financial
responsibility; amendments to
[07,C] chs 11, 13, 14
IAB 10/9/85 ARC 6002

Department of
Transportation Complex
800 Lincoln Way
Ames, Iowa

November 19, 1985

**WATER, AIR AND WASTE
MANAGEMENT[900]**

Underground storage
tanks, ch 135
IAB 10/9/85 ARC 6031

Conference Room
Fifth Floor
Henry A. Wallace Bldg.
Des Moines, Iowa

October 29, 1985
10:00 a.m.

ARC 6037
AGING, COMMISSION ON THE[20]
NOTICE OF INTENDED ACTION
AND TERMINATION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 17A.3, the Iowa Commission on the Aging hereby gives Notice of Intended Action to amend rule 4.2(249B) "Long-Term Care Ombudsman Program," Iowa Administrative Code.

An amendment to subrule 4.2(1) assigns administration of the Care Review Committee system to the Long-Term Care Ombudsman/Resident's Aide Program.

An amendment to subrule 4.2(4) clarifies the responsibilities of the Ombudsman/Resident's Aide Program in administration of the Care Review Committee Program.

An amendment to subrule 4.2(6), paragraph "b," corrects the listing of persons and agencies to whom an annual report is submitted by the Ombudsman/Resident's Aide Program.

Amendments to subrule 4.2(8) add specific information on the role of area agencies on aging in respect to the Ombudsman/Resident's Aide Program.

Subrule 4.2(9) provides detail on the establishment of Care Review Committees regarding meetings and number of members for each facility.

Subrule 4.2(10) adds detail on Care Review Committee membership regarding application for membership, appointment to committees and cancellation of membership to Care Review Committees.

Subrule 4.2(11) contains appeal procedures to the appointment and cancellation of Care Review Committee membership.

Subrule 4.2(12) describes Care Review Committee structure and meetings, and subrule 4.2(13) outlines the responsibilities of the Committee.

Subrule 4.2(14) describes the Committee's access to information and lists persons or groups that Committees may ask for assistance.

Subrule 4.2(15) provides detail on confidentiality and subrule 4.2(16) contains procedures for the review of institutionalized persons, and procedures that are used to respond to complaints from individuals or from the State Department of Health.

Any interested persons may make written suggestions or comments on these proposed rules at least two days prior to November 6, 1985. These written materials should be directed to Director, Iowa Commission on the Aging, 236 Jewett Building, 914 Grand Avenue, Des Moines, Iowa 50319.

There will be a public hearing on Wednesday, November 6, 1985, at 10:00 a.m. in the Iowa Department of Corrections Conference Room, 250 Jewett Building, 914 Grand Avenue, Des Moines, Iowa. Persons who wish to make oral presentations at the public hearing should contact the Director at least two days prior to the date of the public hearing.

This rule is intended to implement Iowa Code Chapter 249B.

Notice of Intended Action proposing amendments to rule 4.2(249B) "Long Term Care Ombudsman Program," published in the Iowa Administrative Bulletin, January 16, 1985, as ARC 5252, is hereby terminated.

The following amendments are proposed.

ITEM 1. Subrule 4.2(1) is amended to read as follows:

4.2(1) General rule. The state agency shall operate a statewide long-term care *resident's aide/ombudsman* program in co-operation with appropriate state and local agencies such as the office of the citizen's aide/ombudsman, the state department of health, and the area agencies on aging. *The program shall include the administration of the care review committee system identified in Iowa Code section 249B.35.*

ITEM 2. Subrule 4.2(2) is amended by adding two new paragraphs and renumbering the paragraphs to read as follows:

4.2(2) Definitions. The following definitions apply to this rule:

"Administrative action" means any action or decision made by an owner, employee or agent of a long-term care facility, or supportive living arrangement, or by a government agency which affects the provision of services to residents covered by the *resident's aide/ombudsman* program.

"Complaint" means a report of an alleged violation of applicable requirements of Iowa Code chapter 135C or rules adopted pursuant to said chapter.

"Long-term care *resident's aide/ombudsman* program" means the statewide long-term care ombudsman program operated by the commission on the aging and administered by the long-term care *resident's aide/ombudsman*.

"Supportive living arrangement" means any category of institution, foster home, or group living arrangement that is regulated by the state in which recipients of supplemental security benefits may reside.

ITEM 3. Subrule 4.2(4) is amended to read as follows:

4.2(3) Program administration. The executive director shall employ ~~an~~ *at least one* individual (hereinafter called the *long-term care resident's aide/ombudsman*) to administer the long-term care *resident's aide/ombudsman* program in accordance with the requirements of the Act and Iowa Code section 249B.35 to the extent that funds are available.

ITEM 4. Subrule 4.2(4) and paragraphs "a" through "e" are amended as follows:

4.2(4) Responsibilities. *Duties of the long-term care resident's aide/ombudsman.* The long-term care *resident's aide/ombudsman* shall ~~have~~ *perform* the following ~~responsibilities~~ *duties to the extent that funds are available:*

a. To ~~research and pursue the resolution of~~ *investigate and resolve* complaints about administrative actions that may adversely affect the health, safety/welfare or rights of ~~elder~~ persons residing in long-term care facilities or who may reside in supportive living arrangements.

b. To monitor the development and implementation of federal, state and local laws, regulations and policies that relate to long-term care facilities *and supportive living arrangements* in the state.

AGING, COMMISSION ON THE[20] (cont'd)

c. To provide information *and training* to the public and to state and local agencies about problems of *older* persons in long-term care facilities.

d. To train *staff and volunteers upon request*.

e. To assist in the development of organizations to participate in the *resident's aide/ombudsman* program.

ITEM 5. Subrule 4.2(4) is further amended by the addition of new paragraphs "f" and "g" as follows:

f. To administer the care review committee system pursuant to these rules and to assist the committees in the performance of their duties through training and technical assistance.

g. To comment and make recommendations on administrative actions under consideration by an agency or authority which may affect residents in long-term care facilities or those seeking admission to long-term care facilities if the complaint involves procedures or practices related to admission to the facility.

ITEM 6. Subrule 4.2(5) and paragraphs "a" through "f" are amended to read as follows:

4.2(5) Access requirements. The *resident's aide/ombudsman in response to complaints* shall have access to long-term care facilities and supportive living arrangements, private access to residents, ~~of long-term care facilities and supportive living arrangements, and access to the personal and medical records of residents on whose behalf a complaint is being pursued and access to other records maintained by the facilities, supportive living arrangements or governmental agencies pertaining to the complaint being investigated.~~

a. The *resident's aide/ombudsman* may enter any long-term care facility or supportive living arrangement without prior notice. After notifying the person in charge of the facility of ~~his or her the resident's aide/ombudsman's~~ presence, the *resident's aide/ombudsman* may communicate privately and without restriction with any resident who consents to the communication.

b. All medical and personal records maintained by a facility shall be confidential and shall not be available for review and copying to ~~by the resident's aide/ombudsman~~ except under the following circumstances:

(1) The information is requested by the *resident's aide/ombudsman* who provides the facility with a written waiver signed by the person about whom the information is sought, the person's guardian, conservator, legal representative or responsible party, as defined under health department subrule 58.1(19), Iowa Administrative Code. Each signed consent shall designate specifically the person or agency to whom the information is to be sent ~~provided~~, and the information shall be ~~sent provided~~ only to that person or agency.

(2) The information is sought by a court order.

c. The *resident's aide/ombudsman* may review and copy any files or other records of a long-term care facility, or of any government agency pertaining to the care of residents that may be considered necessary by the *resident's aide/ombudsman* for the resolution of a complaint.

d. The *resident's aide/ombudsman* shall not observe the private living area of any resident who objects to the observation.

e. The *resident's aide/ombudsman* may request ~~from any government agency or area agency on aging, cooperation~~ cooperation, assistance and data that will enable the *resident's aide/ombudsman* to execute any of ~~his or her functions~~ the *resident's aide's* duties and powers

under the Older Americans Act: *from any government agency or area agency on aging.*

f. The facility staff member in charge may refuse or terminate a *resident's aide/ombudsman's* visit with a resident only when written documentation is provided to the *resident's aide/ombudsman* that the visit is a threat to the health and safety of the resident. The information must be documented by the resident's physician in the resident's medical record.

(1) An exception may occur when the resident, with full information related to ~~her or his~~ *the resident's* medical condition, waives medical advice and chooses to meet with the *resident's aide/ombudsman*.

(2) The facility may request that the resident sign a written statement in which the resident assumes responsibility for ~~his or her~~ *the resident's own* action. If the person is not legally competent to sign the statement, the waiver may be signed by a legal representative or responsible party, as defined in health department subrule 58.1(19), Iowa Administrative Code.

ITEM 7. Subrule 4.2(6) is amended to read as follows:

4.2(6) Reporting. The *long-term care resident's aide/ombudsman program* ~~must~~ shall maintain a state-wide uniform reporting system to collect and analyze information on complaints and conditions in long-term care facilities in accordance with requirements of the Act: ~~and Iowa Code section 249B.34.~~ Information provided by the department of health ~~and care review committees~~ shall be used in this system. ~~No information from this reporting system shall be made public that threatens the confidentiality of residents or complainants without the written permission of affected residents or complainants.~~

a. The complaint documentation and reporting system shall include: ~~where available:~~

- (1) The source ~~and date~~ of the complaint;
- (2) Name, location and type of facility;
- (3) Facility licensure and certification status;
- (4) Description of the problem;
- (5) Billing status of the resident;
- (6) Method by which the complaint was received; and,
- (7) Description of follow-up activities: ~~and date of resolution.~~

b. The *long-term resident's aide/ombudsman program* shall prepare an annual report analyzing the complaint statistics collected and submit this report to AoA, ~~and the office of the governor, the general assembly of Iowa, and the Iowa departments of health and social human services.~~ (45 CFR 1321.43(f), 1981).

ITEM 8. Subrule 4.2(7) is amended to read as follows:

4.2(7) Confidentiality and disclosure. The complaint files maintained by the long-term care *resident's aide/ombudsman program* shall be maintained as confidential information and may not be disclosed unless the *resident's aide/ombudsman* authorizes disclosure.

ITEM 9. Subrule 4.2(7), is further amended by rescinding paragraph "a" and subparagraphs (1) and (2) and inserting in lieu thereof the following:

a. The *resident's aide/ombudsman* shall not disclose the identity of any complainant or resident, or any identifying information obtained from a resident's personal or medical records unless the complainant or resident, or the legal representative of either consents in writing to the disclosure and specifies to whom the information may be disclosed.

ITEM 10. Subrule 4.2(7) paragraphs "b" through "f" are amended to read as follows:

AGING, COMMISSION ON THE[20] (cont'd)

b. The *resident's aide*/ombudsman may use materials in the files for the preparation and disclosure of statistical, case study and other pertinent reports provided that the means of discovering the identity of particular persons is not disclosed.

c. When the *resident's aide*/ombudsman encounters a deficiency that pertains to compliance with state or federal laws or regulations, the *resident's aide*/ombudsman may make referrals directly to the appropriate agency for action.

d. When the research conducted by the *resident's aide*/ombudsman discloses facts that may warrant the institution of civil proceedings against an offender, the matter may be referred to the agency with authority to institute proceedings.

e. When the research conducted by the *resident's aide*/ombudsman reveals information relative to the misconduct or breach of duty of any officer or employee of a facility, supportive living arrangement or government agency, the *resident's aide*/ombudsman may refer the matter to the appropriate authorities for any necessary action.

f. ~~The agency or authority to which a referral has been made shall report to the ombudsman all follow-up activities within thirty days and every thirty days thereafter until final action on each referral.~~ *The resident's aide/ombudsman program shall initiate follow-up activities on all complaints and referrals.* The *resident's aide*/ombudsman shall maintain records and may make disclosures that may be necessary to resolve the matter.

ITEM 11. Rule 4.2(249B) is further amended by the addition of new subrules 4.2(8) to 4.2(16) as follows:

4.2(8) Role of the area agencies on aging.

a. Area agencies on aging shall carry out the following activities in support of the long-term care resident's aide/ombudsman program:

(1) Assist the resident's aide/ombudsman program in determining the training needs of care review committees in their respective planning and service areas;

(2) Assist the resident's aide/ombudsman program in training and co-ordinating the training of care review committee members; and

(3) Distribute state agency-provided forms needed by care review committees.

b. Area agencies on aging may provide additional support to the resident's aide/ombudsman program by:

(1) Providing legal and other technical assistance to care review committees;

(2) Recruiting applicants for membership on care review committees; and

(3) Assisting in the resolution of complaints or concerns being investigated by care review committees.

4.2(9) Care review committees established. A care review committee shall be established for each licensed health care facility as defined in Iowa Code section 135C.1 in accordance with Iowa Code sections 135C.25 and 249B.35 and shall operate within the scope of these rules.

a. The committee shall consist of at least three members or a number sufficient to maintain a ratio of one member to fifteen residents. The maximum number of members shall be established by the committee.

b. Members shall reside within the service area of the facility.

c. The committee, or individual members, may function for more than one facility, subject to being appointed to each facility.

4.2(10) Application, appointment, and cancellation of care review committee membership. Any individual may apply to the state agency for membership on a care review committee. Any person, organization or agency is encouraged to recommend names of potential volunteers for care review committee membership to the state agency.

a. Application forms may be obtained from any area agency on aging or the state agency at the address identified in rule 2.1(249B).

b. Each applicant shall complete and submit an application for membership to the state agency at the address identified in 20—2.1(249B).

c. Applications for membership on care review committees will be accepted unless the applicant has an ownership interest in a facility; or is employed by the facility; or is related to an employee, board member, licensee of the facility; or is a public employee involved with the sponsoring or placement of residents in the facility; or is an administrator of the long-term care facility; or is a professional consultant to the facility. Relatives shall be defined as any one of the following: Father, mother, son, daughter, brother, sister, aunt, uncle, first cousin, nephew, niece, wife, husband, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepparent, stepbrother, stepchild, stepsister, half-sister, half-brother, grandparent or grandchild.

d. Applications for care review committee membership for any facility caring primarily for persons who are mentally ill, mentally retarded, or developmentally disabled shall be accepted only after consultation with the director of the division of mental health, mental retardation and developmental disabilities of the Iowa department of human services. The applications shall be considered acceptable if the director of the division of mental health, mental retardation and developmental disabilities of the Iowa department of human services institutes no disqualifying action within ten days of notification of the proposed appointments.

e. Appointment to care review committees.

(1) Members of the care review committee shall be appointed from individuals whose application for membership has been accepted according to this rule. Appointments shall be made by letter by the executive director or designee and appropriate area agencies on aging and facilities shall be notified of the appointment.

(2) Appointment of care review committee members may be made from accepted applicants who are considered to possess a combination of the following traits or skills: Knowledge of the long-term care system; understanding of the aging process; training in the human services field; experience in complaint identification, processing and documentation; a commitment to the welfare and rights of residents; and understanding of the types and needs of clients served by the facility.

(3) Preference for membership on care review committees may be given to applicants with background and expertise that differ from existing members of the same committee.

f. Cancellation of appointments to care review committees.

(1) A care review committee member's appointment may be canceled by the executive director for any of the following reasons: Falsification of information on the application for membership form; acting as a member without appointment; attending less than one-half of the

AGING, COMMISSION ON THE[20] (cont'd)

meetings convened each year by the care review committee chairperson; and actions which are found by the executive director to violate these rules, or the intent of the long-term care resident's aide/ombudsman program.

(2) The executive director shall provide written notification to committee members, the area agency on aging and the facility of the cancellation of care review committee members' appointments.

4.2(11) Appeal to appointment or cancellation of care review committee membership.

a. An appeal of the decision of the executive director concerning appointment or cancellation of care review membership may be made in writing to the commission within thirty days of the written notice of the executive director's decision.

b. The executive director shall consider the appeal and notify the appealing party of the director's decision within thirty days of receiving written notice of the appeal.

4.2(12) Care review committee structure and meetings.

a. Every committee shall have a chairperson and secretary selected by the membership. The chairperson shall co-ordinate the activities of the committee. The secretary shall record minutes of each meeting on forms provided by the state agency and distributed by area agencies on aging and prepare reports as necessary.

b. The committee shall meet at least quarterly and meet on other occasions as required to accomplish its responsibilities.

c. The administrator or staff of the facility shall not be present at committee meetings except upon request of the committee.

d. Confidential information shall not be discussed during meetings when members of the general public are present.

e. The committee shall submit written minutes to the administrator and to the state agency at the conclusion of each meeting.

f. Committee minutes shall be retained by the facility for a period of at least two years and shall be available to the department of health upon request.

4.2(13) Responsibilities of the committee. The committee shall represent and advocate for the rights of the resident in the facility and those seeking admittance to the facility. The committee or individual members shall:

a. Conduct a review of each resident annually according to the procedures identified in subrule 4.2(16), paragraph "a".

b. Investigate complaints according to the procedures established in subrule 4.2(16), paragraph "c."

c. Attend a training session approved by the state agency at least once during a two-year period.

4.2(14) Committee access and assistance.

a. The committee shall have access to the facility and private access to the residents.

b. The committee may request information, advice and counsel from the facility administrator, medical or health professionals or specialists, area agencies on aging, the state agency or from other state and local agencies.

c. The physician's certification of care shall be made available to the committee by the administrator of the facility.

4.2(15) Confidentiality.

a. The committee shall not have access to the medical, financial or personal records of the residents.

b. The committee shall not have access to the records of the social services department of the facility.

c. The committee shall not disclose information concerning the residents or the operation of the facility in a manner that will identify individuals or the facility except to the resident's aide/ombudsman program or as requested in proceedings involving the citation of a facility by the department of health.

4.2(16) Procedures.

a. Procedures for resident review. To evaluate the degree of satisfaction that residents have with the quality of life experienced in the facility in which they reside, the following procedures will be used:

(1) Resident reviews shall be recorded on a form supplied by the state agency and distributed by area agencies on aging.

(2) The committee shall establish a schedule for at least one private interview annually with each resident in the facility.

(3) Responses to questions asked of residents or their representatives will be reported on the interview section of the form, except as provided in 4.2(16)"a"(6).

(4) Committee members may make visits without prior notice to the facility to observe residents at different times of the day. Comments made after observing residents will be entered on the comments section of the form except as provided in 4.2(16)"a"(6).

(5) The report of each resident review shall be provided to the administrator of the facility following the private interview of the residents and shall be retained by the facility for a period of at least two years and shall be available to the department of health upon request.

(6) Complaints identified by the resident during resident reviews shall be considered complaints and handled according to procedures identified in 4.2(16)"c" and shall not be recorded on review forms.

b. Committee response to complaints.

(1) Throughout the investigation of all complaints, the committee shall maintain objectivity and act as advocates for residents without being adversaries of the facility.

(2) The dignity and privacy of residents will be maintained by all persons involved in a complaint investigation.

(3) The committee may receive and investigate complaints regarding the rights and welfare of residents of, or persons seeking admission to, a facility using the procedures appropriate to the source of the complaint, either from an individual or department of health.

(4) The committee shall solicit the input of the complainant or resident regarding the complainant's or resident's wishes on action to be pursued by the committee.

(5) The purpose of the committee response to complaints is to seek the mutually satisfactory resolution of problems and prevent unnecessary recourse to regulatory action against a facility. The purpose must not, however, prevent such regulatory action when necessary to protect or achieve the rights of residents.

c. Upon receipt of a complaint, the committee will contact the facility administrator to discuss the allegations, and shall forward a copy of the complaint to the department of health.

(1) Information which may identify the complainant or resident shall be confidential unless the complainant or resident has given written permission to the care review committee for the disclosure of such identity.

(2) A committee member will investigate the complaint within fourteen calendar days of receipt.

AGING, COMMISSION ON THE[20] (cont'd)

(3) The investigating care review committee member shall make an unannounced visit to the facility, and upon arrival at the facility, notify the staff person in charge of the facility that the member is in the facility.

(4) The committee member investigating the complaint will, to the extent possible, ascertain the facts of the situation involved in the referral by talking with residents, staff and others who might have information regarding the matter under investigation, and through personal observations of conditions and activities in the facility.

(5) The committee shall attempt to resolve the situation to the mutual satisfaction of the facility administrator and the complainant.

(6) If, after fourteen days, a resolution has not been reached, the committee shall file a written report with the long-term care resident's aide/ombudsman program at the address identified in 20—2.1(249B). The report filed with the resident's aide/ombudsman program shall state the findings of the committee and shall document all attempts of resolution pursued by the committee. The long-term care resident's aide/ombudsman program shall forward a copy of the report to the department of health.

(7) The committee will inform the complainant of any action taken in response to the complaint or concern within twenty days of receipt.

d. The following procedures shall apply to complaints referred by the Iowa department of health to the state agency:

(1) Complaints received or initiated by the Iowa department of health may be referred for investigation by the care review committee by transmittal to the resident's aide/ombudsman program.

(2) Information that may identify the complainant or resident shall be confidential.

(3) The long-term care resident's aide/ombudsman program will provide adequate information within three days to a member of the appropriate care review committee to investigate the allegations. Written notification will be provided within seven days.

(4) A committee member will investigate the complaint within fourteen calendar days of receipt.

(5) The investigating care review member shall make an unannounced visit to the facility, and upon arrival at the facility, notify the staff person in charge of the facility that the member is in the facility.

(6) The committee member investigating the complaint will, to the extent possible, ascertain the facts of the situation involved in the referral by talking with residents, staff and others who might have information regarding the matter under investigation, and through personal observations of conditions and activities in the facility.

(7) The committee shall attempt to resolve the situation to the mutual satisfaction of the facility administrator and the complainant.

(8) If, after fourteen days, a resolution has not been reached, the committee shall file a written report with the long-term care resident's aide/ombudsman program at the address identified in 20—2.1(249B). The report filed with the resident's aide/ombudsman program shall state the findings of the committee and shall document all attempts of resolution pursued by the committee. The long-term care resident's aide/ombudsman program shall forward a copy of the report to the department of health.

(9) The committee will inform the complainant of any action taken in response to the complaint within twenty days of receipt.

ARC 6038**AGING, COMMISSION ON THE[20]****NOTICE OF INTENDED ACTION**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)'6'.

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 §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 17A.3, the Iowa Commission on the Aging hereby gives Notice of Intended Action to amend rule 9.1(249B) "Grants to Area Agencies," Iowa Administrative Code.

The amendment to rule 9.1(249B) provides timeframes for the use of funds received by area agencies.

The addition of new subrule 9.1(4) "Timeframe for use of funds" also provides guidelines for budgeting sections of area agencies annual application for award and implementation procedures.

Any interested persons may make written suggestions or comments on these proposed rules. Written comments should be received by the agency no later than 4:30 p.m., November 3, 1985. A public hearing will be held on November 5, 1985 at 10:00 a.m. in the Iowa Commission on the Aging Conference Room, 236 Jewett Building, 914 Grand Avenue, Des Moines, Iowa. Persons who wish to make oral presentations at the public hearing should contact the Director at least two days prior to the date of the public hearing.

This rule is intended to implement Iowa Code Chapter 249B.

The following amendments are proposed.

ITEM 1. Rule 9.1(249B) is amended by adding the following new subrule:

9.1(4) Timeframe for use of funds. Area agency allotments are budgeted in the area agency annual application for award to be expended for the fiscal year July 1 through June 30 annually. In addition, budgets will include funds identified in 4.9(1) through 4.9(8), in accordance with requirements identified in chapter 9.

a. Funds displayed in the annual application for award budget summary must be expended during the identified fiscal year with the exception that twenty-five percent of the total cash budget may be carried over for use in the subsequent fiscal year.

b. The total cash budget shall include AoA Title III funds, AoA Title V funds, state funds, program income, local public funds and other local cash.

c. AoA Title III carryover funds shall be included in the budget summary of the annual application for award.

d. Program income funds that are to be carried over from the prior fiscal year and program income forecast to be received for the fiscal year identified in the annual application for award shall be included in the budget summary of each year's annual application.

e. The forecast of program income for the plan year identified in the annual application must be at least eighty-five percent of the program income earned in the most recently completed fiscal year.

f. In the fiscal year 1989 and subsequent fiscal years, agencies having carryover funds exceeding twenty-five percent of the prior year cash budget shall have a reduction in their AoA Title III fund advance equal to the excess carryover.

AGING, COMMISSION ON THE[20] (cont'd)

g. Area agencies which exceed the twenty-five percent carryover limit for three consecutive years will not receive AoA Title III cash advance.

ARC 6024**COMMERCE COMMISSION [250]****NOTICE OF INTENDED ACTION**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

The Iowa State Commerce Commission gives notice that on September 20, 1985, the Commission issued an order in Docket No. RMU-85-26, In Re: Transfer of Utility Property, "Order Commencing Rulemaking." The rulemaking is intended to ensure that transferees of utility property used to provide service to the public are ready, willing, and able to provide reasonably adequate service to the public. The Commission has concluded that the transfer of utility property is a discontinuance, reduction, or impairment of service. The Commission has jurisdiction over such matters under Iowa Code section 476.20(1). The statutory authority for this rulemaking is Iowa Code sections 476.2, 476.8 and 476.20(1).

Any interested person may file a written statement of position pertaining to the adoption of the proposed rules. The statement may be filed on or before October 29, 1985, by filing an original and ten copies of the written statement of position in form substantially complying with Iowa Administrative Code 250—2.2(2). All communications will clearly indicate the author's name and the portion of the rule upon which the comment is submitted. All communications will be directed to the Executive Secretary, Iowa State Commerce Commission, Lucas State Office Building, Des Moines, Iowa 50319.

An oral presentation on this matter may be requested as set forth in Iowa Code section 17A.4(1)"b" and Iowa Administrative Code 250—3.6(17A,474).

Add the following new subrule:

7.4(13) Applications for transfer of utility property.

a. Purpose. The purpose of this subrule is to ensure that transferees of utility property used to provide service to the public are ready, willing, and able to provide reasonably adequate service to the public.

b. Effect of subrule. This subrule does not limit:

(1) The rights or obligations created by other statutes or rules applicable to transfers of utility property, including but not limited to the rights or obligations created by Iowa Code sections 476.22 to 476.26.

(2) The power or duty of the commission to apply appropriate regulatory principles to transfers of utility property in formal rate investigations or other commission proceedings.

c. Definitions. For purposes of this subrule, the following definitions apply:

"Transfer" means any sale, lease, mortgage, encumbrance, assignment, or other disposal of property.

"Property" means any utility-owned plant, equipment, system, facility, or other property, necessary and useful in the performance of a utility's duties to the public both before and after the transfer.

"Transferor" means the utility owning the property and seeking to transfer the property.

"Transferee" means any person to whom the utility property will be transferred.

d. Application. Prior to a transfer of utility property of a value in excess of \$250,000, the transferor and the transferee shall file a joint application for permission to transfer the property. One original and ten copies of the application shall be filed with the commission and one copy shall be delivered to the consumer advocate. The application shall include:

(1) Testimony, exhibits, or other documents showing that the transferee will be ready, willing, and able to provide reasonably adequate service to the public after the transfer.

(2) The names, addresses and telephone numbers of individuals who may receive notices or may be contacted about complaints or other inquiries about the property.

(3) A complete description of the nature of the transfer.

(4) A description of the property to be transferred.

(5) A copy of all contracts and related documents associated with the transfer.

e. Approval or docketing. Within forty-five days after the filing of an application, the commission will either approve the application or docket the application. The commission may approve or docket an application prior to the expiration of the forty-five-day period. Failure to issue an order approving or docketing an application will be deemed to be a disapproval of the application. The application will not be deemed to be an application for new or changed rates, charges, schedules or regulations.

f. Contested cases. Contested cases commenced under paragraph "e" of this subrule shall be completed within six months after the date of docketing. Additional time may be granted upon the request of a party to a proceeding and upon a showing of good cause.

g. Criteria. When deciding whether to approve an application, the commission will consider whether the transferee is ready, willing, and able to provide reasonably adequate utility service to the public.

h. Enforcement. The commission may enforce this subrule by the assessment of civil penalties or any other appropriate means.

i. Authority. The statutory authority for this subrule includes Iowa Code sections 476.2, 476.8 and 476.20(1).

ARC 6025**COMMERCE COMMISSION[250]****NOTICE OF INTENDED ACTION**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

The Iowa State Commerce Commission gives notice that on September 20, 1985, the Commission issued an order in Docket No. RMU-85-24, In Re: Second Payment Plans and Electric Service Limiters, "Order Commencing Rulemaking."

COMMERCE COMMISSION[250] (cont'd)

The purpose of this rulemaking is to clarify the rule concerning second payment plans for customers retaining service from November 1 to April 1 due to Iowa Code section 476.20, the winter disconnection moratorium. The proposed change makes it clear that utilities may offer second payment plans after the moratorium period to settle the outstanding account prior to the beginning of the next moratorium period.

The second purpose of this rulemaking is to allow the use of electric service limiters during the winter disconnection moratorium. The use of service limiters is closely related to the question of second payment plans, as both matters concern the customer's ability to pay the balance due on the customer's account at the end of the moratorium. The second payment plan rules allow the utility to offer the customer the option of spreading the debt over several payment periods. The use of service limiters will help the customer to keep the total debt within reasonable limits.

The Commission is proposing to address the specific provisions of service limitation in the context of the tariff review process in order to allow each utility the flexibility to tailor its service limitation policy to its individual operation. However, the Commission is interested in comments concerning any general regulations which may be appropriate.

Any interested person may file written comments in this rulemaking not later than October 29, 1985, by filing an original and ten copies of the comments substantially complying with the form prescribed in Iowa Administrative Code 250—2.2(2). The comments shall clearly indicate the author's name and address and shall contain the specific reference to this docket and the rule upon which comment is submitted. All comments shall be directed to the Executive Secretary, Iowa State Commerce Commission, Lucas State Office Building, Des Moines, Iowa 50319. Oral presentation in this matter may be requested as set forth in the Iowa Code section 17A.4(1)"b."

ITEM 1. Amend the first unnumbered paragraph of 19.4(10) to read as follows:

However, if a customer has retained service from November 1 through April 1 pursuant to 19.4(15), but has been in default of a payment agreement, the utility may offer the customer a second payment agreement in April which will allow the customer to pay the past due amount over at least a seven-month period. The first payment will be due sometime after April 1, with successive payments of agreed amounts to be paid each month thereafter. For such arrangements the utility shall offer the customer the option of spreading payments evenly over at least a seven-month period that will divide the past due amount into equal monthly payments with the final payment due during the next October.

ITEM 2. Amend the first unnumbered paragraph of 20.4(11) to read as follows:

However, if a customer has retained service from November 1 through April 1 pursuant to 20.4(15), but has been in default of a payment agreement, the utility may offer the customer a second payment agreement in April which will allow the customer to pay the past due amount over at least a seven-month period. The first payment will be due sometime after April 1, with successive payments of agreed amounts to be paid each month thereafter. For such arrangements the utility shall offer the customer the option of spreading payments evenly over at least a seven-month period that will divide the past due amount into

equal monthly payments with the final payment due during the next October.

ITEM 3. Amend the first paragraph of 20.4(23) to read as follows:

20.4(23) Limitation of service. The utility shall have the option of adopting a policy for limiting the service of a residential customer for nonpayment of a bill or deposit, or for noncompliance with the terms of a payment agreement, as a measure to be taken prior to disconnection of the customer. ~~Electric heating residential customers shall not have limited service between November 1 and April 1. For purposes of this rule, electric heating shall mean heating by means of a fixed installation electric appliance which serves as the primary heat source.~~

ARC 6041

EMPLOYMENT AGENCY
LICENSING COMMISSION[350]
NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 17A.3 and Chapters 94 and 95, the Employment Agency Licensing Commission hereby gives Notice of Intended Action to adopt rules relating to reports to be made to the Commission.

The Commission has determined that this Notice of Intended Action may have an impact on small business. The Commission has considered the factors listed in Iowa Code section 17A.31. The Commission will issue a regulatory flexibility analysis if a written request is filed by delivery or by mailing postmarked no later than October 29, 1985, to the Deputy Commissioner, Iowa Bureau of Labor, 307 East Seventh Street, Des Moines, Iowa 50319. The request may be made by the administrative rules review committee, the governor, a political subdivision, at least twenty-five persons who qualify as a small business under the Act, or an organization of small businesses representing at least twenty-five persons which is registered with the Commission under Iowa Code section 17A.31.

Any interested person may make written suggestions or written comments on the Notice of Intended Action. Written suggestions or written comments must be filed by delivery or by mailing postmarked no later than October 29, 1985, to the Deputy Commissioner, Iowa Bureau of Labor, 307 East Seventh Street, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code Chapters 94 and 95.

ITEM 1. Amend rule 350—9.4(94) to read as follows:

350—9.4(94) Reports. Each licensee shall file a report with the commission upon Form EALC-4. The report shall be submitted semiannually for the first and second halves of annually by July 1 for the preceding calendar year from January 1 to December 31. The report is due

EMPLOYMENT AGENCY LICENSING COMMISSION[350] (cont'd)

within thirty days from the end of the reporting period. No license shall be renewed unless Form EALC-4 has been completed and returned to the bureau.

ITEM 2. Amend rule 350—10.1(95) to read as follows:

350—10.1(95) EALC-1. This form shall contain the name of the applicant, and if the applicant be a firm, the names of the members, and if it be a corporation, the name of the officers thereof. It shall contain the name, number and address of the building and place where the private employment agency is to be conducted. The form shall specify the period for which the license is requested. ~~It shall also contain~~ *When an applicant is applying for a license for the first time, the applicant shall fill out that portion of this form which contains the affidavits of two reputable citizens of the state in no way connected with the applicant, certifying to the good moral character and reliability of the applicant, or, if a firm or corporation, of each of the members or officers thereof, and that the applicant is a citizen of the United States, if a natural person. That portion of Form EALC-1 dealing with the affidavits of two reputable citizens need not be completed when an applicant is merely renewing the license.*

ITEM 3. Amend rule 350—10.4(95) to read as follows:

350—10.4(95) EALC-4. This form shall list the number of placements, applicant paid fees, employer paid fees, and applicant paid fees for each percentage charged; and the number of applicant refunds made.

ARC 6017

HEALTH DATA COMMISSION[465]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 145.1, 135.11, and 505.8, the Health Data Commission gives Notice of Intended Action to make technical amendments to the Commission's organizational rules, specifically Chapter 2, "Administrative Hearings."

Any interested person may make written comments on these proposed rules prior to November 13, 1985. Such written material should be directed to Denise Horner, Deputy Commissioner, Department of Insurance, Lucas Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally may do so by contacting the same at 515/281-6793.

These rules are intended to implement Iowa Code section 17A.3(1), paragraphs "a" and "b."

The following amendments are proposed:

ITEM 1. Rule 465—2.1(70GA, HF196) is amended to read as follows:

465—2.1(70GA, HF196 145) Scope. A hearing shall be granted to any person aggrieved by final agency action of the commission when the right to a hearing is granted by

statute or constitution including but not limited to disputes as to the accuracy of provider information prepared for dissemination pursuant to 1983 Iowa Acts, House File 196; section 2, subsection 2, paragraph "c" Iowa Code section 145.3(3)"c."

ITEM 2. Rule 465—2.7(70GA, HF196), first unnumbered paragraph, is amended to read as follows:

465—2.7(70GA, HF196 145) Subpoenas. When reasonably necessary for the full presentation of a case, the hearing officer or the commission may, sua sponte, or shall, upon the request of a party, issue subpoenas for the attendance and testimony of witnesses and for the production of books, records, correspondence, papers and other documents which are relevant and material to any matter in issue at the hearing. Parties who desire the issuance of a subpoena shall file with the hearing officer or the commission a written request therefor, designating the witnesses or documents to be produced, and describing the address or location thereof.

ITEM 3. Subrule 2.8(1) is amended to read as follows:

2.8(1) Unless required for the disposition of ex parte matters specifically authorized by statute, the hearing officer or the members of the commission shall not communicate directly or indirectly with any party or their representative, nor shall such party or their representative communicate directly or indirectly with the hearing officer or the members of the commission concerning any issues of fact or law in a contested case unless:

a. Each party or their representative is given prior written notice of the communication. Such notice shall contain a summary of the communication, if oral, or a copy of the communication if written, and the time, place and means of such communication.

b. After such notice, all parties shall have the right, upon written demand, to respond to such communication, including the right to be present and heard if the communication is oral and not completed. If the communication is written, or if oral and completed, any other person has the additional right to a special hearing for the purpose of responding to the ex parte communication, time and place of the communication and provided a reasonable opportunity to participate in the communication.

ARC 6003

HEALTH DEPARTMENT[470]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 135.11(15) and 144.3, the Iowa State Department of Health hereby gives Notice of Intended Action to amend Chapter 95, "Fee for Registration of Certificates of Birth," Iowa Administrative Code.

This amendment specifies the fee for registration of delayed birth certificates is only applicable to persons less than eighteen years of age.

HEALTH DEPARTMENT[470] (cont'd)

A public hearing will be held on the proposed rules October 29, 1985, at 1:00 p.m., in the Fourth Floor Conference Room, Lucas State Office Building. Any interested party may submit written comments prior to October 29, 1985. Comments should be addressed to Mark W. Wheeler, Iowa State Department of Health, Fourth Floor, Lucas State Office Building, Des Moines, Iowa 50319.

These rules are intended to implement 1985 Iowa Acts, House File 451, section 1.

Amend rule 470—95.1(144) by striking the first unnumbered paragraph and inserting in lieu thereof the following:

470—95.1(144) Birth certificates — when filing fee required. Registration of a certificate of birth shall be the following for the purpose of a registration fee being charged pursuant to 1985 Iowa Acts, House File 451, section 1: Birth certificate filed pursuant to Iowa Code section 144.13. Delayed certificates of birth established for persons less than eighteen years of age, pursuant to Iowa Code section 144.15 or 144.18. Birth certificates established for foreign born adoptees pursuant to Iowa Code section 144.23.

ARC 5997**HEALTH DEPARTMENT[470]****TERMINATION OF NOTICE**

Pursuant to the authority of Iowa Code subsection 17A.4(1), paragraph "b," the Iowa State Department of Health hereby terminates the proposed administrative rules to establish a new Chapter 126 entitled "Deaf Services of Iowa," Iowa Administrative Code. Published under Notice of Intended Action in the July 17, 1985, Iowa Administrative Bulletin as **ARC 5689**, these rules are being terminated in order that they may be shortened, clarified and better organized.

This effort will involve more than just minor modifications and will, in fact, be occurring after the August 6, 1985, public hearing that was held in reference to the rules as they had appeared in the July 17, 1985, Iowa Administrative Bulletin. In fairness to the public and in order to maintain the integrity of the department and to comply with the intent and spirit of Iowa Code Chapter 17A, it is only proper that the rulemaking process be repeated once the rules in question have been revised.

For informational purposes, this matter was brought to the attention of the Iowa State Board of Health at their September 11, 1985, meeting. They concurred with the appropriateness of this plan of action.

ARC 6012**HEALTH DEPARTMENT[470]****NOTICE OF INTENDED ACTION**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 147A.4, the Iowa State Department of Health hereby gives Notice

of Intended Action to amend Chapter 132, "Advanced Emergency Medical Care," Iowa Administrative Code.

These amendments:

1. Add a new rule that speaks to the issue of temporary variances by establishing a mechanism whereby authorized ambulance and rescue squad services can request approval to continue operating at the advanced care level even though circumstances beyond their control may cause them to be in temporary noncompliance with rule requirements;

2. Substitute the word "direction" in lieu of the word "control" in subrule 132.8(1), paragraph "f" for purposes of consistency as a result of previous rule changes regarding terminology; and

3. Rearrange the language found in subrule 132.8(8), paragraph "n," subparagraphs (1) and (2) in order that those subparagraphs and a presently unnumbered sentence that follows subparagraph (2) are more appropriately included within a single clearly identified paragraph.

These rule changes have also been filed as Emergency Adopted and Implemented, **ARC 5996**. The subject matter of that filing is incorporated here by reference.

A public hearing on the above changes will be held on October 30, 1985, at 10:00 a.m. in the Third Floor Conference Room, Lucas State Office Building, Des Moines, Iowa 50319.

Any interested party may submit written comments by 4:00 p.m., October 30, 1985. Comments should be addressed to: Mark W. Wheeler, Hearing Officer, Iowa State Department of Health, Fourth Floor, Lucas State Office Building, Des Moines, Iowa 50319.

ARC 5998**HEALTH DEPARTMENT[470]****BOARD OF SOCIAL WORK EXAMINERS
NOTICE OF INTENDED ACTION**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 258A.2 and 147.76, the Board of Social Work Examiners gives Notice of Intended Action to amend Chapter 161 of the Iowa Administrative Code.

The proposed amendment provides that a renewal notice will be sent only to those licensees who have complied with continuing education requirements.

Any interested person may make written comments concerning the proposed rules not later than October 29, 1985, addressed to Irene G. Howard, Director, Professional Licensure, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

The proposed rule is intended to implement Iowa Code section 258A.2.

Subrule 161.7(2) is amended to read as follows:

161.7(2) At least two months before the renewal date, a renewal notice will be sent to each license holder, *who according to the records of the board has complied with the continuing education requirements*, at the last address in the board's file. Failure to receive the notice shall not relieve the license holder of the obligation to pay biennial renewal fees on or before the renewal date.

ARC 6005

HUMAN SERVICES
DEPARTMENT[498]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 239.18, the Department of Human Services proposes to amend Chapter 40, "Application for Aid," Chapter 41, "Granting Assistance," and Chapter 46, "Recoupment," appearing in the Iowa Administrative Code. The Department shall adopt rules necessary to implement the Aid to Dependent Children (ADC) program and to ensure federal financial participation in the program.

This amendment changes the definition of a recipient so that an individual is not considered a recipient for any month in which ADC issued for the individual is subject to recoupment because the recipient was ineligible.

This change is required by a recent federal interpretation. The change clarifies that an individual moving from one ADC eligible group to another may receive ADC in the new household when the ADC received for the individual by the old household is subject to recoupment. For example, when an individual leaves an ADC household, in most instances the needs of the individual cannot be removed without timely notice. If there is not time to give timely notice (ten days) before the first of the next month, ADC assistance may be issued for a month in which the individual is no longer eligible. This assistance is subject to recoupment.

Under the new rules, it becomes clear that this person may be eligible for ADC in the new household for the same month that ADC issued for this person to the old household is subject to recoupment.

In addition, this change can affect how an individual's income is budgeted when determining the amount of ADC the individual is entitled to receive after a month of ineligibility. For example, under current rules when an individual receives ADC in the month following a month that ADC issued for the individual is subject to recoupment, the individual's income continues to be budgeted retrospectively, based on income received two months prior. Under the new rules, this same person's income will be budgeted prospectively, based on anticipated income for the first two months which follow the month that ADC issued for the individual is subject to recoupment because the person was ineligible.

Consideration will be given to all written data, views, or arguments thereto, received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319, on or before October 30, 1985.

This rule is intended to implement Iowa Code section 239.5.

ITEM 1. Amend rule 498—40.1(239) by removing the subrule numbers, removing the catchwords, alphabetizing the definitions, and amending the definitions of "department," "local office," "recipient" and "unborn child" as follows:

Whenever "the department" is used in this title, it "Department" shall mean the Iowa department of human services.

Whenever "the local office" is used in this title, it "Local office" shall mean the local office of the department of human services.

"Recipient" means a person for whom assistance is paid, parent(s) living in the home with the eligible child(ren) and nonparental relative as defined in 41.2(3) who is receiving assistance for the child(ren). *Unless otherwise specified, a person is not a recipient for any month in which the assistance issued for that person is subject to recoupment because the person was ineligible.*

Whenever "unborn child" is used in this title, it "Unborn child" shall include an unborn child during the entire term of the pregnancy.

ITEM 2. Amend the first paragraph of subrule 40.7(4) as follows:

40.7(4) Responsibilities of recipients (including individuals in suspension status). *For the purposes of this subrule, recipients shall include persons who received assistance subject to recoupment because the persons were ineligible.*

ITEM 3. Amend subrule 41.5(2) as follows:

41.5(2) Duplication of assistance. ~~No person~~ *A recipient* whose needs are included in an aid to dependent children grant shall *not* concurrently receive a grant under any other public assistance program administered by the department. Neither shall ~~such person~~ *a recipient* concurrently receive a grant from a public assistance program in another state. When a ~~child~~ *recipient* leaves the home of a specified relative, no payment for a concurrent period shall be made for the same ~~child~~ *recipient* in the home of another relative.

ITEM 4. Amend subrule 41.7(9) as follows:

Amend paragraph "a," subparagraph (5) as follows:

(5) The amount of the assistance grant for the initial two months of eligibility shall be computed prospectively with two exceptions. Income shall be considered retrospectively for the first two payment months which follow a month of suspension, unless there has been a change in the family's circumstances. Also, income for the first ~~two~~ *and second* months of eligibility shall be considered retrospectively when the applicant ~~received assistance~~ *was a recipient* for the ~~two~~ *two* immediately preceding payment months, including ~~a~~ *a* months for which payment was not received due to the restriction defined in 498—45.6(239) and 498—45.7(239).

Add the following new paragraph:

k. When a family's assistance for a month is subject to recoupment because the family was not eligible, individuals applying for assistance during the same month may be eligible for aid to dependent children as a separate eligible group. Income of this new eligible group plus income of the parent or other legally responsible person in the home shall be considered as available in determining eligibility and the amount of the grant. The income of an ineligible parent or other legally responsible person shall be considered prospectively in accordance with 41.7(4) and 41.7(8).

ITEM 5. Amend subrule 46.7(5) as follows:

46.7(5) Collection. Recoupment for overpayments shall be made from the ~~individual~~ *parent or nonparental relative who was the caretaker relative*, as defined in 41.2(3), ~~who was the recipient at the time the overpay-~~

HUMAN SERVICES DEPARTMENT[498] (cont'd)

ment occurred, except as provided in 46.4(5). *When both parents were in the home at the time the overpayment occurred, both parents are equally responsible for repayment of the overpayment.*

ARC 6021

HUMAN SERVICES
DEPARTMENT[498]

NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," and Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," appearing in the Iowa Administrative Code. The Commissioner shall make rules to implement the medical assistance program.

Certain medical services require prior approval by the Department before payment will be made. In a settlement agreement in the United States District Court in *McDole vs. Reagen*, the Department agreed to compile a list of all medical or medically related services or equipment requiring prior approval, to draft rules on the procedures for obtaining prior approval of these services, and to draft rules establishing general criteria for the granting or denial of prior approval.

These amendments are the Department's response to that settlement agreement. Department policy on services requiring prior authorization is clarified. The conditions which must be present to cover certain Medicaid services are more clearly defined.

Consideration will be given to all written data, views, or arguments thereto, received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319, on or before October 30, 1985.

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

ITEM 1. Amend rule 498—78.1(249A) as follows:

Amend subrule 78.1(2), paragraph "a," subparagraph (2), as follows:

(2) Payment will be approved for certain drugs ~~only when prior authorization is obtained from the fiscal agent and when prescribed for treatment of specified conditions and prior approval is obtained from the carrier.~~ *as follows:*

~~Authorization for payment~~ *Payment for amphetamines and combinations of amphetamines with other therapeutic agents and amphetamine-like sympathomimetic compounds used for obesity control, including any combination of such compounds with other therapeutic agents, will be considered will be provided when there is a diagnosis of narcolepsy, hyperkinesia in children, or senile depression and not for obesity control. (Cross-reference 78.28(1)"a")*

~~Authorization for payment~~ *Payment for legend multiple vitamins, tonic preparations and combinations thereof with minerals, hormones, stimulants, or other compounds which are available as separate entities for treatment of specific conditions will be considered will be approved when there is a specifically diagnosed vitamin deficiency disease. (Prior authorization is not required for legend products principally marketed as prenatal vitamin-mineral supplements which contain phosphorous free calcium and a minimum of 1 mg of folic acid per dose.) (Cross-reference 78.28(1)"b")*

Amend subrule 78.1(2), paragraph "e," as follows:

e. Prior authorization is required for nutritional supplements. Prescription or nonprescription nutritional supplements shall be approved for payment for a recipient who needs the supplement due to a specifically diagnosed disease or ~~disorder~~ *condition* which results in a metabolic or digestive disorder which prevents the person from obtaining the necessary nutritional value from usual foods and which cannot be managed by avoidance of certain food products. The nutritional supplements must be prescribed by a physician (MD/DO). *(Cross-reference 78.28(1)"d")*

Rescind subrule 78.1(11) and insert the following in lieu thereof:

78.1(11) Payment will be made for gastro-intestinal surgery for the treatment of obesity when prior approval is obtained from the fiscal agent.

a. The following medical information shall be submitted for review prior to approval. The information for review may be documents attached to the request form rather than incorporated into a specific document.

(1) A complete history and physical examination of the patient preoperatively including weight and height.

(2) A medical evaluation of endocrine and emotional status of the patient preoperatively. When there has been a history of psychiatric illness, a psychiatric evaluation will be required.

(3) Preoperatively routine laboratory analysis of the patient such as CBC and urinalysis; liver function studies; SMA-12; triglycerides; thyroid function tests, where indicated; arterioblood gas studies; pulmonary function studies, where indicated; electrolytes; and EKG.

(4) Reports of specialists when needed because of exception request.

b. The request will be approved based on the following criteria:

(1) The patient shall be at least 175 percent of the ideal weight according to the mean weight (medium frame) on the Metropolitan Life Insurance Company weight scale.

(2) The patient shall be between the ages of twenty and fifty-five.

(3) There shall be proven refractoriness to medical therapy for three years.

(4) If an alcoholic, the patient shall not have consumed alcoholic beverages for at least three years preceding the operation.

(5) There shall be no nonreversible sequela of systemic disease, for example, a stroke.

Exceptions to the above criteria shall be considered when there is a severe complication of obesity including, but not limited to a skeletal problem, severe heart condition or diabetes and an appropriate specialist has submitted information which outlines the severity of the condition and the need for the obesity surgery. *(Cross-reference 78.28(1)"c")*

HUMAN SERVICES DEPARTMENT[498] (cont'd)

Amend subrule 78.1(18) as follows:

78.1(18) Payment and procedure for obtaining eye-glasses, contact lenses, and visual aids shall be the same as described in 498—78.6(249A). *(Cross-reference 78.28(3))*

ITEM 2. Amend rule 498—78.4(249A) as follows:

Amend subrule 78.4(1), paragraph "b," subparagraph (12), first paragraph, as follows:

(12) Oral prophylaxis, including necessary scaling and polishing, is payable once in a six-month period, except for persons who because of physical or mental disability cannot maintain adequate oral hygiene at home and prophylaxis is necessary more frequently. These cases require prior authorization. Topical application of fluoride is payable once in a six-month period. (This does not include the use of fluoride prophylaxis paste as fluoride treatment). *(Cross-reference 78.28(2)"a")*

Amend subrule 78.4(1), paragraph "c," subparagraph (2), as follows:

(2) Surgical procedures requiring prior approval include the following:

Apicoectomy, performed as separate surgical procedure.

Apicoectomy, performed in conjunction with endodontic procedure.

Apical curettage.

Root resection.

Excision of hyperplastic tissue.

Payment will be approved for surgical endodontic treatment when nonsurgical treatment has been attempted and a reasonable time has elapsed after which failure has been demonstrated.

(Cross-reference 78.28(2)"b")

Amend subrule 78.4(1), paragraph "d," subparagraphs (1), (2) and (3), as follows:

(1) Periodontics include those procedures necessary for the treatment of the tissues supporting the teeth. Periodontic services require prior approval and identification of case type. A recipient exhibiting Type I may have gingivitis, shallow pockets, with no bone loss. Type II, early periodontitis, includes moderate pockets, minor to moderate bone loss, satisfactory topography. Type III, moderate periodontitis, includes moderate to deep pockets, moderate to severe bone loss, unsatisfactory topography. Type IV services, i.e., advanced periodontics *periodontitis* in which there are deep pockets, severe bone loss and advanced mobility patterns (usually cases involving missing teeth and reconstruction), are not payable by the program. *(Cross-reference 78.28(2)"c")*

(2) Subgingival curettage is a payable benefit when provided in periodontal case type I, II or III and only when interproximal and subgingival calculus is evident in the radiographs, or when justified and documented that curettage, scaling or root planning is required in addition to routine prophylaxis. *(Cross-reference 78.28(2)"c"(1))*

(3) Surgical procedures are a payable benefit when approved treatment for periodontal case type II or III, only after a reasonable period of time following conservative treatment, and only when the patient has ~~exhibited motivation to maintain~~ *demonstrated reasonable proper* oral hygiene *unless the person is unable to do so because of a physical or mental disability*, or in cases which demonstrate gingival hyperplasia resulting from drug therapy. *(Cross-reference 78.28(2)"c"(2))*

Amend subrule 78.4(1), paragraph "e," subparagraph (1), as follows:

(1) Prior authorization is required for these services except for emergency root canal therapy. Emergency root canal treatment may be done without prior authorization when any of the following conditions exist: Failure of palliative treatment to relieve the acute distress of the patient; a tooth which has been accidentally avulsed; and a fracture of the crown of a tooth. *(Cross-reference 78.28(2)"d")*

Amend subrule 78.4(1), paragraph "f," subparagraphs (4), (6) and (7), as follows:

(4) All cast restorations require prior authorization. *(Cross-reference 78.28(2)"e")*

(6) All crowns, except stainless crowns on primary teeth or temporary stainless steel crowns on permanent teeth, must be prior authorized. Acrylic, porcelain or porcelain to metal type crowns for adults are payable for anterior teeth. Cast metal crowns are payable for clasp teeth for an existing or allowable partial denture when coronal involvement is beyond treatment with amalgam alloy. *(Cross-reference 78.28(2)"f")*

(7) Cast post and core, steel post and composite or amalgam in addition to a crown requires prior authorization. *(Cross-reference 78.28(2)"g")*

Amend subrule 78.4(1), paragraph "g," catchwords, as follows:

g. Prosthetics. *(Cross-reference 78.28(2)"h")*

Amend subrule 78.4(1), paragraph "h," subparagraph (1), as follows:

(1) ~~Orthodontic procedures are payable for the most handicapping malocclusions; orthodontic procedures~~ require prior authorization. A request to perform such a procedure must be accompanied by an interpreted cephalometric radiograph and study models trimmed such that the models simulate centric occlusion of the patient. A written plan of treatment must accompany the diagnostic aids. Posttreatment records must be furnished upon request of the ~~dentist consultant~~ *fiscal agent*. *Payment shall be approved for the most handicapping malocclusions determined in a manner consistent with Handicapping Malocclusion Assessment to Establish Treatment Priority by J.A. Salzman, D.D.S., American Journal of Orthodontics, October, 1968. (Cross-reference 78.28(2)"i")*

ITEM 3. Amend subrule 78.6(2) as follows:

78.6(2) The following services require prior authorization before payment will be made:

a. Tonometry when patient is under age thirty-five. Approval shall be given when the recipient exhibits signs or symptoms of glaucoma, the retina has an abnormal appearance, or there is a family history of glaucoma.

b. Visual fields. Approval shall be given under the same circumstances as in 78.6(2)"a" or if there is a high tonometry reading.

c. Subnormal visual aids including hand magnifiers, loupes, telescopic spectacles, or reverse Galilean telescope systems. Approval shall be given when conventional glasses will not give adequate acuity *based on the needs of the recipient* and the visual aid will provide the acuity. Payment shall be actual laboratory cost as evidenced by an attached invoice.

d. A second lens correction within a twenty-four-month period. Approval shall be given ~~which~~ *when* the recipient's vision has at least a five-tenths diopter of change in sphere or cylinder or ten degree change in axis. *(Cross-reference 78.28(3))*

HUMAN SERVICES DEPARTMENT[498] (cont'd)

ITEM 4. Amend subrule 78.11(3) as follows:

78.11(3) When a patient is transferred from one nursing home to another because of the closing of a facility or from a nursing home to a custodial home because the recipient no longer requires nursing care, the conditions of medical necessity and the distance requirements shall not be applicable. ~~Prior authorization~~ *Approval* for such a transfer shall be ~~obtained from~~ *made by* the local office of the department of ~~social~~ *human* services ~~prior to the transfer~~. When such a transfer is made, the following rate schedule shall apply:

One patient - normal allowance

Two patients - 3/4 normal allowance per patient

Three patients - 2/3 normal allowance per patient

Four patients - 5/8 normal allowance per patient

ITEM 5. Amend rule 498—78.14(249A) as follows:

Amend subrule 78.14(6) as follows:

78.14(6) Purchase of hearing aid. Payment shall be made for the type of hearing aid recommended when purchased from an eligible licensed hearing aid dealer pursuant to rule 498—77.13(249A). When binaural amplification is recommended prior approval shall be obtained from the fiscal agent before payment can be made. *Payment for binaural amplification shall be made when:*

a. *A child needs the aid for speech development, or*

b. *The aid is needed for educational or vocational purposes, or*

c. *The aid is for a blind individual.*

Payment for binaural amplification shall also be considered where the recipient's hearing loss has caused marked restriction of daily activities and constriction of interests resulting in seriously impaired ability to relate to other people, or where lack of binaural amplification poses a hazard to a recipient's safety. (Cross-reference 78.28(4)"b")

Amend subrule 78.14(7), paragraph "f," as follows:

f. Payment for the replacement of a hearing aid less than four years old shall require prior authorization. *Payment shall be approved when the original hearing aid is lost or broken beyond repair or there is a significant change in the person's hearing which would require a different hearing aid. (Cross-reference 78.28(4)"a")*

ITEM 6. Amend 498—chapter 78 by adding the following new rule:

498—78.28(249A) List of medical services and equipment requiring prior approval.

78.28(1) Services, procedures, and medications prescribed by a physician (M.D. or D.O.) which must be submitted for prior approval are as follows:

a. Amphetamines and combinations of amphetamines with other therapeutic agents and amphetamine-like sympathomimetic compounds used for obesity control, including any combination of such compounds with other therapeutic agents. Payment for these medications will be provided when there is a diagnosis of narcolepsy, hyperkinesia in children, or senile depression and not for obesity control. (Cross-reference 78.1(2)"a"(2))

b. Multiple vitamins, tonic preparations and combinations thereof with minerals, hormones, stimulants or other compounds which are available as separate entities for treatment of specific conditions. Payment for these vitamins, preparations, or compounds will be approved when there is a specifically diagnosed vitamin deficiency disease. (Prior authorization is not required for products principally marketed as prenatal vitamin-mineral supplements.) (Cross-reference 78.1(2)"a"(2))

c. Gastro-intestinal surgery for treatment of obesity.

(1) The following medical information shall be submitted for review prior to approval for obesity surgery:

A complete history and physical examination of the patient preoperatively including weight and height.

A medical evaluation of endocrine and emotional status of the patient preoperatively. When there has been a history of psychiatric illness, a psychiatric evaluation will be required.

Preoperatively routine laboratory analysis of the patient such as CBC and urinalysis; liver function studies; SMA-12; triglycerides; thyroid function tests, where indicated; arterioblood gas studies; pulmonary function studies, where indicated; electrolytes; and EKG.

Reports of specialists when needed because of exception request.

(2) The request will be approved based on the following criteria:

The patient shall be at least 175 percent of the ideal weight according to the mean weight (medium frame) on the Metropolitan Life Insurance Company weight scale.

The patient shall be between the ages of twenty and fifty-five.

There shall be proven refractoriness to medical therapy for three years.

If an alcoholic, the patient shall not have consumed alcoholic beverages for at least three years preceding the operation.

There shall be no nonreversible sequela of systemic disease, for example, a stroke.

Exceptions to the above criteria shall be considered when there is a severe complication of obesity including but not limited to a skeletal problem, severe heart condition or diabetes and an appropriate specialist has submitted information which outlines the severity of the condition and the need for the obesity surgery. (Cross-reference 78.1(11))

d. Prescription or nonprescription nutritional supplements shall be approved for payment for a recipient who needs the supplement due to a specifically diagnosed disease or condition which results in a metabolic or digestive disorder which prevents the person from obtaining the necessary nutritional value from usual foods and which cannot be managed by avoidance of certain food products. (Cross-reference 78.1(2)"e")

78.28(2) Dental services which must be submitted for prior approval are as follows:

a. Oral prophylaxis including necessary scaling and polishing more frequently than every six months. Payment shall be approved for a person who because of a physical or mental disability cannot maintain adequate oral hygiene at home and prophylaxis is necessary more frequently. (Cross-reference 78.4(1)"b"(12))

b. Apicoectomy, performed as separate surgical procedure; apicoectomy, performed in conjunction with endodontic procedure; apical curettage; root resection; excision of hyperplastic tissue. Payment will be approved for surgical endodontic treatment when nonsurgical treatment has been attempted and a reasonable time has elapsed after which failure has been demonstrated. (Cross-reference 78.4(1)"c"(2))

c. Periodontic services, subject to the requirements of 78.4(1)"d."

(1) Subgingival curettage is approved for payment when provided in periodontal case type I, II, or III and only when interproximal and subgingival calculus is evident in x rays or when justified as documented that

HUMAN SERVICES DEPARTMENT[498] (cont'd)

curettage scaling or root planning is required in addition to routine prophylaxis. (Cross-reference 78.4(1)"d")

(2) Surgical procedures are approved for payment when it is treatment for or periodontal case type II or III, and only after a reasonable length of time following conservative treatment, and only when the patient has demonstrated reasonable oral hygiene unless the person is unable to do so because a physical or mental disability, or in cases which demonstrate gingival hyperplasia resulting from drug therapy. (Cross-reference 78.4(1)"d")

d. Endodontic services, subject to the requirements of 78.4(1)"e."

e. All cast restorations. (Cross-reference 78.4(1)"f"(4))

f. All crowns except stainless crowns on primary teeth or temporary stainless steel crowns on permanent teeth. Payment for gold crowns is only considered in exceptional cases such as when no other type of restoration can be used. (Cross-reference 78.4(1)"f"(6))

g. Cast post and core, steelpost and composite or amalgam in addition to crown. (Cross-reference 78.4(1)"f"(7))

h. Fixed and removable prostheses subject to the itemization contained in 78.4(1)"g."

(1) Payment shall be approved for replacement of prostheses within a five-year period only when it is necessary to prevent a significant disability.

(2) Payment shall be approved for partial dentures replacing anterior teeth only when the patient has less than four posterior teeth in occlusion or the patient has a full denture in one arch, and a partial denture replacing posterior teeth is required in the opposing arch in order to balance the occlusion; or a partial denture replacing anterior teeth is being approved, and posterior teeth can be replaced with little additional cost. (Cross-reference 78.4(1)"g"(1))

(3) Fixed bridgework (including acid etch bridge-work). Payment shall be approved for only anterior fixed bridgework for recipients whose medical condition precludes the use of a removable prosthesis. (Cross-reference 78.4(1)"g"(2))

i. Orthodontic services. A request to perform such a procedure must be accompanied by an interpreted cephalometric radiograph and study models trimmed such that the models simulate centric occlusion of the patient. A written plan of treatment must accompany the diagnostic aids. Posttreatment records must be furnished upon request of the fiscal agent. Payment shall be approved for the most handicapping malocclusions determined in a manner consistent with Handicapping Malocclusion Assessment to Establish Treatment Priority by J.A. Salzman, D.D.S. American Journal of Orthodontics, October, 1968. (Cross-reference 78.4(1)"h"(1))

78.28(3) Optometric services and eyeglasses which must be submitted for prior approval are as follows:

a. Tonometry if patient is under thirty-five. Payment shall be approved when the recipient exhibits signs or symptoms of glaucoma, the retina has an abnormal appearance or there is a family history of glaucoma.

b. Visual fields. Payment shall be approved under the same circumstances as 78.28(3)"a" or if there is a high tonometry reading.

c. Subnormal visual aids including hand magnifiers, loupes, telescopic spectacles or reverse Galilean telescope systems. Payment shall be approved when conventional glasses will not give adequate acuity based on the needs of the recipient and the visual aid will provide the acuity.

d. A second lens correction within a twenty-four-month period. Payment shall be approved when the recipient's vision has at least a five-tenths diopter of change in sphere or cylinder or ten degree change in axis.

For all of the above, the optometrist shall furnish sufficient information to clearly establish that these procedures are necessary in terms of the visual condition of the patient. (Cross-references 78.6(2) and 78.1(18))

78.28(4) Hearing aids which must be submitted for prior approval are as follows:

a. Replacement of a hearing aid less than four years old. Payment shall be approved when the original hearing aid is lost or broken beyond repair or there is a significant change in the person's hearing which would require a different hearing aid. (Cross-reference 78.4(1)"f")

b. Binaural amplification. Payment shall be made when:

(1) A child needs the aid for speech development, or

(2) The aid is needed for educational or vocational purposes, or

(3) The aid is for a blind individual.

Payment for binaural amplification shall also be considered where the recipient's hearing loss has caused marked restriction of daily activities and constriction of interests resulting in seriously impaired ability to relate to other people, or where lack of binaural amplification poses a hazard to a recipient's safety. (Cross-reference 78.14(6))

ITEM 7. Amend rule 498—79.8(249A) as follows:

Amend subrule 79.8(1) as follows:

79.8(1) All requests for prior authorization shall be made on Form XIX P Auth (SDC), Request for Prior Authorization.

Requests for prior approval shall be sent to SDC, P.O. Box 10394, Des Moines, Iowa 50306. The request should include the relevant criteria applicable to the particular service, medication or equipment, for which prior authorization is sought, according to the criteria outlined in rule 498—78.28(249A). Copies of history and examination results may be attached rather than incorporated in the letter.

Add the following new subrules:

79.8(6) If a provider is unsure if an item or service is covered because it is rare or unusual, the provider may submit a request for prior authorization in the same manner as other requests for prior authorization in 79.8(1).

79.8(7) Requests for prior authorization of services specifically referred to in 498—chapter 78 shall be approved or denied according to the conditions for payment established in 498—chapter 78. Requests for prior authorization of services not specifically referred to in 498—chapter 78 shall be reviewed according to rule 498—79.9(249A) and the following criteria in order of priority:

a. The conditions for payment as established by rule in 498—chapter 78.

b. The conditions for payment as outlined in the provider manual with reference to coverage and duration.

c. The determination as made by the Medicare program unless specifically stated differently in state law or rule.

d. The recommendation to the department from the appropriate advisory committee.

e. Other less expensive procedures which are covered would not be as effective.

HUMAN SERVICES DEPARTMENT[498] (cont'd)

ARC 6006

**HUMAN SERVICES
DEPARTMENT[498]
NOTICE OF INTENDED ACTION**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," appearing in the Iowa Administrative Code. The Commissioner shall make rules to administer the medical assistance program.

The General Assembly created a Medical Assistance Advisory Council to advise and consult with the Department. The Council by law shall consist of twenty-eight members: One representative from the Iowa Medical Society, the Iowa Society of Osteopathic Physicians and Surgeons, the Iowa State Dental Society, the Iowa State Nurses Association, the Iowa Pharmacists Association, the Iowa Podiatry Society, the Iowa Optometric Association, the Community Mental Health Centers Association of Iowa, the Iowa Psychological Association, the Iowa Hospital Association, the Iowa Osteopathic Hospital Association, Optician's Association of Iowa, Inc., the Iowa Health Care Association, the Iowa Assembly of Home Health Agencies, the Iowa Council of Health Care Centers, and the Iowa Association of Homes for the Aging, together with one person designated by the Iowa State Board of Chiropractic Examiners, two state representatives, one from each major political party, two state senators, one from each major political party, the president of the Association for Retarded Citizens, four representatives appointed by the Governor, the Commissioner of Public Health and the Dean of the College of Medicine, University of Iowa.

Current rules define a quorum as two-thirds of the voting members. In the past it has proven very difficult to obtain a quorum to vote on recommendations to the Department. The varying concerns of the Council members make it difficult to formulate agendas of equal interest to all Council members.

This amendment changes the quorum from two-thirds to fifty percent of the voting members. The recommendations of the Council are advisory only and it is felt that fifty percent representation would be adequate.

Consideration will be given to all written data, views and arguments thereto, received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319, on or before October 30, 1985.

This rule is intended to implement Iowa Code section 249A.4.

Amend subrule 79.7(5), paragraph "a," as follows:

a. A quorum shall consist of ~~two-thirds~~ fifty percent of the voting members.

f. The advice of an appropriate professional consultant.

79.8(8) The amount, duration and scope of the Medicaid program is outlined in 498—chapters 78, 79, 81, 82 and 85. Additional clarification of the policies is available in the provider manual distributed and updated to all participating providers.

79.8(9) Recipients shall receive a notice of decision upon a denial of a request for prior authorization pursuant to 498—chapter 7. The notice of decision to the recipient, Form MA-3028, shall be mailed within five working days of the date the prior approval form is returned to the provider.

79.8(10) If a request for prior authorization is denied by the fiscal agent, the request may be resubmitted for reconsideration with additional information justifying the request. The aggrieved party may file an appeal in accordance with 498—chapter 7.

ITEM 8. Amend 498—chapter 79 by adding the following new rule:

498—79.9(249A) General provisions for Medicaid coverage applicable to all Medicaid providers and services.

79.9(1) Medicare definitions and policies shall apply to services provided unless specifically defined differently.

79.9(2) The services covered by Medicaid shall:

a. Be consistent with the diagnosis and treatment of the patient's condition.

b. Be in accordance with standards of good medical practice.

c. Be required to meet the medical need of the patient and be for reasons other than the convenience of the patient or the patient's practitioner or care-giver.

d. Be the least costly type of service which would reasonably achieve the desired outcome.

79.9(3) Services must be eligible for federal financial participation unless specifically covered by state law or rule.

79.9(4) Services shall be within the scope of the licensure of the provider.

79.9(5) Services shall be provided with the full knowledge and consent of the recipient or someone acting in the recipient's behalf unless otherwise required by law or court order or in emergency situations.

79.9(6) The services must be supplied by a provider who is eligible to participate in the Medicaid program. The provider must use the billing procedures and documentation requirements described in 498—chapters 78 and 80.

79.9(7) Providers shall supply all the same services to Medicaid eligibles served by the provider as are offered to other clients of the provider.

79.9(8) Recipients must be informed before the service is provided that the recipient will be responsible for the bill if a noncovered service is provided.

This rule is intended to implement Iowa Code section 249A.4.

ARC 6007**HUMAN SERVICES
DEPARTMENT[498]****NOTICE OF INTENDED ACTION**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 237A.12, the Department of Human Services proposes to amend Chapter 109, "Child Care Centers," appearing in the Iowa Administrative Code. The Department shall promulgate rules setting minimum standards to provide quality child care centers and registered family day care homes.

The Department is required by law to complete a child abuse registry check on employees in a child care center. An employee working with children cannot have a founded report of sexual abuse, or multiple reports of other types of founded abuse.

This amendment adds Form SS-1606-0, Request for Child Abuse Information, to the list of records and reports required to be kept in the child care center's personnel files.

Consideration will be given to written data, views, and arguments thereto, received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before October 30, 1985.

This rule is intended to implement Iowa Code section 237A.5.

Amend subrule 109.2(1) by adding the following new paragraph:

h. A copy of Request for Child Abuse Information, Form SS-1606-0.

ARC 6008**HUMAN SERVICES
DEPARTMENT[498]****NOTICE OF INTENDED ACTION**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 217.6 and 234.6, the Department of Human Services proposes to amend Chapter 130, "General Provisions," appearing in the Iowa Administrative Code. The Department has the authority to formulate such rules as may be necessary to administer the family and adult service programs.

The Department charges clients a fee for all child day care services purchased on behalf of the client by the Department. This fee is dependent on the recipient's income.

The Sixty-ninth General Assembly established a new category of child day care called "group day care." A group day care home may care for no more than eleven children at any one time, with no more than six children under six years of age.

This amendment adds group day care to the rule which establishes a sliding fee scale for day care services, correcting an oversight.

Consideration will be given to written data, views, and arguments thereto, received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before October 30, 1985.

This rule is intended to implement Iowa Code section 234.6.

Amend the first paragraph of subrule 130.4(3) as follows:

130.4(3) Day care. The fees for child day care in a licensed center or registered family or group day care home are shown in the following table.

ARC 6009**HUMAN SERVICES
DEPARTMENT[498]****NOTICE OF INTENDED ACTION**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 153, "Social Services Block Grant," appearing in the Iowa Administrative Code. The Department has the authority to formulate such rules as may be necessary to administer the family and adult service programs.

This amendment corrects a federal regulation date, corrects Department names, corrects typographical and grammatical errors, removes the year from the section giving authority for the block grant advisory committees, and gives the name and number of a required form.

Consideration will be given to all written data, views and arguments thereto, received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before October 30, 1985.

These rules are intended to implement Iowa Code section 234.6.

ITEM 1. Amend rule 498—153.1(234) by removing the subrule numbers and alphabetizing the definitions.

ITEM 2. Amend rule 498—153.2(234) as follows:

Amend subrule 153.2(1) as follows:

153.2(1) The department of human services shall develop the social services block grant pre-expenditure report on an annual basis. The report shall be developed in accordance with the federal regulations, Code of Federal Regulations, Title 45, CFR Part 96 as amended to October 1, 1981 July 6, 1982. The report shall describe the services to be funded, in what areas services are available and the amount of funding available. The plan shall also indicate the source of funding.

HUMAN SERVICES DEPARTMENT[498] (cont'd)

Amend subrule 153.2(4) as follows:

153.2(4) The department shall accept comments about the pre-expenditure report during the specified public review and comment period. The advisory committees, individuals or groups may submit written comments to the district or to the *Program Support Unit, Bureau of Adult, Children and Family Services*, Iowa Department of Human Services, ~~Division of Community Programs, Title XX Unit~~, Hoover State Office Building, Des Moines, Iowa 50319. Public hearings may be arranged by the district administrator at which time testimony will be accepted.

Comments concerning locally purchased services will be forwarded to the county boards of supervisors within the district.

ITEM 3. Amend subrule 153.3(3) as follows:

153.3(3) The advisory committees, individuals or groups may submit written comments to the district or to the *Program Support Unit, Bureau of Adult, Children and Family Services*, Iowa Department of Human Services, ~~Division of Community Programs, Title XX Unit~~, Hoover State Office Building, Des Moines, Iowa 50319. Comments regarding amendments to local purchase services should also be directed to the county boards of supervisors in the county in which a change is being made.

ITEM 4. Amend subrule 153.5(6) as follows:

153.5(6) State supplemental day care funds shall be used to supplement and shall not be used to replace federal social services block grant funds or local purchase state funds. Such funds are allocated according to the formula in *subrule 153.5(3) "a."* In order to receive supplemental funds, a county's local purchase allocation amount for child day care must be at least equal to the county's expenditure for child day care services in the fiscal year ending June 30, 1983. The department shall reallocate funds from counties which do not qualify for or have not utilized the funds to counties which do qualify for the funds.

This rule is intended to implement Iowa Code section 234.6 and 1984 Iowa Acts, chapter 1310, sections 4 and 10 and chapter 1311, section 10.

ITEM 5. Amend rule 498—153.6(234) as follows:

498—153.6(234) Local purchase planning process success.

153.6(1) The county board of supervisors in each county will determine what services they wish to provide with the social services block grant funds allocated to the county. The county board of supervisors may purchase services from other counties. They will choose services from a list provided by the department. The county boards of supervisors will determine how much funding they wish to place in each service and for what period of time during the pre-expenditure report year they wish to fund the services. However, in making these decisions, the supervisors must consider and comply with all provisions of these rules and chapter 130.

In making decisions about which services to fund, the supervisors may consult with consumers, providers, ~~Title XX social services block grant~~ advisory committee members and other interested parties.

153.6(2) The county shall sign *Form SS-1504-0, County Board of Supervisor's Participation Agreement*, a ~~county participation agreement~~ describing the responsibilities of the county and the department. This agreement shall include the county's assertion that the county will provide a twenty-five percent match for all local purchase services.

~~Counties which use funds provided by 1983 Iowa Acts, chapter 192, Division V, section 13, for the purchase of child care services are not required to provide a local match.~~

153.6(3) In no event shall a county be granted reimbursement for more state and federal funds than are allocated to it.

153.6(6) When, based on encumbrance records maintained by the district administrator, a county does not appear to require all funds allocated to it, the district administrator may transfer funds to other counties in the district. At least thirty days prior to a transfer, the district administrator will present to the county board of supervisors the reasons he or she the district administrator believes the county will have surplus funds. The county board of supervisors will have ten days after receipt of the notice to respond. The county board of supervisors may present evidence agreeing or disagreeing with the reasons provided by the district administrator. The district administrator shall consider the evidence before transferring funds.

The district administrator shall have the authority to transfer funds.

This rule is intended to implement Iowa Code section 234.6 and 1983 Iowa Acts, chapter 201, sections 4 and 12 and 1985 Iowa Acts, House File 771, sections 9 and 15 and Senate File 585, Division V, section 9.

ITEM 6. Amend rule 498—153.7(234) as follows:

498—153.7(234) Advisory committees. The department of human services shall maintain and utilize the state and district advisory committees established for providing recommendations on the allocation and uses of federal social services block grant funds during the fiscal year ending June 30, 1985. Persons interested in participating in the district advisory committees may contact the district administrator who will select the members. The statewide advisory committee shall consist of members from each of the district advisory committees. Two members shall represent each of the sixteen social services district offices as constituted prior to March 1982. Costs for meals, lodging, and travel for the state level advisory committee members (or designated alternates attending in the place of members) shall be paid by the department of human services at the same rate as state employees traveling within the state. For a one-day meeting, only one overnight expenditure will be allowed.

These rules are intended to implement Iowa Code section 234.6.

ARC 6013**HUMAN SERVICES
DEPARTMENT[498]****NOTICE OF INTENDED ACTION**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 234.39, the Department of Human Services proposes to amend Chapter 156, "Payments for Foster Care and Foster Parent Training," appearing in the Iowa Administrative Code. The Department shall adopt rules establishing a schedule of charges to be made for the care and services provided foster children.

It is the intent of the General Assembly that individuals in foster care and their parents shall have the primary responsibility for paying the cost of foster care maintenance and services provided by the Department to the extent consistent with their income and resources.

The Department is charged with computing the liability for parents whose children are in foster care on a voluntary basis while the juvenile court is required to establish the amount of the parent's(s)' liability for children in foster care on a court-ordered basis.

Current parental liability rules conflict with Iowa Code Chapter 252C and establish a lower level of parental liability than that required by the law. Current rules also do not provide for the recovery of service costs as directed by the law.

These amendments establish a uniform method of calculating parental liability for foster care, specify foster care recovery procedures, and allow for the recovery of service costs.

It was necessary to address several major issues in the formulation of these rules as follows:

1. Whether each parent should be assessed equal liability or the noncustodial parent should be assessed first with the custodial parent's maximum liability equal to the remaining cost of foster care.

It was decided to assess the noncustodial parent first with the custodial parent's maximum liability equal to the remaining cost of foster care.

The noncustodial parent will have to pay the child's support amount regardless of the custodial parent's liability. Any excess payment (over amount of parental liability) is currently placed in escrow and released to custodial parent or child when the child leaves foster care. To assess liability and potentially require funds to accumulate in escrow does not make sense. Example: Child support is \$300.00 a month. Cost of care is \$400.00 a month. If liability is distributed equally, the noncustodial parent pays \$300.00 (\$200.00 towards cost of foster care and \$100.00 goes into escrow) and custodial parent pays up to \$200.00. If child is in care six months, \$600.00 accumulates in escrow. Under the proposed rules, the parental liability of the noncustodial parent equals the amount of child support, and the \$300.00 would be applied to the cost of care. The maximum liability of the custodial parent would be \$100.00. An escrow account would not accumulate.

2. Whether to use the aid to dependent children (ADC) schedule of living costs or the schedule of basic needs.

The schedule of living costs was selected since it more accurately reflects the cost of maintaining a family.

3. Whether to use the current ten percent calculation or the schedule in Iowa Code Chapter 252C.

To avoid two methods of calculation and different amounts of financial responsibility for the noncustodial parent, it was decided to use the schedule in 252C to determine liability of the noncustodial parent. To be consistent the schedule will also be used for the custodial parent(s), although such parent(s) are allowed to subtract the ADC schedule of living costs before applying the schedule in 252C.

4. Whether to allow a hardship allowance.

Initially the idea was to discontinue this practice but this was reversed due to a desire from the field to allow flexibility to address special needs of the family and the provision in Iowa Code Chapter 252C, for alteration of the amount calculated pursuant to the schedule in 252C.

5. Whether to prorate the amount of parental liability.

Currently the amount of liability is prorated based on the number of days the child is in foster care. Based on suggestions from the field and Foster Care Recovery, it was decided to assess the full monthly amount for any partial month except that the assessed amount cannot exceed the actual cost of care provided.

6. Whether to use the cost of purchased or direct foster family and independent living service costs.

Field staff felt that purchased foster family care and independent living costs should be included since service costs were included for other types of foster care. To include purchased foster family and independent living service costs but not direct foster family and independent living service costs would cause problems since parents could be assessed greater liability for purchased than direct services. Since the hours of purchased and direct services and the cost per hour can vary each month, a fixed monthly rate was needed to allow for assessed liability amounts by the courts. The courts will not enter a new order for a different amount each month. A monthly amount of \$250 per month was decided upon, with any excess over actual expenditures being placed in escrow. (For April 1985, the average purchased foster family service payment was \$366.70, and for independent living was \$376.69.)

7. Whether to assess custodial parents the maximum liability based on calculations.

The decision was to limit the maximum liability to the remaining cost of foster care. This avoids parents paying money each month which accumulates in escrow until the child leaves care or spends it to meet some need.

8. Which liability should be assessed by the court under Iowa Code section 234.36, and which liability should be administratively ordered by DHS under provisions of Iowa Code Chapter 252C.

It was decided that the Department should administratively order liability for all voluntary placements since the court was not involved. Although the Department can establish an order for liability, the court needs to modify or vacate the order. Therefore, the juvenile court should be responsible for establishing and modifying the amount of parental liability pursuant to Iowa Code section 234.39. These changes in liability usually coincide with a modification of the court order.

HUMAN SERVICES DEPARTMENT[498] (cont'd)

Consideration will be given to written data, views, or arguments thereto, received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before October 30, 1985.

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

Burlington - October 30, 1985 Des Moines DHS County Office Conference Room 409 North Fourth Burlington, IA 52601	2:00 p.m.
Carroll - October 30, 1985 Carroll DHS County Office Conference Room 611 North West Street Carroll, IA 51401	1:00 p.m.
Cedar Rapids - November 1, 1985 Cedar Rapids District Office Conference Room - 6th Floor 221 4th Avenue, S.E. Cedar Rapids, IA 52401	10:00 a.m.
Council Bluffs - November 1, 1985 Council Bluffs District Office Conference Room A, 3rd Floor 12 Scott Street Council Bluffs, IA 51502	10:00 a.m.
Creston - October 31, 1985 City Council Chambers City Hall 116 W. Adams Creston, IA 50801	10:00 a.m.
Davenport - October 31, 1985 Davenport District Office 5th Floor Conference Room 428 Western Avenue Davenport, IA 52801	10:00 a.m.
Decorah - November 5, 1985 Winneschek DHS County Office Conference Room 1111 Paine Street Decorah, IA 52101	10:00 a.m.
Des Moines - November 4, 1985 Des Moines District Office District Office Conference Room 3609½ Douglas Des Moines, IA 50312	1:30 p.m.
Dubuque - October 31, 1985 Dubuque DHS County Office Town Clock Plaza Nesler Centre 3rd Floor Conference Room Dubuque, IA 52001	10:00 a.m.
Fort Dodge - October 31, 1985 Webster DHS County Office 23 North Seventh Fort Dodge, IA 50501	10:00 a.m.
Marshalltown - November 5, 1985 Marshalltown Annex Office 206 West State Street Marshalltown, IA 50158	10:00 a.m.

Mason City - October 30, 1985 Mason City District Office Mohawk Square 22 North Georgia Avenue Mason City, IA 50401	10:00 a.m.
Ottumwa - October 31, 1985 Ottumwa District Office 4th Floor Conference Room 226 West Main Ottumwa, IA 52501	10:00 a.m.
Sioux City - October 31, 1985 Sioux City District Office 2nd Floor Conference Room 808 - 5th Street Sioux City, IA 51101	7:00 p.m.
Spencer - October 30, 1985 Bethany Lutheran Church 15 West 14th Street Spencer, IA 51301	7:00 p.m.
Waterloo - October 30, 1985 Waterloo District Office Black Hawk County Conference Room 2nd Floor - KWWL Building 500 East 4th Waterloo, IA 50704	4:00 p.m.

These rules are intended to implement Iowa Code sections 234.39 and 252C.10.

ITEM 1. Rescind rule 498—156.1(234) and insert the following in lieu thereof:

498—156.1(234, 252C) Definitions.

“ADC schedule of living costs” means the aid to dependent children schedule of living costs as defined in subrule 41.8(2).

“Adjusted cost of foster care” means the cost of foster care to the department minus any unearned income of the child in foster care, and minus any parental liability of the noncustodial parent.

“Adjusted monthly net income” means the monthly net income minus the aid to dependent children schedule of living costs for the family size.

“Cost of foster care” means the service and maintenance costs of foster care. The service and maintenance costs are established in 498—chapter 156, computed pursuant to 498—chapter 150 or established by other states. The cost of foster care shall not include the salary, benefits or expenses of department staff except that the service cost of foster family care for purposes of computing parental liability shall be two hundred and fifty dollars per month, whether the service is provided directly by the department or purchased from a private agency. When utilizing this average monthly cost for purchased foster family service results in liability being collected in excess of the adjusted cost of foster care, the excess funds shall be placed in the child’s escrow account.

“Custodial parent” means the parent(s) who has legal custody of the child.

“Department” means the Iowa department of human services.

“District administrator” means the department employee or designee responsible for managing department offices and personnel within a district and for implementing policies and procedures of the department.

“Director” means the director of the child support recovery unit of the department or the director’s designee.

HUMAN SERVICES DEPARTMENT[498] (cont'd)

"Earned income" means income in the form of a salary, wages, tips, bonuses, commissions earned as an employee, income from job corps or profit from self-employment.

"Escrow account" means an interest bearing account in a bank or savings and loan association which is maintained by the department in the name of a particular child.

"Foster care" means substitute care furnished on a twenty-four-hour-a-day basis to an eligible child, in a licensed or approved facility, by a person or agency other than the child's parent or guardian, but does not include care provided in a family home through an informal arrangement for a period of less than twenty days. Child foster care shall include but is not limited to the provision of food, lodging, training, education, supervision and health care.

"Foster family care" means foster care provided in a single family living unit licensed by the department according to 498—chapter 113.

"Gross monthly income" means the income of the custodial parent(s) and family members as discussed in subrule 156.3(3) or the income of the noncustodial parent. For self-employed individuals, including farmers, gross income means the sum of the taxable income, as shown on previous year's Federal Income Tax Form 1040, and deferred compensation.

"Hardship allowance" means any of the following expenses:

Medical expenses in excess of three percent of the monthly net income not covered by health insurance.

Shelter costs in excess of thirty percent of the monthly net income.

Utility costs, not including the cost of a telephone, in excess of fifteen percent of the monthly net income.

The cost of court-ordered day care or child support for a child outside the home and not in foster care.

Any other documented expenses which the district administrator determines to be:

1. Necessary to maintain the family or family dwelling.

2. Beyond the usual expenses involved in maintaining a family or dwelling.

3. A financial hardship for the family preventing them from meeting these expenses, maintaining the family and family dwelling and paying the full amount of parental liability.

"Income" means earned and unearned income.

"Mentally retarded" means a child meeting the definition in Iowa Code section 222.2(5).

"Monthly net income" means the gross monthly income of a parent(s) minus the deductions allowed in Iowa Code section 252C.10, subsection 1.

"Noncustodial parent" means the parent who does not have legal custody of the child.

"Parent" means the biological or adoptive parent of the child.

"Parental liability" means financial responsibility of a parent for the cost of a child's foster care.

"Personal allowance" means the ADC schedule of living costs for the areas of food, clothing, personal care and supplies, medicine chest items and communications as defined in subrule 41.8(2).

"Schedule of support guidelines" means the schedule of minimum support guidelines in Iowa Code section 252C.10. For monthly net income of four hundred dollars or less, the percentages for four hundred and one dollars shall be used.

"Stepparent" means an individual who is not a parent but who is married to a child's parent. A stepparent remains a stepparent until the parent and the stepparent have a legal separation or dissolution or the stepparent adopts the child.

"Unearned income" means any income which is not earned income.

ITEM 2. Rescind rule 498—156.2(234) and insert the following in lieu thereof:

498—156.2(252C) Foster care recovery. The department shall recover the cost of foster care provided by the department pursuant to the rules in this chapter.

156.2(1) Funds shall be applied to the cost of foster care in the following order and each source exhausted before utilizing the next funding source:

a. Unearned income of the child.

b. Parental liability of the noncustodial parent.

c. Parental liability of custodial parent(s).

156.2(2) The department shall serve as payee to receive the child's unearned income. When a parent or guardian is not available or is unwilling to do so, the department shall be responsible for applying for benefits on behalf of a child placed in the care of the department. Until the department becomes payee, the payee shall forward benefits to the department. For voluntary foster care placements of children age eighteen and over, the child is the payee for the unearned income. The child shall forward these benefits, up to the actual cost of foster care, to the department.

156.2(3) The custodial parent shall assign child support payments to the department on Form CS-3104-0, Assignment of Support Payments-Foster Care.

156.2(4) Unearned income of a child and parental liability of the noncustodial parent shall be placed in an account from whence it shall be applied toward the cost of the child's current foster care and the remainder placed in an escrow account.

156.2(5) When a child has funds in escrow these funds may be used by the department to meet the current needs of the child not covered by the foster care payments and not prohibited by the source of such funds.

156.2(6) When the child leaves foster care, funds in escrow shall be paid to the custodial parent(s) or guardian or, when such child has attained the age of majority, to the child, unless a guardian has been appointed.

ITEM 3. Rescind rule 498—156.3(234) and insert the following in lieu thereof:

498—156.3(252C) Computation and assessment of parental liability. The department shall compute and assess parental liability for voluntary foster care placements according to the rules in this chapter and Iowa Code chapter 252C. Parental liability for court-ordered foster care provided by the department shall be assessed by the court pursuant to Iowa Code section 234.39. Upon request the department shall provide the court with information regarding what the department's liability assessment would be. The liability of parents to a child in foster care shall be based on the parent's income. Parents are responsible for reporting changes in family income and family size to the department.

156.3(1) Unless otherwise ordered by the court or limited by law, the following shall apply to the assessment of parental liability:

a. The liability of a noncustodial parent is equal to the parent's child support responsibility and shall be com-

HUMAN SERVICES DEPARTMENT[498] (cont'd)

puted by applying the schedule of support guidelines to that parent's monthly net income. If the noncustodial parent's liability is for more than one child, the column related to the number of children shall be used and the amount of parental liability shall be divided equally among the children, unless otherwise ordered by the court. If such liability has not already been ordered by the court, the district administrator may recommend to the court, for court-ordered placements, or to the director, for voluntary placements, that the assessed liability be less than the computed liability by subtracting a hardship allowance(s) from the parent's monthly net income before applying the schedule of support guidelines to the income.

b. The liability of a custodial parent(s) shall be computed by applying the schedule of support guidelines to that parent's(s) adjusted monthly net income, except that such liability shall not exceed the adjusted cost of foster care. If the custodial parent(s) has more than one child in foster care the column related to the number of children shall be used and the amount of parental liability shall be divided equally among the children, unless otherwise ordered by the court. The district administrator may recommend to the court, for court-ordered placements, or to the director, for voluntary placements, that the assessed liability be less than the computed liability by subtracting a hardship allowance(s) from the parent's(s) adjusted monthly net income before applying the schedule of support guidelines to the income.

c. The liability of parents who have a divorce, separation, or dissolution and who both retain legal custody of the child in foster care shall be computed according to subrule 156.3(1), paragraph "b" except that the combined liability of the two parents shall not exceed the adjusted cost of foster care. If the combined liability would exceed the adjusted cost of foster care, such liability shall be prorated so that the sum of the liabilities equals the adjusted cost of foster care.

d. If a noncustodial parent cannot be located and has not been court-ordered to pay child support or parental liability for the child in foster care, the maximum liability of the custodial parent shall equal the cost of foster care minus the unearned income of the child in foster care.

e. The parents of a child who was adopted under the subsidized adoptions program shall not have any parental liability for the child.

f. A custodial parent who is receiving aid to dependent children or supplemental-security-income-benefits shall not have any parental liability.

g. Parents shall not be assessed parental liability for a child age eighteen and over unless otherwise ordered by the court. If a court order for child support extends beyond the child's eighteenth birthday, the parent receiving the support shall continue to assign the support to the department as long as the child is in foster care being paid by the department.

h. The noncustodial parent of a mentally retarded child shall be assessed liability according to the rules in this chapter except that no more than the personal allowance limit in Iowa Code section 222.78 shall be applied to the cost of foster care. Any liability in excess of the personal allowance limit shall be placed in an escrow account. The liability of the custodial parent(s) of a mentally retarded child shall be limited to that portion of the personal allowance limit not covered by the liability of the noncustodial parent.

i. Termination of parental rights eliminates parental liability for the child.

j. An individual who has been appointed as the guardian of a child but has not adopted the child shall not be assessed parental liability for the child.

k. Parental liability shall exist beginning the month the child enters foster care placement through the month the child leaves foster care.

156.3(2) The following shall be used to determine the number of family members for the custodial parent(s):

a. Parents of the child in the home are counted.

b. A dependent child in the home may be counted if the child is claimed by the person as a dependent for income tax purposes and the unearned income of the child is counted as family income. If the income is not counted, the child shall not be included when determining family size.

c. A dependent adult may be counted as a family member if the parent is supporting the person and claiming the person as a dependent for income tax purposes. Any income paid by this person for support to the parent, including unearned income for which the parent is the payee, shall be counted as income to the parents when computing parental liability.

d. A stepparent shall be counted.

e. The child in foster care is counted.

156.3(3) The following shall be used to determine the gross monthly income for the custodial parent(s):

a. All income of parents.

b. The income of the stepparent.

c. The unearned income of a dependent child in the home if the child is counted as a family member.

d. If a dependent adult is counted as a family member, any income paid by this person for support to the parents, including unearned income for which the parent is the payee, shall be counted.

156.3(4) The following apply to parents who fail to cooperate or to provide necessary information:

a. If parents fail to provide the necessary information to compute their parental liability, such parents shall be assessed a parental liability equal to the cost of foster care minus unearned income of the child in foster care.

b. If parents are the payees for the child's unearned income and fail to comply with subrule 156.2(2), the liability of the parents shall be equal to the cost of the foster care.

c. When parents have a separation, divorce or dissolution the following shall apply:

(1) When the noncustodial parent fails to provide the necessary information to compute parental liability, the person shall be assessed a liability equal to the cost of foster care minus the unearned income of the child in foster care.

(2) When the custodial parent fails to assign child support payments to the department, the person shall be assessed liability equal to the cost of foster care minus unearned income of the child in foster care.

(3) When the custodial parent fails to provide the necessary information to compute the person's liability, the custodial parent shall be assessed liability equal to the adjusted cost of foster care.

(4) When the noncustodial parent and custodial parent fail to provide the necessary information to compute parental liability, each parent shall be assessed a liability equal to one-half the cost of foster care minus one-half the unearned income of the child in foster care.

d. The parent shall be allowed thirty days from the date of request to comply with the department's request for information or assignment of child support payments

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before being considered as failing to provide the information or to assign the child support payments. If the necessary information or the assignment of child support payments is provided later than thirty days after the request for information or assignment, the liability of the parent(s) shall be revised effective the month following the provision of information or assignment of support.

e. When the department discovers that the parent(s) has understated the amount of income, the department shall calculate the amount of underpayment of liability and request the court, for court-ordered cases, or the director, for voluntary placements, to modify the order to require the parent(s) to pay the additional amount.

f. The department shall continue to collect unpaid parental liability after the child leaves foster care.

g. The department shall terminate a voluntary placement agreement on the basis of continued failure to cooperate to assign child support payments or to pay parental liability.

ITEM 4. Rescind rule 498—156.4(234) and insert the following in lieu thereof:

498—156.4(252C) Redetermination of liability.

156.4(1) The department's determination of parental liability shall be reviewed at least every twelve months or whenever one of the following occurs:

- a. The cost of foster care changes.
- b. The worker becomes aware that the family income changes.
- c. The worker becomes aware that the household size changes.
- d. The worker becomes aware that allowable deductions have changed.
- e. The child's unearned income changes.

156.4(2) If the department's review indicates that the amount of parental liability would change, the department shall initiate action to change the amount of the existing order effective the month following the month of change.

ITEM 5. Amend rule 498—156.5(234) as follows:

498—156.5(234, 252C) Voluntary payment. Nothing in these rules shall preclude a parent from voluntarily paying a larger amount more than the assessed amount, not to exceed the actual cost of foster care minus the unearned income of the child.

ITEM 6. Rescind rule 498—156.14(234) and insert the following in lieu thereof:

498—156.14(234, 252C) Voluntary placements. When placement is made on a voluntary basis the parent or guardian shall complete and sign Form SS-2604, Voluntary Placement Agreement.

tended Action to amend Chapter 35 entitled "Accident and Health Insurance," Iowa Administrative Code.

This rule sets minimum standards for self-insured life and health plans for the state, political subdivisions thereof, and school corporations. An annual certification of financial stability is also required. Finally, it is made clear that the public body sponsoring the plan is responsible for payment of benefits not adequately funded by the plan.

Anyone may make written comment on this proposed rule prior to November 8, 1985. Written materials should be directed to Denise Horner, Deputy Commissioner, Insurance Department of Iowa, Lucas Building, Des Moines, Iowa 50319. Also, there will be a public hearing on Thursday, October 31, 1985, from 1:30 p.m. until 3:00 p.m. in the Insurance Department conference room, ground floor Lucas Building. Persons who wish to make oral presentations at the public hearing should contact the Department at 515/281-6793 at least one day prior to the hearing. Parties making oral presentations are encouraged to also submit their comments in writing.

This rule is intended to implement 1985 Iowa Acts, Senate File 502, section 2.

The following amendments are proposed.

ITEM 1. Rules 510—35.7 to 35.19 are reserved for future use.

ITEM 2. Rule 510—35.20(71GA, SF503), is created as follows:

510—35.20(71GA, SF503) Life and health self-insurance plans.

35.20(1) Scope. This rule applies to life and accident and health self-insurance plans for the state of Iowa, political subdivisions of the state, school corporations, and all other public bodies in the state.

35.20(2) Minimum plan standards. Self-insured life plans subject to this rule shall meet the requirements of Iowa Code sections 509.1, 509.2, 509.4, and 509.15 and rules thereunder. Self-insured accident and health plans subject to this rule shall meet the requirements of Iowa Code sections 509.1 and 509.3 and rules thereunder.

35.20(3) Actuarial certification. A certification that each self-insurance plan subject to this rule is and will continue to be able to cover all accrued and reasonably anticipated expenses shall be obtained at least annually from an outside consulting actuary by the appropriate governing body.

35.20(4) Plan shortfalls. If the resources of any self-insurance plan subject to this rule are not adequate to fully cover all claims under that plan, then the public body sponsoring that plan shall make up the shortfall from other resources.

ARC 6016**INSURANCE DEPARTMENT[510]****NOTICE OF INTENDED ACTION**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 505.8, the Insurance Department of Iowa gives Notice of In-

ARC 6023**LIBRARY, STATE OF IOWA[560]****NOTICE OF INTENDED ACTION**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 303A.4 the State Library of Iowa hereby gives Notice of Intended

LIBRARY, STATE OF IOWA[560] (cont'd)

Action to amend Chapter 1 entitled, "Iowa Library Department," Iowa Administrative Code.

The revision changes the working relationship between the State Library of Iowa and the Iowa Regional Library System. It also expands the responsibilities of the Library Commission in the areas of library development.

Any interested persons may make written suggestions or comments on this proposal prior to November 12, 1985. Written materials should be directed to the State Librarian, Historical Building, East 12th and Grand, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the State Librarian at 515/281-4113 or in the State Librarian's office on the second floor of the Historical Building. There also will be a public hearing on Tuesday, November 12, 1985, at 10:00 a.m. in the Conference Room of the State Library. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the State Librarian at least one day prior to the date of the public hearing.

The State Library of Iowa proposed these amendments at a regular meeting on August 5, 1985. These rules are intended to implement Iowa Code Chapter 303A, and 1985 Iowa Acts, Senate File 250.

Rescind chapter 1 and insert the following in lieu thereof:

CHAPTER 1 STATE LIBRARY OF IOWA

560—1.1(303A) Function. The state library of Iowa consists of the office of library development, office of information, and office of agency operations. The office of information includes a law library, medical library, general library, documents depository and support functions. The state library's function is to work toward the development of statewide library service, to provide library service to governmental agencies, to the state legislature, and to the residents of Iowa.

This rule is intended to implement Iowa Code sections 303A.1, 303A.3 and 303A.7.

560—1.2(303A) Organization and operations.

1.2(1) Location. The state library is located in the Historical Building, Capitol Complex, Des Moines, Iowa 50319; Phone (515) 281-4118. Office hours are 8:00 to 4:30 Monday to Friday.

1.2(2) Commission. The state library commission consists of seven members and functions under the leadership of a chair elected by the membership. Six members are appointed by the governor to serve a term of four years. The seventh member is appointed by the supreme court. One of the gubernatorial appointees must represent the medical profession.

1.2(3) Meetings. The commission meets bimonthly on the first Monday of the month. Notice of a meeting is published ten days in advance of the meeting or will be mailed to interested persons upon request. The notice shall contain the specific date, time, and place of the meeting. The operation of commission meetings will be governed by the following rules of procedure:

a. A quorum shall consist of four members.

b. When a quorum is present a position is carried by an affirmative vote of a majority of those present.

c. Persons wishing to appear before the commission shall submit the request to the state librarian's office not less than ten days prior to the meeting. Presentations may

be made at the discretion of the chair and only upon matters appearing on the agenda.

d. Persons wishing to submit written material should do so at least ten days in advance of the scheduled meeting to assure that commission members have adequate time to receive and evaluate the material.

e. At the conclusion of each meeting the commission shall set the time, date and place of the next meeting.

f. The presiding officer may exclude any persons from the meeting for repeated behavior that disrupts or obstructs the meeting.

1.2(4) Minutes. Minutes of commission meetings are prepared and are available at the state librarian's office for inspection during business hours. Copies may be obtained without charge by contacting the office.

This rule is intended to implement Iowa Code section 303A.3.

560—1.3(303A) Administration of the state library. The state library commission appoints a state librarian who is responsible for the day-to-day administration of the state library's activities. This activity is carried out by three divisions which are directly responsible to the state librarian.

1.3(1) Office of agency operations. The division of agency operations provides clerical and staff support for the state library, including accounting and personnel functions. This division may be reached during business hours at (515) 281-4116.

1.3(2) Office of library development. This division provides specialized consulting to local libraries, inter-regional interlibrary loan, administers the Library Services and Construction Act (LSCA) federal grant program, manages the audio visual program, operates a continuing education program, and monitors the condition, development and growth of libraries in Iowa. The division may be reached during business hours at (515) 281-7572 or (800) 248-4483.

a. Forms.

(1) LSCA application forms are available at the state library of Iowa office without charge. These forms must be filled out and submitted to the commission.

(2) Application for participation. Used by persons wishing to participate in the LSCA program. This form requires the submission of specific information necessary to enable the commission to evaluate the applicant's fitness to participate in the LSCA program.

b. Grant process. The competitive grant award procedure for LSCA funds is announced in "Footnotes*" (the agency's monthly newsletter) and by a mailing of application materials to each public library and regional library system. The application deadline date is set six to eight weeks after the application materials are mailed.

Applications are reviewed and evaluated by teams of librarians and other specialists two to three weeks after the application deadline. Review teams use the application evaluation to rate applications. Review teams meet at least once to discuss the applications and to make recommendations to the state librarian.

The state librarian considers the recommendations of the review teams and makes final recommendations to the state library commission.

The commission makes the final decisions on the grant awards. The chair of the commission signs the award letters and the contracts which are mailed with reporting forms and state claim vouchers to the award recipients. Letters of denial are mailed to those whose applications were turned down.

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Recipients report quarterly of progress of the projects. Recipients of Title II grants must file a final report.

Projects are monitored by the office of library development staff.

c. Appeal of grant decisions. Appeals will be conducted in the following manner:

(1) When any application for LSCA funds is denied, a written notice will be sent to the applicant. The applicant may appeal decisions by submitting a written request for a hearing to the state library commission within ten days of receipt of the notice of denial.

(2) Appeals may be made on procedural grounds only, that is, procedures were not applied uniformly to all applicants.

(3) The hearing shall be held within fifteen days of the date of the request at a reasonable time in the state library. The hearing shall be held before the state library commission or members of a review board as the state library commission designates. A stenographer shall be present at all hearings to record all statements, comments, and decisions in a transcription that shall become part of the application award.

(4) Procedures for an appeal hearing.

The state library commission shall notify the appellant as to day and hour of hearing.

The state library commission shall inform the appellant of the right to submit any written documents.

The state library commission shall inform the appellant that a spokesperson must be appointed if the appeal involves more than one person per project. The state library commission or designated members of the review board shall direct questions only to the appellant during the hearing. Any other discussion or comments must be reserved for the closed executive session. No indication of decision shall be given at this time. The appellant shall be notified in writing within five days of the commission's final decision.

1.3(3) Office of information. This division, through the law, medical, and general libraries, provides library service to state agencies, the state legislature, and to residents of Iowa. The division may be reached during business hours at (515) 281-4102 or 281-5124 or (800) 362-2384.

a. Penalties. The library department may request payment for injuring, defacing, destroying, or losing library materials under the control of any of its divisions. Payment for such loss or damage will be assessed at fair market value plus the cost of acquiring, cataloging, and processing the material.

(1) Charges for library materials repaired may include the cost of notification plus actual cost of repairs.

(2) Overdue library materials loaned by the library shall be returned following oral or written notification by the library. Library materials not returned by the due date may be considered to be lost or willfully withheld.

(3) After oral or written notification, the library may withhold borrowing privileges from a borrower charged with injuring, defacing, destroying, losing, or willfully withholding library materials.

(4) After oral or written notification, any fines, penalties or forfeitures imposed by the state library may be recovered in an action in the name of the state and deposited in the general fund.

b. Administration of depository program.

(1) Depository status shall be determined by the state library commission upon written application by the

library. Upon approval of the application, a contract between the state library and the depository library shall be completed.

(2) A nine-member advisory council is organized to advise the Iowa library department regarding this program. The advisory council may be composed of members of state agencies, representatives of depository and non-depository libraries, and the general public appointed by the commission.

(3) The document depository program shall be administered by the depository librarian under the direction of the state librarian.

(4) Materials missing from the depository shipments must be claimed from the depository library center within one month of receipt of the shipment. After that time, requests should be made directly to the issuing agency or the state printer.

c. Depositories.

(1) The state university of Iowa and the Iowa library department shall be considered as depositories in addition to those mentioned in the subrules.

(2) Depositories shall meet the following minimum requirements: All publications received under this program will be retained for a minimum of three years unless a lesser retention period is designated for an item or items by the depository center.

The depository agrees to make the documents available for free public use. Every effort should be made by the depository library to make as few restrictions on circulation as possible.

Space for depository operations should be of the same quality as for other operations of the library. If documents are maintained in a separate division of the library, the space provided should be conveniently located to encourage use of the materials.

(3) Depository libraries may be selected on the basis of one or more of the following criteria:

1. Geographic location consistent with a policy of distributing depositories so as to minimize the distance a user would need to travel,

2. Demonstrated ability to handle the receipts desired based on size of collection, identified need of the library's clientele, and the availability of space and staff.

3. Present federal depository status.

d. Withdrawal of a library from the program.

(1) A core list library may withdraw from this program by sending written notice to the state library.

(2) A depository library may withdraw from this program by sending written notice to the state library sixty days prior to such withdrawal.

(3) A library's depository designation may be withdrawn for failure to conform to the terms of the contract. The state librarian shall give written notification to the depository. Within thirty days after the receipt of the notice, the depository library and the state library shall hold a meeting to review the stated inadequacies. If inadequacies are not corrected or a written plan of action has not been submitted within thirty days, the state library shall withdraw the library's depository designation.

(4) Upon termination of the contract the depository documents become the property of the state library and must be returned to the state library or to such other depositories as may be specified by the state library.

This rule is intended to implement Iowa Code sections 303A.4 and 303A.7.

LIBRARY, STATE OF IOWA[560] (cont'd)

560—1.4(303B) Appeal of plan of service decisions.
Appeals will be conducted in the following manner:

1.4(1) When any Iowa regional library system annual plan of service is denied, a written notice will be sent to the region. The region may submit a written request for a hearing to the state library commission within ten days of receipt of the notice of denial.

1.4(2) The hearing shall be held within fifteen days of the date of the request at a reasonable time in the state library. The hearing shall be held before a review board whose members represent the state library commission and the trustees of the Iowa regional library system.

A stenographer shall be present at all hearings to record all statements, comments, and decisions in a transcription that shall become part of the application award.

1.4(3) Procedures for an appeal hearing:

a. The state library commission shall notify the appellant as to day and hour of hearing;

b. The state library commission shall inform the appellant of the right to submit any written documents.

c. The state library commission shall inform the appellant that a spokesperson must be appointed if the appeal involves more than one person per project.

d. The board shall direct questions only to the appellant during the hearing. Any other discussion or comments must be reserved for the closed executive session. No indication of decision will be given at this time.

e. The appellant shall be notified in writing within five days of the review board's final decision.

This rule is intended to implement Iowa Code section 303B.6.

560—1.5(68A) Open records. Except as provided in Iowa Code sections 68A.7 and 17A.2(1)"f," all public records of the state library are available for public inspection during business hours. Requests to obtain records may be made either by mail, telephone, or in person.

ARC 6036**MERIT EMPLOYMENT
DEPARTMENT[570]****NOTICE OF INTENDED ACTION**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 19A.9, the Iowa Merit Employment Department hereby gives Notice of Intended Action to amend Chapter 1 "Definitions," Chapter 4 "Pay Plan," Chapter 7 "Certification and Selection," Chapter 9 "Probationary Period," Chapter 10 "Promotion, Transfer, Temporary Assignment and Voluntary Demotion," Chapter 11 "Separations, Disciplinary Actions and Reduction in Force," Chapter 12 "Grievances, Appeals and Hearings," and Chapter 14 "Vacation and Leave" appearing in Iowa Administrative Code.

Amendments are intended to make clearer the rules on compensatory time, pay, certification, probationary status, temporary assignments, discharge, scheduling and postponing hearings, and administrative decisions. Revisions of definitions pertinent to these amendments are also included.

The language is clarified for rules dealing with special and extraordinary duty pay under a section now titled temporary assignments in chapters 4 and 10.

Certification rules are being amended to allow departments to eliminate the names of applicants previously interviewed who are not interested in working for that agency. The names of applicants so removed will continue to be referred to other departments, but not to the requesting agency.

Rules on discharge are amended to include a procedure for a face-to-face encounter prior to the discharge, in accordance with a recent U.S. Supreme Court decision.

Chapter 12 rules on hearing scheduling and postponement are amended to include clarifying language and incorporated administrative procedures. The rule on administrative decisions is changed to require a written brief be submitted with requests for reconsideration.

Any interested person may make written suggestions or comments on these proposed rules no later than October 29, 1985, to the Deputy Director, Iowa Merit Employment Department, Grimes State Office Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally should contact the Deputy Director at (515) 281-6602 or at the above address. Also, there will be a public hearing on Thursday, November 14, 1985, at 9:20 a.m. in the Grimes Conference Room, South Half on the first floor of the Grimes State Office Building. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the Director's Secretary prior to the date of the public hearing in order to be scheduled.

These rules are intended to implement Iowa Code section 19A.9.

The following amendments are proposed.

ITEM 1. Rule 570—1.1(19A) two definitions ("overtime" and "premium overtime compensation") are amended to read as follows:

"Overtime" means those hours for which an employee works in excess of is entitled to be paid that exceed forty work hours in a work week.

"Premium overtime compensation" means compensation payment at a rate of one and one-half hours for each hour of overtime worked.

ITEM 2. Subrule 4.5(6) is rescinded and the following adopted in lieu thereof:

4.5(6) Pay for temporary assignments.

a. A permanent employee assigned to special duty may receive extra pay only when the assignment is to a class in a higher pay grade or from a nonsupervisory to a supervisory class in the same pay grade. Pay shall be set in accordance with the rules governing pay upon promotion to the class to which assigned for the duration of the assignment. When extra pay is granted the class to which the employee is temporarily assigned shall be controlling for all pay purposes including overtime, shift differential, standby, call back and leadworker pay eligibility.

b. A permanent employee assigned extraordinary duties may receive extra pay only when those duties are of a higher level than those in the class to which the

MERIT EMPLOYMENT DEPARTMENT[570] (cont'd)

employee is assigned, or when supervisory duties are assigned to an employee who is allocated to a nonsupervisory class. This extra pay must be given in step increments, except for employees covered by the professional/managerial pay plan in which case it may be paid a percentage above their current salary. This extra pay may exceed the maximum pay for the class, and shall be paid only as long as the extraordinary duties are assigned.

c. Extra pay given as a result of an assignment to special duty or extraordinary duty shall not affect the employee's eligibility to receive a merit/step pay increase while on a temporary assignment. If granted a merit/step pay increase, the extra pay shall then be recalculated from the employee's new base salary. At the expiration of the assignment, the employee's pay shall revert to the employee's regular authorized pay.

Rule 570—4.6(19A) is rescinded and the following adopted in lieu thereof:

570—4.6(19A) Overtime. Overtime is defined as those hours for which the employee is entitled to be paid that exceed forty hours in a work week. Classes will be designated by the director as to whether they are covered or exempt for mandatory overtime pay.

4.6(1) Employees in overtime covered classes shall be paid at a rate of one and one-half hours for each hour of overtime.

4.6(2) Employees in overtime exempt classes may be compensated for overtime when prior approval of the director has been granted. Compensation shall be at a rate no greater than one and one-half hours for each hour of overtime.

Compensation shall be either in pay or compensatory leave. The employee may decide the method of compensation subject to the approval of the appointing authority.

a. Compensatory leave shall accrue to a maximum of eighty hours. Thereafter, the employee shall receive pay for overtime. Accrued compensatory leave may be paid at the appointing authority's discretion, and when paid shall be at the regular rate of pay the employee is earning at the time of payment.

b. Accrued compensatory leave shall be granted in accordance with rule 14.9(19A).

c. Upon separation from state employment, transfer to a different appointing authority or movement into a class with different overtime designation, all accrued compensatory leave shall be paid to the employee.

4.6(3) Any hours compensated at a rate of time and one-half shall not be used to generate any additional compensation.

4.6(4) Employees covered by a collective bargaining agreement shall be governed by the terms of their particular agreement.

Rule 570—4.7(19A) is rescinded and the number reserved for future use.

ITEM 3. Rule 570—7.9(19A) is rescinded and the following adopted in lieu thereof:

570—7.9(19A) Omission of names from referral.

7.9(1) If the appointing authority passes over the name of an applicant on three separate certificates in connection with three separate appointments for the same job class from which another person with a lower certified score was hired, then the appointing authority may request that the director not refer the applicant to the appointing authority for that job class.

7.9(2) If an applicant declines or fails to respond to three offers to interview for the same job class in connection with three separate certificates for three different vacancies, then the appointing authority may request that the director not refer the applicant to the appointing authority for that job class.

7.9(3) If approved for removal, the director shall notify the applicant. The period of removal shall not exceed two years from the date removed. Appeal from removal shall be in accordance with 570—chapter 12.

ITEM 4. Rule 570—9.1(19A) is rescinded and the following adopted in lieu thereof:

570—9.1(19A) Duration. All original permanent appointments made as provided for in these rules shall require a six-month period of probationary status. If, during the period of probationary status the conditions under which the employee was originally certified are changed, the employee must be eligible for certification in accordance with 7.3(2).

A period of probationary status of six months may, at the discretion of the appointing authority with notice to the employee and the director, be required upon reinstatement, and all rules regarding probationary status shall apply during that period.

Subrule 9.2(2) is amended to read as follows:

9.2(2) A probationary employee may be disciplinarily demoted to a lower class in the same class series, in the same location, and under the same conditions under which the employee was originally certified. Otherwise, disciplinary demotion during the period of probationary status shall require eligibility for appointment from a list of eligibles in accordance with subrule 7.3(2). A probationary employee may be *disciplinarily* demoted to a work-test (division C) class without regard to class series location or other similar conditions as long as the employee meets the minimum qualifications required for the class. The total required period of probationary status shall include the time spent in the higher class. The pay shall be set in accordance with subrule 4.5(7).

ITEM 5. Rule 570—10.3(19A) is rescinded and the following adopted in lieu thereof:

570—10.3(19A) Temporary assignments.

10.3(1) An appointing authority may assign a permanent employee to special duty when that employee is temporarily needed in a position in another class. This assignment shall be without prejudice to the employee's rights in or to the regularly assigned position. Unless there is a statutory requirement to the contrary, the employee need not be qualified for, nor certified to the class to which temporarily assigned.

10.3(2) An appointing authority may temporarily assign a permanent employee duties that are extraordinary for the employee's class. These duties may be of a level higher than, lower than, or similar to the duties regularly assigned to the employee's class, and may be in addition to or in place of some or all of the employee's regularly assigned duties.

10.3(3) Additional pay may be requested by the appointing authority when:

a. A special duty assignment is to a class in a higher pay grade;

b. A special duty assignment is from a nonsupervisory to a supervisory class having the same pay grade;

c. Extraordinary duties are assigned that are of a level higher than the duties assigned to the class to which the employee is allocated; or

MERIT EMPLOYMENT DEPARTMENT[570] (cont'd)

d. Supervisory duties are assigned to an employee whose regular assignment is in a nonsupervisory class.

Requests shall be submitted to the director in writing explaining the need and the period of time requested. If approved, the additional pay shall be in accordance with subrule 4.5(6).

10.3(4) An appointing authority may make temporary assignments without additional pay for a period not to exceed six pay periods in a calendar year without the approval of the director. Assignments beyond six pay periods shall require the approval of the director.

10.3(5) Temporary assignments shall not be authorized for any employee covered by a collective bargaining agreement unless determination has been made by the employment relations division that it is not prohibited.

ITEM 6. Subrule 11.2(4), introductory paragraph, is amended to read as follows:

11.2(4) Discharge. An appointing authority may discharge an employee. *Prior to being discharged, the appointing authority or designee will personally inform permanent employees of the pending discharge, and at that time the employee will have the opportunity to respond.* A written statement of the reasons for the discharge shall be sent to the permanent employees within twenty-four hours after the effective date of the action and a copy shall be sent to the director by the appointing authority at the same time.

ITEM 7. Subrule 12.3(5) is rescinded and the following adopted in lieu thereof:

12.3(5) Scheduling of hearings. Appeals shall be scheduled by the director for hearing. All appeals involving suspension, reduction in pay step/rate within pay grade, disciplinary demotion, or discharge shall be heard within thirty calendar days following the receipt of the request for hearing.

Subrule 12.3(6) is rescinded and the following adopted in lieu thereof:

12.3(6) Postponement or continuance of hearings. A scheduled hearing may be postponed or continued. A request to do so must be in writing and received at least five working days prior to the scheduled hearing date, unless otherwise approved. The parties shall be notified in writing of the decision. If the request is denied, a request to reconsider the decision may be made to the person presiding at the hearing at the time of the hearing. All information concerning the request shall become part of the record.

Subrule 12.3(7) is adopted as follows:

12.3(7) Judicial review. The parties to an appeal hearing may obtain judicial review of the commission's decision in accordance with Iowa Code chapter 17A.

Rule 570—12.4(19A) is amended to read as follows:

570—12.4(19A) Administrative decisions. The department director may, on jurisdictional or other grounds, deny a request for hearing, provided that ~~the parties shall be~~ notified in writing of the reasons for the decision. The requesting party appellant may, within fourteen calendar days following the issuance date of the department's decision, seek a review of that decision by filing a written "request for reconsideration" with the commission. *The request for reconsideration must include a written brief indicating why the commission should accept legal jurisdiction, and a copy sent to the other party. The other party may also brief the commission on the question of jurisdiction.* The request for reconsideration

will be placed on the commission's next available meeting agenda and the parties so notified.

By a majority of its members voting, the commission may affirm the department's decision, or reverse the decision and order the hearing to be scheduled. The decision by one or more commission members present to abstain from voting shall not constitute a vote for these purposes. All remedies provided for in rules 12.4(19A) and 12.2(19A) must be exhausted pursuant to Iowa Code subsection 17.19(1) in order to obtain judicial review.

ITEM 8. 570—14.9(19A) is rescinded and the following adopted in lieu thereof:

570—14.9(19A) Compensatory leave. Compensatory leave accrued in accordance with subrule 4.6(2) may be granted at the convenience of the employee whenever possible. Accrued compensatory leave may, at the discretion of the appointing authority, be required to be used provided the employee is notified five working days prior to the required usage.

Subrule 14.10(6) is amended to read as follows:

14.10(6) ~~The maximum value of a holiday shall be eight hours.~~ *The value of a holiday shall be equal to the number of hours the employee is regularly scheduled to work but not less than eight hours for full-time employees.* Holidays shall be prorated for employees who are regularly scheduled to work less than eighty hours in the pay period, based upon the number of hours scheduled to work during the pay period in which the holiday falls. If an employee does not work on the holiday, the hours normally scheduled for that day shall be included when determining the number of pro rata holiday hours.

ARC 6019**NURSING, BOARD OF[590]****NOTICE OF INTENDED ACTION**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 Iowa Board of Nursing hereby gives Notice of Intended Action to adopt amendments to Chapter 6, "Nursing Practice for Registered Nurses/Licensed Practical Nurses," appearing in the Iowa Administrative Code.

The amendments delineate the skills training and education for which a registered nurse must provide documentation to the medical director of an ambulance or rescue squad in order for the nurse to become a member of the staff of an authorized service. The registered nurse must document skills training and education equivalent or superior to that required of a certified emergency medical technician or paramedic.

Any interested person may make written suggestions or comments prior to October 29, 1985. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, State Capitol Complex, 1223 East Court Avenue, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the

NURSING, BOARD OF[590] (cont'd)

Executive Director at (515) 281-3256 or in the office at 1223 East Court Avenue.

These rule amendments implement Iowa Code section 147A.12.

The following amendments are proposed.

Amend rule 590—6.4(152) by adding the following new subrule:

6.4(2) A registered nurse may be a member of the staff of an ambulance or rescue squad authorized pursuant to Iowa Code chapter 147A.

a. The registered nurse shall document skills training and education equivalent or superior to that required of a certified advanced emergency medical technician or paramedic.

b. Documentation of the following education and skills training shall be reviewed and approved at the local level by the medical director of the ambulance or rescue squad.

(1) For all levels of certification the following shall be required:

Current basic cardiac life support (BCLS) certification in accordance with current American Heart Association standards.

Military antishock trouser (MAST).

Use of basic airway adjuncts including:

1. Oropharyngeal airway.
2. Nasopharyngeal airway.
3. Cannula, mask.
4. Demand valve unit.
5. Bag valve mask.
6. Pocket mask.
7. Initiation and use of portable O₂ tanks.

Application of traction and cervical immobilization.

Complete spinal and extremity immobilization.

Use of extrication equipment.

Immobilization of impaled object.

Voice radio communication.

Four advanced life support field responses.

Emergency driving.

Primary and secondary field assessment.

Overview of statutes and rules governing emergency medical services.

(2) For EMT-I, EMT-II and Paramedic, esophageal intubation shall be required.

(3) For EMT-D, EMT-II and Paramedic, recognition and treatment of ventricular fibrillation and operation of defibrillator shall be required.

(4) For EMT-II and Paramedic, the following shall be required:

Direct laryngoscopy.

Endotracheal intubation.

Current advanced cardiac life support (ACLS) in accordance with current American Heart Association standards.

c. The documentation may be reviewed by the board of medical examiners, the board of nursing, or state health department.

d. Exceptions to this subrule include:

(1) The registered nurse who accompanies and is responsible for a transfer patient.

(2) The registered nurse who serves on a basic ambulance or rescue squad service.

e. Any registered nurse found to be staffing an authorized ambulance or rescue squad service who has not met the appropriate educational standards shall be subject to disciplinary proceedings initiated by the board of nursing as defined in the Iowa Administrative Code 590—chapter 4.

ARC 6001**TRANSPORTATION,
DEPARTMENT OF[820]**

07 MOTOR VEHICLES

NOTICE OF INTENDED ACTION

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §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 307.10, the Department of Transportation hereby gives Notice of Intended Action to adopt 820—[07,C] Chapter 6 entitled "Denials, Cancellations, Suspensions and Revocations."

Chapter 6 implements the requirements of 1985 Iowa Acts, Senate File 570, regarding the suspension of a person's driver license or permit for nonpayment of a fine, penalty, surcharge or court costs. Chapter 6 also includes rules on service of notice, hearing and appeals for this type of suspension. The substance of this chapter of rules is also being submitted under emergency rulemaking procedures as **ARC 6000**, published in the Iowa Administrative Bulletin on October 9, 1985, and is incorporated herein by reference.

On November 19, 1985, at their regular meeting at the Department of Transportation Complex, 800 Lincoln Way, Ames, Iowa, the Transportation Commission shall consider the adoption of these proposed administrative rules. This action shall be in accord with Iowa Code Chapter 17A and 820—[01,B] Chapter 1, Iowa Administrative Code.

Any person or agency may submit written comments concerning the proposed rule or may submit a written request to make an oral presentation at the Commission meeting. These comments or requests shall:

1. Include the name, address and telephone number of the person or agency authoring the comment or request.
2. Reference the number and title of the proposed rule as given in this Notice which is the subject of the comment or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Office of Financial/Operational Analysis, 800 Lincoln Way, Ames, Iowa 50010.
5. Be delivered to this office or postmarked no later than November 4, 1985.

The Department shall notify a person or agency properly requesting an oral presentation of the time of day scheduled for the presentation.

ARC 6002**TRANSPORTATION,
DEPARTMENT OF[820]**

07 MOTOR VEHICLES

NOTICE OF INTENDED ACTION

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §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 307.10, the Department of Transportation hereby gives Notice of Intended Action to amend 820—[07,C] Chapter 11 entitled

TRANSPORTATION, DEPARTMENT OF [820] (cont'd)

"OWI and Implied Consent," Chapter 13 entitled "Driver Licenses" and Chapter 14 entitled "Financial Responsibility."

Items 6, 8, 10, 11 and 14 are being revised to reference the new administrative rule on service of notice, 820—[07,C]6.37(321), that was adopted under emergency rulemaking procedures and published as ARC 6000 in the Iowa Administrative Bulletin of October 9, 1985. Changes from the current procedure include service of notice by certified mail instead of restricted certified mail as authorized by 1985 Iowa Acts, House File 366, and optional service by other delivery methods. Items 1 and 2 delete references to the rescinded service of notice rule.

Items 7 and 9 are being revised to reference the new administrative rule on the hearing and appeal process, 820—[07,C]6.38(321), which was also published in ARC 6000. The new rule includes these changes: A description of properly "received" requests, the use of telephones for informal settlements, a time limit for reaching informal settlements, a hearing officer's option to hear or continue a contested case when the requester fails to appear, and the limiting of appeals of proposed decisions to conclusions of law.

Item 3 divides the driver license vision examination standards into two groups (with or without corrective lenses). The rule also reduces the maximum allowable speed to 35 m.p.h. for persons with a visual acuity of 20/70; this change is the result of an advisory from the Safe Transportation Committee of the Iowa Medical Society.

Item 5 amends the list of exceptions to moving traffic violations to comply with Iowa Code section 321.210.

Item 4 is an editorial simplification, Item 12 is a gender correction, Item 13 is a correction of office title and Iowa Code references, and Item 15 is a list of corrections to implementation clauses.

These rule amendments are intended to implement Iowa Code Chapters 321, 321A and 321B and 1985 Iowa Acts, House File 366.

Pursuant to the authority of Iowa Code sections 307.10 and 321A.2, rules 820—[07,C] Chapter 11 entitled "OWI and Implied Consent," Chapter 13 entitled "Driver Licenses," and Chapter 14 entitled "Financial Responsibility" are hereby amended.

ITEM 1. Rescind paragraph 11.3(2)"b" and insert in lieu thereof the following:

b. The effective date of the revocation shall be as provided in Iowa Code section 321B.16.

ITEM 2. Rescind paragraph 11.4(2)"b" and insert in lieu thereof the following:

b. The effective date of the revocation shall be as provided in Iowa Code section 321B.13.

ITEM 3. Rescind subparagraphs 13.3(2)"a" (1) to (3), insert the following in lieu thereof, and renumber the remaining subparagraph accordingly:

(1) Without corrective lenses: If the visual acuity is 20/40 or better with both eyes or with the best eye, no restriction will be imposed. If the visual acuity is less than 20/40 but at least 20/50 with both eyes or with the best eye, the applicant shall be restricted to driving when headlights are not required. If the visual acuity is less than 20/50 but at least 20/70 with both eyes or the best eye, the applicant shall be restricted to driving when headlights are not required and restricted to a maximum speed of 35 m.p.h.

(2) With corrective lenses: If the visual acuity is 20/40 or better with both eyes or with the best eye, the applicant shall be required to wear corrective lenses. If the visual acuity is less than 20/40 but at least 20/50 with both eyes or the best eye, the applicant shall be required to wear corrective lenses and shall be restricted to driving when headlights are not required. If the visual acuity is less than 20/50 but at least 20/70 with both eyes or the best eye, the applicant shall be required to wear corrective lenses, restricted to driving when headlights are not required, and restricted to a maximum speed of 35 m.p.h.

ITEM 4. Rescind subrule 13.9(2) and insert in lieu thereof the following:

13.9(2) Military extension. Military extensions are explained in Iowa Code section 321.198. A person eligible for a military extension should carry Form 430028 with the license. Form 430028 explains the military extension and is available from the department. When appearing before the department for license renewal, a person who had a military extension may be required to furnish documentation of military service and initial separation from active duty.

This rule is intended to implement Iowa Code sections 321.196 to 321.198.

ITEM 5. Amend paragraphs 13.13(10)"a," "b," "c," "e" and "g" as follows:

a. Equipment violations as provided in Iowa Code section 321.210;

b. Parking violations regulations in cities as described in Iowa Code section 321.210;

c. Violations of Registration laws;

e. Careless driving pursuant to city ordinances
Violations of the child restraint law as provided in Iowa Code section 321.210;

g. Violations of Weights and measures laws;

ITEM 6. Amend paragraph 13.13(12)"a" as follows:

a. A notice of suspension shall be sent served as described in rule [07,C]13.21(321) 820—[07,C]6.37(321).

ITEM 7. Rescind rule [07,C]13.20(321) and insert in lieu thereof the following:

820—[07,C]13.20(321) Hearing and appeal process. A person whose privilege to operate motor vehicles in Iowa has been denied, canceled, suspended or revoked under this chapter may protest the decision in accordance with rule 820—[07,C]6.38(321).

This rule is intended to implement Iowa Code chapter 17A and section 321.211.

ITEM 8. Rescind rule [07,C]13.21(321) and insert in lieu thereof the following:

820—[07,C]13.21(321) Service of denial, cancellation, suspension or revocation notice. The department shall serve a notice of denial, cancellation, suspension or revocation in accordance with rule 820—[07,C]6.37(321).

This rule is intended to implement Iowa Code sections 321.16, 321.211 and 331.655, and 1985 Iowa Acts, House File 366.

ITEM 9. Rescind rule [07,C]14.2(321A) and insert in lieu thereof the following:

820—[07,C]14.2(321A) Hearing and appeal process. A person who is aggrieved by an action of the department implementing Iowa Code sections 321A.4 to 321A.11 may protest the action in accordance with rule 820—[07,C]6.38(321). The hearing officer in a contested case hearing

TRANSPORTATION, DEPARTMENT OF[820] (cont'd)

may subpoena witnesses and conduct any investigation deemed necessary to:

14.2(1) Determine if the subject of the hearing is properly identified with the accident.

14.2(2) Determine if there is any reasonable possibility that judgment could be rendered against the subject of the hearing.

14.2(3) Determine if the subject of the hearing is entitled to any exceptions provided by law.

14.2(4) Determine if the security required following an accident is reasonable and make adjustments deemed necessary or proper.

This rule is intended to implement Iowa Code chapter 17A and section 321A.2.

ITEM 10. Rescind subrules 14.4(1) and 14.4(2) and insert in lieu thereof the following:

14.4(1) Suspension.

a. The effective date of the suspension shall be ten days after service of the suspension notice (Form No. 431010). The suspension notice shall be served as provided in rule 820—[07,C]6.37(321). The suspension notice shall notify the person of the following:

(1) The amount of security required as evidence of ability to satisfy any judgment resulting from the accident.

(2) Where to surrender the license and registrations.

(3) The methods by which compliance can be shown and suspension avoided.

(4) Entitlement to a hearing.

b. The duration of the suspension shall be as provided in Iowa Code section 321A.7. When the suspension is terminated, the department shall issue to the person a notice terminating the suspension (Form No. 431009).

14.4(2) Reserved.

ITEM 11. Rescind subrule 14.5(1) and insert in lieu thereof the following:

14.5(1) Suspension.

a. The effective date of the suspension shall be upon service of the suspension notice (Form No. 431010). The suspension notice shall be served as provided in rule 820—[07,C]6.37(321). The suspension notice shall notify the person of the following:

(1) The privilege to operate and register motor vehicles in Iowa is suspended until the judgment is satisfied and proof of financial responsibility is shown.

(2) Where to surrender the license and registrations.

(3) The methods by which proof of financial responsibility can be shown.

b. The duration of the suspension shall be as provided in Iowa Code section 321A.14. When the suspension is terminated, the department shall issue to the person a notice terminating the suspension (Form No. 431009).

ITEM 12. Amend subparagraph **14.5(2)"a"(2)** as follows:

(2) A letter to the department from the creditor or his *the creditor's* attorney consenting to the issuance of license and registrations to the debtor ~~will~~ *shall* be accepted.

ITEM 13. Rescind subrule 14.6(4) and insert in lieu thereof the following:

14.6(4) Terminating the suspension upon filing of proof. A notice terminating the suspension (Form No. 431009) shall be issued by the department to any person otherwise eligible for licensing who was the subject of the suspension requirements of Iowa Code section 321A.17 and this rule, or who was the subject of the suspension

requirements of rule 14.5(321A) and has satisfied the judgment, when the person has shown future proof of financial responsibility by any of the methods described in subrule 14.6(2). The notice identifies the person by social security number, birth date and previous license number, and gives the reason for the last suspension or revocation. The notice terminating the suspension shall notify the person of the following:

a. An appearance before an Iowa driver license examiner is required. The person must pass the required examinations and pay the fees required by Iowa Code section 321.191.

b. Operating and registration privileges are restricted to the vehicles and coverage described on the notice.

ITEM 14. Rescind subrule 14.6(6) and insert in lieu thereof the following:

14.6(6) Suspension when future proof is canceled.

a. When a person's future proof is canceled, the person shall immediately refile future proof or surrender the license and registrations to the department.

b. If the person fails to refile, a suspension notice (Form No. 431010) shall be served in accordance with rule 820—[07,C]6.37(321). The effective date of the suspension shall be upon service of this notice. The suspension notice shall notify the person of the following:

(1) The date of cancellation of future proof.

(2) The privilege to operate and register motor vehicles in Iowa is suspended until future proof is refiled.

(3) Where to surrender the license and registrations.

(4) The methods by which future proof of financial responsibility can be re-established.

c. When the person refiles future proof, the department shall issue to the person a notice terminating the suspension (Form No. 431009).

ITEM 15. Rescind the Iowa Code sections in the implementation clauses for rules [07,C]14.3(321A) to [07,C]14.6(321A), and insert the following Code sections for each clause as follows:

14.3(321A): 321.266, 321A.4 to 321A.11, and 321A.31

14.4(321A): 321A.4 to 321A.11, and 321A.31

14.5(321A): 321A.12 to 321A.29, and 321A.31

14.6(321A): 321A.12 to 321A.29, 321A.31, and 321A.34

ARC 6031

WATER, AIR AND WASTE MANAGEMENT[900]

WATER, AIR AND WASTE MANAGEMENT COMMISSION NOTICE OF INTENDED ACTION

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 §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 455B.105, and 1985 Iowa Acts, House File 643, section 4, the Water, Air and Waste Management Commission gives Notice of Intended Action to adopt rules creating a new Chapter 135 relating to the regulation of underground storage tanks. The main purpose of these rules at this point is to provide a form to the regulated public for

WATER, AIR AND WASTE MANAGEMENT[900] (cont'd)

making the notifications required by 1985 Iowa Acts, House File 643, section 3. The rules also provide the basic definitions used in this program and provide the current definition of regulated substances covered in this program. These rules may impact small businesses, among others.

The Commission emergency adopted these rules on September 16, 1985. These rules are also filed emergency adopted and implemented, **ARC 6030**, and the content of these rules is incorporated herein by reference. If appropriate, amended rules will be adopted pursuant to this process.

Any interested person may file written comments on the above rules through November 8, 1985, with the Executive Director of the Department of Water, Air and Waste Management, Henry A. Wallace Building, 900 East Grand Avenue, Des Moines, Iowa 50319. Persons are also invited to present oral or written comments at a public hearing which will be held October 29, 1985, at 10:00 a.m. in the 5th Floor Conference Room, Henry A. Wallace Building, 900 East Grand Avenue, Des Moines, Iowa 50319.

ARC 6032**WATER, AIR AND WASTE
MANAGEMENT**[900]**WATER, AIR AND WASTE MANAGEMENT COMMISSION
AMENDED NOTICE OF INTENDED ACTION**

Pursuant to Iowa Code section 455B.412(3) (1985), the Water, Air and Waste Management Commission proposes to amend 900—Chapter 141 and new Chapter 149. The Commission proposed to adopt new 900—Chapter 149 in previously filed Notice of Intended Action [**ARC 5766**] published in the Iowa Administrative Bulletin dated July 31, 1985.

Upon the request of the Commission for comments pertaining to ARC 5766 the Commission received numerous comments regarding the federal RCRA rules adopted by reference by the Commission. The Commission has adopted the federal rules to May, 1984. Since that date many new important revisions to the federal program have been adopted which have an impact on the wastes subject to Iowa's hazardous waste fee schedule. In order to reduce to a minimum the discrepancy between the hazardous wastes regulated by EPA and the hazardous wastes which are subject to the Iowa fee schedule the Commission proposes to adopt the most recent federal rule revisions pertaining to the RCRA program by amending those rules referencing federal rules.

The Commission also proposes to amend new rule 900—149.8(455B) to clarify the rate of accrual of the penalty for delinquent fees. Finally, the Commission proposes to amend new subrule 149.6(1) to delete the word "listed" and to replace it with the word "identified" when referencing those wastes subject to the fee schedule. The term "listed" has become a term of art and is commonly held to mean a specific waste named in 40 C.F.R. sections 261.31 through 261.33. In order to make it clear that hazardous wastes which are subject to the fee schedule include all regulated hazardous wastes, not just the "listed" wastes, the term "listed" has been deleted. There are no other amendments to the newly proposed Chapter 149.

Written comments may be forwarded to the Department of Water, Air and Waste Management for twenty

days from the date of publication of this amended notice. These comments may be mailed to the Department of Water, Air and Waste Management, Henry A. Wallace Building, 900 East Grand Ave., Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code Chapter 455B.

The following amendments are proposed:

ITEM 1. Amend the first paragraph of subrule 141.1(1) to read as follows:

141.1(1) The following is adopted by reference: 40 C.F.R. Part 260 as amended through ~~March 26, 1984~~ *July 15, 1985*.

ITEM 2. Amend rule 900—141.2(455B) to read as follows:

900—141.2(455B) Identification and listing of hazardous waste. The following is adopted by reference: 40 C.F.R. Part 261 as amended through ~~May 10, 1984~~ *July 25, 1985*.

Provided that any general reference to 40 C.F.R. Part 124 shall mean 141.13(455B) of these rules.

ITEM 3. Amend the first paragraph of rule 900—141.3(455B) as follows:

900—141.3(455B) Standards applicable to generators of hazardous waste. The following is adopted by reference: 40 C.F.R. Part 262 as amended through ~~March 26, 1984~~ *July 15, 1985*.

ITEM 4. Amend the first paragraph of rule 900—141.5(455B) to read as follows:

900—141.5(455B) Standards for owners and operators of hazardous waste treatment, storage and disposal facilities. The following is adopted by reference: 40 C.F.R. Part 264 as amended through ~~June 30, 1983~~ *July 15, 1985*.

ITEM 5. Amend the first unnumbered paragraph of rule 900—141.6(455B) to read as follows:

900—141.6(455B) Interim status standards for owners and operators of hazardous waste treatment, storage and disposal facilities. The following is adopted by reference: 40 C.F.R. Part 265 as amended through ~~November 22, 1983~~ *July 15, 1985*.

ITEM 6. Amend proposed subrule 900—149.6(1) to read as follows:

149.6(1) The hazardous wastes to which the fee schedule listed in rule 149.4(455B) applies are those identified in 40 C.F.R. Part 261 to July 15, 1985, as adopted by reference by rule 900—141.2(455B).

ITEM 7. Amend proposed subrule 900—149.7(1) to read as follows:

149.7(1) Manifests. Those persons subject to the manifesting requirements of 40 C.F.R. Part 262 as amended through July 15, 1985, as adopted by reference by 900—chapter 141, shall maintain the manifests for the purpose of determining the amount of fees to be assessed as set out in rule 149.5(455B).

ITEM 8. Amend proposed rule 900—149.8(455B) to read as follows:

900—149.8(455B) Failure to pay fees. If it is found that a person has failed to pay the fees assessed by this chapter, the executive director will enforce the collection of the delinquent fees. A penalty of fifteen percent of the fee due in addition to the fee due shall be collected. Delinquent fee penalties will accrue at a rate of fifteen percent per year.

ARC 6011

HEALTH DEPARTMENT[470]

Pursuant to the authority of Iowa Code section 135.11(15), the Iowa State Department of Health hereby emergency adopts and implements amendments to Chapter 9, "Outpatient Diabetes Education Programs," Iowa Administrative Code.

These amendments add a pharmacist to the list of required professional staff for certified diabetes education programs.

In compliance with Iowa Code section 17A.4(2) the Department finds public participation is unnecessary, impracticable, or contrary to the public interest in that these changes are a result of concerns raised by the Legislative Rules Review Committee regarding the inclusion of a pharmacist and their subsequent formal objection to the rules without a pharmacist requirement.

The Department also finds that pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of the rule thirty-five days after publication should be waived and the rule be made effective upon filing with the Administrative Rules Coordinator's office in that it confers a benefit on the general public by removing the formal objection filed by the Legislative Rules Review Committee to prior rules and informs applicants for diabetes education program certificates of the new pharmacist requirement for certification purposes.

The Iowa State Board of Health adopted this rule at its regularly scheduled meeting of September 11, 1985.

These rules are intended to implement Iowa Code chapters 409, 514, and 514B.

ITEM 1. Amend rule 470—9.2 Definitions by adding the following definition in its proper alphabetical place.

"Pharmacist" means a person currently licensed to practice pharmacy under Iowa Code chapter 155.

ITEM 2. Amend subrule 9.6(2) by adding the following:
d. Licensed pharmacist.

ITEM 3. Amend subrule 9.6(4) as follows:

9.6(4) The program may have other health professionals as staff including but not limited to dentist, exercise physiologist, health educator, ophthalmologist, pediatric diabetologist, pharmacist, podiatrist, psychologist, psychiatrist, or social worker.

ITEM 4. Amend subrule 9.7(2) by rescinding in its entirety and inserting in lieu thereof the following:

9.7(2) Annually thereafter all required program staff shall have available for review, documentation of participation in continuing education in diabetes or program management as follows: Physician, ten contact hours; licensed pharmacist, registered nurse, registered dietitian, professional health educator, 7.5 contact hours.

[Filed emergency 9/19/85, effective 9/19/85]
[Published 10/9/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/9/85.

ARC 5994

HEALTH DEPARTMENT[470]

Pursuant to the authority of Iowa Code section 135.11(15), the Iowa State Department of Health hereby emergency adopts and implements amendment to Chapter 80, "Homemaker-Home Health Aide Services," Iowa Administrative Code.

In compliance with Iowa Code section 17A.4(2) the Department finds public notice and participation impracticable in that this change is not substantive in nature, but rather only changes the implementation of Chapter 80 from an appropriations bill to the Health Department's authorizing chapter.

The Department also finds that pursuant to Iowa Code section 17A.5(2)"b"(2) that normal effective date of the rule thirty-five days after publication should be waived and the rule be made effective upon filing with the Administrative Rules Coordinator's office in that it ensures that the rules of Chapter 80 reflect the current and appropriate implementing authority.

The Iowa State Board of Health adopted this rule at its regularly scheduled meeting of September 11, 1985.

This change is intended to implement Iowa Code section 135.11(15).

Amend implementation of each rule of Chapter 80 by striking "69 GA, Chapter 1260" and inserting "135."

[Filed emergency 9/11/85, effective 9/11/85]
[Published 10/9/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/9/85.

ARC 5995

HEALTH DEPARTMENT[470]

Pursuant to the authority of Iowa Code sections 135.47, 17A.4 and 17A.5, the Iowa State Department of Health hereby emergency adopts and implements an amendment to Chapter 111, "Financial Assistance to Eligible End-Stage Renal Disease Patients," Iowa Administrative Code. This amendment will change the reimbursement percentage rate applied to eligible claims received by the Chronic Renal Disease Program (CRDP).

Since August 1, 1984, financial assistance to eligible renal patients was cut by 30 percent in order to assure that program expenditures remained within the budget. Between May 8, 1985, through June 30, 1985, the CRDP was able to reimburse claims at 100 percent. On and after July 1, 1985, however, financial assistance was limited to an 80 percent rate of reimbursement. As a result of recent rule changes that maximize the expenditure of program funds to those in greatest need and based upon an analysis of projected patient expenditures versus the program budget, it is now possible to once again provide financial assistance at a 100 percent reimbursement rate effective on and after October 1, 1985.

HEALTH DEPARTMENT[470] (cont'd)

In accordance with Iowa Code section 17A.4(2), public notice and participation is found to be unnecessary because of the remote likelihood that any adverse comments would be generated due to the limited nature of the amendment and the narrow and well-defined patient population category that is affected.

In addition, pursuant to Iowa Code section 17A.5(2)"b"(2), the normal effective date of this amendment (thirty-five days after publication) should be waived and the amendment made effective on October 1, 1985, as it confers a financial benefit upon the affected members of the public at the earliest appropriate and practical time.

The 30 percent and 20 percent cuts mentioned earlier have been a real burden to many patients. This increase in financial assistance will be gratefully accepted.

The Renal Disease Advisory Committee and the Iowa State Board of Health approved this amendment at their regular meetings held on July 19, 1985, and September 11, 1985, respectively.

This amendment becomes effective on October 1, 1985, and implements Iowa Code sections 135.45 to 135.48.

Subrule 111.6(2) is rescinded in its entirety and the following inserted in lieu thereof:

111.6(2) Financial assistance for the expense categories listed above shall be reimbursed in full for eligible claims received by this program on or after October 1, 1985.

[Filed emergency 9/11/85, effective 10/1/85]
[Published 10/9/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/9/85.

ARC 5996**HEALTH DEPARTMENT[470]**

Pursuant to the authority of Iowa Code section 147A.4, the Iowa State Department of Health hereby emergency adopts and implements the following rules in reference to Chapter 132, "Advanced Emergency Medical Care," Iowa Administrative Code.

These amendments:

1. Add a new rule that speaks to the issue of temporary variances by establishing a mechanism whereby authorized ambulance and rescue squad services can request approval to continue operating at the advanced care level even though circumstances beyond their control may cause them to be in temporary noncompliance with rule requirements;

2. Substitute the word "direction" in lieu of the word "control" in subrule 132.8(1), paragraph "f," for purposes of consistency as a result of previous rule changes regarding terminology; and

3. Rearrange the language found in subrule 132.8(8), paragraph "n," subparagraphs (1) and (2), in order that those subparagraphs and a presently unnumbered sentence that follows subparagraph (2) are more appropriately included within a single clearly identified paragraph.

In accordance with Iowa Code section 17A.4(2), public notice and participation is found to be unnecessary and contrary to the public interest because the rules as presently written do not permit the Department to grant a temporary variance in situations where noncompliance with rule requirements is being experienced even though the situation may be beyond the service's control. In the absence of such a provision, the Department would be forced to initiate an adverse action or ignore the item(s) of noncompliance. This limited choice of response is not in the best interest of the public nor the ambulance or rescue squad service that may be involved.

In addition, pursuant to Iowa Code section 17A.5(2)"b"(2), the normal effective date of these amendments (thirty-five days after publication) should be waived and the amendments made effective September 11, 1985. This will place in effect at the earliest possible time a mechanism that will enable the department to respond with a positive alternative to a situation of temporary noncompliance and thus permit the continued availability of advanced care prehospital services to the community so affected.

Also, these rules are being filed as a Notice of Intended Action, **ARC 6012**, to solicit public comment.

The Advanced Emergency Medical Care Council and the Iowa State Board of Health approved these amendments at their regularly scheduled meetings held on August 15, 1985 and September 11, 1985, respectively.

These rules became effective September 11, 1985, and implement Iowa Code sections 147A.4 and 147A.5.

ITEM 1. Rule 470—chapter 132 is amended by adding the following new rule:

470—132.14(147A) Temporary variances.

132.14(1) If during a period of authorization there is some occurrence that temporarily causes a service program to be in noncompliance with these rules, the department may grant a temporary variance. Temporary variances to these rules (not to exceed six months in length per any approved request) may be granted by the director of the state EMS section to a currently authorized service program. Requests for temporary variances shall apply only to the service program requesting the variance and shall apply only to those requirements and standards for which the department is responsible.

132.14(2) To request a variance, the service program shall:

- Notify the department verbally (as soon as possible) of the need to request a temporary variance.
- Cite the rule from which the variance is requested.
- State why compliance with the rule cannot be maintained.
- Explain the alternative arrangements that have been or will be made regarding the variance request.
- Estimate the period of time for which the variance will be needed.
- Submit to the department, within ten days after having given verbal notification to the department, a written explanation for the temporary variance request that addresses each of the above paragraphs. The address and telephone number is: Iowa State Department of Health, Emergency Medical Services Section, Lucas State Office Building, Des Moines, Iowa 50319, (515) 281-3741.

132.14(3) Upon notification of a request for variance, the director of the state EMS section shall take into consideration, but shall not be limited to:

HEALTH DEPARTMENT[470] (cont'd)

a. Examining the rule from which the temporary variance is requested to determine if the request is appropriate and reasonable.

b. Evaluating the alternative arrangements that have been or will be made regarding the variance request.

c. Examining the effect of the requested variance upon the level of care provided to the general populace served.

d. Requesting additional information if necessary.

132.14(4) Preliminary approval or denial shall be provided verbally within twenty-four hours. Final approval or denial shall be issued in writing within ten days after having received the written explanation for the temporary variance request and shall include the reason for approval or denial. If approval is granted, the effective date and the duration of the temporary variance shall be clearly stated.

132.14(5) The director of the state EMS section shall inform the council membership at each council meeting of all requests for temporary variances and the current status of each.

132.14(6) Any request for appeal concerning the denial of a request for temporary variance shall be in accordance with the procedures outlined in rule 132.10(147).

ITEM 2. Subrule 132.8(1), paragraph "f," is amended to read as follows:

f. Have a medical director and on-line medical control ~~control~~ *direction* available on a twenty-four-hour-per-day, seven-day-per-week basis.

ITEM 3. Subrule 132.8(8) is amended by rescinding paragraph "n" in its entirety and inserting the following in lieu thereof:

n. There shall be an in-line oxygen system that includes, as a minimum, an oxygen cylinder with a storage capacity of at least three thousand liters (M size tank or equivalent) located in a compartment which is vented to the outside. The pressure gauge, regulator and control valve shall be readily accessible. In addition, there shall be at least one oxygen outlet at the head of the patient stretcher.

These amendments are intended to implement Iowa Code sections 147A.4 and 147A.5.

[Filed emergency 9/11/85, effective 9/11/85]

[Published 10/9/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/9/85.

ARC 6018**IOWA LOTTERY AGENCY[526]**

Pursuant to the authority of 1985 Iowa Acts, House File 225, the Iowa Lottery Agency on September 13, 1985, adopted the following amendments to chapters 3, 4, and 5, Iowa Administrative Code.

In compliance with Iowa Code section 17A.4(2), the Lottery Board and Agency also find that public notice

and participation is impractical in that the continued administration of the lottery would be hindered and cause a reduction in revenue to the state.

The Lottery Board and Agency also find pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of these rules thirty-five days after publication should be waived and the rules made effective upon filing with the Administrative Rules Coordinator on September 20, 1985, as they confer a benefit upon the public to ensure speedy and uniform compliance with the agency's legislative mandate.

The Iowa Lottery Board and Agency adopted these rules on September 13, 1985.

These rules became effective September 20, 1985.

These rules are intended to implement 1985 Iowa Acts, House File 225.

ITEM 1. Rescind subrule 3.4(3) and renumber subrules 3.4(4) to 3.4(6) as 3.4(3) to 3.4(5).

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

c. The type of business owned or operated by the applicant to ensure consonance with the ~~dignity of the state~~, the general welfare of the people and the operation and integrity of the lottery;

ITEM 3. Rescind subrule 4.6(1) and renumber subrules 4.6(2) to 4.6(5) as 4.6(1) to 4.6(4).

ITEM 4. Subrule 5.2(1) is amended to read as follows:

5.2(1) Vendor eligibility. Any firm or individual legally conducting business within the state of Iowa may request to be placed on the approved vendor listing. Such firm or individual must complete properly the vendor application form prescribed and place it on file with the agency. The agency shall select vendors from the approved listing or any other ~~accepted~~ source and mail copies of solicitation documents.

ITEM 5. Rescind subrule 5.3(3) and renumber subrules 5.3(4) to 5.3(19) as 5.3(3) to 5.3(18).

ITEM 6. Amend rule 5.7(71GA, HF225) by adding the following new subrule:

5.7(7) The commissioner shall enter into any agreements or contracts necessary to the day-to-day operation of the agency, including but not limited to: Accounting services, security services, annuity guarantees and purchases, equipment purchases, television distribution and production, communications, auditing services, legal services, and space planning and necessary remodeling.

Consultant contracts in excess of \$25,000 and major procurement contracts for advertising and public relations services, printing of tickets, or for purchase or lease of equipment or services essential to the operation of a lottery game shall be ratified and approved by the lottery board.

[Filed emergency 9/20/85, effective 9/20/85]

[Published 10/9/85]

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ARC 6034**PLANNING AND PROGRAMMING[630]**

Pursuant to the authority of Iowa Code section 7A.3, and the 1985 Iowa Acts, House File 555, the Office for Planning and Programming adopts and emergency implements a new Chapter 18, "Iowa Community Cultural Grants Program."

Notice of Intended Action for these rules was published in Iowa Administrative Bulletin, July 3, 1985, as **ARC 5679**.

These rules will become the permanent rules which govern the awarding of grants to cities and community groups for the development of community programs which promote the city's historical, ethnic and cultural heritages and which will provide local jobs for Iowa residents.

These rules are identical to those published under Notice.

The Office for Planning and Programming finds pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of these rules thirty-five days after publication should be waived and the rules be made effective upon filing with the Administrative Rules Coordinator on September 20, 1985, to ensure that grants can be awarded on October 1, 1985, and that there will be uniform compliance with the program's legislative mandate.

These rules are intended to implement Iowa Code section 7A.3 and the 1985 Iowa Acts, House File 555.

The Office for Planning and Programming adopted these rules September 18, 1985.

Rescind Chapter 18, "Iowa Community Cultural Grants Program," and insert in lieu thereof the following:

**CHAPTER 18
IOWA COMMUNITY CULTURAL
GRANTS PROGRAM**

630—18.1 (71GA, HF555) Purpose. The purpose of the Iowa community cultural grants program is to establish a program of grants to cities and community groups for the development of community programs that would provide local jobs for Iowa residents and at the same time promote a city's historical, ethnic and cultural heritage, through the development of festivals, music, drama, cultural programs or tourist attractions.

630—18.2 (71GA, HF555) Program description. Any city or community group, as defined by these rules, is eligible to apply for and receive a grant through the program. The program shall operate as a competitive grants program and be administered by the office for planning and programming under the direction and supervision of the community cultural grants commission. Cities and community groups may make application to the community cultural grants commission, which will approve or disapprove applications based on criteria described in these rules. Contractual agreements specifying the terms of the grant award shall then be executed between the office for planning and programming and successful grant recipients.

630—18.3 (71GA, HF555) Definitions. When used in this chapter, unless the context otherwise requires:

"Act" means the 1985 Iowa Acts, House File 555.

"Administrative costs" means reasonable and necessary costs and charges associated with the planning and

execution of proposed project or program; such as, bookkeeping, travel, consumable supplies, project development, project management, printing, and audit costs.

"Advisory committee" means the committee established by the Act comprised of the Iowa arts council, the Iowa historical department and the tourism division of the Iowa development commission.

"Application" means a request for an Iowa community cultural grants program that complies with the requirement of rule 630—18.5(71GA, HF555).

"Community cultural grants commission" refers to the commission established by the 1985 Iowa Acts, House File 555 composed of five public members, not more than two from the same political party, appointed by the governor subject to confirmation by the senate under Iowa Code section 2.32, and one senator, to serve as an ex officio nonvoting member, appointed by the president of the senate, and one representative, to serve as an ex officio nonvoting member, appointed by the speaker of the house of representatives.

"Community group" shall not include a school, church, convention or association of churches or organizations operated primarily for religious purposes, and which is operated, supervised, controlled or principally supported by a church, convention or association of churches.

"Cost" means all the costs of the project or program.

"Eligible activity" refers to festivals, performing, visual and literary arts, tourist attractions and activities and services that will increase historic preservation, arts, tourism services and contribute to the cultural enrichment of the community and be available to the general public which provides for local jobs for Iowa residents.

"Eligible applicant" means an incorporated city or a community group which is federally tax exempt and incorporated under the Iowa Nonprofit Corporation Act. Nonprofit organizations that have not yet achieved tax-exempt status may apply through an alternative organization (fiscal agent), which is tax exempt and otherwise eligible to apply.

"Fiscal agent" means an organization which meets the definition of eligible applicant. The fiscal agent becomes the legal applicant of record, redistributes the funds to the intended receiver, and is entirely responsible for all published requirements of the grants program, including contracts, revised budgets, fiscal records and reports.

"Grantee" means any applicant receiving grant funds under this program.

"In-kind services" means a noncash contribution provided by a grantee as a part of the grantee's matching share of a project, which shall not exceed one half of the match requirement. Expenses such as labor costs, transportation costs, rent, or supplies may be included in computing in-kind services.

"Iowa community cultural grants program" (ICCG) means the program established and authorized by the Act.

"Local matching funds" means at least fifty percent or more of the total program or project cost which must be provided by the city or community group submitting an application for a grant and which shall not include any portion of another state or federal grant.

"Proposed project" means one or more eligible activities for which a city or community group has submitted a single application for grant funds. Only one application may be submitted by an applicant, unless the eligible

PLANNING AND PROGRAMMING[630] (cont'd)

applicant is serving only as a fiscal agent for another group in additional applications.

630—18.4 (71GA, HF555) Application procedures. Applicants shall submit applications to Community Cultural Grants Commission, Office for Planning and Programming, 523 East 12th Street, Des Moines, Iowa 50319. Applications shall be in the form prescribed by the community cultural grants commission and the office for planning and programming and shall contain information identified in rule 630—18.5(71GA, HF555). All applications submitted shall be reviewed by the advisory committee with their remarks and recommendations for grantees and grant awards being submitted to the community cultural grants commission, which will determine final grantees' awards to the extent funds are available.

630—18.5 (71GA, HF555) Contents of application. Each application shall contain the following information as required in the annual request for proposal package:

1. Description of the proposed project or program including a time schedule for implementing the proposed project or program.
2. The amount of grant funds requested.
3. The amount of city, private or other local cash or in-kind resources or combination thereof, which are committed in an amount not less than fifty percent of the total project or program cost.
4. Include, if necessary, a description of in-kind services to be contributed in lieu of providing up to one half of the entire match in cash.
5. A description of how the proposed project will create jobs immediately and the estimated number of jobs. A description of how the proposed project will generate future jobs, the estimated number of jobs and sources of funding.
6. A description of the proposed project's historical, ethnic, cultural heritage and tourism value for the city or community.
7. A budget for the project or program.
8. A designation as to whether or not the program or project existed prior to the deadlines for grant applications established by the commission.

630—18.6 (71GA, HF555) Review and rating of applications. The office for planning and programming shall conduct a preliminary review of each application to determine that the applicant is eligible, that the application is complete, that the proposed project is consistent with the program purpose of providing jobs through eligible activities and that requested grant funds will be matched with a local match equal to not less than fifty percent of the total project cost with no more than one half of the match being in-kind services.

Applications, which do not meet these criteria, will not be considered for funding. Applications which meet the minimum criteria will be rated by the advisory committee on the following factors to determine recommendations to the community cultural grants commission on the order and amount of funding.

1. Number and impact of full-time or part-time, or both, jobs created by and paid from this grant. (Projects funded in the previous fiscal year and requesting a continuation grant will be limited to a maximum of 200 points in this category.) 250 points
2. Number and impact of potential, continuing or recurring jobs created. (Projects funded in the previous

fiscal year and requesting a continuation grant will be limited to a maximum of 200 points in this category.) 250 points

3. Percent of local matching funds in cash 100 points

4. Historical, ethnic, cultural and tourism value and quality 400 points

Total 1000 points

630—18.7 (71GA, HF555) Administration of grants. Grant awards will be made in two categories:

1. \$1,000 - \$4,999;
2. \$5,000 - \$25,000.

A minimum of \$50,000 is reserved for grants ranging from \$1,000 - \$4,999, unless a sufficient number of qualified applications are not received.

18.7(1) At least twenty-five percent of the funds appropriated for the Iowa community cultural grants program shall be awarded to community programs or projects which were not in existence prior to the grant application deadline established each year by the commission. Also included in this category may be activities or programs which are a significant expansion of a previously established project.

18.7(2) The community cultural grants commission reserves the right to not grant all appropriated funds, if there is an insufficient number of acceptable applications submitted to adequately achieve the purposes of the Act as described in rule 18.1 (71GA, HF555).

630—18.8 (71GA, HF555) Contract agreement. Upon approval of each grant award, the office for planning and programming shall prepare a contract agreement, which shall include the terms and conditions of the grant, including grant amount, project description and matching requirements. This contractual agreement must be executed by the director of the office for planning and programming or the designee of the director of the office for planning and programming, and the mayor or other duly authorized official of a recipient city, or a recipient community group. The contract will include dates for requisition of reimbursable expenditures.

630—18.9 (71GA, HF555) Administrative costs. No more than five percent of the total project costs may be used for administrative costs.

630—18.10 (71GA, HF555) Reporting and audit requirements. The office for planning and programming may require grantees to submit progress reports on the status of the project. Any grant of \$15,000 or over will be required to conduct an on-site financial compliance audit of their grant project expenditures at their expense. All grants of less than \$15,000 may be required to submit documentation of expenses for the purpose of a desk audit or may be required to conduct an on-site audit of grant project expenditures at their expense.

630—18.11 (71GA, HF555) Timing of grants. In order to promote sound administration and effectuate the intent of the Act, the office for planning and programming, under the direction of the community cultural grants commission, may set one or more deadlines for grant applications and make awards of some or all of the funds appropriated under this Act.

The office for planning and programming intends to solicit applications for grant funds on or about June 1 each year funds are available, as decided by the commission at its May meeting. Applicants will be given approximately sixty days to respond to the applications.

PLANNING AND PROGRAMMING[630] (cont'd)

Persons or organizations wishing to receive an application for grant funds may contact the Office for Planning and Programming, 523 East 12th Street, Des Moines, Iowa 50319.

630—18.12 (71GA, HF555) Annual report. The office for planning and programming shall submit to the governor and the general assembly an annual report setting forth the details of the operations of the program on the basis of the calendar year.

These rules are intended to implement 1985 Iowa Acts, House File 555.

[Filed emergency after Notice, 9/20/85, effective 9/20/85]
[Published 10/9/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/9/85.

ARC 6000

**TRANSPORTATION,
DEPARTMENT OF[820]**

07 MOTOR VEHICLES

Pursuant to the authority of Iowa Code section 307.10, the Transportation Commission, on September 10, 1985, emergency adopted 820—[07,C] Chapter 6 entitled "Denials, Cancellations, Suspensions and Revocations."

1985 Iowa Acts, Senate File 570, section 3, requires the Department to suspend a person's privilege to operate motor vehicles in Iowa when the clerk of the district court notifies the Department that the person has failed to pay, within sixty days after receiving notice of nonpayment from the clerk, the fine, penalty, surcharge or court costs arising out of a conviction for violating a law regulating the operation of motor vehicles. To avoid suspension, the person must prove to the satisfaction of the Department and the clerk of the district court that the person is unable to pay. Senate File 570, section 3, applies to persons convicted on or after July 1, 1985.

Chapter 6 has been adopted to implement the requirements of 1985 Iowa Acts, Senate File 570, sections 3 and 5 (section 5 contains an exemption from having to file proof of financial responsibility). Rule 6.22(321) pertains specifically to a suspension for nonpayment of a fine, penalty, surcharge or court costs. Rules 6.37(321) and 6.38(321), which include service of notice and hearing and appeal provisions, also pertain to this type of suspension. (Rules 6.37(321) and 6.38(321) have also been worded so that they may pertain to other types of license suspensions and to license denials, cancellations, and revocations when and if such provisions are added to Chapter 6 in the future.)

The Department finds that it has a legislative mandate to implement rules for suspension for nonpayment of a fine, penalty, surcharge or court costs as quickly as possible. Therefore, the Department finds:

1. In reliance upon Iowa Code subsection 17A.4(2), that it is contrary to the public interest to delay the implementation of these rules by following the provisions of 17A.4(1).

2. In reliance upon Iowa Code subparagraph 17A.5(2) "b"(1), that these rules must be made effective as soon as possible because a statute so provides.

Accordingly, these rules shall become effective on September 13, 1985, after filing with the administrative rules coordinator.

Notwithstanding the preceding paragraphs, these rules are also being submitted under Notice of Intended Action as **ARC 6001**.

These rules are intended to implement Iowa Code Chapters 17A, 321, and 321A and 1985 Iowa Acts, Senate File 570, sections 3 and 5.

Pursuant to the authority of Iowa Code section 307.10, the following rules are adopted:

ARTICLE C
DRIVER LICENSING

CHAPTER 6
DENIALS, CANCELLATIONS, SUSPENSIONS
AND REVOCATIONS

820—[07,C]6.1 to 6.21 Reserved.

820—[07,C]6.22(321) **Suspension for nonpayment of fine, penalty, surcharge or court costs.**

6.22(1) Report to the department.

a. The department shall suspend a person's privilege to operate motor vehicles in Iowa:

(1) When the department is notified by a clerk of the district court on Form No. 431037 that the person has been convicted on or after July 1, 1985, of violating a law regulating the operation of motor vehicles, that the person has failed to pay the fine, penalty, surcharge or court costs arising out of the conviction, and that sixty days have elapsed since the person received a notice of nonpayment from the clerk of the district court, and

(2) When, in accordance with subrule 6.22(2), the department presumes or the department or the clerk of the district court determines that the person is able to pay the fine, penalty, surcharge and court costs.

b. The department shall consider parking violations to be violations of laws regulating the operation of motor vehicles.

6.22(2) Ability to pay.

a. The department shall presume that a person is able to pay the fine, penalty, surcharge and court costs when it receives the "Notice to suspend" copy of Form No. 431037 from the clerk of the district court.

b. The department shall not consider inability to pay as a defense to license suspension unless:

(1) The person files Form No. 431038 with the clerk of the district court within forty-five days after the person receives notice of nonpayment from the clerk of the district court,

(2) Form No. 431038 includes the clerk's determination as to whether the person is able to pay, and

(3) The clerk of the district court forwards Form No. 431038 to the department.

c. If the steps in subparagraphs 6.22(2)"b"(1) to (3) are followed, the department shall record on Form No. 431038 its determination as to whether the person is able to pay and return Form No. 431038 to the clerk of the district court.

d. If the department and the clerk of the district court disagree on the person's ability to pay, the person shall be considered to be able to pay the fine, penalty, surcharge and court costs.

e. The department shall suspend the person's privilege to operate motor vehicles in Iowa after review of Form No. 431038 when the department receives the "Notice to Suspend" copy of Form No. 431037 from the clerk of the district court and is notified by the clerk of the district court that:

TRANSPORTATION, DEPARTMENT OF [820] (cont'd)

(1) The clerk has notified the person that the person is considered to be able to pay the fine, penalty, surcharge and court costs,

(2) The person has not paid the fine, penalty, surcharge or court costs, and

(3) Sixty days have elapsed since the person received the notice of ability to pay from the clerk of the district court.

6.22(3) Service of suspension notice, suspension, and reinstatement.

a. The department shall serve the person with a notice of suspension in accordance with rule 6.37(321).

b. The suspension period shall begin thirty days after the notice of suspension is served.

c. A person whose license or permit has been suspended under this rule is not eligible for a work permit.

d. The suspension shall continue until the department has issued a notice terminating the suspension. The department shall terminate the suspension when it is notified by the clerk of the district court that all appropriate payments have been made.

e. If the person is otherwise eligible for licensing, the person shall not be required to pay a reinstatement fee, file proof of financial responsibility, or pass an examination in order to regain operating privileges.

6.22(4) Hearing and appeal process.

a. A person whose license or permit has been suspended under this rule may request an informal settlement or a contested case hearing as outlined in rule 6.38(321). The request must be received by the department within twenty days after the notice of suspension is served.

b. Informal settlements, hearings, and appeals shall be conducted as outlined in rule 6.38(321). The proceedings shall be limited to a determination of whether the facts required by 1985 Iowa Acts, Senate File 570, section 3, and this rule are true. The merits of the conviction shall not be considered.

c. If properly submitted, a request for an informal settlement or a contested case hearing or an appeal of the hearing officer's proposed decision shall serve to stay the suspension pending the outcome of the settlement, hearing or appeal.

This rule is intended to implement Iowa Code chapter 17A and section 321A.17, and 1985 Iowa Acts, Senate File 570, sections 3 and 5.

820—[07,C]6.23 to 6.36 Reserved.

820—[07,C]6.37(321) Service of denial, cancellation, suspension or revocation notice.

6.37(1) The department shall send a notice of denial, cancellation, suspension or revocation by certified mail with a return acknowledgement required to the person's address as shown on departmental records.

6.37(2) If service by mail is unsuccessful, or in lieu of service by mail, the notice may be delivered by a peace officer, a departmental employee, or any person over eighteen years of age.

6.37(3) The person serving the notice shall certify the delivery, specifying the name of the receiver, the address and the date, or shall certify nondelivery.

6.37(4) The department shall pay fees for personal service of notice by a sheriff as specified in Iowa Code section 331.655. The department may also contract for personal service of notice when the department determines that it is in the best interests of the state.

6.37(5) The denial, cancellation, suspension or revocation shall become effective on the date specified in the notice.

This rule is intended to implement Iowa Code sections 321.16, 321.211, and 331.655, and 1985 Iowa Acts, House File 366.

820—[07,C]6.38(321) Hearing and appeal process.

6.38(1) Informal settlement or hearing. A person whose privilege to operate motor vehicles in Iowa has been denied, canceled, suspended or revoked under this chapter may protest the decision by requesting an informal settlement, by requesting a contested case hearing, or by using both procedures.

a. Request. All requests shall be submitted in writing to: Director, Office of Driver Services, Iowa Department of Transportation, Lucas State Office Building, Des Moines, Iowa 50319. The request shall include the complete addresses and telephone numbers of all persons involved and any attorneys representing them. A request shall be deemed "received" if it is properly addressed and postmarked within the time period specified in the denial, cancellation, suspension or revocation notice, or if it is delivered to the director of the office of driver services within this time period. A request which is not timely submitted shall not be considered.

b. Informal settlement. The matter may be informally settled under rule 820—[01,B]3.3(17A) and may be handled by telephone. If an informal settlement cannot be reached within a reasonable period of time, the department shall notify the person that there has been a failure to reach an informal settlement, that the denial, cancellation, suspension or revocation is sustained, and that the person may request a hearing in accordance with paragraph "a" of this subrule.

c. Contested case hearing. The hearing shall be conducted in accordance with Iowa Code chapter 17A and rules 820—[01,B] chapter 3, and may be conducted in whole or in part by telephone. If the person requests a contested case hearing but the person or the person's representative fails to appear at the hearing, the hearing officer may either conduct the hearing, considering all evidence available, and render a decision on this evidence, or grant a continuance.

6.38(2) Appeal of proposed decision. A proposed decision by an administrative hearing officer in a contested case hearing shall become the final decision of the department and shall be binding on the department and the person who requested the hearing unless it is appealed within twenty days from the date of issuance.

a. The appeal shall be limited to conclusions of law.

b. The appeal shall be submitted in writing to: Director, Office of Driver Services, Iowa Department of Transportation, Lucas State Office Building, Des Moines, Iowa 50319. The appeal shall include the complete address and telephone numbers of all persons involved and any attorneys representing them. The appeal shall be deemed "received" if it is properly addressed and postmarked within twenty days after the date of issuance of the proposed decision, or if it is delivered to the director of the office of driver services within this time period.

c. The director of the office of driver services shall forward the appeal to the director of transportation or the director's designee.

d. Failure to timely appeal a proposed decision to the director shall be considered a failure to exhaust administrative remedies.

TRANSPORTATION, DEPARTMENT OF[820] (cont'd)

6.38(3) Final agency action. The director of transportation or the director's designee shall act on the appeal in accordance with subrule 820—[01, B]3.9(10). The decision of the director of transportation or the director's designee shall be the final decision of the department and shall constitute final agency action for the purposes of judicial review. No further steps are necessary to exhaust administrative remedies.

This rule is intended to implement Iowa Code chapter 17A and section 321.211.

[Filed emergency 9/13/85, effective 9/13/85]
[Published 10/9/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/9/85.

ITEM 2. Subrule 70.4(1) is amended as follows:

70.4(1) Use of application forms. Application for approval of any development in a floodway or flood plain which exceeds the thresholds in chapter 71 of these rules shall be made on an *approved* application form ~~obtained from the department~~ or on a form that is an acceptable facsimile of the approved application form.

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[Published 10/9/85]

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ARC 6030**WATER, AIR AND WASTE
MANAGEMENT[900]****WATER, AIR AND WASTE MANAGEMENT COMMISSION**

Pursuant to the authority of Iowa Code section 455B.105, and 1985 Iowa Acts, House File 643, section 4, the Water, Air and Waste Management Commission emergency adopts rules creating a new Chapter 135 relating to the regulation of underground storage tanks. The main purpose of these rules is to provide a form to the regulated public for making the notifications required by 1985 Iowa Acts, House File 643, section 3. These rules also provide the basic definitions used in this program and provide the current definition of regulated substances covered in this program. These rules may impact small businesses, among others.

In compliance with Iowa Code section 17A.4(2), the Commission finds that public notice and participation would be impracticable and unnecessary. The duty to notify the Department of the installation of new underground storage tanks began as early as August 1, 1985 (30 days after installation of a tank on or after July 2, 1985). The law requires Department rules to be consistent with the federal rules on this subject. The form being provided is an adaptation of the federal form proposed by the U.S. Environmental Protection Agency on May 28, 1985 (50 FR 21772). The Department feels that it is to the benefit of the regulated public to have this form immediately in order to fulfill their statutory duty. Other portions of these rules simply reiterate the statute. The current definition of regulated substances, including a comprehensive list of substances, was promulgated after enactment of House File 643. The Iowa Act requires that the Department's designation of regulated substances be at least as stringent as the federal regulation, and it is beneficial to the public to have the current definition in the rule. In order to receive more public input on these rules, however, the Department is simultaneously publishing these rules as a Notice of Intended Action, **ARC 6031**.

The Department points out that these rules require the owner of an underground storage tank to give certain notices, where the Iowa statute allows the owner or operator to give these notices. See 135.3(1) and (3). This is because the federal law requires the owner to give these notices, Iowa law requires this Department's rules on this subject to be consistent with the federal regulations, and the Federal Environmental Protection Agency has voiced objection to draft rules using the "owner or operator"

ARC 6029**WATER, AIR AND WASTE
MANAGEMENT[900]****WATER, AIR AND WASTE MANAGEMENT COMMISSION**

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.263, the Water, Air and Waste Management Commission emergency amends Chapter 70, "Scope of Title - Definitions - Forms - Rules of Practice," Iowa Administrative Code, to reflect the use of a modified application form which is also acceptable to other agencies that have jurisdiction over floodway and flood plain construction.

In compliance with Iowa Code section 17A.4(2), the Commission finds that public notice and participation are unnecessary because no substantive changes are made in the rules. The Commission also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these rules, thirty-five days after publication, should be waived and the rules be made effective upon filing with the Administrative Rules Coordinator, on September 20, 1985, as it confers a benefit on the public to be able to utilize the same form when applying to several agencies.

The Commission adopted these rules at its regular meeting on September 16, 1985. These rules implement Iowa Code Chapters 469 and 455B, division III, part 4, and Iowa Code sections 17A.3 and 109.15.

ITEM 1. Rule 900—70.3(17A, 109, 455B, 469) is amended as follows:

900—70.3(17A, 109, 455B, 469) Forms. The following forms are currently in use for flood plain projects.

Form WAWM 36: Application for Approval of Construction in or on any Floodway or Flood Plain. ~~7/83~~ 8/85.

Form WAWM 37: Notification of Completion of Construction. 7/83.

Form WAWM 38: Temporary Stream Crossing for Highway Construction. 7/83.

WATER, AIR AND WASTE MANAGEMENT[900] (cont'd)

language. However, it should be pointed out that the notification form can be prepared and signed by an authorized representative of the owner, which is consistent with the federal regulations. In the Department's opinion this would allow an operator to give the notice if authorized by the owner.

The Commission also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these rules, thirty-five days after publication, should be waived and the rules be made effective upon filing, September 20, 1985, as they confer a benefit upon the public to have the current definition of regulated substances and notice form.

The Commission adopted these rules at its regular meeting on September 16, 1985.

These rules are intended to implement Iowa Code Chapter 455B as amended by 1985 Iowa Acts, House File 643.

ITEM 1. Chapter 135 is adopted as follows:

CHAPTER 135
UNDERGROUND STORAGE TANKS

900—135.1(455B) Authority, purpose and applicability.

135.1(1) Authority. 1985 Iowa Acts, House File 643, authorizes the department to regulate underground tanks used for storage of regulated substances, and to adopt rules relating to detection, prevention and correction of releases of regulated substances from such tanks, maintenance of financial responsibility by owners or operators of such tanks, new tank performance standards, notice and reporting requirements, and designation of regulated substances.

135.1(2) Purpose. The purpose of these rules is to protect the public health and safety and the natural resources of Iowa by timely and appropriate detection, prevention and correction of releases of regulated substances from underground storage tanks.

135.1(3) Applicability. These rules apply primarily to owners and operators of underground tanks which are or have been used for the storage of regulated substances. Certain notice provisions also apply to persons who deposit regulated substances into an underground storage tank and to sellers of underground storage tanks.

900—135.2(455B) Definitions. The following definitions apply to this chapter:

"Nonoperational storage tank" means an underground storage tank in which regulated substances will not be deposited or from which regulated substances will not be dispensed after July 1, 1985.

"Operator" means a person in control of, or having responsibility for, the daily operation of the underground storage tank.

"Owner" means:

a. In the case of an underground storage tank in use on or after July 1, 1985, a person who owns the underground storage tank used for the storage, use, or dispensing of regulated substances.

b. In the case of an underground storage tank in use before July 1, 1985, but no longer in use on that date, a person who owned the tank immediately before the discontinuation of its use.

"Regulated substance" means an element, compound, mixture, solution or substance which, when released into the environment, may present substantial danger to the public health or welfare or the environment. Regulated

substance includes substances designated in Table 302.4 of 40 CFR Part 302 (April 4, 1985), and petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure. Substances which exhibit the characteristics identified in 40 CFR 261.20 through 261.24 (May 10, 1984) and which are not excluded from regulation as a hazardous waste under 40 CFR 261.4(b) (May 10, 1984) are regulated substances. However, regulated substance does not include a substance actually regulated as a hazardous waste under the Resource Conservation and Recovery Act of 1976. (42 U.S.C. §3251 et seq.)

"Release" means spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into groundwater, surface water, or subsurface soils.

"Underground storage tank" means one or a combination of tanks, including underground pipes connected to the tanks which are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes, is ten percent or more beneath the surface of the ground. Underground storage tank does not include:

a. Farm or residential tanks of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes.

b. Tanks used for storing heating oil for consumptive use on the premises where stored.

c. Residential septic tanks.

d. Pipeline facilities regulated under the Natural Gas Pipeline Safety Act of 1968, as amended to January 1, 1985 (49 U.S.C. §1671 et seq.), the Hazardous Liquid Pipeline Safety Act of 1979, as amended to January 1, 1985 (49 U.S.C. 2001 et seq.), or an intrastate pipeline facility regulated under Iowa Code chapter 479.

e. A surface impoundment, pit, pond, or lagoon.

f. A storm water or wastewater collection system.

g. A flow-through process tank.

h. A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

i. A storage tank situated in an underground area including, but not limited to, a basement, cellar, mine-working, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor. Underground storage tank does not include pipes connected to a tank described in paragraphs "a" to "i."

"Tank site" means a tank or grouping of tanks within close proximity of each other located on the facility for the purpose of storing regulated substances.

900—135.3(455B) Notice requirements.

135.3(1) Except as provided in subrule 135.3(2), the owner of an underground storage tank existing on or before July 1, 1985, shall complete and submit to the department a copy of WAWM Form 148 by May 1, 1986.

135.3(2) The owner of an underground storage tank taken out of operation between January 1, 1974, and July 1, 1985, shall complete and submit to the department a copy of WAWM Form 148 by May 8, 1986, unless the owner knows the tank has been removed from the ground. For purposes of this subrule, "owner" means the person who owned the tank immediately before the discontinuation of the tank's use.

135.3(3) An owner which brings into use an underground storage tank after July 1, 1985, shall complete and submit to the department a copy of WAWM Form 148 within thirty days of the existence of the tank.

WATER, AIR AND WASTE MANAGEMENT[900] (cont'd)

135.3(4) Exemption from reporting requirement. Subrules 135.3(1) to 135.3(3) of this rule do not apply to an underground storage tank for which notice was given pursuant to section 103, subsection c, of the Comprehensive Environmental Response, Compensation and Liabilities Act of 1980. [42 U.S.C. §9603(c)]

135.3(5) Reporting fee. The notice by the owner to the department under subrules 135.3(1) to 135.3(3) shall be accompanied by a fee of five dollars for each tank included in the notice.

135.3(6) Notification requirement for persons who deposit a regulated substance in an underground tank. Any person who deposits a regulated substance in an underground tank shall notify, in writing, the owner or operator of such tank of the obligations specified in subrules 135.3(1) to 135.3(3). Notification may be made by

personal delivery of Form 148. This obligation shall cease on June 8, 1987.

135.3(7) Notification requirement for a person who sells a tank. A person who sells a tank intended to be used in Iowa as an underground storage tank shall notify, in writing, the purchaser of the tank of the obligations specified in subrule 135.3(3).

These rules are intended to implement Iowa Code chapter 455B as amended by 1985 Iowa Acts, House File 643.

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[Published 10/9/85]

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ARC 6014**AGRICULTURE DEPARTMENT[30]**

Pursuant to the authority of Iowa Code sections 159.5(11) and 162.16, the Iowa Department of Agriculture hereby adopts a rule amending Chapter 20, "Animal Welfare," Iowa Administrative Code. This rule is intended to clarify that persons owning or providing training services for dogs utilized in greyhound races shall be licensed as a commercial kennel or commercial breeder.

Notice of Intended Action was published in the Iowa Administrative Bulletin August 14, 1985, as **ARC 5816** and as Emergency Adopted and Implemented Rule as **ARC 5815**.

Public comments were solicited until September 3, 1985, and comments or suggestions were received. This rule is identical to that published under notice.

This rule is intended to implement Iowa Code sections 162.6 and 162.8. The rule promulgated as Emergency Adopted and Implemented as **ARC 5815**, published August 14, 1985, is rescinded effective November 13, 1985, and this rule shall become effective November 13, 1985.

The following new subrule is adopted.

Rule 30—20.5(162) is amended by adding the following new subrule:

20.5(4) All persons who breed or provide training services for dogs that will be, or are, entered in greyhound races shall be licensed to operate as a commercial kennel or commercial breeder, or both, unless they are operating under a valid federal license and a certificate of registration issued by the secretary.

This rule is intended to implement Iowa Code sections 162.6 and 162.8.

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[Published 10/9/85]

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ARC 5999**ARCHITECTURAL EXAMINERS,
BOARD OF[80]**

Pursuant to the authority of Iowa Code sections 118.5 and 258A.4, the Board of Architectural Examiners, at a meeting held September 10, 1985, adopted changes to Chapter 2, "Registration," Iowa Administrative Code.

Notice of Intended Action was published in Iowa Administrative Bulletin June 19, 1985 as **ARC 5583**.

Chapter 2 provides the requirements for admittance to sit for the examinations and this change updates Circular of Information No. 1 and No. 3, published by the National Council of Architectural Registration Boards (NCARB).

This rule implements Iowa Code sections 118.5 and 258A.4.

This rule will become effective November 13, 1985.

Amend subrules 2.2(1) and 2.2(2) as follows:

2.2(1) All requirements shall have been verified by the council record and attained in accordance with Appendix "A" to Circular of Information No. 1, *1982 1984-1985* issued by the National Council of Architectural Registration Boards (NCARB) and where a degree equivalency is required, in accordance with Circular of Information No. 3, *1985* issued by the National Council of Architectural Registration Boards (NCARB).

2.2(2) Practical training shall have been equivalent to "Training Requirements for Intern Architect Development Program (IDP) Applicants for NCARB Certification" in accordance with Appendix "B" to Circular of Information No. 1, *1982 1984-1985* issued by the NCARB. "IDP periodic Assessment Reports" forms, published by NCARB, verified by signature of a registered architect, shall have been completed to demonstrate attainment of an aggregate of the minimum number of value units in each training area and submitted by the applicant at the time of application.

[Filed 9/13/85, effective 11/13/85]
[Published 10/9/85]

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ARC 6039**BLIND, COMMISSION FOR[160]**

Pursuant to the authority of Iowa Code section 601B.6(8), the Iowa Commission for the Blind adopted on September 14, 1985, amendments to Chapter 4, "Vending Facilities," and established a new Chapter 10, "Appeals and Hearings," Iowa Administrative Code.

The amendments describe the appeals processes and provide a set of detailed rules for conduct of evidentiary hearings under the federal Randolph-Sheppard Act.

Notice of Intended Action was published in the Iowa Administrative Bulletin, Volume VII, Number 23, May 8, 1985, as **ARC 5506**.

Changes from the rules published under Notice are principally in codification and in style, as suggested by the Administrative Rules Review Committee. In addition, the following specific changes were made:

Subrule 10.1(5)—Allows only a vendor to invoke arbitration, in conformity with federal law.

Subrule 10.2(1)—Definitions of the Commission are consolidated and definition of "vendor" is brought into conformity with federal regulations.

Subrule 10.2(5)—Penalty for dilatory conduct is specified, at suggestion of Administrative Rules Review Committee.

Subrule 10.2(10)—Time limit for requesting arbitration is made consistent with federal guidelines.

Subrule 10.2(14)"g"—Service on the Commission is limited to the director, assistant director for operations, or administrative assistant to the director.

These rules are intended to implement Iowa Code sections 601B.6(8) and 601B.7.

These rules will become effective on December 18, 1985.

Rule 4.12(601B,601C) is rescinded. A new Chapter 10, "Appeals and Hearings," is created. Chapter 10 is adopted as follows:

CHAPTER 10**APPEALS AND HEARINGS**

160—10.1(601B,601C) Appeals process for the business enterprises program of the Iowa commission for the blind.

10.1(1) Steps in appeals process. There are four steps in the appeals process of the Iowa commission for the blind's business enterprises program:

BLIND, COMMISSION FOR[160] (cont'd)

1. Informal conciliation;
2. Hearing before the commission board;
3. Full evidentiary hearing; and
4. Arbitration.

These steps must occur in the order in which they are listed and are more fully described below, except that step 2 is optional.

10.1(2) Step 1: Informal conciliation. This is the necessary first step in the process to resolve any grievance. Either the vendor or the commission staff can commence informal conciliation. Informal conciliation must occur before any other steps in the grievance process can be used.

Informal conciliation occurs all the time and is not usually given a name by the participants, but is sometimes called administrative review. It can, but does not necessarily, involve a personal meeting between the vendor and the staff. Informal conciliation occurs when either the vendor or the commission staff is dissatisfied with the action of the other and contacts the other to try to work out the dissatisfaction. This contact can be by phone, by letter, or in person and usually involves discussion and negotiation of the point over a period of time. Both vendor and staff have an interest in working out grievances informally since this is the least costly, least time-consuming, and least disruptive way of resolving differences. However, both the vendor and the commission staff have the right to stick to their opinion and to move to the next step in the grievance process if informal conciliation does not resolve the grievance in a manner satisfactory to them. If either the vendor or the commission staff remains dissatisfied after a good faith effort by both to resolve the grievance, then either vendor or staff can move to the next step.

10.1(3) Step 2: Hearing before the commission board. This step is only available to the vendor. The commission staff cannot initiate a hearing before its own policy-making board. This step is simply an option for the vendor. The vendor may choose to skip this step completely and move directly from step 1 to step 3. If the vendor chooses to skip step 2, the vendor has used all administrative remedies available to the vendor, including the option to skip a remedy.

a. The commission board makes its own rules concerning procedure case-by-case at the hearing itself. If either the vendor or the commission staff is unsure about the procedure, the commission board should be asked to explain the procedure before the hearing starts. These hearings are generally informal, conducted by the commission board so that both sides have an opportunity to present to the board whatever the board believes is relevant to the decision it is being asked to make.

b. It is possible that, under certain circumstances, a hearing before the commission board would be a closed hearing. Unless all the proper circumstances exist to close the hearing, the hearing must be held as a part of an open, publicized meeting of the commission board and listed on its agenda. One set of circumstances which could close such a hearing will arise when the vendor is seeking, as a part of the commission board's decision, that the board "evaluate the professional competency" of a commission staff member concerning that staff member's "appointment, hiring, performance, or discharge" and when that staff member asks the commission board to go into closed session as provided in the Iowa open meetings law, Iowa Code chapter 21.

c. Another set of circumstances which could close the commission board hearing may arise if the vendor or the commission staff wishes to raise during the hearing matters which are considered confidential. The documents which are confidential are likely to be very limited and the decision to close the hearing or to leave it open will have to be made on a case-by-case basis.

d. The Iowa open meetings law, Iowa Code chapter 21, insists that only those meetings or parts of meetings specifically exempted by a precise section of the law may legally be closed; therefore, if an exemption is not specifically met, the meeting of the commission under this subrule shall be open.

e. A vendor who has used this step in the appeals process and is dissatisfied with the result then moves to step 3.

10.1(4) Step 3: Full evidentiary hearing. Either a vendor or the commission staff can commence the full evidentiary hearing process, which is a required step in the appeals process. A full evidentiary hearing is part of the appeals process guaranteed to the vendor by the federal Randolph-Sheppard Act.

a. The full evidentiary hearing process is governed by rule 10.2(601B,601C).

b. If the vendor staff is dissatisfied with the decision after a full evidentiary hearing, then the vendor may move to step 4.

10.1(5) Step 4: Arbitration. A vendor can commence arbitration if dissatisfied with the ruling after a full evidentiary hearing. Arbitration is a required step in the appeals process. Arbitration is a part of the appeals process guaranteed to the vendor by the federal Randolph-Sheppard Act. Essentially, arbitration occurs by the vendor's filing a complaint with the U.S. Secretary of Education, who then convenes a three-member arbitration panel. The vendor chooses one member of the three-member arbitration panel, the commission chooses the second member, and those two persons choose a third person agreeable to both who serves as chair of the arbitration panel.

At the full evidentiary hearing and the arbitration stages of the appeals process, proceedings will be conducted much like proceedings in a court of law. Both these proceedings are open to the public. The commission will normally be represented at both by an assistant attorney general. The vendor may be represented by an attorney or by a knowledgeable friend at the commission board hearing, the full evidentiary hearing, and the arbitration hearing. The court-reported record of testimony and the documents admitted into evidence at the arbitration step will serve as the complete record of proceedings for any further appeals. No more evidence can be added if the vendor or the commission appeals the arbitration panel's decision into the federal courts. Appeal from the arbitration decision goes to the federal district court and can go as far as the Supreme Court of the United States.

160—10.2(601B,601C) Full evidentiary hearings. These rules define procedures under which full evidentiary hearings, required by the Randolph-Sheppard Act, shall be conducted in Iowa.

10.2(1) Definitions. As used in these rules, the following words or phrases have the following meanings:

Commission. The Iowa commission for the blind, the state agency designated in Iowa as the state licensing

BLIND, COMMISSION FOR[160] (cont'd)

agency under the Randolph-Sheppard Act and including the governing board, the director, and all staff.

Day. Regular working day for employees of the state of Iowa.

Director. Director of the Iowa commission for the blind.

Full evidentiary hearing. The proceeding defined by the Randolph-Sheppard Act, 20 U.S.C. 107D-1(a) and 34 C.F.R. 395.13, July 1, 1981.

Petitioner. The person or agency which files the petition commencing the full evidentiary hearing proceeding.

Randolph-Sheppard Act. The federal law appearing in the United States Code at 20 U.S.C. 107 and the federal regulations at 34 C.F.R. 395, effective July 1, 1981. These are available in small print in any law library and, in braille or on tape, from the Iowa library for the blind and physically handicapped.

Respondent. The person or agency named by the petitioner as a person or agency against which the petition is brought and from whom the petitioner seeks stated responses.

Vendor. A blind person licensed as a vendor by the Iowa commission for the blind who is operating a vending facility on federal or other property.

10.2(2) Commencement of proceeding.

a. **How commenced.** A full evidentiary hearing proceeding may be commenced by the Iowa commission for the blind or by a vendor. A full evidentiary hearing proceeding is commenced by filing a petition with the director and serving the petition on the respondent in the manner described in these rules.

b. **Commencement by commission.** If the commission believes that a vendor has violated the terms of the operator's agreement then in effect between the commission and the vendor, or believes the vendor has violated the rules governing the vending program in Iowa so as to warrant suspension or revocation of a vendor's operating agreement or license, the commission shall file a petition naming the vendor as respondent. However, in cases of imminent threat to the health or safety of vending facility patrons or concern for retention of the permit to operate a facility as governed by subrule 4.4(2), the commission may remove a vendor as provided in that subrule but at the same time must initiate the evidentiary hearing procedures contained in this subrule.

c. **Commencement by vendor.** If a vendor believes that the commission has violated a right guaranteed to the vendor by the Randolph-Sheppard Act or Iowa law, or if the vendor is otherwise aggrieved by the action of the commission, the vendor may file a written petition naming the commission as respondent within fifteen days after an adverse decision from an administrative review or within fifteen working days of the occurrence in the absence of an administrative review.

d. **Hearing officer involved.** When the director has received a petition, and a response has been filed with the director, under these rules the director shall provide these documents to an impartial hearing officer, selected according to law, and shall thereafter act only as the employee of one of the parties. After the director has referred the documents as provided in this subrule, then the director shall serve notice upon all parties of the identity, telephone number, and address of the hearing officer in the manner prescribed in these rules.

10.2(3) The petition.

a. **Contents of the petition.** The petition shall be a clear, concise written statement which shall:

1. Identify the petitioner;
2. Identify the petitioner's representative;

3. Identify the respondent;

4. Give a general statement of the facts the petitioner believes constitute a violation of respondent's duty to petitioner or a violation of petitioner's rights or a grievance on petitioner's behalf;

5. In the case of the commission, give the specific portion or portions of the operator's agreement or license or rules believed to have been violated;

6. In the case of a vendor, give a statement of the provisions of law on which the vendor bases a claim or violation of a right or other grievance; and

7. Give a general statement of the relief sought and the basis for such relief.

b. **Serving of petition.** The petitioner shall serve the petition upon the director and upon the respondent in the manner described in these rules. If the petitioner is the commission, the filing of the petition with the director and serving of the petition upon respondent shall be sufficient to commence the proceeding.

10.2(4) The response.

a. **Contents of the response.** The response shall be a clear, concise statement which shall:

1. Identify the respondent;
2. Identify the respondent's representative;
3. Identify the petitioner;
4. Give a general statement of the facts the respondent believes constitute a legal and complete explanation for respondent's behavior;

5. In the case of the commission, give specific citations to federal or Iowa law upon which it relies to explain its actions;

6. In the case of a vendor, give a statement of the provisions of law upon which the explanation is based;

7. Give a general statement of the appropriate conclusion of the proceeding from the respondent's point of view;

8. Concede as true those facts stated by the petitioner and not disputed by the respondent;

9. Concede the applicability and the correctness of the application of any law or regulation cited by the petitioner and not disputed by the respondent; and

10. Concede the appropriateness of any relief sought by the petitioner which the respondent agrees is appropriate.

b. **Serving of response.** Within ten days of the service of a petition prepared under subrule 10.2(3), the respondent shall file a response with the director. The response shall be served upon the director and on the petitioner in the manner described in these rules. If the respondent is the commission, the filing of the response with the director is sufficient service upon the commission.

c. **Failure to respond.** If the director receives a petition which is properly served in the manner described in these rules and to which no response is filed within ten days, then the director shall refer the petition to the hearing officer as described in subrule 10.2(2)"d." A party failing to file a response shall be taken by the hearing officer as having conceded each and every fact and application of law alleged in the petition concerning the respondent unless able to show good cause for failing to file within ten days. The hearing officer shall direct in such cases that a response be filed as soon after the ten-day period as the hearing officer deems reasonable.

10.2(5) Discovery.

a. **Petitioner's discovery, generally.** Upon the filing and service of a petition, the petitioner becomes entitled to discovery.

BLIND, COMMISSION FOR[160] (cont'd)

b. Respondent's discovery, generally. Upon the filing and service of a response, a respondent becomes entitled to discovery.

c. Voluntary discovery encouraged. All parties are entitled to take court-reported depositions from persons they believe have relevant evidence, except that a vendor who is a respondent may not be compelled to give a deposition. All parties are entitled to request voluntary production of documents and things in the possession of another party.

d. Commission's duty to disclose. Upon request, the commission must produce for a vendor's inspection and copy any documents and things requested by the vendor and must produce for deposition any commission board member or commission employee requested by the vendor.

e. Discovery by subpoena. If any party seeks relevant evidence not under the control of the commission and cannot obtain the evidence by voluntary compliance, the hearing officer is empowered to use the subpoena power of the commission board to subpoena witnesses for depositions and to subpoena the production of documents and things for inspection by all parties.

f. Notice of discovery events. All parties shall be given notice in the manner described in these rules of all depositions to be taken and of all productions of documents and things, whether performed voluntarily or pursuant to a subpoena.

g. Hearing officer to supervise. The hearing officer shall supervise discovery and shall ensure:

1. That each side has the opportunity to find and examine all evidence it deems relevant;
2. That all parties conduct discovery as quickly as possible so there is no unnecessary delay of the proceedings to the harm of any party; and
3. That no party or citizen is unnecessarily burdened with repetitive, cumulative or harassing requests for discovery except that the commission shall be held strictly to its duty to produce as defined in subrule 10.2(5)"d."

h. Sanctions. If the hearing officer determines that any party is refusing to co-operate in discovery, is hiding evidence, or is unnecessarily delaying or dawdling in discovery to the harm of any other party, then the hearing officer grant some or all of the relief sought by the harmed party.

10.2(6) Hearing date and scheduling conferences.

a. Setting of hearing date. As soon after the filing and service of the response as can be arranged, the hearing officer shall hold a conference between the parties to set a date for the hearing. All parties shall provide to the hearing officer their best estimate of how long their discovery will take and shall provide suggested hearing dates. The hearing officer shall then set a date for the hearing, taking into consideration the estimates of each party concerning discovery, the convenience of witnesses and counsel, and the need to conduct the proceedings expeditiously. Testimony shall be taken evenings or weekends if blind persons who are employed are to be called as witnesses. The hearing officer shall write an order scheduling the date for the hearing within fifteen working days of receipt of a response unless the vendor and the commission agree in writing to some other period of time.

b. Rescheduling of hearing date. If any party finds that discovery is taking longer than estimated despite the party's efforts or for any other good cause, the hearing officer may reschedule the hearing for a later date by means of a second conference at which the party seeking

rescheduling shall state its reasons and any other party has the opportunity to object. After hearing all relevant statements from the parties, the hearing officer shall reschedule the date or not reschedule the date as required by equity, the provisions of subrule 10.2(5)"g" giving the hearing officer supervisory authority over discovery, and the provisions of subrule 10.2(6)"a" governing the setting of hearing dates.

c. Methods of holding conferences. Conferences held under this rule may be held in person or by telephone or by a combination of both, according to the convenience of the hearing officer and the parties.

d. Notice. Notice of these conferences shall be served upon all parties in the manner described in these rules.

10.2(7) Prehearing conference.

a. Scheduling the conference. The hearing officer shall schedule a prehearing conference so that all parties or representatives may be present. Normally it will be held twenty days before the date set for the hearing, but the date of this conference may be more than twenty days before the date set for the hearing if all parties agree, if the date would otherwise fall on a weekend, or if the hearing officer's schedule requires it. In no case shall the prehearing conference be nearer to the date set for the hearing than five days. The hearing officer shall serve notice of the prehearing conference at least ten days prior to the date set for the conference in the manner described in these rules. If any party objects to the time set for the conference, the party shall immediately notify the hearing officer and the hearing officer shall conduct an immediate conference with all parties as soon as possible so the prehearing conference can go forward. Aside from the provisions of this paragraph, the hearing officer shall only change the prehearing conference to accomplish the provisions of subrule 10.2(7)"b."

b. Conference in person. To the greatest extent possible, the hearing officer shall schedule the prehearing conference so that all parties may be present in person or through their representatives being present in person.

c. Facts and law. During the prehearing conference, the hearing officer shall determine the facts on which all parties agree, the facts on which any parties disagree, the applications of law about which all parties agree, and the areas of applications of law about which the parties disagree.

d. Witnesses exchanged. During the prehearing conference, each party shall provide the hearing officer and the other parties with a list of the witnesses the party intends to call at the hearing. If any party does not recognize a witness or the purpose for which the witness is being called, the hearing officer shall require the party intending to call the witness to describe briefly the witness including the witness's relation to any party and shall require a brief summary of the testimony the witness is expected to provide.

e. Documents exchanged. During the prehearing conference, each party shall provide the hearing officer and all other parties a copy of every document the party intends to introduce into evidence and a copy of every document the party might introduce either during its case or during rebuttal. The hearing officer may designate those documents intended to be introduced at this time if that is desired. Upon the request of any party, the party offering a document shall be required to identify the person or persons who prepared a document and the source of information presented in a document.

BLIND, COMMISSION FOR[160] (cont'd)

f. Objections to evidence. During the prehearing conference, the hearing officer shall hear and determine all objections to the admission of evidence which can be fully and fairly made at this time so that time at the hearing can be used for the taking of admissible evidence.

g. Settlement. During the prehearing conference, the hearing officer shall encourage the reaching of a settlement agreement which is fair and equitable to all parties.

h. Completing discovery. During the prehearing conference, the hearing officer shall settle all unresolved matters of discovery.

i. Final discovery schedule. At the end of the prehearing conference, the hearing officer and all parties shall jointly make a schedule for completing any discovery to ensure that the hearing shall proceed on schedule.

j. Prehearing order. Within one week of the prehearing conference, the hearing officer shall prepare and serve upon all parties in the manner described in these rules a prehearing order which shall:

1. List the participants in the conference and whether they were present in person or by telephone;
2. State the relevant facts and applications of law not in dispute;
3. State the facts and applications of law which constitute the dispute;
4. Attach the list of witnesses of each party;
5. List the exhibits intended to be introduced by each party, giving designations if already assigned;
6. Attach the schedule for completing discovery; and
7. Set forth any rulings on the admissibility of evidence together with the reason why the ruling is made.

10.2(8) The hearing.

a. Order of presentation. The order of presentation at the hearing shall be as follows:

1. Opening statement by petitioner;
2. Opening statement by respondent;
3. Witnesses and exhibits from petitioner;
4. Witnesses and exhibits from respondent;
5. Rebuttal witnesses and exhibits from petitioner;
6. Rebuttal witnesses and exhibits from respondent;
7. Closing statement by petitioner;
8. Closing statement by respondent; and
9. Rebuttal statement by petitioner.

b. Evidence. During the hearing, the hearing officer shall receive all oral and documentary evidence from witnesses, documents and things which are relevant to the issues in dispute. The hearing officer may exclude totally irrelevant evidence or evidence which is repetitive and shall admit the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, even if it would be inadmissible in a jury trial. During the presentation of evidence by one party, the other party and the hearing officer may cross-examine witnesses. Objections to evidence that it is totally irrelevant or repetitive must be made and ruled upon, where possible, at the prehearing conference. If the hearing officer excludes evidence in the prehearing order, the party offering the evidence may offer the excluded evidence again at the hearing if other evidence at the hearing makes the excluded evidence relevant to the party's case or rebuttal.

c. Subpoenas. The hearing officer is empowered to use the subpoena power of the commission to compel the attendance of witnesses and the production of documents on behalf of any party which seeks a subpoena and shows that the evidence cannot otherwise be presented.

d. Reporting or recording. The hearing shall be reported by a certified shorthand reporter or, by agreement of all parties, the hearing may be tape recorded. If the hearing is reported, the commission shall pay for the reporter. If the hearing is recorded, any party may transcribe the hearing at the party's own expense. The transcript of testimony, exhibits, and all papers and documents filed in the hearing shall constitute the exclusive record for decision.

e. Offering of new evidence and recesses for reading it. If any party seeks to introduce a document into evidence which was not exchanged with other parties at the prehearing conference as required in subrule 10.2(7)"e," the hearing officer shall hear objections to the admission of the document on the ground that it was not so exchanged. The document shall be admitted only if the party offering the document can show that the party did not know of the existence of the document before the prehearing conference or had some other good reason why the document was not exchanged as required. If a document is offered into evidence, any blind hearing officer, blind representative, or blind vendor may automatically have a recess of the hearing for a reasonable time to study the document.

f. Burden of proof. The burden of proof shall rest upon the petitioner at all times, and the decision of the hearing officer shall be rendered according to the preponderance of the evidence.

g. Briefs. Within ten days after the hearing, the petitioner may file with the hearing officer a brief which shall be served upon all other parties in the manner described in these rules and which shall summarize the facts and state the applicable law. Within five days after the filing of petitioner's brief, the respondent may file a reply brief summarizing the facts and stating the law which shall be served upon all parties in the manner described in these rules. Within five days of the filing of a reply brief, the petitioner may file a rebuttal brief, which shall be served on all parties. If any party chooses not to file a brief, the parties following it in order may still file briefs. Any party may waive the filing of briefs.

10.2(9) Decision on the record.

a. Written decision. Within fifteen working days after receipt of the official transcript, the hearing officer shall render a decision. The decision shall be written and shall be served upon all parties in the manner described in these rules.

b. Finality of decision. The decision of the hearing officer shall be final unless a party appeals the decision as provided in subrule 10.2(10).

c. Contents of decision. The hearing officer's decision shall clearly state the facts found by the hearing officer, the law found by the hearing officer to be applicable, the hearing officer's specific applications of the law to the dispute presented at the hearing, and the relief to be granted, if any, which the hearing officer finds to be fair, equitable, and according to law.

d. Reader services or other communication services. Reader services or other communication services will be arranged for a vendor requesting them. Transportation costs and per diem shall be provided to the vendor if the evidentiary hearing is in a city other than the legal residence of the vendor. The hearing will be held at a time and place convenient and accessible to the vendor.

10.2(10) Appeal. A vendor dissatisfied with the decision rendered after a full evidentiary hearing may request that an arbitration panel be convened by filing a com-

BLIND, COMMISSION FOR[160] (cont'd)

plaint with the Secretary of the United States Department of Education, as described in 20 U.S.C. 107D-1(a) and 34 C.F.R. 395.13, effective July 1, 1981, and serving upon all other parties the letter demanding arbitration.

10.2(11) Settlement. The hearing officer shall at all times encourage settlement by the parties before the hearing. The hearing officer shall be satisfied that any settlement decree proposed by the parties is fair and equitable to all parties and, if so, shall sign the decree along with all the parties and shall retain jurisdiction over the parties for a reasonable period, to be provided for in the decree, to ensure that the decree is implemented.

10.2(12) Hearing officer.

a. Generally. The hearing officer shall conduct all proceedings to ensure every party an opportunity to make its case and to avoid unnecessary delay. The hearing officer shall be an impartial, qualified official who has no involvement either with the action at issue or with the administration or operation of the vending program. The hearing officer shall be a qualified state agency hearing officer and shall in no case be a staff member of the commission.

b. Interim orders. The hearing officer shall have the power to make all interim orders deemed necessary for the orderly and fair progression of the proceeding. Where appropriate, the hearing officer may make orders determining the interim relation of the parties in the proceeding.

c. Sanctions. The hearing officer shall have the power to supervise the proceeding generally and to fashion those orders for punishment of dawdling or misbehavior of any party which fairness requires. These orders may include the granting of some or all of the relief sought by the party who was harmed by the dawdling or misbehavior of a party.

d. Ex parte communication prohibited. The hearing officer shall not communicate directly or indirectly about any issue of fact or law in the hearing with any party except with notice and opportunity for all parties to participate as provided in these rules.

10.2(13) Representatives.

a. Representatives designated. Upon the filing of a petition or response, every party shall designate the person, if any, who will serve as the party's representative, giving work and home telephone numbers and work address of the representative. Vendors may choose to represent themselves and shall, if they choose to do so, indicate that choice on the petition or response. The commission may choose to have one of its employees serve as representative and, if it elects to do so, shall so indicate on the petition or response. Any party may choose to be represented by an attorney. Any party may choose to be represented by a friend, advocate, or representative not licensed to practice law.

b. Change of representative. If, at any time, for any reason, the designation of representative of a party changes, that party shall immediately serve notice in the manner described in these rules upon the hearing officer and all other parties, identifying the new representative and giving the information required to be provided by subrule 10.2(13)"a."

c. Duties of representatives. The representative designated by a party shall appear with the party at all points in the proceeding. The party may be represented at any point in the proceeding by the representative alone. The representative shall have the power to act for and to bind the party represented, after consultation with that party.

10.2(14) Notice and service.

a. Form of notice. Every petition, response, notice, order, decision, and other document required to be served under these rules shall be served on every party in small print. In addition to the small print document, a blind vendor, blind representative, or blind hearing officer shall also receive service in braille, tape, or large print at the choice of the vendor, representative, or hearing officer. The commission shall maintain a list of choice of alternative medium of each vendor. Documents served in the alternative medium shall be served in a timely manner.

b. Basic documents. The petition or response, the prehearing order, and the hearing officer's decision shall be served upon the blind vendor, blind representative, or blind hearing officer in the medium of that person's choice in addition to service in small print. This requirement cannot be waived.

c. Hearing officer serving notices, orders. In addition to sending scheduling notices to a blind vendor or blind representative in small print, the hearing officer may telephone the blind person and read the notice over the telephone as the alternative medium for the blind person. If the hearing officer elects this method, the hearing officer shall keep a log showing the time and date of the call. If the hearing officer chooses this method, no discussion of the proceeding shall occur during the call except that the receiver may register objections to scheduling. The prehearing order and the decision will be produced by the commission and in a timely manner unless the hearing officer chooses to tape or braille these documents personally.

d. Waiver. The blind vendor, blind representative, or blind hearing officer may waive service of all documents, except basic documents, in an alternative medium by filing a waiver with the hearing officer and serving the waiver on all parties.

e. Service methods. Service of documents can be made in one of three ways: By a sheriff or deputy who prepares for the serving party a return of service; by certified mail, return receipt requested, with a delivery restricted to the party to be served; or by a person not employed by or related to any party who is over eighteen years of age and who hands the document to the party to be served and makes a return of service for the serving party.

f. Service recorded. Every document served under these rules will be accompanied by a statement of how the document is being served, signed by the party doing the serving. Proofs of service will be maintained by the serving party.

g. Serving the commission. The commission may be served during regular business hours at its Des Moines headquarters building through acceptance of the document by the director, assistant director for operations, or administrative assistant to the director, any one of whom may sign the return receipt.

h. Serving the vendor. The vendor may be served at home or at work, but only the vendor or the vendor's spouse can accept service. If the vendor designates a representative, the representative shall accept service on behalf of the vendor from the time the representative begins to act on the vendor's behalf. The representative may be served in the same manner the commission is served. The fact that a representative is accepting service for the vendor does not remove the requirement for service to be in the alternative medium as defined in this rule.

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i. Disputes. If a dispute arises concerning the receipt of service, the hearing officer shall examine the documents showing service by the serving party, the intended recipient, and any other relevant evidence. Genuine disputes shall be resolved in favor of the person who states that a document was not received except that the document's being served and then lost at the commission shall not constitute failure of service. If the hearing officer finds that a document was not received, the schedule of proceedings shall be adjusted accordingly. If a party misses a deposition, production, or conference due to a lack of service, the hearing officer shall fashion an appropriate remedy.

j. Sanctions. If the hearing officer determines that a party deliberately or negligently failed to serve another party who was harmed by the lack of service, the hearing officer shall fashion appropriate sanctions which may include granting some or all of the harmed party's relief.

10.2(15) Referring to these rules.

a. Official citation. These rules shall be published in the Iowa Administrative Code with each rule preceded by the agency number and followed by the appropriate Iowa Code section or acts designation in parentheses.

b. Ordinary citation. During the course of a hearing proceeding in all oral and written statements, these rules may be referred to by the simple designation, omitting the Iowa Code reference. For example, this paragraph may be referred to as subrule 15"b."

c. Availability. To facilitate the availability and use of these rules, each vendor shall be provided with a copy in a designated medium and the Iowa library for the blind and physically handicapped shall have copies in all three media available for borrowing. These shall give the Iowa Administrative Code citation at the beginning and shall thereafter use the ordinary designation method described in subrule 10.2(15)"b."

This rule is intended to implement Iowa Code sections 601B.6(8) and 601B.7.

[Filed 9/20/85, effective 12/18/85]

[Published 10/9/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/9/85.

ARC 6010**COLLEGE AID COMMISSION[245]**

Pursuant to the authority of Iowa Code sections 261.1 and 261.15, the College Aid Commission adopts an amendment to Chapter 6, "Advisory Council for Student Aid Programs," Iowa Administrative Code.

The amendment extends the membership period of Advisory Council members from a two-year term to a four-year term, includes lending institutions and the Iowa student loan liquidity corporation as members on the Council, and updates the name of the Iowa personnel and guidance association.

Notice of Intended Action was published in Iowa Administrative Bulletin, Volume VIII, Number 3, July 31, 1985, as **ARC 5758**.

This rule was adopted in final form on September 10, 1985, and will become effective on November 13, 1985.

This rule is intended to implement Iowa Code Chapter 261.

Rule 245—6.1(261) is amended to read as follows:

245—6.1(261) Advisory council. An advisory council selected from officers of Iowa secondary schools, public area schools, Iowa independent colleges and universities, *lending institutions*, and state-supported universities, shall be established by the commission. Members are appointed to serve ~~two~~ *four*-year terms with the exception of the elected presidents of the Iowa ~~personnel and guidance association~~ *association for counseling and development*, the Iowa association of college admissions counselors, and the Iowa association of student financial aid administrators, who serve only for their one year in office. *The executive director of the Iowa student loan liquidity corporation shall be appointed to the council as a permanent member.* The council shall meet at least annually to review the state-supported student aid programs and make recommendations to the commission for revisions in policies and procedures.

This rule is ~~intended to~~ provides schools with representation in the administration of student aid programs implemented under *Iowa Code* chapter 261; ~~The Code~~.

This rule is intended to implement Iowa Code chapter 261.

[Filed 9/18/85, effective 11/13/85]

[Published 10/9/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/9/85.

ARC 6026**CORRECTIONS,
DEPARTMENT OF[291]**

Pursuant to Iowa Code section 217A.5, the Department of Corrections hereby adopts amendments to rules 1.5(217A)—Director; 1.6(217A)—Organization of the Department and 20.4(217A)—Mail, Iowa Administrative Code.

The rules have been revised in response to comments.

Amendments to rules 1.5(217A) and 1.6(217A) establish a new Division within the Department for Prison Industries, formerly under the Institutions Division.

Rule 20.4(217A), has been clarified, references updated and provisions added relative to confidentiality of correspondence with the Citizen's Aide office.

The original notice included changes to rule 20.12 (217A) relating to furloughs which have been held pending further review.

Notice of Intended Action was published in Iowa Administrative Bulletin, Volume VIII, Number 3, on July 31, 1985, as **ARC 5775**. A public hearing was held August 20, 1985, with no one attending.

These rules were adopted by the Board of Corrections at their regularly scheduled meeting on September 10, 1985.

These rules become effective November 13, 1985.

ITEM 1. Rule 1.5(217A) is amended to read as follows:

291—1.5(217A) Director. The governor appoints the director of the department of corrections. The director is responsible for the daily administration of the department. The operations are performed by ~~three~~ *four* divi-

CORRECTIONS, DEPARTMENT OF[291] (cont'd)

sions. The deputy directors of these divisions report to the director of the department.

ITEM 2. Rescind subrule 1.6(1), paragraph "i."

ITEM 3. Amend rule 1.6(217A) by adding a new subrule as follows:

1.6(4) The division director for prison industries shall be responsible for the following:

a. The manufacturing/service operations at the Iowa state penitentiary, Fort Madison, the Iowa state reformatory, Anamosa, the Iowa correctional institution for women, Mitchellville, and the medium security unit, Mount Pleasant, pursuant to Iowa Code chapter 216.

b. The activities and programs of the sales manager and territorial sales staff of Iowa prison industries.

c. The budget, income and expense forecasts and financial recordkeeping/reporting required to operate Iowa prison industries as a self-supporting activity.

ITEM 4. Subrule 20.4(4), paragraph "c," is amended to read as follows:

c. Confidential letters may be written to officers of federal, state, or municipal courts, any federal or state official, *any member of the board of corrections, the commissioner of the department of social services, any official of the division of adult corrections the department of corrections*, any member of the board of parole, an attorney, state appeal board of the state comptroller's office, *the citizen's aide/ombudsman's office*, and the civil rights commission of Iowa. ~~An attorney desiring to correspond with an inmate shall first identify self and inmate (client) to prison officials. Correspondence shall be considered confidential legal mail upon verification of attorney/client relationship.~~

[Filed 9/20/85, effective 11/13/85]

[Published 10/9/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/9/85.

ARC 6040

EMPLOYMENT SECURITY[370]

(JOB SERVICE)

Pursuant to the authority of Iowa Code sections 96.11(1) and 17A.3, the Iowa Department of Job Service hereby amends Chapter 4, "Claims and Benefits," Iowa Administrative Code.

These rules are identical to those published in Iowa Administrative Bulletin, Number 4, August 14, 1985 as ARC 5817.

The amendments are: Subrule 4.7(2), paragraph "c," subparagraph (2), excludes from a claimant's base period any payment such as holiday pay, vacation pay, or a bonus, which is not directly a result of the claimant working in and receiving wages from insured work performed during the base period. Subrule 4.7(2), paragraph "e," subparagraph (5), provides the administrative office claims representative with specific wage information for which to make the initial determination.

The agency adopted the rules September 18, 1985, and they will become effective November 13, 1985.

These rules are intended to implement Iowa Code sections 96.3(5) and 96.23.

The amendments are as follows:

ITEM 1. Amend subrule 4.7(2), paragraph "c," subparagraph (2) as follows:

(2) Did not *work in and* receive wages ~~for~~ from insured work for:

1. Three or more calendar quarters in the base period, or

2. Two calendar quarters and lacked qualifying wages ~~in from~~ insured work during another quarter of the base period.

ITEM 2. Amend subrule 4.7(2), paragraph "e," by adding new subparagraph (5) as follows:

(5) Specify whether the wages determined to be in the claimant's base period were or were not received for working in insured work during the base period.

[Filed 9/20/85, effective 11/13/85]

[Published 10/9/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/9/85.

ARC 6015

INSURANCE DEPARTMENT[510]

Pursuant to the authority of Iowa Code section 511.8(20), the Iowa Department of Insurance hereby adopts rules to amend Chapter 32, "Deposits by a Domestic Life Company in a Custodian Bank or Clearing Corporation," Iowa Administrative Code.

Under Iowa Code section 511.8(20), the Commissioner of Insurance must adopt rules to implement the authorization for life insurance companies to use custodial accounts to satisfy the legal reserve deposit requirement. Due to the fact that the Insurance Department is no longer maintaining its vault for the storage of securities constituting the legal reserve deposit, the utilization of custodial accounts by those companies is now mandatory rather than permissive. In the process of implementing the mandatory use of custodial accounts, the Department has learned of the need for certain changes of a technical nature in order to make the use of custodial accounts workable. Chief among these changes is the concept of a "Minimum Aggregate Value of Securities" reported to the custodian financial institution by the Department which must be maintained at all times by the life insurance company. These rules embody the technical changes.

Notice of Intended Action was published in the Iowa Administrative Bulletin of August 14, 1985 as ARC 5849.

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

These rules will become effective on November 13, 1985.

These rules are intended to implement Iowa Code section 511.8(20).

The following rules are adopted.

ITEM 1. Subrule 32.3(1) is amended to read as follows: 32.3(1) That the custodial account is to be titled as follows: "_____ Insurance Company Account No. _____ in custody for and to vest in the Commissioner of Insurance of the State of Iowa in accordance with Iowa Code sections 507C.18 and 508.19."

INSURANCE DEPARTMENT[510] (cont'd)

ARC 6004

INSURANCE DEPARTMENT[510]
JOINT RULES WITH HEALTH DEPARTMENT

ITEM 2. Subrule 32.3(2) is amended to read as follows:

32.3(2) *The commissioner shall notify the custodian, in writing, that a "Minimum Aggregate Value of Securities" must be held in the custodial account at all times. The commissioner's notice remains in full force and effect until amended or revoked in writing by the commissioner. That* The company shall, on or before the fifteenth day of each month certify to the commissioner on a form provided by the commissioner that the aggregate value (determined as provided by Iowa Code section 511.8, subsection 17) of securities on deposit with the commissioner in the manner specified by Iowa Code section 511.8, subsection 16, and in the custodial account as of the last day of the preceding month was at least equal to the company's legal reserve (as defined in Iowa Code section 511.8) as of the last day of the preceding year. In the event the company fails or refuses to make the certification provided in this subrule, or in the event the commissioner is authorized or directed by reason of any determination, appointment, or order pursuant to Iowa Code section 507C.18, 508.17, 508.18, or 508.22, the commissioner may acquire custody or otherwise assume control of the custodied securities, and may order reregistration, delivery, or other disposition which the commissioner deems appropriate under the circumstances. In addition, if the commissioner has reason to believe that a company may be insolvent, or that its condition is such as to render its further continuance in business hazardous to the public or holders of its policies, or that continued trading by the company in custodied securities may create a hazard to the public or policyholders, the commissioner may order the company to cease trading in custodied securities pending examination as provided in Iowa Code section 508.16. *The company may from time to time deposit or withdraw securities from the custodial account, subject to the stated "Minimum Aggregate Value of Securities" on deposit.*

ITEM 3. Subrule 32.3(4) is amended to read as follows:

32.3(4) That all custodied securities that are registered must be registered in the name of the company, in the name of a nominee of a company, in the name of the custodian or its nominee, *in the name of an agent of the custodian or its nominee*, or, if held in a clearing corporation, in the name of the clearing corporation or its nominee.

ITEM 4. Amend rule 32.3(508) by adding the following subrule:

32.3(13) *That the custodial agreement may be amended or terminated only with the prior approval of the commissioner.*

ITEM 5. Subrule 32.4(3) is amended to read as follows:

32.4(3) The custodian shall maintain blanket bond coverage relating to its custodial functions with limits equal to or exceeding those suggested by the American Bankers Association satisfactory to the commissioner.

These rules are intended to implement Iowa Code section 511.8(20).

[Filed 9/20/85, effective 11/13/85]

[Published 10/9/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/9/85.

The Health Department and the Insurance Department, pursuant to the authority of Iowa Code Chapter 17A and section 514B.23, amends 510—40.5(11)"b," Iowa Administrative Code. These amendments set out the criteria and method for selection of a group to perform the external review of the Health Maintenance Organization, the criteria and method by which such group shall evaluate the effectiveness of the HMO's peer review program, and the procedures which will be followed by all affected parties upon completion of such an inspection.

This amendment was adopted on September 11, 1985.

Notice of Intended Action was published in Iowa Administrative Bulletin, June 19, 1985, as **ARC 5602**. Changes from such Notice are noted in: 40.5(11)"b"(3); "c"(1); "c"(2) last sentence.

This rule will become effective on November 13, 1985.

Rescind subrule **40.5(11)**, paragraph "b," and insert in lieu thereof the following:

b. External review — criteria and methodology for the selection of an external review group (ERG):

(1) Application to be the ERG may be made in the form of a letter to the commissioner of public health, describing the qualifications of the ERG and how the ERG meets the criteria set forth in this rule.

(2) Applications will be accepted for ninety days following adoption of this rule, and as described below.

(3) The commissioner shall invite an application from any ERG upon the request of any HMO.

(4) The commissioner may also invite applications from any group which might have the capability of carrying out a review.

(5) The commissioner will consider all applications and appoint one, based on the following criteria:

1. The group's experience in evaluating the quality of medical care.

2. The degree to which the group is representative of the licensed physician community in Iowa.

3. The degree to which the group is knowledgeable about the health delivery system in Iowa.

4. The degree to which selection of the group will avoid duplication with other review activities in Iowa.

5. The group's ability to co-ordinate its activities with other review groups, and with practitioners and providers of health care in Iowa.

6. The group's knowledge of current and accepted medical opinion, and its ability to make qualitative evaluations of clinical practice.

7. The degree to which at least fifty percent of the physician members of the group (or that part of the group responsible for HMO inspections) are members of an HMO medical staff.

(6) No physician shall review an HMO of which the physician is a member.

(7) Appointment of an ERG will be for a four-year period, and only one ERG will be appointed at a time. Applications for appointment or reappointment will be accepted between one hundred eighty days and ninety days before the expiration of the acting ERG's four-year term.

c. External review — criteria and methodology by which an ERG will evaluate the effectiveness of an HMO's peer review program:

INSURANCE DEPARTMENT[510] (cont'd)

(1) The ERG will conduct an on-site inspection of each Iowa-certified HMO every two years, or on a schedule requested by the health department.

(2) The inspection will consist of interviewing HMO staff and physicians, and a review of such records (including clinical records of HMO patients) the ERG determines are necessary to conduct its inspection. The records may include any records or parts thereof maintained by the HMO or any of its physician members which pertain to HMO quality assurance operations or HMO patients, excluding financial records.

(3) The function of the ERG will be to make a qualitative evaluation of the effectiveness of an HMO's internal peer review program, and to report its findings to the health department.

(4) The following items will be considered by the ERG in making its determination:

1. The extent and acuity of the HMO's peer review program in evaluating the clinical management of enrollees provided by HMO physicians.

2. The ability of the HMO's program to identify aberrant practices in clinical management, and to take appropriate disciplinary action.

3. The method within the HMO by which the peer review program reports its findings to the medical staff and the governing body.

4. The authority within the HMO to correct practices which the peer review program has found to be detrimental.

5. The system developed within the HMO to facilitate the work of the peer review program.

6. The commitment on the part of the HMO governing body and medical staff toward an active peer review program with a goal of quality assurance.

d. External review — procedures to be followed upon completion of an ERG's inspection:

(1) Within thirty days of the completion of its inspection, the ERG will submit a written report of its findings to the HMO.

(2) The HMO will have forty-five days to respond to the ERG.

(3) The ERG must file its final report with the health department within ninety days of the completion of its inspection. The final report must include any comments received from the HMO.

(4) The health department may extend the time periods referred to in this paragraph "d," subparagraphs (1) to (3).

(5) After considering the report of the ERG and its own inspection reports, the health department will report its findings to the insurance department and will recommend to the insurance department that the HMO's certificate of authority be either continued, suspended, or revoked.

(6) Final action regarding a health department recommendation will be the responsibility of the insurance department, and the standard procedures of the insurance department including hearings and appeals shall prevail.

[Filed 9/18/85, effective 11/13/85]
[Published 10/9/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/9/85.

ARC 6020

NURSING, BOARD OF[590]

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Nursing adopts amendments to Chapter 3, "Licensure to Practice—Registered Nurse/Licensed Practical Nurse" appearing in the Iowa Administrative Code.

Those licensees moving out of state would be required to submit certified checks or money orders or pay in cash at the board office for a certified statement that they are licensed in this state. Those getting new or renewal licenses would have those licenses voided if the checks are returned. If the nurse works with a voided license, then disciplinary action could be taken.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 14, 1985 as ARC 5798. These amendments are identical to those published under Notice of Intended Action.

These rule amendments implement Iowa Code section 147.80.

These amendments will become effective on November 13, 1985.

ITEM 1. Amend subrule 3.1(6), paragraph "d," to read as follows:

d. For a certified statement that a registered nurse/licensed practical nurse is licensed in this state, \$30.00. *This fee shall be paid by certified check or money order; if paid in person in the board office, the fee may be paid in cash. No personal checks shall be accepted as payment.*

ITEM 2. Amend subrule 3.1(6), paragraph "j," to read as follows:

j. For a check returned for any reason, \$10.00. *If licensure had been issued by the board office based on a check for the payment of fees and the check is later returned by the bank, the board shall request payment by certified check or money order. If the fees are not paid within two weeks of notification by certified mail of the returned check, the license is no longer in effect. The licensee's status returns to what it would have been had this license not been issued.*

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[Published 10/9/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/9/85.

ARC 6035

PLANNING AND PROGRAMMING[630]

Pursuant to the authority of Iowa Code section 7A.3, the Office for Planning and Programming (OPP) rescinds Chapter 23 "Community Development Block Grant Non-entitlement Program" and adopts in lieu thereof the following new chapter.

The new chapter is intended to bring the Iowa Administrative Code into compliance with the Federal Housing and Recovery Act of 1983 (PL98-181) and related federal regulations; make changes recommended by the Iowa Community Development Council, a citizen advisory group; make the program more responsive to the need for increased economic development activity in Iowa; and make several technical changes to accommodate new practices in grant management.

PLANNING AND PROGRAMMING[630] (cont'd)

Notice of Intended Action was published in the Iowa Administrative Bulletin of August 14, 1985, as ARC 5812. A public hearing was held in Des Moines on September 5, 1985, to solicit comments and suggestions on the proposed rules contained in the Notice of Intended Action. Suggestions from the public hearing and other sources have been considered in this rulemaking.

The Notice of Intended Action gave three options regarding the percent of funds to be allocated to the economic development set-aside: Retaining the fifteen percent set-aside established for 1985, or increasing it to twenty percent, or twenty-five percent. Many comments were received on this issue. In general, those comments from elected city officials did not favor increasing the set-aside, while comments from local economic development officials favored raising it to at least twenty-five percent. After considering the comments received on this issue, OPP decided to increase the economic development set-aside to twenty percent.

Another adopted rule change from 1985 will enable OPP to allocate the uncommitted part of the imminent threat contingency fund to the economic development set-aside. OPP also usually makes awards under the regular competitive program for public works projects in direct support of economic development. These items, when added to the twenty percent set-aside, should effectively result in about thirty percent of program funds being devoted to economic development.

Other aspects of the proposed changes to the economic development set-aside received either support, or minimal negative comment in the hearing process.

A number of city council resolutions and other letters were received which commented on the existing community-wide point structure used in rating for the regular, annual competition. There were objections to continued use of 1980 Census poverty figures, which comprise the basis for 100 of the 200 community-wide points possible. These figures were considered too dated. Several persons suggested use of unemployment rates as an alternative basis for rating.

There were also objections to continued use of the total city or county portion of the tax levy as the basis for the other 100 points of the community-wide points possible. These comments favored excluding, for rating purposes, such items as the debt service portion of the levy.

After considering these comments, OPP has decided to award to each community the higher of a score based on poverty figures or a score based on the current average county unemployment rate. This will allow use of a more recent indicator of economic distress for those communities that have experienced economic downturns since 1980. OPP has decided, however, not to change the tax levy basis for scoring. We feel that consideration of the debt service portion of the levy has added to our understanding of both current local financial effort, and potential hardship in accomplishing a project without grant funds.

Comments were received in opposition to OPP's proposal to set minimum levels of funds drawn on previous grants as a prerequisite to being considered for additional grant awards. The state has a strong interest in timely completion of projects, and the proposal offers a needed incentive to local governments for this. Also, the proposed minimum levels of funds to be drawn are considered to be fairly lenient, and should allow for some project delays due to unforeseen events. Therefore, OPP has decided to adopt the proposal as stated in the Notice of Intended Action.

Few comments were received on the proposed CDBG interim financing program. However, information from representatives of the U.S. Department of Housing and Urban Development has caused OPP to modify the proposal. Specifically, we were advised that the proposal to allow communities to obtain interim financing for their own use would likely violate federal law. Consequently, the program will be limited to interim financing for for-profit and not-for-profit organizations, for purposes of job creation.

In addition, OPP has added, to the threshold criteria for the interim financing program, a requirement that at least five jobs be created or retained, and a requirement that at least one job must be created or retained for every twenty-five thousand dollars of grant funds available.

No significant negative comments were received concerning any of the other proposed rule changes.

The Office for Planning and Programming adopted these rules on September 20, 1985.

These rules will become effective November 13, 1985.

These rules are intended to implement Iowa Code section 7A.3 and Public Law 93-383.

The following rules are adopted.

Rescind Chapter 23 and insert the following in lieu thereof:

CHAPTER 23

COMMUNITY DEVELOPMENT BLOCK GRANT
NONENTITLEMENT PROGRAM

630—23.1 (7A, PL93-383) Definitions. When used in this chapter, unless the context otherwise requires:

"Act" means Title I of the Housing and Community Development Act of 1974, as amended (PL 93-383, PL 97-35, and PL 98-181).

"Application" means a request for program funds including the required forms and attachments.

"Application on behalf of" means any application submitted by one eligible applicant requesting funds for one or more other eligible applicants.

"Community" means any eligible applicant.

"Community development block grant nonentitlement program" means the grant program authorized by Title I of the Housing and Community Development Act of 1974, as amended, for cities and counties except those designated as entitlement areas by the U.S. Department of Housing and Urban Development.

"Competitive program" means the CDBG nonentitlement program, excluding the economic development set-aside as described in 23.7(7A, PL93-383), the imminent threat contingency program, described in 23.11(2), and the interim financing program, described in 23.12(7A, PL93-383).

"Economic development" means the alleviation of physical and economic distress through the stimulation of private investment and community revitalization for projects involving the creation of new jobs or the retention of existing jobs that would otherwise be lost.

"Economic development set-aside" means a separate allocation to cities and counties to provide direct financial assistance to private enterprise for projects involving the creation of new jobs or the retention of existing jobs that would otherwise be lost.

"Eligible applicant" means any county or incorporated city within the state of Iowa, except those designated as entitlement areas by the U.S. Department of Housing and Urban Development.

"Equity" means funds or other interest contributed to the project by the owners of the business, other than loans, credit, liens, mortgages or other liabilities.

PLANNING AND PROGRAMMING[630] (cont'd)

"Grant" means funds received through the community development block grant nonentitlement program.

"Historic sites" means any site listed on the national register of historic sites or any other site deemed to have historical significance by the Iowa division of historic preservation.

"HUD" means the U.S. Department of Housing and Urban Development.

"Imminent threat contingency fund" means a separate allocation to fund projects which will alleviate an imminent threat to public health, safety and welfare which requires immediate action. Up to five percent of the total nonentitlement program funds may be reserved for this purpose. Rules governing these funds are specified in subrule 23.11(2).

"Joint application" means an application submitted by more than one eligible applicant to complete a single project for the benefit of all those applying.

"Local development corporation" means any entity meeting one of the following:

1. Organized pursuant to Title VII of the Headstart, Economic Opportunity, and Community Partnership Act of 1974 (42 U.S.C. 2981) or the Community Economic Development Act of 1981 (42 U.S.C. 9801 et seq.);

2. Eligible for assistance under section 502 or 503 of the Small Business Investment Act of 1958 (15 U.S.C. 696);

3. Incorporated under state or local law whose membership is representative of the area of operation of the entity (including nonresident owners of businesses in the area) and which is similar in purpose, function and scope to those specified in "1." or "2." above; or

4. Eligible for assistance under Section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695).

"Local effort" means cash, land or buildings provided by public or private sources within the community which is used to directly support the costs of program activities as described in an application.

"Low- and moderate-income families" means those families earning no more than eighty percent of the median family income of the county as determined by the latest U.S. Department of Housing and Urban Development, section 8 income guidelines. This includes individuals living alone.

"Low- and moderate-income persons" means members of low- and moderate-income families as defined in this rule.

"Multipurpose application" means an application having two or more major activities.

"Multiyear funding" means a project receiving a funding commitment from two program years' allocations.

"Neighborhood-based nonprofit organizations" means an association or corporation, duly organized to promote and undertake community development activities on a not-for-profit basis within a neighborhood. An organization is considered to be neighborhood-based if the majority of either its membership, clientele, or governing body are residents of the neighborhood where activities assisted with CDBG funds are to be carried out.

"Nonentitlement area" means an area which is not a metropolitan city.

"OMB Circular A-87" means the U.S. Office of Management and Budget report entitled "Cost Principles Applicable to Grants and Contracts With State and Local Governments."

"OMB Circular A-102" means the U.S. Office of Management and Budget report entitled "Uniform Administration Requirements for Grants-in-Aid to State and Local Governments."

"OPP" means the Iowa office for planning and programming.

"Program income" means program income as defined by the Iowa CDBG Management Guide.

"Project" means an activity or activities funded with community development block grant nonentitlement funds.

"Recipient" means any eligible applicant receiving funds under this program.

"Section 301(d) small business investment company" means an entity organized pursuant to section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making.

"Single purpose application" means an application having only one primary or major activity and any number of other activities incidental to the primary activity.

"Single-year funding" means a project receiving a funding commitment from only one program year's allocation.

630—23.2 (7A, PL93-383) Goals and objectives. The Act apportions funds to states, on a formula basis, to be used by local governments for the purposes listed in this rule.

As outlined in section 101(c) of the Act, the primary goal of this program is "the development of viable urban communities, by providing decent housing and suitable living environment and expanding economic opportunities, principally for persons of low and moderate income."

In addition to national program goals and objectives the state of Iowa will address the following objectives through its administration of the program:

1. Involve local officials in program decisions, including program design, administrative policies, and review;

2. Simplify the application procedures and administration of the program;

3. Design the program to be flexible enough to address community priorities. As required by federal statute, however, the projected use of funds must give maximum feasible priority to activities which benefit low- and moderate-income families, or aid in the prevention or elimination of slums or blight; or must meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet the needs; and

4. Ensure neutrality and fairness in the treatment of all applications submitted under this program.

630—23.3 (7A, PL93-383) Eligibility. All incorporated cities and all counties in the state of Iowa, except those designated as entitlement areas by the U.S. Department of Housing and Urban Development, are eligible to apply for and receive funds under this program.

630—23.4 (7A, PL93-383) Eligible and ineligible activities. This rule provides a list of eligible and ineligible activities under the CDBG program.

23.4(1) General policy relating to activities outside an applicant's boundaries. Applicants may conduct activities which are otherwise eligible for block grant assistance which are located outside of their boundaries and which are not inconsistent with state or local law, only if the applicant can demonstrate that community objectives could not be achieved if the activities were located within the community's boundaries.

PLANNING AND PROGRAMMING[630] (cont'd)

23.4(2) General policies relating to special assessments. Special assessments under the block grant program. The term "special assessment" means a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement, such as streets, curbs, and gutters. The amount of fee represents the pro rata share of the capital costs of the public improvement levied against the benefiting properties. This term does not relate to taxes, or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes. The following policies relate to the use of special assessment under the block grant program:

a. There can be no special assessment to recover that portion of a capital expenditure funded with CDBG funds. Recipients may, however, levy assessments to recover the portion of a capital expenditure funded from other sources. Funds collected through such special assessments are not program income.

b. Program funds may be used to pay all or part of special assessments levied against properties owned and occupied by low- and moderate-income persons when such assessments are used to recover that portion of the capital cost of public improvements financed from sources other than community development block grants, provided that: The assessment represents that property's share of the capital cost of the eligible facility or improvement; and, the installation of the public facilities and improvements was carried out in compliance with requirements applicable to activities assisted under the CDBG program.

23.4(3) Eligible activities. As authorized by Title I, section 105 of the Housing and Community Development Act of 1974, as amended, and as further defined in 24 Code of Federal Regulations Part 570, activities assisted by this program may include only the following:

a. Acquisition in whole or in part by a public agency or private nonprofit entity, by purchase, lease, donation, or otherwise, of real property (including air rights, water rights, rights-of-way, easements and other interests therein) for any public purpose, subject to the limitations of 23.4(4);

b. Acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, except as provided in 23.4(4). Public facilities and improvements eligible for assistance are subject to the policies in 23.4(1).

c. Code enforcement in deteriorated or deteriorating areas in which enforcement, together with public improvements and services to be provided, may be expected to arrest the decline of the area;

d. Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites;

e. Special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly and handicapped persons;

f. Payments to housing owners for losses of rental income incurred in holding for temporary periods housing units to be utilized for the relocation of individuals and families displaced by activities under this title;

g. Disposition (through sale, lease, donation, or otherwise) of any real property acquired pursuant to this title or its retention for public purposes;

h. Provisions of public services, including but not limited to those concerned with:

Employment,

Crime prevention,

Child care,

Health,

Drug abuse,

Education,

Energy conservation,

Welfare or recreation needs.

A public service must be either a new service, or a quantifiable increase in the level of a service above that which has been provided by or on behalf of the unit of general local government (through funds raised by such unit, or received by such unit from the state in which it is located) during any part of the twelve-month period immediately preceding the date of submission of the statement with respect to which funds are to be made available under Title I, and which are to be used for such services, except that not more than fifteen per centum of the amount of any assistance to a unit of general local government under this Title may be used for activities under this paragraph;

i. Payment of the nonfederal share required in connection with a federal grant-in-aid program undertaken as part of activities assisted under this Title;

j. Payment of the cost of completing a project funded under Title I of the Housing Act of 1949;

k. Relocation payments and assistance for displaced individuals, families, businesses, organizations, and farm operations, when determined by the grantee to be appropriate;

l. Planning activities which consist of all costs of data gathering, studies, analysis and preparation of plans and implementing actions and policy, planning, management capacity-building activities as specified in 24 CFR 570.205;

m. Payment of reasonable administrative costs and carrying charges related to the planning and execution of community development and housing activities. Funds used for these purposes shall not exceed ten percent of the total contract amount and may not exceed ten percent of the CDBG amount;

n. Activities as specified in 24 CFR 570 may be undertaken on an interim basis in areas exhibiting objectively determinable signs of physical deterioration where the recipient has determined that immediate action is necessary to arrest the deterioration and that permanent improvements will be carried out as soon as practicable;

o. Grants to neighborhood-based nonprofit organizations, local development corporations, or entities organized under section 301(d) of the Small Business Investment Act of 1958 to carry out a neighborhood revitalization or community economic development or energy conservation project in furtherance of the objectives of 23.2(7A, PL93-383). This may include any activity not specifically listed as ineligible under 23.4(4), except that construction of new housing is eligible under this provision;

p. Financing the rehabilitation of privately owned buildings and improvements, low-income public housing and other publicly owned residential buildings and improvements, and publicly owned nonresidential buildings and improvements otherwise eligible for assistance;

q. Rehabilitation, preservation and restoration of historic properties, whether publicly or privately owned. Historic preservation does not include, however, the expansion of properties for ineligible uses, such as buildings for the general conduct of government;

PLANNING AND PROGRAMMING[630] (cont'd)

r. Acquisition, construction, reconstruction, rehabilitation or installation of distribution lines and facilities of privately owned utilities, including the placing underground of new or existing distribution facilities and lines;

s. Renovation of closed school buildings for use as an eligible public facility, for a commercial or industrial facility, or for housing;

t. Special economic development activities if such activities are necessary and appropriate to carry out an economic development project. Special economic development activities include:

(1) The acquisition, construction, reconstruction, or installation of commercial or industrial buildings, structures and other real property equipment and improvements, including railroad spurs or similar extension. Provision of such assistance shall be limited to funds distributed through the economic development set-aside as provided for in 23.7(7A, PL93-383), the imminent threat provisions as provided in 23.11(2), or the interim financing program as provided for in 23.12(7A, PL93-383);

(2) The provision of assistance to private-for-profit businesses. Provision of such assistance shall be limited to funds distributed through the economic development set-aside as provided for in 23.7(7A, PL93-383), the imminent threat provisions as provided in 23.11(2), or the interim financing program as provided for in 23.12(7A, PL93-383);

u. Construction of housing assisted under section 17 of the United States Housing Act of 1937; and

v. Reasonable administrative costs for overall program development, management, co-ordination, monitoring, and evaluation, and similar costs associated with management of the rental rehabilitation and housing development programs authorized under section 17 of the United States Housing Act of 1937.

23.4(4) Ineligible activities. The general rule is that any activity that is not authorized under the provisions of 23.4(3) is ineligible to be carried out with CDBG funds. The following list merely serves as a general guide and does not constitute a list of all ineligible activities.

a. Purchase of equipment. The purchase of equipment with block grant funds is generally ineligible.

(1) Construction equipment. The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation or use allowances pursuant to attachment B of OMB Circular A-87 for an otherwise eligible activity is an eligible use of block grant funds. An exception is the purchase of construction equipment which is used as a part of a solid waste disposal facility which is eligible for block grant assistance, such as a bulldozer used at a sanitary landfill.

(2) Furnishings and personal property. The purchase of equipment, fixtures, motor vehicles, or furnishings or other personal property not an integral structural fixture is ineligible, except when necessary for use by a recipient or its subgrantees in the administration of its community development program.

b. Operating and maintenance expenses. The general rule is that any expense associated with operating, maintaining, or repairing public facilities and works or any expense associated with providing public services not assisted with block grant funds is ineligible for assistance. However, operating and maintenance expenses associated with providing public services or interim assistance otherwise eligible for assistance may be assisted. For example, the cost of a public service being operated with block grant funds in a neighborhood facility may include reasonable expenses associated with

operating the public service within the facility, including costs of rent, utilities and maintenance. Examples of activities which are not eligible for block grant assistance are:

(1) Maintenance and repair of streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for the handicapped, parking and similar public facilities. Examples of maintenance and repair activities for which block grant funds may not be used include the filling of potholes in streets, repairing of cracks in sidewalks, the mowing of recreational areas, and the replacement of expended street light bulbs.

(2) Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities; and

(3) Expenses associated with provision of any public service which is not eligible for assistance.

c. General government expenses. Except as otherwise specifically authorized in these rules or under OMB Circular A-87, expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance under this part.

d. Political activities. No expenditure may be made for the use of equipment or premises for political purposes, sponsoring or conducting candidates' meetings, engaging in voter registration activity or voter transportation or other partisan political activities.

e. New housing construction. Assistance may not be used for the construction of new permanent residential structures or for any program to subsidize or finance new construction except as provided for in 23.4(3)"d." For the purpose of this paragraph, activities in support of the development of low- and moderate-income housing, including clearance, site assemblage, provision of site improvements and provision of public improvements and certain housing preconstruction costs, are not considered as programs to subsidize or finance new residential construction.

f. Income payments. The general rule is that assistance shall not be used for income payments for housing or any other purpose.

630—23.5 (7A, PL93-383) Application requirements for the competitive program.

23.5(1) Restrictions on applicants.

a. No more than one application per community will be considered per year under the competitive program.

b. Joint applications from two or more communities will be accepted only in those instances where the most efficient solution to a problem requires mutual action.

c. Cities of 2,500 population or over and counties of 6,800 population or over may apply for multiyear funding. Multiyear funding is limited to funding commitments from two program years' allocations. Multiyear funding is also limited to single purpose applications for infrastructure improvements when it can be demonstrated that funds available to a community in one year are not adequate to complete the project.

d. All eligible applicants may apply for single-year, single-purpose or multipurpose funding. Single-year funding does not necessarily require project completion within a twelve-month period.

e. Communities may not apply on behalf of eligible applicants other than themselves. Applicants will be allowed, however, to utilize staff from counties, areawide planning organizations, or other jurisdictions to administer the program.

PLANNING AND PROGRAMMING[630] (cont'd)

23.5(2) Application procedure. Each year, prior to solicitation of general competitive applications, the office for planning and programming will, to the extent funds are available for this purpose, conduct a training program for all eligible applicants. All eligible applicants will be notified of the time, date, place and agenda by mail. Application instructions and all necessary forms will be available upon written request to the Office for Planning and Programming, Division of Local Government Affairs, 523 E. 12th Street, Des Moines, Iowa 50319, or by calling (515) 281-3982. The training program will include a discussion of the program's purpose, eligible and ineligible program activities and instructions regarding the preparation and submission of an application.

The deadline for submission of general competitive applications (original and one copy) shall be two months following the last date of the training program. No applications will be accepted after the deadline for submission. Only data submitted by the established deadline will be considered in the selection process, unless additional data is specifically requested by OPP in writing.

Review and ranking of general competitive applications will be performed by OPP personnel after consultation, where appropriate, with other state agencies with program responsibility in CDBG-related areas. All applications meeting threshold requirements will be reviewed and ranked within ninety days of the final submission deadline. The anonymity of the communities will be maintained to the greatest extent possible during the review and ranking of applications. Those applications with the highest rankings within each population category will be funded, to the extent that competitive program funding is available. All successful applicants will be notified and invited to a conference with OPP personnel to outline procedures to be followed as grant recipients.

23.5(3) Contents of application. Each general competitive application must address each of the threshold criterion, and demonstrate that each criterion has been satisfied. In addition, each application must contain each of the following items:

- a. Description of community need (and how need was determined);
- b. Project description (includes amount of funding requested, use of funds, project's impact on community need, and project schedule);
- c. Percent of project addressed towards low- and moderate-income persons, including method of determination;
- d. Description of local effort, including the amount;
- e. Certifications. All applications will be required to certify that, if they receive funds under this program, they will comply with the following requirements, if applicable:

- (1) The Civil Rights Act of 1964 (PL 88-352) and Title VIII of the Civil Rights Act of 1968 (PL 90-284);
- (2) Title I of the Housing and Community Development Act of 1974, as amended;
- (3) Age Discrimination Act of 1975;
- (4) Section 504 of the Rehabilitation Act of 1973;
- (5) Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5) where applicable under Section 110 of the Housing and Community Development Act of 1974, as amended;
- (6) Preservation of Historical and Archaeological Data Act of 1974 (PL 93-291);

(7) National Historic Preservation Act of 1966, Section 106 (PL 89-665);

(8) National Environmental Policy Act of 1969;

(9) Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1979, Title II and Title III; and

(10) Other relevant regulations as noted in the Iowa CDBG Management Guide.

630—23.6 (7A, PL93-383) Selection criteria for the competitive program.

23.6(1) Threshold criteria. All applicants must satisfy these criteria before their application will be considered complete and eligible for ranking.

a. Evidence of local capacity to administer the grant, such as satisfactory previous grant administration, availability of qualified personnel, or plans to obtain qualified personnel.

b. Acceptable past performance in the administration of community development block grant funds including the timely commitment of program funds, where applicable.

c. Feasibility of completing the identified project with funds requested. If an applicant intends to use other funding sources, they must be identified and the level of commitment and timeframes involved must be explained.

d. Project must address at least one of the following three objectives:

(1) Primarily benefit low- and moderate-income persons. Fifty-one percent or more of those benefiting from a project must be considered low- and moderate-income persons.

(2) Aid in the prevention or elimination of slums and blight. The application documents the extent or seriousness of deterioration in the area to be assisted, showing a clearly adverse effect on the well-being of the area or community, and illustrating that the activity or activities proposed will alleviate or eliminate the conditions causing the deterioration.

(3) Activities designed to meet community development needs having a particular urgency. An activity will be considered to address this objective if the recipient certifies that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the recipient is unable to finance the activity on its own, and that other sources of funding are not available. A condition will generally be considered to be of recent origin if it developed or became critical within eighteen months prior to original application for CDBG funds.

e. Project funds may only be used for an eligible activity or activities;

f. Costs incurred on CDBG funded projects prior to written authorization from OPP may not be eligible for reimbursement with CDBG funds;

g. Conduct a public meeting, after adequate prior notice, to furnish citizens information concerning the amount of grant funds available for proposed community development and housing activities and the range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income and the plans of the applicant to minimize displacement of persons as a result of activities assisted with such funds and to assist persons actually displaced as a result of such activities. An acceptable method of meeting this requirement is to

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follow the guidelines for a public hearing set forth in Iowa Code section 362.3;

h. Evidence that the community has engaged in a process to identify its community development and housing needs, including the needs of low- and moderate-income persons, and the activities to be undertaken to meet such needs;

i. Communities that have received a grant from the preceding year's competitive CDBG allocation must have drawn down at least twenty-five percent of the total grant amount by the current application deadline in order to be eligible for funding in the current year's competitive CDBG program.

Communities that have received a grant from the competitive CDBG allocation two years preceding the current year must have drawn down at least eighty-five percent of the total grant amount by the current application deadline in order to be eligible for funding in the current year's competitive CDBG program.

Communities that have received a grant from the competitive CDBG allocation three or more years preceding the current year must have drawn down one hundred percent of the total grant amount by the current application deadline in order to be eligible for funding in the current year's competitive CDBG program.

23.6(2) Rating factors. There are two categories of rating factors, community-wide and project-specific. The highest point total possible is 950.

a. Community-wide. (data supplied by OPP in advance of the competition)

(1) The higher of scores from the following two rating factors:

1. Percent of community below the poverty level as defined by the 1980 Census, 100 points possible; or

2. Unemployment rate for the county in which the community is located, 100 points possible.

(2) City or county mill rate, 100 points possible.

b. Project - specific. (data obtained from applications)

(1) Magnitude of need identified by community, 200 points possible;

(2) Project impact - extent to which project addresses community need, 200 points possible;

(3) Percent of project funds benefiting low- and moderate-income families, 200 points possible; and,

(4) Local effort, 100 points possible.

c. Cities of under 2,500 population and counties with an unincorporated population of under 6,800 that did not receive a CDBG grant in the preceding two years' programs will receive 50 bonus points. Cities of under 2,500 population and counties with an unincorporated population of under 6,800 that did not receive a CDBG grant in the preceding year's program but did receive a CDBG grant two years preceding the current year will receive 25 bonus points.

d. Ties in applications. Ties will be decided in favor of the community whose project benefits the largest number of low- and moderate-income persons.

e. Rating of multiyear and multipurpose applications. All applications will be rated on the factors noted in paragraphs "a" and "b" of this subrule. Multiyear applications will be rated on the basis of the total number of years applied for, and multipurpose applications will be rated on the basis of weighted total of need and impact scores for all the projects included in the application. The weighting will be based on the dollar amount of the CDBG funds and local effort for each project.

f. All projects in multipurpose applications will be included in the point score determination and final ranking of CDBG applications. However, individual projects within a multipurpose application must receive a combined score of at least 100 points out of a possible 400 points for the "magnitude of need" and "project impact" rating factors, in order to receive CDBG funding. Projects not meeting this criterion shall be eliminated from any application after final ranking, but prior to funding of the application.

23.6(3) Verification of data. Applications which rate high enough to be funded will be reviewed to verify figures or statements in the applications. At the discretion of OPP, this may include site visits. In cases where inaccuracies, omissions, or errors are found, OPP will have the discretion of rejecting the application or rerating it based on correct information. In cases where an applicant loses funding through this process, its grant amount may be awarded to the highest ranking non-funded applicant(s). In an instance where the highest ranking nonfunded applicant requests more funds than what is available, OPP will have complete discretion concerning the disposition of the excess funds, including renegotiating the amount requested or carrying those funds over to the next program year.

23.6(4) Negotiation of grant awarded. OPP reserves the right to negotiate the amount of the grant award, the scale of the project and alternative methods of completing the project.

630—23.7 (7A, PL93-383) Application requirements for the economic development set-aside program.

23.7(1) Restrictions on applicants.

a. CDBG funds will be limited to interest rate subsidies, principle reduction subsidies, or similar subsidies to conventional loans.

b. No more than one application per community will be considered per quarter under the economic development set-aside program. However, each application may contain requests for assistance to more than one private enterprise.

c. Multiyear funding commitments will not be allowed under the economic development set-aside program.

d. Communities may not apply on behalf of eligible applicants other than itself.

23.7(2) Application procedure. Applications for the economic set-aside program will be accepted by the office for planning and programming at any time. Awards will generally be made on a quarterly basis. Applications must generally be received at OPP at least forty-five days prior to the quarterly award date in order to be considered in that round of funding. Any applications received after that date will generally be held over for consideration in the next quarter.

Up to five hundred thousand dollars of any quarterly allocation may be used for applications where timing is considered to be urgent and where OPP is satisfied that the business to be assisted cannot wait for quarterly funding decisions. These applications must meet the same threshold requirements of other economic development set-aside applications, must score at least as high as the median score for funded applications in the previous round of funding and must satisfy OPP that a funding decision cannot wait for quarterly funding decisions.

An original and one copy of the application shall be submitted. Only data submitted by the established deadline for that quarter will be considered in the selection

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process, unless additional data is specifically requested by OPP.

Review and ranking of the applications will be performed by OPP personnel. Those applications with the highest rankings meeting the minimum threshold criteria will be funded, to the extent that funding for that quarter is available. Applications not funded in one quarter may be resubmitted at any time, for consideration in a subsequent funding cycle.

Application instructions and necessary forms will be available upon written request to the Office for Planning and Programming, Division of Local Government Affairs, 523 E. 12th Street, Des Moines, Iowa 50319, or by calling 515/281-3982.

23.7(3) Contents of application. Each application must address each of the threshold criteria, and demonstrate that each criterion has been satisfied.

a. Project description (including amount of funding requested, use of funds and project schedule);

b. Project budget (including other public funds, private loans and owner's equity); and

c. Certifications. Applicants under the economic development set-aside program will be required to certify that, if they receive funds under this program, they will comply with the same certifications required by applicants for the competitive program.

630—23.8 (7A, PL93-383) Selection criteria for economic development set-aside program.

23.8(1) Threshold criteria. All applicants for economic development set-aside funds must satisfy the following minimum requirements to be eligible for funding:

a. At least fifty-one percent of the permanent jobs created or retained by the proposed project will be available to low- and moderate-income persons;

b. A minimum ratio of one permanent job created or retained for every ten thousand dollars of CDBG funds awarded must be maintained;

c. The effective interest rate on the total loan package may not be less than fifty percent of the interest rate available to the business requesting assistance;

d. Terms of loans must be consistent with terms generally accepted by conventional financial institutions for the type of property involved;

e. At least five percent of the total project amount must be in the form of private equity;

f. There must be evidence that the CDBG funds requested are necessary to make the proposed project feasible;

g. There must be evidence that the project is feasible and that the business requesting assistance can continue as a "going concern" in the foreseeable future;

h. A minimum of five jobs must be created or retained as a result of the proposed activity;

i. Jobs created as a result of other jobs being displaced elsewhere in the state will not be considered new jobs created for the purpose of evaluating the application;

j. No significant negative land use or environmental impacts will occur as a result of the project;

k. There must be evidence of local capacity to administer the grant, such as satisfactory previous grant administration, availability of qualified personnel, or plans to obtain qualified personnel;

l. There must be acceptable past performance in the administration of community development block grant funds, where applicable;

m. Project funds may not be incurred without written authorization to incur costs;

n. The applicant must conduct a public meeting, after adequate prior notice, to furnish citizens information concerning the amount of funds available for proposed community development and housing activities and the range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income and the plans of the applicant to minimize displacement of persons as a result of activities assisted with such funds and to assist persons actually displaced as a result of such activities. An acceptable method of meeting this requirement is to follow the guidelines for a public hearing set forth in Iowa Code section 362.3.

23.8(2) Rating factors.

a. The following rating system will be used to rank applications under the economic development set-aside program. The highest point total possible is 400.

(1) Number of jobs per CDBG funds requested, 100 points possible;

(2) Percent of funds other than CDBG funds in the project (e.g. private or public loans) 100 points possible; and,

(3) Need and impact of the project. Considerations are to include local employment conditions, resultant new economic activity, planned hiring under programs of the Job Training Partnership Act, use or availability of other public incentives, project schedule, and property tax enhancement and other effects on the local tax base, 200 points.

In addition, priority will be given to projects that will create manufacturing jobs and projects that add value to Iowa resources. Refinancing or restructuring of existing loans, and projects involving a single retail establishment will be considered low priorities.

b. Ties in applications. Ties will be decided in favor of the project showing the highest number of jobs created or retained.

c. Each project in an application will be rated and ranked separately. Those projects ranked high enough will be funded regardless of the ranking of the remainder of the application.

d. Each activity must receive a score of at least 50 points out of a possible 200 points for the "need and impact" rating criterion in order to receive CDBG funding.

23.8(3) Verification of data. Applications which rate high enough to be funded will be reviewed to verify figures or statements in the applications. At the discretion of OPP, this may include site visits. In cases where inaccuracies, omissions, or errors are found, OPP will have the discretion of rejecting the application or re-rating it based on correct information.

23.8(4) Negotiation of funds awarded. The amount of CDBG funds awarded shall be the minimum necessary to make the proposal feasible. OPP reserves the right to negotiate the effective interest rate, term, and other conditions of the loan prior to grant award.

630—23.9 (7A, PL93-393) Funding allocation.

23.9(1) Funds for state administration. Up to two percent of total state program funds may be used for state administration.

23.9(2) Funds reserved for imminent threat program. Up to five percent of total program funds may be reserved in any year for the imminent threat contingency fund. Any funds not allocated by the first day of October following the receipt of funds from HUD shall be added to funds reserved under 23.9(3) for the current economic

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development set-aside program. (Rules for the imminent threat contingency fund are in subrule 23.11(2))

23.9(3) Funds reserved for economic development set-aside. Twenty percent of total program funds will be reserved each year for the economic development set-aside program.

Up to forty percent of the funds set-aside may be awarded during the first quarter of funding. Up to a total of seventy-five percent of the funds may be awarded in the first two quarters of funding, and the total amount may be awarded in the first three quarters of funding. If this fund is not fully allocated in any year, the excess amount will be reallocated to the general nonentitlement program for the following program year.

23.9(4) Distribution of competitive funds. The funds remaining after deducting those used for state administration, the imminent threat contingency fund and the economic development set-aside will be allocated in the following manner:

<u>Cities</u>	<u>Counties</u>	<u>Percent of Funds</u>
0 - 2,499 population	0 - 6,799 population (54 smallest)	35%
2,500 - 49,999 population	6,800 + population (45 largest)	65%

The division of counties is based on unincorporated population only. The counties have been divided between the two population categories in order to maintain an equal per capita distribution of funds.

Competitive grant allocation in each category will be reduced by the amount of OPP multiyear commitments within each category.

23.9(5) Use of recaptured funds. Funds recaptured, for any reason, by OPP shall be reallocated to the general nonentitlement program for the following program year.

23.9(6) Grant ceilings. Maximum grant amounts are as follows:

a. Competitive program only.

<u>All Single Year Applicants</u>	<u>Grant Ceiling</u>
0 - 999 population	\$200,000
1,000 - 2,499 population	\$300,000
2,500 - 14,999 population	\$450,000
15,000 - 49,999 population	\$600,000
<u>Multiyear Applicants</u>	<u>Grant Ceilings</u>
2,500 - 14,999 population	\$350,000 per year
15,000 - 49,999 population	\$500,000 per year

However, no grantee may receive more than \$1,000 per capita, based on the total population within the grantee's jurisdiction. In determining grant ceilings, county populations will be calculated on the basis of unincorporated areas only. Joint applications may be funded up to one and one-half times the maximum amount allowable for either of the joint applicants.

b. Economic development set-aside. The maximum grant for individual applications from any city or county is \$500,000 per quarter.

c. Imminent threat contingency fund. There is no grant ceiling for communities receiving imminent threat funds.

630—23.10 (7A, PL93-383) Administration.

23.10(1) Contracts. Upon selection of a project(s) for funding, the office for planning and programming will issue a contract. In the absence of special circumstances in which there is a legal incapacity on the part of the

applicant to accept funds for eligible activities, the contract shall be between the office for planning and programming and the community. The designation by the community of another public agency to undertake activities assisted under this program shall not relieve the recipient of its responsibilities in assuring the administration of the program in accordance with all federal and state requirements, including these rules. These rules, and applicable federal and state laws and regulations become a part of the contract.

Certain activities may require that permits or clearances be obtained from other state or federal agencies prior to proceeding with the project. Grant awards may be conditioned upon the timely completion of such requirements.

23.10(2) Financial management standards.

a. All recipients shall comply with Attachments N and O of OMB Circular No. A-102, "Uniform Administrative Requirements For Grant-in-Aid To State And Local Governments." Any clarifications or modifications of these standards by the state shall be clearly stated in the Iowa CDBG Management Guide provided to each recipient. Where requirements differ between the circular and state or local law, the more restrictive requirement shall prevail. Contracts may also be conditioned to provide other requirements.

b. Allowable costs shall be determined in accordance with OMB Circular No. A-87, "Cost Principles Applicable To Grants And Contracts With State And Local Governments." Any clarifications or modifications of this standard by the state shall be clearly stated in the Iowa CDBG Management Guide provided to each recipient with the contract.

c. All contracts made under these rules are subject to audit. Recipients shall be responsible for the procurement of audit services and for the payment of audit costs. Audits may be performed by the state auditor's office or by a qualified independent auditor.

Grantees which receive more than \$100,000 in federal financial assistance (including a CDBG grant) in any fiscal year must comply with the provisions of the Single Audit Act of 1984 (P.L. 98-502) for that fiscal year. In addition, grantees receiving between \$25,000 to \$100,000 in assistance may choose to comply with the Single Audit Act. In such cases, the local government must have an annual audit of all its financial statements. The Act should be consulted for additional compliance requirements.

Grantees which determine that they are not required to comply with the Single Audit Act of 1984 and also choose not to comply with said Act, shall have audits prepared in accordance with CDBG requirements, and state laws and regulations. Such audits shall commence within sixty days of the CDBG program's contract expiration date, and be issued within one hundred fifty days of the contract expiration date, unless the grantee conducts annual audits on a fiscal year basis.

Variations of these time requirements shall only be allowed with prior approval from OPP. Copies of the audit report shall be transmitted to OPP and to other agencies as requested.

d. Program income.

(1) Units of general local government shall be required to return to the federal government interest (except for interest described in 23.10(2)"d"(3)) earned on grant funds advanced in accordance with the "Iowa CDBG Management Guide."

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(2) Proceeds from the sale of personal property shall be handled in accordance with attachment N of OMB Circular No. A-102, "Property Management Standards."

(3) All other program income earned during the grant period may be retained by the recipient and added to funds committed to the program, provided that they are expended for the same type of activity from which the income was derived.

(4) Recipients shall record the receipt and expenditure of revenues related to the program (such as taxes, special assessments, levies, fines, etc.) as a part of the grant program transactions.

(5) Program income received subsequent to grant closeout.

1. Except as may be otherwise provided under the terms of the grant agreement or any closeout agreement, program income received subsequent to the end of the grant period may be treated by the recipient as follows: Subject to the requirements of 23.10(2)"d"(5)"2," "3," this income may be treated as miscellaneous revenue, the use of which is not governed by the provisions of the grant: Provided, that if the recipient has another continuing grant under the same multiyear commitment under these rules, the program income received subsequent to the grant closeout shall be treated as program income of the active grant program.

2. Disposition of tangible personal property. The recipient shall account for any tangible personal property acquired with grant funds in accordance with attachment N of OMB Circular No. A-102, "Property Management Standards."

3. Disposition of real property. Proceeds derived after grant closeout from the disposition of real property acquired with grant funds under this program shall be subject to the program income requirements of 23.10(2)"d"(5)"1" above, provided that where such income may be treated as miscellaneous revenue pursuant to 23.10(2)"d"(5)"1," above, it shall be used by the recipient for community development activities eligible pursuant to 23.4(3) to further the general purposes and objectives of the Act. The use of income subject to this provision is not governed by any other requirements of these rules.

23.10(3) Requests for funds. Grant recipients shall submit requests for funds in the manner and on forms prescribed by OPP.

23.10(4) Recordkeeping and retention. Financial records, supporting documents, statistical records, the environmental review records required by 24 Code of Federal Regulations 58.30, and all other records pertinent to the grant program shall be retained by the recipient in accordance with the provisions of the Iowa CDBG Management Guide, including the following:

a. Records for any displaced person shall be retained for three years after that person has received final payment;

b. Records pertaining to each real property acquisition shall be retained for three years after settlement of the acquisition, or until disposition of the applicable relocation records in accordance with 23.10(4)"a," whichever is later;

c. Representatives of the secretary of the department of housing and urban development, the inspector general, the general accounting office, the state auditor's office and the office for planning and programming shall have access to all books, accounts, documents, records and other property belonging to or in use by recipients pertaining to the receipt of assistance under these rules.

23.10(5) Performance reports and reviews. Grantees shall submit grantee performance reports to OPP as prescribed in the Iowa CDBG Management Guide. The reports will assess the use of funds in accordance with program objectives, the progress of program activities, and compliance with certain other program requirements.

OPP may perform any reviews or field inspections it deems necessary to assure program compliance, including reviews of grantee performance reports. When problems of compliance are noted, OPP may require remedial actions to be taken. Failure to respond to a notification of need for remedial action may result in the implementation of 23.11(4).

23.10(6) Grant closeouts. Upon completion of project activities, recipients will initiate grant closeout in accordance with procedures specified in the Iowa CDBG Management Guide.

23.10(7) Compliance with federal and state laws and regulations. All grant recipients shall comply with all applicable provisions of the Act and its implementing regulations, including these rules. Recipients shall also comply with any provisions of the Iowa Code governing activities performed under this program.

630—23.11 (7A, PL93-383) Miscellaneous.

23.11(1) Multiyear grants. Some communities receive funding commitments from OPP from more than one program year's allocation. These commitments will be fully funded for each year of the communities' programs provided performance has been found acceptable in the year previously funded, and provided that the state receives an adequate commitment of funds from HUD for those years. OPP shall assess grantee performance.

23.11(2) Imminent threat contingency fund. Up to five percent of the total nonentitlement program funds allocated to the state may be reserved for communities which are experiencing an imminent threat to public health, safety or welfare which necessitates corrective action sooner than could be accomplished through the regular application process under the nonentitlement program.

Communities in need of these funds must submit a written request to the Director of the Division of Local Government Affairs, Office for Planning and Programming, 523 E. 12th Street, Des Moines, Iowa 50319. The request must include a description of the community's problem, the amount of funding requested, projected use of funds, and why the problem cannot be remedied through the normal CDBG funding procedure.

Upon receipt of a request for imminent threat funding, OPP will make a determination as to whether the community and the project are eligible for funding. This determination will be made by OPP, after consultation with the department of health, office of disaster services, or other appropriate federal, state, or local agencies. A project will be considered eligible for funding only if it meets all of the following criteria:

a. The proposed project must be an eligible project under 23.4(3);

b. An immediate threat must exist to health, safety or community welfare;

c. The threat must be the result of unforeseeable and unavoidable circumstances or events;

d. The threat must require immediate action;

e. No known alternative project or action would be more feasible than the proposed project;

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f. Sufficient other local, state, or federal funds (including the competitive CDBG program) either are not available, or cannot be obtained within the timeframe required. OPP staff will check into this with the office of disaster services, and other public agencies, as appropriate.

If OPP determines that the community and the proposed activity are eligible for funding, it shall notify the governor of its determination. Upon the personal authorization of the governor to do so, OPP will make funds available to an applicant which meets the eligibility criteria.

Any community receiving funds under the imminent threat program must comply with all laws, rules, and regulations applicable to the CDBG nonentitlement program, with the exception of those rules waived by the governor pursuant to 23.11(6).

23.11(3) Amendments to applications. Any substantive change to a funded CDBG program will be considered a contract amendment. Such changes would include contract time extensions, budget revisions, and significant alterations of existing activities that will change the scope, location, objectives or scale of the approved activities or beneficiaries. The amendment must be requested in writing, according to guidelines established in the Iowa CDBG Management Guide. No amendment will be valid until approved in writing by OPP. The amended program must rate at least as highly on the selection criteria point system as the original application rated.

OPP will not approve the addition of a new activity which is unrelated to the original contract activities, unless OPP is satisfied that all original activities will also be completed per the contract. In such cases, OPP may allow up to ten thousand dollars of the original CDBG funds to be utilized for a new activity. Such amendments are not subject to rerating; however, they must meet the threshold requirements listed in 23.6(1).

Amendments involving the replacement of one activity with another will not be allowed for projects funded under the economic development set-aside program.

23.11(4) Remedies for noncompliance. At any time before project closeout, OPP may, for cause, find that a community is not in compliance with its requirements under this program. At OPP's discretion, remedies for noncompliance may include penalties up to and including the return of program funds to OPP. Reasons for a finding of noncompliance include, but are not limited to: The recipient using program funds for activities not described in its application, the recipient's failure to complete approved activities in a timely manner, the recipient's failure to comply with any applicable state or federal rules or regulations, or the lack of a continuing capacity of the recipient to carry out the approved program in a timely manner.

23.11(5) Contractors and subrecipients limited. Project funds shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any contractor or subrecipient during any period of debarment, suspension or placement in ineligibility status by the Department of Housing and Urban Development under the provisions of 24 Code of Federal Regulations Part 24.

23.11(6) Waivers. When the governor of the state of Iowa has determined that sufficient cause for such action exists, the governor may waive any requirement under these rules not required by law. A waiver may be applied to one or more eligible applicants under this program.

Sufficient cause for such a waiver may include, but not be limited to, instances where a community has requested imminent threat contingency funds under 23.11(2), where undue hardship will result from applying the requirement. Waivers under this subrule will become effective only upon the personal authorization of the governor.

23.11(7) Forms. The following forms will be used by the office for planning and programming in the administration of the block grant program:

a. Grant application forms.

(1) Application form for the CDBG Competitive Program (Form 206-0027).

(2) Housing Rehabilitation Application Supplement (Form 206-0028).

(3) Economic Development Set-Aside Application Form (Form 206-0140).

(4) Notification of Intent Form (Form 206-0050).

b. Grant administration forms.

(1) Status of Federal Funds/Request for Funds (Form 206-0035).

(2) Grantee Program Schedule (Form 206-0037).

(3) Multiyear Activity Chart (Form 206-0039).

(4) Grantee Performance Report - In-Kind Local Effort (Form 206-0056).

(5) Grantee Performance Report - Activity Status (Form 206-0058).

(6) Grantee Performance Report - Jobs Bill Supplement (Form 206-0060).

(7) Grantee Performance Report - Financial (Form 206-0059).

630—23.12 (7A, PL93-383) CDBG interim financing program.

23.12(1) Objective. The objective of the CDBG short-term grant program is to benefit low- and moderate-income persons living within eligible Iowa communities by providing short-term or interim financing for the implementation of projects which create or retain employment opportunities, which prevent or eliminate blight, or which accomplish other federal and state community development objectives.

23.12(2) Eligibility. All nonentitlement cities and all counties in the state of Iowa are eligible to apply for and receive assistance through the CDBG short-term grant program.

23.12(3) Eligible activities. Funds provided through this program may be used for short-term assistance, interim financing, or construction financing for the purchase, construction, rehabilitation, or other improvement of land, buildings, facilities, machinery and equipment, fixtures and appurtenances, or other projects, undertaken by a for-profit organization or business or by a nonprofit organization, which will create permanent jobs or retain jobs that would otherwise be lost.

23.12(4) Application procedure.

a. Each year the office for planning and programming shall announce the expected availability of funds for the CDBG short-term grant program.

b. Said announcement will include details as to the amount of funds available and other information which may be required or determined to be necessary.

c. Applications may be submitted at any time after the announcement of availability. Applications shall be processed, reviewed, and considered on a first-come-first-served basis. Funding decisions will be made by OPP within thirty days of OPP's receipt of a complete application and to the extent that funds are available.

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d. Applications shall be made in a form and with contents as prescribed by the office for planning and programming.

e. Applications may be submitted only by eligible communities as described in subrule 23.12(3).

f. Applications received by OPP which are incomplete or require additional information, investigation or extended negotiation may lose funding priority.

23.12(5) Selection criteria.

a. **Threshold criteria.** All applicants for CDBG short-term grant program funds must satisfy the following minimum requirements to be eligible for funding:

(1) A minimum of five jobs must be created or retained as a result of the proposed activity.

(2) There must be a minimum ratio of one permanent job created or retained for every twenty-five thousand dollars of CDBG funds awarded.

(3) There must be evidence of local capacity to administer the grant, such as satisfactory previous grant administration, availability of qualified personnel, or plans to obtain qualified personnel.

(4) There must be acceptable previous performance in the administration of state or federal programs such as the community development block grant, where applicable.

(5) The applicant must show the feasibility of completing identified project with funds requested. If an applicant intends to use other funding sources, they must be identified and the level of commitment and timeframes involved must be explained.

(6) Project must address at least one of the following three objectives:

1. Primarily benefit low- and moderate-income persons. Fifty-one percent or more of those benefiting from a project must be considered low- and moderate-income persons.

2. Aid in the prevention or elimination of slums and blight. The application documents the extent or seriousness of deterioration in the area to be assisted, showing a clear adverse effect on the well-being of the area or community, and illustrating that the activity or activities proposed will alleviate or eliminate the conditions causing the deterioration.

3. Activities designed to meet community development needs having a particular urgency. An activity will be considered to address this objective if the recipient certifies that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the recipient is unable to finance the activity on its own, and that other sources of funding are not available. A condition will generally be considered to be of recent origin if it developed or became critical within eighteen months prior to original application for CDBG funds.

(7) Project funds may only be used for an eligible activity or activities.

(8) Project funds may not be incurred prior to written authorization to incur costs.

(9) The applicant must conduct a public meeting to furnish citizens information concerning the amount of funds available for proposed community development and housing activities and the range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income and the plans of the applicant to minimize displacement of persons as a result of activities assisted with such funds and to assist persons actually

displaced as a result of such activities. One method of meeting this requirement is to follow the guidelines for a public hearing set forth in Iowa Code section 362.3.

(10) There must be evidence that the community has engaged in a process to identify its community development and housing needs, including the needs of low- and moderate-income persons, and the activities to be undertaken to meet such needs.

(11) The project must provide that at least fifty-one percent of the permanent jobs created or retained by the proposed project will be available to low- and moderate-income persons.

(12) There must be evidence that the funds requested are necessary to make the proposed project feasible.

(13) No significant negative land use or environmental impacts will occur as a result of the proposed project.

(14) There must be evidence that the proposed project will be completed within fifteen months of the date of grant award.

(15) There must be evidence of an irrevocable letter of credit, or equivalent security instrument, from a AA or better rated lending institution, assignable to OPP, in an amount equal to the CDBG short-term grant funds requested plus interest if applicable.

(16) There must be evidence of the commitment of permanent financing for the project.

(17) Applicant must provide an assurance that any program income earned or received as a result of the project shall be returned to OPP on or before the end date of the grant contract.

b. **Selection criteria.** Applications will be evaluated on the basis of the following criteria:

(1) Timeliness of the project, including readiness to proceed and proposed term of the interim financing.

(2) The cost in CDBG short-term grant funds per job created or retained.

(3) The amount of interest income returned to OPP as a result of the project.

(4) The need for the project.

(5) The impact of the project.

23.12(6) Negotiation of funds awarded. The amount of CDBG short-term grant funds awarded shall be the minimum necessary to make the proposal feasible. OPP reserves the right to negotiate the terms and conditions prior to grant award.

23.12(7) Funding allocation.

a. An amount not to exceed \$7.5 million shall be made available for grants under the CDBG short-term grant program.

b. OPP reserves the right to award grants totaling a lesser amount than \$7.5 million should overall CDBG funding be reduced or should the CDBG competitive program grantees' use of funds exceed forecasts.

23.12(8) Program income. All program income earned and received under the CDBG short-term grant program and as a result of the funded project shall be returned to OPP on or before grant closeout.

23.12(9) Administration. Grant recipients under the CDBG short-term grant program shall be subject to all the requirements specified in rule 23.10(7A, PL93-383).

These rules are intended to implement Iowa Code section 7A.3 and Title I of the Housing and Community Development Act of 1974, as amended.

[Filed 9/20/85, effective 11/13/85]

[Published 10/9/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/9/85.

ARC 6027

REVENUE DEPARTMENT[730]

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue hereby adopts amendments to Chapter 91, "Administration," Chapter 92, "Amusement Concessions," and Chapter 94, "Qualified Organization," Iowa Administrative Code.

Notice of Intended Action was published in Iowa Administrative Bulletin, Volume VIII, Number 2, on July 17, 1985, as ARC 5714.

These rule amendments are being made to implement 1985 Iowa Acts, Senate Files 81 and 349.

These rule amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

The only change from the rules published under Notice of Intended Action is: Item 5 was changed to allow persons other than peace officers and persons licensed pursuant to Iowa Code Chapter 80A to serve as security officers and to delete the requirement that a qualified organization that is compensating employees maintain a list of individual names and addresses of bingo players.

These amendments will become effective November 13, 1985, after filing with the administrative rules coordinator and publication in the Iowa Administrative Bulletin and Iowa Administrative Code.

The following amendments are adopted.

ITEM 1. Amend subrule 91.6(1), paragraph "j," to read as follows:

j. Any qualified organization conducting gambling activities must be eligible for tax exempt status under section 501(c)3, 501(c)4, 501(c)5, 501(c)6, 501(c)10, or 501(c)19 of the Internal Revenue Code, as defined in Iowa Code section 422.3.

ITEM 2. Amend rule 730—91.6(99B) at the implementation clause to read as follows:

This rule is intended to implement Iowa Code sections 99B.1; ~~1983 Iowa Code Supplement section 99B.7 and Iowa Code sections, 99B.2, and 99B.14~~ 99B.7 as amended by 1984 Iowa Acts, ~~House File 2015~~ Senate File 349, and 99B.14.

ITEM 3. Amend rule 730—92.8(99B) to read as follows:

730—92.8(99B) Raffles conducted by at a fair. Raffles may be conducted at a fair but only by the sponsor of the fair or a qualified organization licensed under Iowa Code section 99B.7 that has received permission from the sponsor of the fair to conduct a raffle. "Fair" means an annual fair and exposition held by the Iowa state fair board and any fair held by a county or district fair or agricultural society under the provisions of Iowa Code chapter 174. The sponsor of the fair or the qualified organization must obtain a license for which the fee is fifteen dollars for each raffle. For a qualified organization, this license is in addition to the license issued pursuant to Iowa Code section 99B.7. A qualified organization must submit written permission to conduct a raffle from the sponsor of the fair with its application for a license. A license must cover the entire duration of the raffle in order to be valid. The gambling event commences when the first ticket is sold and ends when the winning number is drawn. The rules for a raffle must be posted in the same manner as those for a game of skill or game of chance. Cash prizes may not be awarded and merchandise prizes may not be repurchased. A raffle may not be

operated on a pyramid or buildup basis. The cost of each chance or ticket to the raffle cannot exceed one dollar and the aggregate retail value of any prize cannot exceed fifty dollars in merchandise. There is no limit as to the number of raffles which may be conducted nor the number of winners in a raffle provided no person wins more than fifty dollars in merchandise. If the merchandise prize is a gift certificate, the certificate must not be redeemable in cash. Raffle winners cannot be required to be present to win.

In addition to the normal raffles, either a fair sponsor or a qualified organization, but not both, may hold one raffle per year at a fair at a cost of no more than one dollar per chance or ticket. Under this raffle there may only be one winner. The value of the prize in this raffle may be greater than fifty dollars but no greater than ten thousand dollars as determined by the purchase price paid by the fair sponsor or qualified organization. The prize may be a single item or an aggregate of several items, the total value of which does not exceed ten thousand dollars.

This rule is intended to implement Iowa Code section 99B.1(3) as amended by 1984 Iowa Acts, House File 2015, and section 99B.5 as amended by 1985 Iowa Acts, Senate File 81.

ITEM 4. Amend rule 730—94.4(99B), first numbered paragraph, to read as follows:

730—94.4(99B) Expenses. Reasonable expenses shall not exceed twenty-five percent of the net receipts. Expenses allowed within the twenty-five percent limitation are the license fee, taxes (other than state sales tax paid on gross receipts), promotion expense, major equipment purchases, overhead expenses, employee compensation and other expenses incurred exclusively and directly as a result of the gambling activity. No expense item shall be allowed without a proper receipt, paid invoice or canceled check and cannot be paid from an outside source. Before any expense item will be allowed, the burden of proof is on the licensee to show that the expense has been incurred exclusively and directly as a result of the gambling activity. An expense will not be considered reasonable if the amount charged significantly exceeds the prevailing rate or average retail cost of the item or service purchased.

ITEM 5. Amend rule 730—94.4(99B), first unnumbered paragraph beginning with "No person may be compensated . . .," by deleting the paragraph and inserting in lieu thereof the following:

No person may be compensated either directly or indirectly for services rendered in connection with a game of skill, game of chance, or raffle with the exception that not more than four persons per one hundred players (one person per twenty-five players) participating in a bingo occasion and one or more individuals serving as security officers may be employed. The amount of compensation paid to an employee for services rendered in connection with a bingo occasion cannot exceed the federal minimum wage. This restriction does not apply to security officers who may be paid a reasonable rate pursuant to this rule. The qualified organization conducting the bingo occasion must maintain records showing the number of players at a bingo occasion if employees are compensated for services rendered in connection with the bingo occasion. Also, the qualified organization must maintain records showing the name, address, social security number, dates of employment, number of hours worked and wages paid to all employees for services rendered in connection with bingo

REVENUE DEPARTMENT[730] (cont'd)

occasions. The qualified organization's records must specifically identify which bingo occasion an employee was compensated for. Anything of value given to a person in exchange for services rendered in connection with a gambling occasion is considered compensation.

ITEM 6. Amend rule 730—94.4(99B) at the implementation clause to read as follows:

This rule is intended to implement Iowa Code section 99B.1(6) and 1983 Iowa Code Supplement section 99B.7(6) as amended by 19845 Iowa Acts, House File 2015 Senate File 349.

ITEM 7. Amend subrule 94.10(6) to read as follows:

94.10(6) A person cannot conduct, promote, administer, or assist in the conducting, promoting or administering of a bingo occasion, unless the person regularly participates in activities of the qualified organization other than conducting bingo occasions or participates in an educational, civic, public, charitable, patriotic, or religious organization to which the net receipts are dedicated by the qualified organization. See rule 94.4(99B) for an exception.

This rule is intended to implement Iowa Code sections 99B.2(1) and 99B.6 and 1983 Iowa Code Supplement section 99B.7(1) as amended by 19845 Iowa Acts, House File 2015 Senate File 349.

[Filed 9/20/85, effective 11/13/85]
[Published 10/9/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/9/85.

ARC 6033

SUBSTANCE ABUSE,
IOWA DEPARTMENT OF[805]

Pursuant to the authority of Iowa Code section 125.7, the Iowa Department of Substance Abuse hereby adopts amendments to Chapter 3 of the Iowa Administrative Code entitled, "Licensure Standards for Substance Abuse Treatment Programs," which were approved by the Iowa Commission on Substance Abuse on September 18, 1985.

These rules were published as a Notice of Intended Action on June 19, 1985, as ARC 5592.

The term "/intermediate care" is being deleted as an editorial change in subrule 3.22(12) paragraph "b," rule 3.24(125); and subrules 3.24(1), 3.24(3), 3.24(4), 3.24(6), 3.24(7), 3.24(9), 3.24(10), 3.24(11), 3.24(12), 3.24(13) and 3.24(14). In addition, the above indicated editorial change is being made in rule 3.25(125); and subrules 3.25(1), 3.25(2), 3.25(3), 3.25(8) and 3.25(9).

Rule 805—3.1(125) is being amended to remove subrule numbers, add new definitions and alphabetize all existing and new definitions.

Subrule 3.7(2), paragraph "a" is being amended to specify that prior notification to the program of onsite visits for licensure is not required by the department.

Amendments to subrules 3.5(1), 3.12(1) and 3.17(5) are editorial revisions to correct the address of the department.

Rule 805—3.6(125), subrule 3.7(1), and subrule 3.7(2) are being amended to reflect the current operations of the department in regard to the licensure application process.

Subrule 3.2(1) is being amended to reflect the current category of substance abuse services for which a license may be issued.

Subrule 3.17(6) is being added to comply with Iowa Code section 22.7 (open records law).

Subrule 3.22(3) is being amended to include "inpatient" and "halfway house" treatment as new separate categories in the procedures manual to include written policies, procedures and definitions.

Subrule 3.22(4) is being substantially rewritten to more adequately meet the needs of the local programs for fiscal management.

Subrule 3.22(5) is being amended to revise the timeframe for review of the confidentiality laws and regulations by new employees to a more restrictive timeline.

Subrule 3.22(6) is being amended to clarify the requirement for medical histories and physical examinations for clients admitted to outpatient and residential treatment services.

Subrule 3.22(9) is being amended to outline and define provisions for treatment supervision and eliminate the requirement that other supportive and professional services are available as previously defined under this rule.

Subrules 3.22(10), 3.22(11), 3.22(12) and 3.22(15) are being amended as editorial revisions and minor language modifications to clarify the standards and ensure that they meet the needs of the programs.

Subrule 3.22(14) is being amended to require the listing of specific services to be maintained by the local programs for the purpose of referral.

Subrule 3.22(17), paragraphs "g" and "h" are being amended to clarify the proper use of criminal justice release of information forms for substance abuse clients involved in the criminal justice system.

Subrule 3.22(17) is relettered to insert new paragraph "h."

Rule 3.23(125), subrules 3.23(1), 3.23(2), 3.23(4), rule 3.24(125) and subrule 3.24(2) amendments were essentially editorial revisions for purposes of clarification and accuracy of terminology and requirements for residential and halfway house programs.

Subrule 3.24(5) is amended to further define specific requirements for the provision of primary residential programs, extended residential programs and halfway house services.

Subrules 3.24(6), 3.24(7), 3.24(8) and 3.24(10) are revised to include editorial revisions for the purpose of clarification and to ensure the uniformity of terms, such as "halfway house" throughout these standards.

The only changes from the Notice of Intended Action include: (1) In rule 805—3.1(125), the definition of "extended residential program" is being further clarified by including the term "residential" after "primary," and the phrase "chemical dependency rehabilitation services" replaces the term "extended treatment." (2) In subrule 3.23(4), paragraph "a" the term "as indicated" is not deleted as was indicated in the Notice of Intended Action. (3) In subrule 3.24(5), paragraphs "a," "b" and "c" "at least" is inserted to read "to reflect at least" to consistently indicate minimum standards. (4) In subrule 3.24(8), paragraph "a" the term "as indicated" is not deleted as was indicated in the Notice of Intended Action.

These rules are intended to implement the Iowa Code Chapter 125.

These rules will become effective on November 13, 1985.

SUBSTANCE ABUSE, IOWA DEPARTMENT OF[805] (cont'd)

ITEM 1. Chapter 3 is amended by striking “/intermediate care” and substituting “and halfway house” in the following rules.

3.22(12), paragraph “b”

3.24(1)

3.24(3)

3.24(4)

3.24(9)

3.24(11)

3.24(12)

3.24(13)

3.24(14)

3.25(125)

3.25(1)

3.25(2)

3.25(3)

3.25(8)

3.25(9)

ITEM 2. Amend rule 805—3.1(125) by removing subrule numbers and arranging all existing definitions in alphabetical order; and further amend said rule by adding the following new definitions.

“Chemical dependency rehabilitation services” means those individual or group services that are directly related to chemical dependency or the individual treatment plan. These services include individual, group and family counseling, educational services, self-help groups and structured recreational activities. They do not include active employment or education courses beyond the secondary level.

“Extended residential program” means a twenty-four-hour, seven-day-a-week substance abuse treatment program that offers primary residential treatment services followed by a combination of chemical dependency rehabilitation services and community ancillary services. Clients must participate in an average of thirty hours of chemical dependency rehabilitation services per week.

“Halfway house” means a twenty-four-hour, seven-day-a-week substance abuse treatment program offering treatment and rehabilitation services to facilitate the individual’s reintegration into the community, most often following completion of a primary care program. Individuals receive less intensive treatment in this setting as compared with residential treatment, and may participate in activities or work outside the facility during the day. Major emphasis is on aftercare and community ancillary services. Clients must participate in at least five hours of structured chemical dependency rehabilitation services per week.

“Inpatient program” means a twenty-four-hour, seven-day-a-week substance abuse treatment program within a hospital setting. Intensive primary treatment and rehabilitation services are offered to individuals who are considered unable to live or work in the community due to medical, social, emotional or physical disabilities resulting from substance abuse. Physicians are available at all times in order to provide immediate medical attention.

“Intermediate treatment” means substance abuse treatment services provided in a primary residential, extended residential or halfway house.

ITEM 3. Amend rule 805—3.1(125) by revising the following definitions to read as follows:

“Assessment” means the process of evaluating an individual’s strengths, weaknesses, problems, current status, and needs so that a treatment plan, if appropriate, can be developed.

“Primary Residential/intermediate care program” means a twenty-four-hour, live-in seven-day-a-week substance abuse treatment program facility offering intensive primary treatment and rehabilitation services to facilitate the substance abuser’s ability to live and work in the community. Individuals who are considered unable to live or work in the community due to social, emotional, or physical disabilities resulting from substance abuse. Clients must participate in at least fifty hours of structured chemical dependency rehabilitation services per week.

ITEM 4. Amend subrule 3.2(1) to read as follows:

3.2(1) Categories. The categories of services for which licenses will be issued are:

a. Inpatient;

b. Residential/intermediate care;

c. Nonresidential and outpatient Halfway house;

d. Chemical substitute, antagonist and detoxification. Nonresidential and outpatient;

e. Chemical substitute, antagonist and detoxification; and

f. Intake and assessment.

ITEM 5. Amend subrule 3.5(1) to read as follows:

3.5(1) Application information. An applicant for licensure shall submit at least the following information on forms provided by and available at the Iowa Department of Substance Abuse, Insurance Exchange Colony Building, Suite 202 500, 505 Fifth Avenue 507 Tenth Street, Des Moines, Iowa 50319, with a return receipt requested.

ITEM 6. Amend rule 805—3.6(125) to read as follows:

805—3.6(125) Application review. An applicant for licensure shall submit a completed application to the department within twenty days from the date the forms are received. The licensure manager shall review the application for completion and request any additional material as needed. A licensure site visit shall be scheduled in written format with a copy mailed to the chairperson of the board and the commission chairperson. Applicants failing to return the forms shall be notified by registered mail that all programs must be licensed in order to continue operating.

ITEM 7. Amend subrule 3.7(1), paragraph “a,” to read as follows:

a. Following the issuance of a license, the treatment program may request technical assistance from the IDSA technical assistance manager so as to bring into conformity areas reported to be in partial or noncompliance to these rules. Such technical assistance shall be provided within thirty days of the applicant’s request. The licensure manager IDSA may also request that technical assistance be provided to the program if deficiencies are noted during a site visit.

ITEM 8. Amend subrule 3.7(2) and paragraph “a” to read as follows:

3.7(2) Onsite visit for licensure. The onsite visit for licensure constitutes the second phase of the licensure process. A licensing site inspection shall be scheduled no later than six months after the department’s receipt of the program’s application to operate a substance abuse treatment program. The department shall not be required to provide advanced notice to the program of the onsite visit for licensure.

a. The onsite visit team will consist of designated members of the IDSA staff, the licensure manager (team leader) and selected consultants as approved by the director.

SUBSTANCE ABUSE, IOWA DEPARTMENT OF [805] (cont'd)

ITEM 9. Amend subrule 3.12(1) to read as follows:

3.12(1) Notice of contest. The notice of contest to the actions of the commission shall be filed in writing at the Iowa Department of Substance Abuse, Suite 202 500, Insurance Exchange Colony Building, 505 Fifth Avenue 507 Tenth Street, Des Moines, Iowa 50319. No particular form shall be required; however, the notice shall state the decision which is being contested and the basis for the contest. This notice shall be received by the department within thirty days after notice of the proposed decision of the commission was received.

ITEM 10. Amend rule 3.17(125) to read as follows:

805—3.17(125) Complaints. Any person may request an inspection of a program licensed pursuant to Iowa Code chapter 125; ~~the Code~~, by filing with the department a complaint of any alleged violation of applicable requirements of the Code of Iowa Code or the rules adopted pursuant to it. The complaint shall state in a specific manner the basis of the complaint and the full name and address of the complainant. The complaint may be delivered personally or by mail to the director at Suite 202 500, Insurance Exchange Colony Building, 505 Fifth Avenue 507 Tenth Street, Des Moines, Iowa 50319. The executive director and board chairperson of the program involved shall be notified that the department has received a complaint within forty-eight hours of its receipt by the department. Timely filing is required in order to ensure the availability of witnesses and to avoid initiation of an investigation under conditions which may have been significantly altered during the period of delay.

ITEM 11. Amend subrule 3.17(5) to read as follows:

3.17(5) Contested cases. The commission shall hear all cases of programs who notify the department within twenty working days after receipt of the inspection report of their desire to contest the results of the inspection. The notice of contest shall be filed in writing at the Iowa Department of Substance Abuse, Suite 202 500, Insurance Exchange Colony Building, 505 Fifth Avenue 507 Tenth Street, Des Moines, Iowa 50319. All contested cases shall be conducted pursuant to rule 805—3.12(125).

ITEM 12. Amend rule 3.17(125) by adding subrule 3.17(6) to read as follows:

3.17(6) Confidentiality. Written reports by the department, information provided to or obtained by the department through complaints or investigations concerning any program shall be available to the public in accordance with Iowa Code section 22.7.

ITEM 13. Amend subrule 3.22(3) by adding two new paragraphs as paragraphs "r" and "t"; and relettering existing paragraphs as follows:

- r. Inpatient treatment;
- ~~r.~~ s. Residential and intermediate treatment;
- t. Halfway house treatment;
- ~~s.~~ u. Outreach;
- ~~t.~~ v. Detoxification; and,
- ~~u.~~ w. Medication control.

ITEM 14. Rescind subrule 3.22(4) including paragraphs "a" through "f," and insert in lieu thereof the following:

3.22(4) Fiscal management. The program shall ensure proper fiscal management which shall include the following:

a. The preparation and maintenance of an annual written budget shall include the following:

1. Itemized projected expenses by line item and revenue by funding source.

2. Review and approval by the board of directors prior to the beginning of the budget year.

3. Approval by the board of directors for revisions made during the fiscal year.

4. Work paper support for budgeted projections.

b. The fiscal management system shall be maintained in accordance with generally accepted accounting principles, including internal controls to reasonably protect the agency assets. This shall be verified by an independent fiscal audit of the center by the state auditor's office or certified public accountant based on an agreement entered into by the board of directors.

c. Documentation shall be maintained which demonstrates compliance with the following requirements.

1. Financial transactions shall be handled in a consistent manner, recorded on a current basis, and summarized monthly.

2. A separate record of cash receipts (received in person or by mail) shall be made by a staff person other than the one who records it into the accounting records. The two records shall be reconciled at least monthly.

3. The board of directors shall establish a policy governing the frequency of deposit for cash receipts. Cash and checks shall be deposited according to the board's policy.

4. Bank reconciliations shall be prepared or reviewed on a current monthly basis by a staff member who does not handle cash or does not record cash transactions.

5. Approval of all invoices and verification of clerical accuracy shall be required.

6. When checks require only one signature, the staff member responsible for keeping accounting records shall not have authority to sign checks.

7. Payroll records shall be maintained which include a timesheet signed by the employee and supervisor, the amount of payroll taxes withheld, payment of taxes by the applicable due date, and accrued vacation and sick leave.

8. A policy shall exist to determine classification of purchase as fixed assets. Records of fixed assets, which include an annual inventory by location and a depreciation schedule, shall be maintained.

9. Procedures shall exist to collect fees from clients and third party payers.

10. The authority to write off uncollectible accounts shall reside with the board of directors.

d. Current financial reports shall be provided at least quarterly to the program management and the board of directors. These reports shall include itemized income and expenses compared to the budget.

e. The financial management system shall reflect the financial position of the agency including assets, liabilities and reserves. The system shall provide a basis for information required by all funding sources.

f. There shall be an insurance program that provides for the protection of the physical and financial resources of the program which provides coverage for all people, buildings, and equipment. The insurance program shall be reviewed annually by the board of directors.

ITEM 15. Amend subrule 3.22(5), paragraph "k," item "8" to read as follows:

8. Documentation of review and adherence to confidentiality laws and regulations. ~~at least during orientation.~~ This review and agreement shall occur prior to assumption of duties.

SUBSTANCE ABUSE, IOWA DEPARTMENT OF[805] (cont'd)

ITEM 16. Amend subrule 3.22(6) to read as follows:

3.22(6) Medical services. The applicant shall have policies and procedures developed in conjunction with a physician to examine and evaluate substance abusers seeking treatment or rehabilitation. Individuals who are scheduled to enter a residential/~~intermediate~~ or *halfway house* facility, chemotherapy or emergency care facility shall undergo a medical history and physical examination. Laboratory examinations may be done as deemed necessary by the physician. A medical history, the physical and laboratory examinations required for these clients shall be performed as soon as possible, but no later than twenty-one days after entrance into the program. *On individuals who are scheduled to enter an outpatient program, a medical history shall be conducted no later than thirty days after admission.*

The applicant shall have written policies and procedures defining the appropriate action to be taken when a medical emergency arises.

ITEM 17. Amend subrule 3.22(9) to read as follows:

3.22(9) Supportive and professional Treatment supervisor services. ~~The program shall have the following services available to all clients in need of these services either onsite or through a written agreement with an outside agency:~~

- a. ~~Vocational rehabilitation services;~~
- b. ~~Legal services;~~
- c. ~~Educational services;~~
- d. ~~Financial counseling;~~
- e. ~~Recreational activities;~~
- f. ~~Treatment supervisor services.~~ The program shall have available consultation from a treatment supervisor. This individual will assist the program in developing policies and procedures relating to the assessment and treatment of psychopathology. The treatment supervisor will assist in the training of the staff, reviewing of case records, and providing assistance to the clinical staff in client treatment. *The executive director or designee shall be ultimately responsible for clinical services and implementation of treatment services to clients.*

ITEM 18. Amend subrule 3.22(10), paragraphs "e," "f" and "g" to read as follows:

e. Staff development activities and participation in state, national and regional training shall be planned and scheduled. These activities shall be documented in order to evaluate their scope, effectiveness, attendance, and amount of time spent on such efforts. The written plan for onsite staff development and activities for professional growth and development of program personnel shall be ~~annually reviewed and approved by the board of directors based on the annual needs assessment~~ and shall be available to all personnel.

f. Minutes shall be kept of onsite training activities and shall include, but not necessarily be limited to:

- 1. Date of the meeting;
- 2. Names of persons attending;
- 3. Topics discussed; to include name and title of ~~presenters~~ *presenters*; and,
- 4. Recommendations made.

g. The individual responsible for supervising staff development activities shall conduct at least an annual needs assessment. ~~and shall meet at least quarterly with staff members to determine whether they believe staff development activities are suited to their needs and to elicit their advice on ways of improving these activities.~~

ITEM 19. Amend subrule 3.22(11), paragraph "b," as follows. Also, amend paragraph "f," and add paragraph "g" to read as follows:

b. The following information shall be collected and recorded on standardized formats developed by the program on all individuals applying for services prior to or at the time of admission and shall become part of that individual's case record;

- 1. Identifying information which includes name, address, telephone number;
 - 2. Demographic information which includes date of birth, sex, race or ~~ethnic origin~~ *ethnicity*;
 - 3. Sufficient identification of the referral source;
 - 4. Presenting problem;
 - 5. Substance abuse history which will include type, amount, frequency and duration of substance use;
 - 6. Family history which will describe the family composition and dynamics;
 - 7. Education status and history which describe levels of achievement;
 - 8. Vocational/employment status and history which will describe skills or trades learned; record of jobs held, duration, reasons for leaving;
 - 9. Peers and friends, *which will describe interpersonal relationships and interaction with individuals and groups outside of the home*;
 - 10. Legal history which will describe any involvement with the criminal justice system;
 - 11. Medical and health history including any incidences of overdoses; and any physical indicators of contagious diseases with necessary action as required by the Code of Iowa Code;
 - 12. Psychological history and mental status;
 - 13. Any other relevant information which will assist in formulating an initial assessment of the client; and,
 - 14. A financial evaluation to include insurance coverage.
- f. Sufficient information shall be collected during the intake process so that ~~an~~ *the assessment process allows for the development of a complete assessment of the client's status is complete* and a comprehensive ~~treatment plan~~ *treatment plan* can be developed.
- g. *A complete assessment of the client's status shall be developed, which shall be an analysis and synthesis of the intake data, and shall address the client's strengths, problems, and areas of clinical concern.*

ITEM 20. Amend subrule 3.22(12), paragraph "c," by rescinding "3," which reads as follows, and renumbering "4" and "5" accordingly:

3. A delineation of primary and support services to be provided the client;

ITEM 21. Amend subrule 3.22(14), paragraph "b," to read as follows:

b. The program shall maintain a list of all appropriate resources available within the service area: *which shall include provision for vocational rehabilitation, legal; education and financial services.* The list of resources shall minimally contain:

- 1. The name and location of the resource;
- 2. The types of services provided by the resource;
- 3. ~~The name(s) of a contact person(s); and,~~ *The procedures to be followed in making referrals, or title of contact person; and,*
- 4. The criteria for determining a client's eligibility for services.

SUBSTANCE ABUSE, IOWA DEPARTMENT OF[805] (cont'd)

ITEM 22. Amend subrule 3.22(15), paragraph "b," by rescinding "3," which reads as follows, and renumbering "4" to "6" accordingly:

3. A delineation of primary and support services to be provided the client;

ITEM 23. Amend subrule 3.22(17), paragraph "g," item "6" to read as follows:

6. *Except where the client is a mandatory criminal justice system referral, a statement that the consent is subject to revocation at any time, and date, event or condition upon which it will expire without express revocation.*

ITEM 24. Amend subrule 3.22(17), by adding the following new paragraph "h" and relettering paragraphs "h" through "n" as "i" through "o."

h. Where participation by an individual in a treatment program is made a condition of the individual's release from confinement, the disposition or status of any criminal proceedings against the individual or the execution or suspension of any sentence imposed, such individual may consent to unrestricted communication between any program in which the individual is enrolled in fulfillment of the above condition and (1) the court granting probation or other post-trial or retrial conditional release, (2) the parole board or other authority granting parole, or (3) probation or parole officers responsible for the individual's supervision. In addition, where consent is given for disclosures in this manner, such consent shall expire sixty days after it is given or when there is substantial change in the person's status, whichever is later.

ITEM 25. Amend rule 3.23(125), introductory paragraph, to read as follows:

805—3.23(125) Specific standards for outpatient substance abuse program. An outpatient care program shall be ~~designated~~ *designed* to provide a variety of diagnostic and primary substance abuse services on both a scheduled basis and a nonscheduled basis in a nonresidential therapeutic setting.

ITEM 26. Amend subrule 3.23(1), paragraph "c," to read as follows:

c. Organizational ~~of~~ structure;

ITEM 27. Rescind subrule 3.23(2) and reserve.

ITEM 28. Amend subrule 3.23(4) to read as follows:

3.23(4) Urinalysis. All programs serving clients who are receiving treatment for use or abuse of a controlled substance, ~~except marijuana,~~ shall establish policies and procedures, *if applicable,* for the collection of urine specimens and utilization of urinalysis results.

a. Urine specimens obtained from clients shall be collected under direct supervision and analyzed ~~for morphine, methadone, cocaine, codeine, amphetamines, barbiturates, and other substances~~ *as indicated by the program.*

b. Any laboratory used by the program for urine testing and analysis shall comply, *if applicable,* with all federal and state proficiency testing programs.

c. Client records shall reflect the manner in which urine test results are utilized in treatment.

d. For programs with a urinalysis service, policies shall be developed concerning measures to be employed when urine specimens of clients are found to contain ~~the~~ *the* ~~forementioned~~ substances.

ITEM 29. Amend subrule 3.23(5), paragraph "d," to read as follows:

d. There shall be a written plan outlining procedures to be followed in the event of fire or tornado. This plan

shall be conspicuously displayed at the facility ~~and included as a part of the new staff orientation.~~

ITEM 30. Amend rule 3.24(125), introductory paragraph, to read as follows:

805—3.24(125) Specific standards for residential/intermediate care substance abuse and halfway house program. A residential/~~intermediate care and halfway house~~ program shall be designed to provide comprehensive diagnostic, treatment and rehabilitation services on a scheduled or nonscheduled basis in a ~~residential~~ *twenty-four-hour* therapeutic setting.

ITEM 31. Amend subrule 3.24(2), paragraph "a," first line to read as follows:

a. This plan shall include, but not *be* limited to, the following:

ITEM 32. Rescind subrule 3.24(5) and insert in lieu thereof the following:

3.24(5) Chemical dependency rehabilitation services:

a. *Primary residential program.* The program shall maintain a schedule to reflect at least fifty hours per week per client of chemical dependency rehabilitation services.

b. *Extended residential program.* The program shall maintain a schedule to reflect at least an average of thirty hours per week per client of chemical dependency rehabilitation services.

c. *Halfway house.* The program shall maintain a schedule to reflect at least five hours per week per client of chemical dependency rehabilitation services.

ITEM 33. Amend subrule 3.24(6) to read as follows:

3.24(6) Health and fire safety inspections. Residential/~~intermediate~~ service and halfway house substance abuse treatment facilities shall comply with appropriate state department of health rules, state fire marshal's rules and fire ordinances, and appropriate local health, fire, occupancy code, and safety regulations. The program shall maintain documentation of such compliance.

a. Residential and halfway house substance abuse treatment facilities required to be licensed by the Iowa department of substance abuse shall comply with standards for food service sanitation in accordance with rules promulgated by the Iowa department of agriculture pursuant to 30—chapter 37 of the Iowa Administrative Code.

b. Food service operations in substance abuse residential and halfway house treatment facilities shall be inspected on an annual basis by the Iowa department of agriculture or appropriate local boards of health having agreements with the department of agriculture to conduct such inspections.

ITEM 34. Amend subrule 3.24(7) to read as follows:

3.24(7) Meals. A residential/~~intermediate care~~ program shall provide a minimum of three meals per day to each client enrolled in the program. Residential/~~intermediate care~~ programs such as halfway houses, live-in/work-out centers, and other programs where clients are not present during meal time, provisions shall be made to ~~provide~~ *make available* the necessary meals. Menus shall be prepared in consultation with a qualified dietitian. If clients are ~~utilized~~ *allowed* to prepare meals, the program shall document conformity with all commonly accepted policies and procedures of state health regulations and food hygiene.

ITEM 35. Amend subrule 3.24(8) to read as follows:

3.24(8) Urinalysis. All programs serving clients who are receiving treatment for use or abuse of a controlled

SUBSTANCE ABUSE, IOWA DEPARTMENT OF[805] (cont'd)

substance; ~~except marijuana~~, shall establish policies and procedures, *if applicable*, for the collection of *urine specimens* and utilization of urinalysis results.

a. Urine specimens obtained from clients shall be collected under direct supervision and analyzed ~~for morphine, methadone, cocaine, codeine, amphetamines, barbiturates, and other substances~~ as indicated by the program.

b. Any laboratory used by the program for urine testing and analysis shall comply, *if applicable*, with all federal and state proficiency testing programs.

c. Client records shall reflect the manner in which urine test results are utilized in treatment.

d. For programs with a urinalysis service, policies shall be developed concerning measures to be employed when urine specimens of clients are found to contain the ~~forementioned~~ substances.

ITEM 36. Amend subrule 3.24(10) to read as follows:

3.24(10) Visitation with family and friends. A residential/~~intermediate~~ and halfway house ~~care~~ program

shall have policies and procedures which will ensure opportunities for continuing contact with family and friends. If such visiting opportunities are clinically contraindicated, they shall be approved on an individual basis by the treatment supervisor and subject to review by the executive director. The justification for restrictions shall be documented in the client record. If clinical indications require restrictions on visitation, such restrictions shall be evaluated for continuing therapeutic effectiveness every seven days by the treatment supervisor and primary counselor.

The program shall establish visiting hours which will be conspicuously displayed at the facility *and in such a manner to be visible to those entering the facility*.

[Filed 9/20/85, effective 11/13/85]

[Published 10/9/85]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 10/9/85.

State of Iowa

Executive Department

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

EXECUTIVE ORDER NUMBER SIXTEEN

WHEREAS, research has clearly demonstrated the importance of physical fitness in sustaining a healthy, happy and productive life; and

WHEREAS, the Governor of the State of Iowa continually seeks ways to improve the overall health and fitness of Iowa's citizens; and

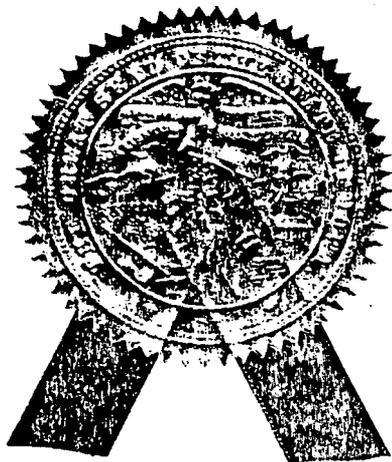
WHEREAS, the State of Iowa has an abundance of talent and leadership within its public and private health communities, sports and recreational associations, business and private organizations;

NOW THEREFORE, I Terry E. Branstad, Governor of the State of Iowa, do hereby officially establish the Iowa Governor's Council on Physical Fitness and Sports shall meet the following objectives:

- I. To enlist the active support of individual citizens, civic groups, business and industry, professional associations, amateur and professional sports groups, voluntary organizations and others in the effort to plan, promote and improve physical fitness programs for all citizens.
- II. To maintain liaison with governmental, private, and other agencies regarding physical fitness programs.
- III. To recognize outstanding developments, contributions, and achievements in physical fitness and sports.
- IV. To sponsor and support physical fitness workshops, clinics, conferences, and other related activities throughout the state.
- V. To collect and disseminate pertinent physical fitness information and news of noteworthy developments in the state and across the nation. This will involve the active participation of the Iowa Council with fellow Councils in other states, with the National Association of Governor's Councils on Physical Fitness and Sports, and with the President's Council on Physical Fitness and Sports.

- VI. To initiate public service advertising campaigns and public support programs.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 10th day of May in the year of our Lord one thousand nine hundred and eighty-five.



Terry E. Branstad
GOVERNOR

ATTEST:

Mary Jane O'Neil
SECRETARY OF STATE



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

EXECUTIVE ORDER NUMBER SEVENTEEN

- WHEREAS, Iowa's economy in both agriculture and manufacturing is undergoing a restructuring; and
- WHEREAS, the future economic prosperity of Iowa depends upon our ability to respond to shifting economic trends; and
- WHEREAS, a comprehensive economic strategy must be developed for Iowa to guide policy initiatives; and
- WHEREAS, all sectors of Iowa's economy must work together to develop a consensus on an economic strategy for Iowa; and
- WHEREAS, the Governor's Committee on Iowa's Future and Growth and the General Assembly suggested the creation of an Iowa Partnership for Economic Progress to develop a consensus on economic development strategies for our state.

NOW THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by virtue of the authority vested in me by the laws and Constitution of the State of Iowa do hereby create an Iowa Partnership for Economic Progress composed of 13 members appointed by the Governor from the government, business, education and labor sectors of Iowa. The chairperson shall be appointed by the Governor, all members shall serve at the pleasure of the Governor, and meet upon the call of the chair.

The Partnership shall:

- I. Review the studies of Iowa's economy, including the report of the Governor's Committee for Iowa's Future Growth, and develop strategies for economic development policy for the state;
- II. Review and further develop the recommendations of the Committee on Iowa's Future Growth;
- III. Develop consensus on important economic development issues;
- IV. Identify areas where partnership efforts among state and local government, education, labor and business can assist in the job creation efforts in Iowa;

- V. Identify policy initiatives needed to further the economic development strategy for Iowa;
- VI. Identify organization and research needs for economic development efforts in the state; and
- VII. Report to the Governor and the General Assembly on the above and other matters deemed important, as appropriate.

The Partnership shall utilize the Development Commission staff and shall seek support from private sector and educational institutions in the state.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 16th day of May in the year of our Lord one thousand nine hundred and eighty-five.



Terry E. Branstad
GOVERNOR

ATTEST:

Mary Jane Adell
SECRETARY OF STATE



State of Iowa
Executive Department

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

EXECUTIVE ORDER NUMBER EIGHTEEN

WHEREAS, the State of Iowa Communications Task Force has recommended that the state coordinate telecommunications and information management systems to maximize efficiency in a cost effective manner and,

WHEREAS, telecommunications and information management are rapidly changing technologies and,

WHEREAS, the state needs to assign the responsibility for planning, coordinating, developing and facilitating implementation of agency plans as they affect statewide telecommunications and information management systems.

NOW THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by the authority vested in me by the laws and Constitution of the State of Iowa do hereby order that:

- I. A Telecommunication and Information Management Council (TIM Council) shall be created to coordinate, develop a coordinated, cost effective, statewide telecommunications and information management plan for the State of Iowa. This plan shall be approved by each member of the Council.
- II. The TIM Council shall consist of the nine voting following members:
 - (a) the state comptroller
 - (b) the director of the department of general services
 - (c) the commissioner of public safety
 - (d) the director of the department of transportation
 - (e) the executive secretary of the board of regents with one representative each from the University of Iowa, Iowa State University, University of Northern Iowa, and the University Hospital
 - (f) the executive director of the department of public broadcasting
 - (g) the superintendent of public instruction
 - (h) the commissioner of the department of human services
 - (i) the adjutant general

The Governor may appoint additional members to the TIM Council. The chair of the TIM Council shall be appointed by, report to, and serve at the pleasure of the Governor.

- III. The TIM Council shall assist and coordinate the merger of existing and planned communications and data networks and facilities where feasible and economically justified. The Council shall coordinate policies, planning and direction of state networks and shall determine what agency will be responsible for managing and operating a shared system.
- IV. The TIM Council shall coordinate planning for financing telecommunications and information management improvements which affect statewide or multi-agency plans.
- V. Agencies shall submit drafts of plans which have impact upon the state telecommunications and information management plan to the TIM Council for approval based upon determination of compatibility of system designs, operations and equipment.
- VI. Each agency represented on the TIM Council shall cooperate in promoting the principles and objectives contained in this order.
- VII. The TIM Council shall serve as a consultant, a resource and a facilitator to all state agencies. The TIM Council shall serve agencies to combine the state's buying power in procurement of resources and negotiation of contracts, to coordinate equipment maintenance, software development, research of technologies, hardware and software, and training programs where appropriate and cost effective.



ATTEST:

IN TESTIMONY WHEREOF, I have here unto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 9th day of July in the year of our Lord one thousand nine hundred eighty-five.

Kerry E. Brandstad
GOVERNOR

Mary Jane Odell
SECRETARY OF STATE



State of Iowa
Executive Department

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

EXECUTIVE ORDER NUMBER NINETEEN

WHEREAS, economic conditions in Iowa are reflecting a depressed agricultural economy and a softening demand for consumer goods; and

WHEREAS, these factors have generated a decline in actual state revenues compared to earlier estimates for fiscal year 1986; and

WHEREAS, the state comptroller has concluded that without revisions to the state budget in fiscal year 1986, the shortfall in revenues will result in a general fund deficit on June 30, 1986 of \$91.1 million; and

WHEREAS, Article VII of the Iowa Constitution prohibits state budget deficits; and

WHEREAS, Iowa Code Section 8.31, provides a procedure for uniform and prorated reductions of state appropriations by the Governor to avoid overdrafts and deficits; and

WHEREAS, without implementing these uniform, prorated reductions in state appropriations, the state will face a \$91.1 million deficit in the general fund on June 30, 1986.

NOW THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by the power and authority invested in me by the Constitution and the laws of Iowa, do hereby make the following findings and orders:

1. I find that the estimated budget resources during fiscal year 1986 are insufficient to pay all appropriations in full as required by Iowa Code Section 8.30, to wit:

General fund balance, June 30, 1985	<u>\$.0 million</u>
Fiscal year 1986 receipts (net)	<u>\$2,123.0 million</u>
Fiscal year 1986 appropriations and standing estimated appropriations	<u>\$2,214.1 million</u>
TOTAL	(\$91.1 million) =====

- 2. I further find that a 3.85 percent reduction in appropriations subject to Iowa Code Section 8.31 is necessary to prevent an overdraft or deficit in the general fund of the state at the end of this fiscal year.
- 3. I hereby direct the implementation of Iowa Code Section 8.31 requiring the uniform modification of allotment requests filed pursuant to that section for each of the remaining three-quarters of the fiscal year to achieve an annual 3.85 percent fiscal year reduction in each respective appropriation unless subsequent projections provide good reason to alter these findings.
- 4. I further direct the state comptroller to prepare such modified allotments for the second quarter of fiscal year 1986, which commences October 1, with the exception of appropriations excluded by Iowa Code Section 8.2(1), pertaining to the courts, the legislature, constructive trust funds such as tax refund allocations, federal highway matching funds, and obligated, encumbered or contracted capital items, and those appropriations that by law have been distributed 100 percent to date.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 18th day of September in the year of our Lord one-thousand nine hundred and eighty-five.



Attest:

Mary Jane Odell
Secretary of State

Terry E. Branstad
Governor

SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL

THOMAS J. MILLER

August 1985

CIVIL RIGHTS

Age Discrimination: Police Officer and Fire Fighter Retirement Benefit Allowance. 29 U.S.C. § 621; Iowa Code Chapters 411, 601A (1985); §§ 411.1(11), 411.1(13), 411.6(1)(a), 411.6(2). Chapter 411 does not discriminate on the basis of age by failing to necessarily provide increased benefits for additional longevity of service beyond twenty-two years. (Baustian to McIntee, State Representative, 8/5/85) #85-8-2(L)

COMPTROLLER

Federal Regulation of Social Security Number Information. PL 93-579; 5 U.S.C. § 553(c)(2)(C)(i-ii). State may require disclosure of employee's social security number; number may subsequently be used in conjunction with benefit programs. (Galenbeck to Krahl, State Comptroller, 8/6/85) #85-8-3(L)

COUNTIES AND COUNTY OFFICERS

Auditors and Boards of Supervisors. Incorporation of rural water districts. Iowa Code ch. 357A (1985). Proposed rural water district area may include existing benefitted districts, and rural service areas of other water systems not organized under ch. 357A; a petition for organization of a district would not be void under § 357A.2 where it described the area as "all unincorporated land in the county" rather than by sections. (Smith to Hughes, Ringgold County Attorney, 8/8/85) #85-8-7(L)

County Attorney; Conflict of Interest With Civil Litigation. Iowa Code § 331.755(2) (1985); Iowa Code of Professional Responsibility, Canon 7 and Canon 9. A county attorney has a conflict of interest in representing an individual in civil litigation in his or her county which has resulted in criminal charges being filed for violation of a state law, including traffic offenses; this is true even if a special prosecutor is appointed to represent the State of Iowa in the criminal case. (Blink to Belson, Ida County Attorney, 8/13/85) #85-8-9(L)

CRIMINAL LAW

Obscene Materials. Iowa Code §§ 728.1(1), 728.1(2), 728.3, 728.4 (1985). An opinion will not be rendered on an issue which is presently the subject of litigation. In order for a seller of magazines containing advertisements for hard core pornography to be convicted of aiding and abetting the sale of hard core pornography as proscribed in § 728.4, proof that the seller had prior knowledge that hard core pornography was being offered would be required. (Dorff to Van Maanen, State Representative, 8/6/85) #85-8-4(L)

LAW ENFORCEMENT

Public Safety, Department of. Iowa Code §§ 692.17-692.18 (1985). The provisions of Iowa Code § 692.17 (1985) are applicable only to the Iowa Department of Public Safety, and the provisions of Iowa Code § 692.18 (1985) are applicable only to information received from that department and not to information generated by local law enforcement agencies. (Hayward to Metcalf, 8/26/85) #85-8-10(L)

MOTOR VEHICLES

Personalized Registration Plates. Iowa Code § 321.34(5) (1985). Department of Transportation has statutory authority to require \$25 application fee for personalized license plates replaced during registration year in which new metal plates are issued. (Ewald to Angrick, Citizens' Aide/Ombudsman 8/2/85) #85-8-1(L)

MUNICIPALITIES

Amendment to Veteran's Preference under Civil Service. Iowa Code §§ 4.5, 19A.9(21), 400.10, 400.11 (1985). Senate File 266, which amends the veterans preference provisions of the civil service, applies only to certified eligible lists certified after the amendment's effective date of July 1, 1985. The additional points to be added to a veteran's grade or score are added to the grade or score of veterans qualifying for passage of the examination for appointment to a position. (DiDonato to O'Kane, State Representative, 8/6/85) #85-8-5(L)

SUBSTANCE ABUSE

Mental Illness; Court Costs. Iowa Code Chapter 125, §§ 230.10, 625.1 (1985). Costs incurred in unsuccessful commitment proceedings under chapter 230 may not be taxed to the individual or their family. Chapter 125 does not provide for taxing applicants in unsuccessful proceedings and absent a court order assessing costs against an applicant as a "losing party," applicants should not be assessed costs pursuant to § 625.1. (McGuire to Norland, Worth County Attorney, 8/27/85) #85-8-11(L)

TAXATION

Bankrupt Railroads. Iowa Code § 444.3 (1985). Property taxes collected upon valuations excluded from use in computing the levy under section 444.3 shall be distributed to the various taxing districts if collected within 60 days of delinquency. Property of railroads that are not bankrupt or in bankruptcy proceedings at the time of levy shall be included in computing the levy. (Hunacek to Johnson, Auditor of State, 8/6/85) #85-8-6(L)

TOWNSHIPS AND TOWNSHIP TRUSTEES

Fire Protection and Ambulance Services. Iowa Code § 359.42 (1985). The township trustees have implied authority to define what fire protection and ambulance services will be provided in their township. The trustees have no authority to provide supplemental ambulance services when the county has already provided for ambulance services. (Weeg to Goeke, Bremer County Attorney, 8/12/85) #85-8-8(L)

STATUTES CONSTRUED

<u>1985 Code</u>	<u>Opinion</u>
4.5	85-8-5(L)
19A.9(21)	85-8-5(L)
Ch. 125	85-8-11(L)
230.10	85-8-11(L)
321.34(5)	85-8-1(L)
331.755(2)	85-8-9(L)
357A	85-8-7(L)
359.42	85-8-8(L)
400.10	85-8-5(L)
400.11	85-8-5(L)
411.1(11)	85-8-2(L)
411.1(13)	85-8-2(L)
411.6(1)(a)	85-8-2(L)
411.6(2)	85-8-2(L)
444.3	85-8-6(L)
601A	85-8-2(L)
625.1	85-8-11(L)
692.17 - .18	85-8-10(L)
728.1(1)	85-8-4(L)
728.1(2)	85-8-4(L)
728.3	85-8-4(L)
728.4	85-8-4(L)
 <u>U.S. Const.</u>	
5, § 553(c)(2)(C)(i-ii)	85-8-3(L)

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWA
FILED - September 18, 1985

NOTE: Copies of these opinions may be obtained from the Supreme Court Clerk, State Capitol Building, Des Moines, IA 50319, for a fee of 40 cents per page.

No. 84-1090. MULKINS v. BOARD OF SUPERVISORS.

Appeal from the Iowa District Court for Montgomery County, J. C. Irvin, Judge. Affirmed in part, reversed in part, and remanded. Considered by Reynoldson, C.J., and Uhlenhopp, Harris, McGiverin, and Wolle, JJ. Opinion by Reynoldson, C.J. (12 pages \$4.80)

Plaintiffs appeal from an order striking certain allegations from their petition appealing the denial of damages in a road vacation proceeding. OPINION HOLDS: I. Some of the allegations stricken from the petition were relevant to the plaintiffs' damages and should not have been stricken; other allegations were properly stricken. We hold plaintiffs had the right to plead and prove a prior (1977) abandonment of a road vacation by the county, and the right to plead and prove the events leading up to and including the mandamus decree ordering the board to rebuild the bridge. The trial court erred by striking these allegations from the petition. The allegations relating to events occurring subsequent to the vacation of the road on May 21, 1981, were beyond the critical narrow window of time involved in the "before" and "after" valuation and were properly stricken from the plaintiffs' petition. II. Neither issue preclusion nor claim preclusion dictates a different result. The necessary elements for claim preclusion are absent in this case. The element of identity of issues necessary for issue preclusion is also lacking in this case. For the purposes of the narrow window of time involved in assessing plaintiffs' damages, the mandamus decree was extant. Allegations in the petition relating to its existence should stand.

No. 84-1595. STATE v. SOPPE.

Appeal from the Iowa District Court for Dubuque County, Alan L. Pearson, District Associate Judge. Reversed and remanded with directions. Considered by Reynoldson, C.J., and Uhlenhopp, Harris, McGiverin, and Schultz, JJ. Opinion by Reynoldson, C.J. (10 pages \$4.00)

The State appeals from an order dismissing a trial information charging the defendant with OWI, second offense. OPINION HOLDS: I. We hold the State in this case had a right to appeal the dismissal of the trial information, and we do have jurisdiction of this appeal. II. The 1984 amendment to Iowa Code section 321.281 (codified at Iowa Code § 321.281(2)(c) (1985)) does not operate as an ex post facto clause in these circumstances. However, the legislature did not intend the amendment to apply retroactively to count defendant's preamendment deferred judgment as a previous violation.

NO. 84-1505. LOSEE v. STATE.

Appeal from the Iowa District Court for Lee County, John C. Miller, Judge. Affirmed. Considered by Reynoldson, C.J., and McCormick, Larson, Carter, and Wolle, JJ. Opinion by Wolle, J. (10 pages \$4.00)

Petitioner, an inmate at the Iowa State Penitentiary, appeals from the district court's denial of his application for postconviction relief from a penitentiary disciplinary committee decision. OPINION HOLDS: We find in the record of this disciplinary proceeding adequate support for the prison officials' refusal to grant petitioner's request for a psychological stress evaluation test, as well as adequate evidence to support the disciplinary committee's decision. Petitioner's due process challenges to the committee's decision are without merit.

No. 84-1964. VEACH v. IOWA DEPARTMENT OF TRANSPORTATION.

Appeal from the Iowa District Court for Polk County, Richard A. Strickler, Judge. Reversed and remanded with directions. Considered by Reynoldson, C.J., and McCormick, Larson, Carter, and Wolle, JJ. Opinion by Wolle, J. (7 pages (\$2.80))

The DOT appeals with permission from judicial review ruling temporarily enjoining the department from denying a work permit and declaring a departmental rule unconstitutional. OPINION HOLDS: The State's interest in public safety is substantially served by treating people who refuse chemical testing differently from people who submit to testing. Petitioner was not denied equal protection by a DOT rule denying work permits to persons who refused chemical testing.

No. 84-1588. STATE v. HOFFMAN.

Appeal from the Iowa District Court for Johnson County, John R. Sladek, District Associate Judge. Appeal dismissed. Considered by Reynoldson, C.J., and Uhlenhopp, Harris, McGiverin, and Wolle, JJ. Per Curiam. (2 pages \$.80)

The State appeals from an order denying a motion to amend the trial information to change the charge from OWI, first offense, to OWI, second offense. OPINION HOLDS: Iowa Code section 814.5 discloses no basis for the State to take direct appeal or for this court to grant discretionary review. Assuming, arguendo, we could consider the State's direct appeal as an action in certiorari, we find no ground, following our resolution of the same underlying issue in State v. Soppe, ___ N.W.2d ___ (Iowa 1985), filed today, for granting certiorari.

No. 84-1176. ANTHONY V. STATE.

Appeal from the Iowa District Court for Polk County, A. M. Critelli, Judge. AFFIRMED. Considered by Reynoldson, C.J., and McCormick, Larson, Carter, and Wolle, JJ. Opinion by McCormick, J. (16 pages \$6.40)

Plaintiffs appeal from judgment for the State on their tort claim arising from the rape of one of the plaintiffs by a state prisoner on work release. OPINION HOLDS: I. We overrule the plaintiffs' motion for partial adjudication and motion to strike portions of the appellee's brief; a party may seek affirmance on appeal by relying without a cross-appeal on grounds rejected by the trial court as well as grounds that were accepted. II. The trial court did not err by excluding from evidence a state work-release manual adopted after the events of this case. The plaintiffs argue on appeal that the manual was admissible under an exception to the general rule which excludes evidence of subsequent remedial measures to prove negligence; however, the plaintiffs did not assert this theory of admissibility in the trial court. III. The formulation of a work-release plan falls within the "discretionary function" exception to State tort liability. IV. The trial court did not err by finding that the State had exercised due care in supervising and controlling the prisoner. To the extent the plaintiffs complain about the terms and conditions of the work-release plan, the discretionary function exception once again applies; to the extent the plaintiffs complain about the implementation of the work-release plan, the evidence was not so strong as to compel a finding of negligence as a matter of law. V. The State had no duty to warn the plaintiffs of the prisoner's background. The prisoner had made no threats, so no potential victim could be readily identified for warning. In these circumstances the trial court was correct in ruling that no duty to warn existed.

No. 84-1533. IN RE MARRIAGE OF HALL.

Appeal from the Iowa District Court for Polk County, M. C. Herrick, Judge. AFFIRMED. Considered by Reynoldson, C.J., and McCormick, Larson, Carter, and Wolle, JJ. Per curiam. (2 pages \$.80)

Respondent husband appeals and petitioner wife cross-appeals from a dissolution decree. OPINION HOLDS: We affirm both the trial court's award of custody of the parties' children to petitioner wife and the trial court's denial of alimony for petitioner wife. We order respondent husband to pay \$1,500 toward petitioner wife's attorney fees.

NO. 84-1359. BENSON v. FORT DODGE POLICE PENSION BOARD OF TRUSTEES.

NO. 84-1449. BENSON v. CIVIL SERVICE COMMISSION OF THE CITY OF FORT DODGE.

Appeals from the Iowa District Court for Webster County, M. D. Seiser, Judge. Affirmed in pension appeal; Reversed in discharge appeal. Considered by Reynoldson, C.J., and McCormick, Larson, Carter, and Wolle, JJ. Opinion by Carter, J. (15 pages \$6.00)

Affected municipal agencies appeal from adverse rulings of district court on a police officer's challenge pursuant to Iowa Code section 400.27 to the civil service commission's determination upholding his discharge, and on the police officer's challenge by writ of certiorari to the pension board determination denying his disability claim. OPINION HOLDS: I. Based on the record made at the hearing before the pension board, the officer established his entitlement to an ordinary disability pension under Iowa Code section 411.6(3). Notwithstanding the district court's limited scope of review in the pension dispute, we find that it was correct in concluding that the officer is entitled to receive an ordinary disability pension and that the pension board acted illegally in determining otherwise. II. On our de novo review of the evidence, we conclude that the discharge was warranted for the reasons given in the notice, and the district court erred in concluding otherwise.

NO. 84-1194. PHELPS v. LAVORATO.

Original action invoking supervisory jurisdiction of the supreme court under Iowa Constitution, article V, section 4. Petition Dismissed. Considered en banc. Per Curiam. (3 pages \$1.20)

In an original action invoking supervisory jurisdiction of the supreme court, plaintiffs challenge a general order of the fifth judicial district restricting court appointments under Iowa Code section 815.7 to attorneys signing a contract for services. OPINION HOLDS: The problems which have inhered in our present system of attorney compensation have been effectively addressed by adoption of new guidelines, and it is not necessary, or even desirable, to consider an alternative approach to the same problems. We therefore decline further exercise of our supervisory jurisdiction and dismiss this petition.

NO. 84-1680. PATCHETTE v. STATE.

Appeal from the Iowa District Court for Lee County, Harlan W. Bainter, Judge. Affirmed. Considered by Reynoldson, C.J., and McCormick, Larson, Carter, and Wolle, JJ. Opinion by Larson, J. (13 pages \$5.20)

Petitioner appeals from denial of postconviction relief under Iowa Code chapter 663A. OPINION HOLDS: I. Petitioner may assert a claim of ineffective assistance of counsel in a postconviction proceeding attacking prison disciplinary proceedings. II. Iowa Code section 246.241(5) (1983) does not permit enhancement of the penalty by acts committed simultaneously. III. No prejudice was shown by counsel's failure to object to the punishment because the subsequent proceedings, not successfully challenged on appeal, cured the problem. Error was not preserved on petitioner's claim that the commencement of the subsequent proceedings constituted vindictiveness denying him due process.

NO. 84-1823. POHLMAN v. ERTL COMPANY.

Appeal from the Iowa District Court for Black Hawk County, Forest E. Eastman, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and McCormick, Larson, Carter, and Wolle, JJ. Opinion by Larson, J. (9 pages \$3.60)

Iowa Department of Job Service appeals from judgment reinstating unemployment compensation benefits to claimant. OPINION HOLDS: I. The agency's determination, that the claimant's alleged child care problems did not constitute good cause for turning down a job offer where she had made no effort to find a babysitter or to make any other arrangements for child care, was not erroneous as a matter of law; it should therefore have been affirmed. II. There was substantial evidence to support the agency's conclusion that the claimant had been offered "suitable" employment within the meaning of the unemployment compensation statute.

NO. 84-1903. CITY OF MUSCATINE v. U. S. ENVIRO-CON, INC.

Appeal from the Iowa District Court for Muscatine County, Margaret S. Briles, Judge. Affirmed. Considered by Reynoldson, C.J., and McCormick, Larson, Carter, and Wolle, JJ. Opinion by Carter, J. (13 pages \$5.20)

Defendant, which had cross-petitioned against third parties for indemnity or contribution in the event that it was held liable on plaintiff's claims, appeals from the district court's determination, following settlement of plaintiff's claims, that defendant's cross-petition claims have been automatically dismissed by operation of law under Iowa Rule of Civil Procedure 215.1. OPINION HOLDS: I. The district court properly interpreted rule 215.1 as requiring the claims for indemnity or contribution to be tried prior to the time for dismissal established by a previous order continuing the case.

No. 84-1367. MERCHANT V. STATE.

Appeal from the Iowa District Court for Woodbury County, Richard J. Vipond, Judge. AFFIRMED. Considered by Reynoldson, C.J., and McCormick, Larson, Carter, and Wolle, JJ. Opinion by McCormick, J. (7 pages \$2.80)

The petitioner appeals from denial of postconviction relief. OPINION HOLDS: I. The Iowa sentencing court had the authority to order that the petitioner's state sentences be served consecutively to a previously imposed federal sentence. II. The doctrine of primary jurisdiction, allowing the tribunal which first obtained jurisdiction over a criminal defendant to hold it until exhausted to the exclusion of another tribunal which obtained jurisdiction later, does not require that the petitioner's Iowa sentences be served before his federal sentence. The doctrine of primary jurisdiction is merely a means for resolving jurisdictional disputes between the sovereigns and does not create a personal right in the affected individual. III. Under the circumstances of this case, the fact that the petitioner's state sentences were interrupted to send him to federal prison does not terminate the state sentences and does not make them concurrent to the federal sentence.

No. 84-1805. POLK COUNTY V. STEINBACH.

Appeal from the Iowa District Court for Polk County, Richard Strickler, Judge. REVERSED. Considered by Reynoldson, C.J., and McCormick, Larson, Carter, and Wolle, JJ. Opinion by McCormick, J. (6 pages \$2.40)

A workers' compensation claimant appeals from a district court decision on judicial review holding that he was not a county employee. OPINION HOLDS: We hold that a person who participates in a county work program to repay the county for general relief assistance may be an employee of the county for workers' compensation purposes. In the present case substantial evidence supports the commissioner's finding that Steinbach was an employee of the county for workers' compensation purposes.

NO. 84-1807. FARMERS PRODUCTION CREDIT ASSOCIATION v. MCFARLAND.

Appeal from the Iowa District Court for Chickasaw County, L. John Degnan, Judge. Affirmed in part, reversed in part and remanded. Considered en banc. Opinion by Schultz, J. Concurrence in part and dissent in part by Uhlenhopp, J. Dissent by Carter, J. (23 pages \$9.20)

The mortgagors and mortgagors' assignee appeal from a district court decision foreclosing a second mortgage and determining redemption rights of the parties. OPINION HOLDS: I. A junior lienholder has no right to redeem from a debtor or debtor's assignee that has redeemed during the exclusive period pursuant to Iowa Code sections 628.3, .26. We reverse the portion of the district court's order that granted the junior lienholder the right to redeem the property from the assignee and allowed the junior lienholder to obtain a sheriff's deed to the property. II. Because no creditor redemption period existed, the liens of a junior lienholder or creditor are not extinguished when a mortgagor or assignee redeems during the exclusive statutory period. Although the assignee has a right to title under the assignment, her title is subject to the rights of the junior lienholder against the property in this action. The district court should amend its order to allow foreclosure in rem on the lien. CONCURRENCE IN PART AND DISSENT IN PART ASSERTS: I concur in the holding of the majority that the junior mortgagee cannot redeem from the assignee, but dissent from the holding that the junior mortgagee can foreclose against the property. I would affirm the district court's judgment that the junior mortgagee is entitled to judgment on the mortgagor's note but would otherwise reverse the judgment. DISSENT ASSERTS: In the present case, the statutory redemption process terminated upon redemption from sale by the mortgagor's assignee and the junior lien should have been extinguished then.

NO. 83-1399. IN RE MARRIAGE OF HORTON.

Appeal from the Iowa District Court for Scott County, R. K. Stohr, Judge. On review from the Iowa Court of Appeals. DECISION OF COURT OF APPEALS VACATED; DECISION OF TRIAL COURT AFFIRMED. Considered by Harris, P.J., and McCormick, Larson, Carter, and Wolle, JJ. Per curiam.

(3 pages \$1.20)

Petitioner wife appealed from a trial court order modifying an earlier dissolution of marriage decree. The court of appeals reversed the trial court order in part. OPINION HOLDS: We agree with the court of appeals' holding that the trial court's order to sell the parties' house amounted to an improper modification of a prior property division. However, the house has now been sold and there is no practical way to upset the sale. We disagree with the court of appeals' determination that the sale proceeds be divided; the proceeds should be held in trust for the college expenses of the parties' children, under the terms of the trial court's order.

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