



# IOWA ADMINISTRATIVE BULLETIN

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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  
DONNA WATERS, Administrative Code Assistant

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### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
20	Friday, March 7, 1986	March 26, 1986
21	Friday, March 21, 1986	April 9, 1986
22	Friday, April 4, 1986	April 23, 1986

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## SUBSCRIPTION INFORMATION

### Iowa Administrative Bulletin

The Iowa Administrative Bulletin is sold as a separate publication and may be purchased by subscription or single copy. All subscriptions will expire on June 30 of each year. Subscriptions must be paid in advance and are prorated quarterly as follows:

First quarter	July 1, 1985, to June 30, 1986	\$122.00 plus \$4.88 sales tax
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Iowa State Printing Division  
Grimes State Office Building  
Des Moines, IA 50319  
Phone: (515) 281-5231

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## Schedule for Rulemaking 1986

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. 10	Jan. 29	Feb. 18	Mar. 5	Mar. 26	Apr. 30	July 28
Jan. 24	Feb. 12	Mar. 4	Mar. 19	Apr. 9	May 14	Aug. 11
Feb. 7	Feb. 26	Mar. 18	Apr. 2	Apr. 23	May 28	Aug. 25
Feb. 21	Mar. 12	Apr. 1	Apr. 16	May 7	June 11	Sep. 8
Mar. 7	Mar. 26	Apr. 15	Apr. 30	May 21	June 25	Sep. 22
Mar. 21	Apr. 9	Apr. 29	May 14	June 4	July 9	Oct. 6
Apr. 4	Apr. 23	May 13	May 28	June 18	July 23	Oct. 20
Apr. 18	May 7	May 27	June 11	July 2	Aug. 6	Nov. 3
May 2	May 21	June 10	June 25	July 16	Aug. 20	Nov. 17
May 16	June 4	June 24	July 9	July 30	Sep. 3	Dec. 1
May 30	June 18	July 8	July 23	Aug. 13	Sep. 17	Dec. 15
June 13	July 2	July 22	Aug. 6	Aug. 27	Oct. 1	Dec. 29
June 27	July 16	Aug. 5	Aug. 20	Sep. 10	Oct. 15	Jan. 12 '87
July 11	July 30	Aug. 19	Sep. 3	Sep. 24	Oct. 29	Jan. 26 '87
July 25	Aug. 13	Sep. 2	Sep. 17	Oct. 8	Nov. 12	Feb. 9 '87
Aug. 8	Aug. 27	Sep. 16	Oct. 1	Oct. 22	Nov. 26	Feb. 23 '87
Aug. 22	Sep. 10	Sep. 30	Oct. 15	Nov. 5	Dec. 10	Mar. 9 '87
Sep. 5	Sep. 24	Oct. 14	Oct. 29	Nov. 19	Dec. 24	Mar. 23 '87
Sep. 19	Oct. 8	Oct. 28	Nov. 12	Dec. 3	Jan. 7 '87	Apr. 6 '87
Oct. 3	Oct. 22	Nov. 11	Nov. 26	Dec. 17	Jan. 21 '87	Apr. 20 '87
Oct. 17	Nov. 5	Nov. 25	Dec. 10	Dec. 31	Feb. 4 '87	May 4 '87
Oct. 31	Nov. 19	Dec. 9	Dec. 24	Jan. 14 '87	Feb. 18 '87	May 18 '87
Nov. 14	Dec. 3	Dec. 23	Jan. 7 '87	Jan. 28 '87	Mar. 4 '87	June 1 '87
Nov. 28	Dec. 17	Jan. 6 '87	Jan. 21 '87	Feb. 11 '87	Mar. 18 '87	June 15 '87
Dec. 12	Dec. 31	Jan. 20 '87	Feb. 4 '87	Feb. 25 '87	Apr. 1 '87	June 29 '87
Dec. 26	Jan. 14 '87	Feb. 3 '87	Feb. 18 '87	Mar. 11 '87	Apr. 15 '87	July 13 '87

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.

## To All Agencies:

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

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
<b>AGING, COMMISSION ON THE[20]</b> Priority service requirement, amendments to 9.4 IAB 3/12/86 ARC 6400	Conference Room Aging Commission 236 Jewett Bldg. 914 Grand Ave. Des Moines, Iowa	April 1, 1986 10:00 a.m.
<b>ATTORNEY GENERAL[120]</b> General definitions, ch 16 IAB 3/12/86 ARC 6392	Conference Room Second Floor Hoover State Office Bldg. Des Moines, Iowa	April 8, 1986 10:00 a.m.
<b>CONSERVATION COMMISSION[290]</b> Safety equipment, 27.13(9) IAB 2/26/86 ARC 6372	Conference Room Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	March 20, 1986 10:00 a.m.
Speed and distance zoning, 30.10, 30.27 IAB 2/26/86 ARC 6373	Conference Room Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	March 20, 1986 10:00 a.m.
Motor regulations, 40.4, 40.5 IAB 2/26/86 ARC 6374	Conference Room Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	March 20, 1986 10:00 a.m.
Saylorville multiuse trail and wildlife area, ch 56 IAB 2/26/86 ARC 6375	Conference Room Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	April 3, 1986 10:00 a.m.
Crow hunting regulations, 101.1 IAB 2/26/86 ARC 6376	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 19, 1986 10:00 a.m.
Rabbit and Squirrel Hunting season, 102.1 to 102.3 IAB 2/26/86 ARC 6377	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 19, 1986 10:00 a.m.
Pheasant, quail and gray partridge hunting seasons, 103.1 to 103.3 IAB 2/26/86 ARC 6378	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 19, 1986 10:00 a.m.
Furbearers (except groundhog) seasons, 104.1 to 104.4, 104.7 IAB 2/26/86 ARC 6379	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 19, 1986 10:00 a.m.
Deer hunting regulations, ch 106 IAB 2/26/86 ARC 6380	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 19, 1986 10:00 a.m.
Waterfowl and coot hunting seasons, 107.1 to 107.3 IAB 2/26/86 ARC 6381	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 19, 1986 10:00 a.m.
Common snipe, Virginia rail, sora, woodcock and ruffed grouse hunting seasons, 109.1 to 109.4 IAB 2/26/86 ARC 6382	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 19, 1986 10:00 a.m.

**CONSERVATION COMMISSION[290] (cont'd)**

Wild turkey, fall hunting,  
112.1 to 112.4  
IAB 2/26/86 ARC 6383

Auditorium  
Wallace State Office Bldg.  
Des Moines, Iowa

April 19, 1986  
10:00 a.m.

**HEALTH DATA COMMISSION[465]**

Submission of data, amendments  
to ch 6  
IAB 2/26/86 ARC 6365

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

March 19, 1986  
9:30 a.m. to 11:00 a.m.

**HEALTH DEPARTMENT[470]**

Inspection of hospitals,  
51.3(4), 51.3(5)  
IAB 2/26/86 ARC 6357

Conference Room  
Third Floor, Side 1  
Lucas State Office Bldg.  
Des Moines, Iowa

March 27, 1986  
10:00 a.m.

Inspections of hospitals for  
mentally retarded and other  
developmentally disabled persons,  
63.3(4)  
IAB 2/26/86 ARC 6358

Conference Room  
Third Floor, Side 1  
Lucas State Office Bldg.  
Des Moines, Iowa

March 27, 1986  
1:00 p.m.

**HUMAN SERVICES DEPARTMENT[498]**

Purchase of service, amendments  
to ch 150  
IAB 3/12/86 ARC 6409

Conference Room  
First Floor, Side 1  
Hoover State Office Bldg.  
Des Moines, Iowa

April 2, 1986  
1:00 p.m.

Community supervised apartment  
living arrangements services program,  
ch 206, IAB 3/12/86 ARC 6410

Conference Room  
First Floor, Side 1  
Hoover State Office Bldg.  
Des Moines, Iowa

April 2, 1986  
3:00 p.m.

Residential services for  
adults, ch 207  
IAB 3/12/86 ARC 6411

Conference Room  
First Floor, Side 1  
Hoover State Office Bldg.  
Des Moines, Iowa

April 2, 1986  
3:00 p.m.

**IOWA LOTTERY AGENCY[526]**

Amendments to ch 3, Licensing;  
ch 5, Purchasing procedures; ch 8;  
Instant game general rules; ch 9,  
On-line game general rules  
IAB 3/12/86 ARC 6402  
(See ARC 6401. herein)

Iowa Lottery Agency  
2015 Grand Ave.  
Des Moines, Iowa

April 8, 1986  
1:00 p.m.

**RACING COMMISSION, STATE[693]**

Greyhound racing, Mutuel  
departments; 7.3, 7.11, 7.13,  
8.2, 8.3, 8.10  
IAB 2/26/86 ARC 6354

Auditorium  
Wallace State Office Bldg.  
Des Moines, Iowa

March 18, 1986  
9:00 a.m.

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

Wastewater construction and  
operation permits, amendments  
to ch 64  
IAB 3/12/86 ARC 6395

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

April 1, 1986  
10:00 a.m.

Hazardous waste, 141.2  
IAB 3/12/86 ARC 6405

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

April 1, 1986  
10:00 a.m.

**ARC 6400**  
**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)"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 20—9.4(249B), "Priority service requirement," Iowa Administrative Code. The amendments are a response to the Older Americans Act Amendments of 1984 which amended the definitions of priority services and added requirements to be met before waivers to the provision of priority services could be granted by the Commissioners.

Any interested person may make written comment on these proposed rules until 4:30 p.m. on April 1, 1986. Such written material should be directed to the Executive Director, Iowa Commission on the Aging, 914 Grand Avenue, Suite 236, Des Moines, Iowa 50319.

There will be a public hearing on Tuesday, April 1, 1986, at 10:00 a.m. in the Iowa Commission on the Aging Conference Room, 236 Jewett Building, 914 Grand Avenue, Des Moines, Iowa. Persons may present their views orally or in writing at this public hearing. Persons who wish to make oral presentations should contact the Executive Director at least one day prior to the date of the public hearing.

These rules are intended to implement Iowa Code chapter 249B.

The following amendments are proposed:

ITEM 1. Subrule 9.4(1) is amended to read as follows:

**9.4(1) General rule.** An area agency must spend an adequate proportion of its supportive services allotment as identified in 6.7(5) ~~excluding amounts used for administration under rule 9.10(249B)~~ for the following categories of service, with ~~at least some~~ *an adequate proportion of funds* spent in each of the following categories:

a. Services associated with access to other services. These services are transportation, outreach, and information and referral;

b. In-home services. These services are homemaker and home health aide, visiting and telephone reassurance, ~~and~~ *chore maintenance; and supportive services for the families of victims of Alzheimer's disease and other neurological and organic brain disorders of the Alzheimer's type; and*

c. *Legal services assistance.*

ITEM 2. Subrule 9.4(2) is rescinded in its entirety, and the following inserted in lieu thereof:

**9.4(2) Waivers.**

a. An area agency must request a waiver from the requirements of subrule 9.4(1) if the need for the service is not being met and the agency does not propose sufficient funding to allow all older individuals to have reasonably convenient access to the service.

b. The commissioners, in approving the area plan or a plan amendment, shall, upon recommendation of the executive director, waive the requirement of subrule 9.4(1) for any category of service for which the area

agency demonstrates to the commissioners that the services being furnished for such category meets the needs of older persons in the planning and service area for that category of service following requirements in these rules, or the area agency documents that it has made every reasonable effort to meet the need.

c. Before submitting a request for a waiver from the requirements of subrule 9.4(1) the area agency shall conduct a timely public hearing on the proposed waiver, including the following factors:

1. Notify all interested parties in the area of the public hearing;

2. Furnish interested parties with an opportunity to testify; and,

3. Prepare a record of the public hearing.

d. The public hearing on the proposed waiver request may be held in conjunction with the public hearing required for the annual application for award, rule 6.11(249B), if the following provisions are made:

1. Hearing notices specify the category of the priority service waiver being requested;

2. Hearing notices are provided to interested parties prior to the hearing concerning the waiver request;

3. The priority service waiver is a distinct agenda item providing the public with the opportunity to comment during that portion of the hearing.

e. When submitting the request for a waiver of the provision of priority services to the state agency, area agencies shall submit, in addition to the public hearing record, an exhibit to show that such category of priority service is furnished sufficient to meet the need in the area. The exhibit shall be included in the annual application for award format and instructions issued annually by the executive director.

f. Need for the service will be determined to be met if all older individuals within the planning and service area have reasonably convenient access to the service.

**ARC 6391**

**ATTORNEY GENERAL [120]**

DEPARTMENT OF JUSTICE

**NOTICE TERMINATED**

Pursuant to Iowa Code sections 17A.4(1)"b" and 537.6117, the Attorney General hereby terminates the Notice of Intended Action which was published in the Iowa Administrative Bulletin, August 14, 1985, as **ARC 5837**. The subject matter of the Notice was whether the Iowa Consumer Credit Code administrator should promulgate two specific rules relating to "lines of credit" and home "equity lines of credit," which had been requested in a Petition for Rulemaking.

A public hearing was held on September 10, 1985. Several parties appeared for the hearing. Oral testimony and written comments were received and considered by the administrator. Much of the comments and testimony concerning the Petitioner's proposed rules argued that the proposed rules should not be adopted owing primarily to questions concerning home equity lines of credit arising under Iowa Code section 535.10.

## ARC 6392

### ATTORNEY GENERAL[120]

DEPARTMENT OF JUSTICE

#### 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 537.6117, the administrator of the Iowa Consumer Credit Code, as designee of the Attorney General, hereby gives Notice of Intended Action to adopt Chapter 16, "General Definitions," comprising a rule relating to lines of credit in consumer credit transactions. The administrator has the general authority to promulgate rules deemed reasonably necessary for the enforcement of the Iowa Consumer Credit Code, Iowa Code chapter 537.

Because the administrator has concluded that the proposed rules may have an impact on small business, the administrator, pursuant to Iowa Code section 17A.31 will consider the impact of the rules on small business.

The rules, if adopted, will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

The administrator is initiating rulemaking pursuant to Iowa Code chapter 17A based on a previous rulemaking proceeding, **ARC 5837**, involving a definition of line of credit. That rulemaking proceeding was terminated by the administrator by notice published in the Iowa Administrative Bulletin on March 12, 1986.

The administrator solicits comments on:

(1) Whether there should be a rule which defines line of credit in relation to the terms "amount financed," "consumer loan," and "loan" as these terms are defined in Iowa Code sections 537.1301(4), 537.1301(14)"a," and 537.1301(25) respectively; and,

(2) Whether a rule relating to "line of credit" is necessary to conform the Iowa Consumer Credit Code, Iowa Code chapter 537, to the federal truth-in-lending Act as required by Iowa Code section 537.1102(2)"f."

Any interested person may make written suggestions or comments on the proposed rules prior to April 8, 1986. Such written materials should be directed to: The Administrator, Iowa Consumer Credit Code, Consumer Protection Division, Department of Justice, Hoover Building, Second Floor, Des Moines, Iowa 50319.

There will be a public hearing on April 8, 1986 at 10:00 a.m. in the second floor conference room of the Hoover State Office Building. Persons may present their views at this hearing either orally or in writing, however, persons wishing to make oral presentation should so advise the administrator at 515-281-5926 by contacting Linda Thomas Lowe at least forty-eight hours prior to the date of the public hearing.

This rule is intended to implement Iowa Code sections 537.1301(14), 537.1301(4), 537.1301(25), and 537.1102(2)"f."

Add new Chapter 16 as follows:

## CHAPTER 16

### GENERAL DEFINITIONS

#### 120—16.1 (537). Line of credit.

**16.1(1)** If a lender commits itself to a line of consumer credit up to an amount in excess of the amount specified in Iowa Code section 537.1301(14)"a"(5), the credit transaction is not subject to Iowa Code chapter 537 whether or not the amount actually advanced at any one time is above or below the amount specified in Iowa Code section 537.1301(14)"a"(5). For purposes of this rule, "line of credit" shall mean an arrangement whereby: (1) The lender or creditor expressly commits itself in writing pursuant to a consumer loan agreement to permit the borrower to borrow money from time to time up to a certain maximum amount specified in the loan agreement, and (2) there is no requirement of additional credit information for any advances.

**16.1(2)** For purposes of this rule, the "amount financed" in a line of credit is the maximum limit on the line of credit and not the amount of any single advance.

This rule is intended to implement Iowa Code sections 537.1301(14), 537.1301(4), 537.1301(25), and 537.1102(2)"f."

## ARC 6399

### CAMPAIGN FINANCE DISCLOSURE COMMISSION[190]

#### 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 56.10, the Campaign Finance Disclosure Commission, based on action in its Commission meeting held on January 15, 1986, gives Notice of Intended Action to adopt and amend certain administrative rules.

Interested persons may submit suggestions or comments by telephone or in writing, or may submit a written request to make an oral presentation on the intended action to Kay Williams, Executive Director, Campaign Finance Disclosure Commission, 507 10th Street, Des Moines, Iowa 50309, telephone number 515/281-4411, no later than April 1, 1986.

## CAMPAIGN FINANCE DISCLOSURE COMMISSION[190] (cont'd)

An explanation of the proposed new rules and amendments to existing rules follows.

Rule 4.19(56) is amended to clarify the definition of "purpose of expenditure." The rule had been misinterpreted in the past to be all-inclusive, instead of only providing examples of unacceptable terms.

Rule 4.21(56) is a new rule which has been promulgated by the Commission for interpretation purposes. It provides that a contribution or expenditure by a trustee in the name of a trust must also identify the truster of the trust and the beneficiaries of the trust when reporting such contribution or expenditure. Failure to properly identify these components of the trust would constitute a contribution in the name of another person, which is prohibited by statute in Iowa Code section 56.12.

Rule 4.22(56) is a new rule intending to carry out the disclosure law. Some political action committees (PACs) allow contributors to specify the candidate to whom they want their donations to be given. This process is generally referred to as "earmarking contributions." This rule provides that the PAC must show on its disclosure reports the contributions it has received for specific candidates. It also provides that the PAC, when issuing checks to candidates, must inform the candidate of the person or persons who have earmarked certain contributions to the candidate so that the treasurer of the candidate's committee may properly report the source of the contribution both by PAC and individual name. Failure to identify the original source of the contribution would constitute a contribution in the name of another, which is prohibited by statute in Iowa Code section 56.12.

Rule 4.23(56) is a new rule which informs active, ongoing committees that disclosure forms for a twelve-month period will be provided on or about April 25 of each year. Because of increasing mailing and distribution costs, it further informs the public that forms will be sent by the least expensive mode unless the committee requests in advance and pays for a higher priority. This rule has been promulgated as a cost-saving measure for the Commission, to save the difference between first-class and fourth-class mailing.

Rule 4.24(56) is a new rule which informs active, ongoing committees that one set of forms and one instruction manual will be provided at no charge. Additional manuals, if requested, will be provided at a cost of \$2.00 each, payable in advance. This rule has been promulgated as a cost-saving measure to offset printing and distribution costs.

Rule 5.10(56) is amended. It provides that the Commission will continue to charge a basic rate per page (currently ten cents) for copies of statements, reports, and notices if the person comes to the Commission office and makes copies on the agency copy machine. If the person asks the Commission to make the copies, the charge will be the basic rate per page plus fifteen cents per page for handling and postage. The total allowable rate shall not exceed twenty-five cents per page. This rule has been promulgated as a cost/labor-saving measure; the public will be encouraged to make their own copies, but will still be able to have them made by office staff for an appropriate charge.

ITEM 1. Amend rule 4.19(56) to read as follows:

**190—4.19(56) Purpose of expenditure.** The term "purpose of expenditure" shall mean a clear and concise

statement that specifically describes the transaction which has occurred. The following general terms are examples of descriptions which are not acceptable: Expenses, reimbursement, candidate expense, services, supplies, and miscellaneous expense.

ITEM 2. Amend chapter 4 by adding the following new rules:

**190—4.21(56) Contribution in the name of another person.** A contribution or expenditure by a trustee solely in the name of the trust constitutes a contribution or expenditure in the name of another person. All disclosure reports filed pursuant to Iowa Code chapter 56 which include contributions accepted from or disbursements made to a trust must identify the trust, the trustee, the truster and the beneficiaries in all places where "name" is required to be provided under Iowa Code section 56.6(3).

**190—4.22(56) Reporting of earmarked contributions.** A political committee is permitted to receive contributions from its members which are earmarked to be donated to specific candidate's committees or other political committees. A political committee receiving and transmitting earmarked contributions is required to list on its disclosure report the name of the contributor and the name of the candidate or committee for which the contribution was earmarked. The political committee is further required to inform the treasurer of the recipient committee in writing the name of the individual contributor, as well as the name of the committee which has collected the contribution. The committee receiving the earmarked contribution is required to disclose on its report both the name of the individual contributor and the sponsoring committee.

**190—4.23(56) Forms distribution.** The commission and commissioners provide forms to each active committee on or about April 25 of each year to be used during the next twelve-month period and further provide forms to any person requesting them. Forms will be distributed by the least expensive mode unless the committee requests in advance that they be sent by first-class mail or some other higher priority delivery and further provides a prepaid mailing or delivery envelope.

**190—4.24(56) Additional forms and manuals.** The commission will provide one set of disclosure forms and an instruction manual annually to each active committee. Additional sets of forms in reasonable quantities will be furnished at no charge. Additional manuals will be furnished at a cost of \$2.00 each, payable in advance to the commission.

ITEM 3. Rule 5.10(56) is amended to read as follows:

**190—5.10(56) Costs of copies.** The commission may charge persons requesting copies of statements, reports, and notices, the actual basic cost of the reproduction as set by the Printing Division of the Department of General Services, and a handling charge, but the rate charged shall not exceed twenty-five cents per page. Persons who make their own copies on the agency copy machine shall be charged the basic rate of ten cents per page. Persons who request copies by telephone or mail will be charged the basic rate plus fifteen cents per page for handling and postage costs. This rule shall be effective immediately upon filing with the secretary of state.

**ARC 6417****COLLEGE AID COMMISSION[245]****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 261.37(5), the College Aid Commission proposes to rescind Chapter 10, entitled "Iowa Guaranteed Student Loan Program," and propose a new Chapter 10, Iowa Administrative Code.

The revised Chapter 10 is intended to update the Guaranteed Student Loan Manual and state the administrative rules in a clear and concise manner.

Interested persons may submit comments orally or in writing to the Executive Director, Iowa College Aid Commission, 201 Jewett Building, Des Moines, Iowa 50309 (515-281-3501) on or before April 15, 1986.

These rules are intended to implement Iowa Code section 261.37.

These rules are also being filed emergency, **ARC 6416**.

Pursuant to Iowa Code section 17A.6(3), these rules are being omitted from this publication; however, full text is published in the Iowa Administrative Code.

**ARC 6388****HEALTH DEPARTMENT[470]****BOARD OF EXAMINERS FOR THE LICENSING AND REGULATION OF HEARING AID DEALERS****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 258A.4, the Board of Examiners for the Licensing and Regulation of Hearing Aid Dealers gives Notice of Intended Action to amend Chapter 145 of the Iowa Administrative Code.

The proposed rule requires an advertisement relating to hearing aids to include the hearing aid dealer's name, office address, and telephone number.

Any interested person may make written comments concerning the proposed rules not later than April 1, 1986, 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.4.

Subrule 145.212(8) is amended by adding the following new paragraph:

f. Failure to place in an advertisement relating to hearing aids the hearing aid dealer's name, office address, and telephone number.

**ARC 6406****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 17A.3, the Department of Human Services proposes to amend Chapter 3, "Oral Presentations on Proposed Rules," appearing in the Iowa Administrative Code.

In 1978 the Department was ordered in the court case *Schmitt vs. the Iowa Department of Social Services* to not compel indigents to travel at their own expense beyond the major population center in their own administrative area. Thus oral presentations involving clients were always scheduled in each of the sixteen districts existing at that time. In 1984 the Department reorganized its field offices and the number of districts was reduced from sixteen to eight. Although the court case and rules would have allowed the Department to reduce the number of oral presentations it schedules from sixteen to eight, the Department has continued to schedule presentations involving clients in all sixteen locations.

Attendance at these oral presentations has been very poor. Therefore, at this time the Department has decided to only schedule oral presentations involving clients in the eight districts. However, to avoid possibility of clients being unable to attend the oral presentations and voice their opinions because of the distance involved, this amendment offers persons the opportunity to participate in the oral presentations at their local office through use of the Department's teleconferencing system.

The rules are also being changed to provide that when the Department has not scheduled hearings, and when an association or group of twenty-five or more persons requests a hearing, it will be held in the county or district where the principal administrative headquarters of the association is located, where the majority of the persons requesting a hearing reside, or in an alternate county or district office when specifically requested by the association or group.

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 50319-0114 on or before April 2, 1986.

This rule is intended to implement Iowa Code section 17A.4.

Rescind rule 498—3.2(17A) and insert the following in lieu thereof:

**498—3.2(17A) Location of oral presentations.**

**3.2(1)** Presentations scheduled by the department prior to a request for oral presentations. Oral presentations shall be held in the districts as defined in rule 498—1.4(17A). Once an oral presentation has been scheduled, any association having not less than twenty-five members or a group of twenty-five or more persons shall be allowed, upon a request pursuant to rule 498—3.1(17A), to participate in the oral presentation at a local office

## HUMAN SERVICES DEPARTMENT[498] (cont'd)

through use of the department's central information delivery system (CIDS).

The department will determine for each rule for which oral presentations are scheduled whether it will be necessary to hold presentations in all districts, based on client impact. Anyone may object to the department's decision prior to the date of the presentation(s) by writing the same addressee specified in the notice of intended action for receiving written data, views, or arguments. The department will review the adequacy of the number of locations in light of the comments received.

**3.2(2)** Presentations scheduled by the department after a request for oral presentations is received. When a request pursuant to rule 498—3.1(17A) is received from an association having not less than twenty-five members or a group of twenty-five or more persons and the department has not previously scheduled oral presentations, an oral presentation shall be scheduled in the county or district where the principal administrative headquarters of the association is located, where the majority of the persons requesting a hearing reside, or in an alternate county or district when specifically requested by the association or group.

**ARC 6407****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 51, "Eligibility," and Chapter 76, "Application and Investigation," appearing in the Iowa Administrative Code.

These amendments provide a basis in rules for the Department to recover Medicaid and State Supplementary Assistance (SSA) funds incorrectly paid. Recipients for whom incorrect Medicaid or SSA expenditures have been made will be asked to repay these expenditures. Resources, income and income tax refunds can also be attached to secure payment of incorrectly expended funds. In the past the Department's only method of recovery has been to take the client to court.

The Department debated whether to involuntarily recover agency errors from the client. It was decided to keep Medicaid policy consistent with ADC policy which does require the involuntary recovery of agency errors.

Medicaid and SSA recoveries which will be generated by these rules are estimated to be \$50,000 in federal and state dollars for a twelve-month period.

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 50314-0114 on or before April 2, 1986.

These rules are intended to implement Iowa Code sections 249.3, 249.4, and 249A.4.

ITEM 1. Amend 498—chapter 51 by adding the following new rule:

**498—51.9(249) Recovery.****51.9(1) Definitions.**

"Administrative overpayment" means assistance incorrectly paid to or for the client due to continuing assistance during the appeal process.

"Agency error" means assistance incorrectly paid to or for the client due to action attributed to the department as the result of one or more of the following circumstances:

1. Misfiling or loss of forms or documents.
2. Errors in typing or copying.
3. Computer input errors.
4. Mathematical errors.

5. Failure to determine eligibility correctly or to certify assistance in the correct amount when all essential information was available to the local office.

6. Failure to make prompt revisions in payment following changes in policies requiring the changes as of a specific date.

"Client" means a current or former applicant or recipient of state supplementary assistance.

"Client error" means assistance incorrectly paid to or for the client due to the client or client's representative failing to disclose information, or giving false or misleading statements, oral or written, regarding the client's income, resources, or other eligibility and benefit factors. It also means assistance incorrectly paid to or for the client due to failure by the client or client's representative to timely report as defined in rule 498—76.10(249A).

"Department" means the department of human services.

**51.9(2)** Amount subject to recovery. The department shall recover from a client all state supplementary assistance funds incorrectly expended to or on behalf of the client. The incorrect expenditures may result from client or agency error, or administrative overpayment.

**51.9(3)** Notification. All clients shall be promptly notified when it is determined that assistance was incorrectly expended. Notification shall include for whom assistance was paid; the time period during which assistance was incorrectly paid; the amount of assistance subject to recovery, when known; and the reason for the incorrect expenditure.

**51.9(4)** Source of recovery. Recovery shall be made from the client or from parents of children under age twenty-one when the parents completed the application and had responsibility for reporting changes. Recovery may come from income, resources, the estate, income tax refunds, and lottery winnings of the client.

**51.9(5)** Repayment. The repayment of incorrectly expended state supplementary assistance funds shall be made to the department.

**51.9(6)** Appeals. The client shall have the right to appeal the amount of funds subject to recovery under the provisions of 498—chapter 7.

This rule is intended to implement Iowa Code sections 249.3 and 249.4.

ITEM 2. Amend 498—chapter 76 by adding the following new rule:

**498—76.12(249A) Recovery.****76.12(1) Definitions.**

"Administrative overpayment" means medical assistance incorrectly paid to or for the client due to continuing assistance during the appeal process or allowing a deduction for the Medicare part B premium in determining

## HUMAN SERVICES DEPARTMENT[498] (cont'd)

client participation while the department arranges to pay the Medicare premium directly.

"Agency error" means medical assistance incorrectly paid to or for the client due to action attributed to the department as the result of one or more of the following circumstances:

1. Misfiling or loss of forms or documents.
2. Errors in typing or copying.
3. Computer input errors.
4. Mathematical errors.
5. Failure to determine eligibility correctly or to certify assistance in the correct amount when all essential information was available to the local office.
6. Failure to make prompt revisions in medical payment following changes in policies requiring the changes as of a specific date.

"Client" means a current or former applicant or recipient of Medicaid.

"Client error" means medical assistance incorrectly paid to or for the client due to the client or client's representative failing to disclose information, or giving false or misleading statements, oral or written, regarding the client's income, resources, or other eligibility and benefit factors. It also means assistance incorrectly paid to or for the client due to failure by the client or client's representative to timely report as defined in rule 498—76.10(249A).

"Department" means the department of human services.

**76.12(2)** Amount subject to recovery. The department shall recover from a client all Medicaid funds incorrectly expended to or on behalf of the client. The incorrect expenditures may result from client or agency error, or administrative overpayment.

**76.12(3)** Notification. All clients shall be promptly notified when it is determined that assistance was incorrectly expended. Notification shall include for whom assistance was paid; the time period during which assistance was incorrectly paid; the amount of assistance subject to recovery, when known; and the reason for the incorrect expenditure.

**76.12(4)** Source of recovery. Recovery shall be made from the client or from parents of children under age twenty-one when the parents completed the application and had responsibility for reporting changes. Recovery may come from income, resources, the estate, income tax refunds, and lottery winnings of the client.

**76.12(5)** Repayment. The repayment of incorrectly expended Medicaid funds shall be made to the department.

However, repayment of funds incorrectly paid to a skilled nursing facility, intermediate care facility, or mental health institute may be made by the client to the facility. The department shall then recover the funds from the facility through a vendor adjustment.

**76.12(6)** Appeals. The client shall have the right to appeal the amount of funds subject to recovery under the provisions of 498—chapter 7.

ARC 6408

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(7), the Department of Human Services proposes to amend Chapter 65, "Administration," appearing in the Iowa Administrative Code.

The Department has been informed by the Food and Nutrition Service (FNS) that they will be issuing emergency final regulations to be effective May 1, 1986. These regulations will implement mandated changes from the Food Security Act of 1985 and the 1985 Farm Bill. The Department has not yet received the regulations, but is placing the content of the regulations as related by FNS under Notice at this time.

The changes due to the Food Security Act are:

1. The earned income deduction will increase from eighteen to twenty percent of earnings.
2. The maximum shelter deduction will increase from \$139.00 to \$147.00.
3. Currently the shelter and dependent care deduction are combined and the total deduction for both cannot exceed \$139.00. These changes provide a separate dependent care deduction for nonelderly, nondisabled households of up to \$160.00 a month. These changes do not provide dependent care for elderly (sixty and over) but Congressional action is anticipated to correct this problem.
4. The resource limit for nonelderly households will increase from \$1,500.00 to \$2,000.00.
5. The resource limit for an elderly person living alone will increase from \$1,500.00 to \$3,000.00.

The 1985 Farm Bill made the following changes. For farmers only, income otherwise countable for food stamp purposes will be reduced by the amount that the cost of producing self-employment income exceeds that income derived from self-employment.

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 50319-0114 on or before April 2, 1986.

This rule is intended to implement Iowa Code sections 217.6 and 234.12.

**ARC 6409****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 150, "Purchase of Service," appearing in the Iowa Administrative Code.

This amendment establishes policies and procedures governing the use of requests for proposals (RFP) as a tool for selection of providers under purchase of service contracts as required by the General Assembly.

Under these rules, district administrators will have the option of awarding contracts on the basis of RFPs and bids when two or more potential providers of the same service exist in the district.

Districts will be required to develop an RFP describing the Department's requirements and disclosing the method to be used for evaluating the bids. The Department must maintain a bidders list of all qualified providers and the RFP must be sent to all providers on the bidders list. The RFP must be advertised in appropriate publications, and the bids must be opened publicly.

Once a contract has been awarded based on the RFP and bid process for a specific service, the service must be purchased from the provider receiving the contract for all new clients. Payment shall still be made monthly based on the units provided as demonstrated by invoices from the provider, but at the end of the contract period the provider will be paid for the difference between the service availability guaranteed in the contract and the number of units already paid.

Awarding contracts on the basis of RFPs and bids does the following:

1. The level of competition for purchase of service dollars is moved from the client referral level to the contract level.

2. The unit rate for service cost is based on a bid rather than a financial report.

3. Providers receiving a contract are assured of the purchase of a minimum number of units.

Providers may be concerned if they are not the successful bidder that they may not be able to remain in operation.

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 50319-0114 on or before April 2, 1986.

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

Des Moines - April 2, 1986 1:00 p.m.  
Hoover State Office Building  
First Floor Conference Room, Side 1  
Des Moines, Iowa 50319-0114

These rules are intended to implement Iowa Code section 234.6 and 1985 Iowa Acts, chapter 259, section 11.

ITEM 1. Amend rule 498—150.1(234) by adding the following new definition:

"Request for proposals or RFP" means procurement of a provider by competitive bids and awards involving the following basic steps:

1. Preparing a request for proposal, describing the requirements of the department clearly and accurately and completely, but avoiding unnecessarily restrictive specifications or requirements which might unduly limit the number of bidders. The term "request for proposals" includes all related documents (whether attached or incorporated by reference) furnished to prospective bidders for the purpose of bidding. A preliminary proposal may be issued prior to the final RFP.

2. Publicizing the request for proposals by distributing it to prospective bidders, advertising in appropriate publications, and by other appropriate means, at least three weeks prior to the bid opening date to enable prospective bidders to prepare and submit bids before the time set for public opening of bids.

3. Receiving bids submitted by prospective contractors.

4. Awarding a contract, after bids are publicly opened, to that responsible bidder whose bid conforms to the request for proposal and is the most advantageous to the department, cost and other factors considered.

ITEM 2. Amend subrule 150.2(1) as follows:

Amend the introductory paragraph as follows:

**150.2(1)** Iowa purchase of social services. An Iowa purchase of social services contract is between the department and a provider for a specified service or services to clients referred by the department. This contract establishes the service components to be provided, ~~the rates per unit of service, a maximum~~ the number of units to be ~~available of service, and other negotiated~~ conditions.

Amend paragraph "a" as follows:

a. Agency contract is a contract written with an agency. *It may be awarded either on the basis of rule 150.3(234) or 150.10(234).*

ITEM 3. Amend 498—chapter 150 by adding the following new rule:

**498—150.10(234) Iowa purchase of social services contract—agency providers (RFP procurement).**

**150.10(1)** Procurement policy. The department shall procure services in the most efficient and economical manner possible. Procurement shall be competitive to the maximum practicable extent.

This method of procurement may be used whenever this method is feasible and practicable under the existing conditions and circumstances, as determined by the district administrator. Districts may use an RFP and bids as the method of awarding a contract when two or more potential providers of the same service exist in the district. When districts use this method to award contracts all of the following subrules apply.

**150.10(2)** Bidders lists. The district shall maintain current bidders lists by service classification.

a. Any firm legally available to do business in a district shall be placed on an appropriate bidders list or lists after submitting a written request to the district administrator.

b. A bidder's name may be removed from a bidders list or lists for any of the following reasons:

(1) When the bidder has failed to respond to three consecutive requests for proposals.

## HUMAN SERVICES DEPARTMENT[498] (cont'd)

(2) When the bidder has failed to meet the performance requirements of a previous procurement.

(3) When the bidder has attempted to improperly influence the decision of any state employee involved in the procurement process.

(4) When there are reasonable grounds to believe that there is a collusive effort by bidders to restrain competition by any means.

(5) Where there is a determination that the bidder conducts discriminatory employment practices.

(6) Other reasons amounting to just cause.

c. A bidder may appeal removal from a bidders list or lists by submitting the appeal in writing to the district administrator. If the bidder is not satisfied with the decision of the district administrator, the bidder may appeal pursuant to 498—chapter 7.

**150.10(3)** Request for proposals and solicitation of bids. The district shall prepare a request for proposal complete with bidding documents, specifications and instructions to bidders and send (or deliver) the request for proposal to prospective bidders for the purpose of bidding.

If the RFP is for a local purchase service it shall be approved by the county boards of supervisors providing local match prior to being sent to bidders.

a. The request for proposal may be marked "preliminary" and sent to prospective bidders requesting their review of the proposal to determine their ability to meet the requirements of the procurement. The "preliminary" proposal process shall involve the following steps:

(1) A vendor's conference may be held to discuss the "preliminary" proposal.

(2) Written requests for variations, deviations, or approved equal substitutions to the proposal shall be accepted, evaluated, and answered by the district in writing to all interested parties.

(3) The proposal may be amended by the district to incorporate approved changes.

(4) A final request for proposal, if issued, shall be sent to prospective bidders for the purpose of bidding.

b. The method to be used by the district in evaluating bids received shall be disclosed in the request for proposal, including the evaluation criteria and relative weight assigned to each. Evaluations shall involve at a minimum, representatives of county, district, and central office purchase of service.

c. The request for proposal shall be sent to a sufficient number of prospective bidders so as to promote adequate competition commensurate with the dollar value of the procurement, as determined by the district administrator.

(1) The request for proposal shall be sent to all bidders listed in the appropriate bidders list for the service to be procured.

(2) The fact that a bidders list is used shall not in itself preclude the furnishing of a request for proposals to others upon request, or the consideration of bids received from bidders who were not invited to bid.

d. The district shall publicize the procurement by advertising in appropriate publications, giving the date and time of bid opening, a general description of the service to be procured, and the name and address of the person to contact to obtain a copy of the request for proposal.

e. Minority and small business enterprises shall be encouraged to participate in the bidding process.

f. A vendor's conference (either "preliminary" or final) shall be held.

**150.10(4)** Instructions to bidders. Each bidder shall prepare the bidding documents in the manner prescribed below and in the RFP and furnish all information and samples as required in the RFP. The following shall be adhered to by all bidders when preparing and submitting bids:

a. Bid preparation. Bids shall be written and signed, and shall conform to the specifications on the RFP. Telegraphic or telephonic bids shall not be considered.

b. Information to be provided by bidder. The bidder shall denote sufficient information to assist in identifying each service the bidder proposes to supply.

c. Bid price. Where requested, the unit and total price for each separate service shall be provided on the bidding documents. In case of discrepancy, the unit price shall prevail.

d. Time of acceptance. The bidder shall hold the bid firm at least thirty days past the bid opening date to allow the department opportunity to evaluate the bids and select the successful bidder.

e. Escalator clauses. Unless specifically provided for in the RFP, a bid containing an escalator clause (e.g., rate increase beyond an initial period) shall not be considered.

f. Changes and additions. No changes in or additions to the request for proposal shall be permitted unless a written request for a change or an addition is submitted to the district, and the change or addition is approved by the district administrator at least five days prior to bid opening. The district shall notify all bidders in writing of approved changes or additions.

Any unauthorized change in or addition to the RFP shall be sufficient grounds for rejection of the bid.

g. Submission of bids. All bids shall be submitted in sufficient time to reach the district office prior to the time set for the opening of bids. Any bid received after the time set for bid opening shall be returned to the bidder unopened. Bids received shall be dated, including the time received, by the district office showing the date and hour received. By submitting the bid, the bidder:

(1) Agrees that the contents of the bid will become part of the contract if the bidder receives the award.

(2) Shall be assumed to have become familiar with the contents and requirements of the RFP.

h. Modification or withdrawal of bids. Bids may be modified or withdrawn prior to the time set for the opening of bids. After opening, no bid may be modified. The department may approve the withdrawal of a bid.

**150.10(5)** Public opening of bids. Bids shall be opened publicly and the amount of the bid read aloud at the time stipulated in the RFP.

**150.10(6)** Consideration of bids. The department reserves the right to accept or reject any or all bids. Individual bids may be rejected for any of the following reasons:

a. Noncompliance with the requirements of these rules or of the RFP.

b. Financial instability of the bidder.

c. Evidence of unfair bidding practices.

d. For any other reason stated in this rule.

**150.10(7)** Contract award.

a. Time frame. Unless otherwise specified by the district in the RFP, an award shall be made within thirty days after bid opening if it is in the best interests of the state. If an award is not made within the applicable time

**HUMAN SERVICES DEPARTMENT[498] (cont'd)**

frame, the procurement shall be canceled unless an extension of time is mutually agreed to by the district and all bidders.

b. Tie bids. Bids which are equal in all respects and are tied in price shall be resolved as follows:

(1) If one of the tied bidders had a contract the previous year for the same service at the same location, and the contract was performed satisfactorily, the prior contractor shall receive the award.

(2) If the preceding subparagraph does not apply, the award shall be determined by lot in the presence of the tied bidders. Any tied bidder may appoint a representative to witness the determination by lot.

However, if the tie involves both Iowa and out-of-state bidders, the contract shall be awarded to the Iowa bidder. If there are two or more Iowa bidders, the award shall be determined by lot among the Iowa bidders.

c. Tabulation of bids. A tabulation of bids based on evaluation criteria described in the RFP shall be made. The total points scored by each bidder with an award recommendation shall be sent to all bidders and other interested parties who have made a written request, at least ten days prior to contract award.

d. Protests. Any protest of the recommended contract award shall be submitted in writing to the district administrator. A written protest must be received by the district administrator at least three days prior to contract award. If a bidder is not satisfied with the decision of the district administrator, the bidder may appeal to the manager, purchase of service section. If still dissatisfied, the bidder may appeal this decision to the commissioner of the department who will issue the final decision.

**150.10(8) Services which may be purchased.** When a district purchases a specific service using this rule, no units of that specific service shall be purchased for new clients through contracts issued using rule 498—150.3(234). Clients served by other providers prior to award of the contract may continue to receive service for a period sufficient to permit orderly transition to the new provider as determined by the client case plan but not to exceed six months.

**150.10(9) Rates.** For contracts awarded using this rule, rates shall be established only through this procedure. Financial reports from the provider shall not be required for rate setting purposes.

**150.10(10) Service availability.** For services purchased using this rule, the district shall agree to a minimum service availability as listed in the RFP, and may purchase additional units of service if provided for in the RFP.

**150.10(11) Payment.** For services purchased using this rule, payment shall be made each month on the basis of Form AA 2241-0, Purchase of Service Provider Invoice, submitted by the provider. At the end of the contract period, payment for unused service availability, if any, shall be made on the basis of a Claim Order/Claim Voucher, Form 075-0297, submitted by the provider.

**150.10(12) Contract document.** The completed contract document shall consist of the RFP issued by the district, the bid submitted by the successful bidder, and signatures of the following individuals:

- a. Authorized representative of the provider agency.
- b. District administrator.
- c. Manager, purchase of service section.
- d. County boards of supervisors providing match if local purchase service.

**150.10(13) Contract administration.**

a. Contract management. During the contract period the assigned project manager will be the contract liaison between the department and the provider and shall be contacted on all interpretations and problems relating to the contract. The project manager will also monitor performance under the contract using criteria described in the RFP and will provide or arrange for technical assistance to improve the provider's performance, if needed.

b. Contract amendment. When a contract has been awarded using this rule, amendments will be allowed only if other bidders are not prejudiced. Changes requiring contract modification shall require a district to reissue the RFP, except for minor technical changes not involving cost changes, when approved by the district administrator and manager, purchase of service section.

c. Contract renewal. For contracts awarded using this rule, no renewals are permitted unless provided for in the RFP.

d. Contract termination. Causes for termination during the period of the contract are:

- (1) Mutual agreement of the parties involved.
- (2) If required reporting is not made.
- (3) Failure to abide by the provisions of the contract. Termination for this reason requires evidence of attempts to get the provider to correct the problem(s).
- (4) If funds anticipated for the continued fulfillment of this contract are at any time not forthcoming or insufficient, either through the failure of the state of Iowa to appropriate funds for the program or the discontinuance or material alteration of the program under which funds were provided, then the state shall have the right to terminate this contract without penalty by giving not less than thirty days' written notice documenting the lack of funding.
- (5) Other reasons specified in the RFP.

**150.10(14) Conditions of participation.**

a. Civil rights laws. The provider shall be in compliance with all federal, state, and local civil rights laws and regulations with respect to equal employment opportunity, or have a written work plan approved by the department to come into compliance.

b. Title VI compliance. The provider shall be in compliance with Title VI of the 1964 Civil Rights Act, as amended, and all other federal, state, and local laws and regulations regarding the provision of services or have a written plan approved by the department to come into compliance.

c. Section 504 compliance. The provider shall be in compliance with all federal (Rehabilitation Act of 1973, as amended), state, and local section 504 laws and regulations or have a written work plan approved by the department to come into compliance.

d. Affirmative action. The provider shall be in compliance with all federal, state, and local laws and regulations regarding affirmative action, or have a written work plan approved by the department to come into compliance.

e. Abuse reporting. The provider shall have an approved policy and procedure for reporting abuse or neglect of children and dependent adult abuse.

f. Confidentiality. The provider shall comply with all applicable federal and state laws and regulations on confidentiality including rules on confidentiality contained in 498—chapter 9.

g. Client appeals and grievances. Clients receiving service through a purchase of service contract awarded

## HUMAN SERVICES DEPARTMENT[498] (cont'd)

using this rule, shall have the right to appeal adverse decisions made by the department or the provider. The provider shall have an approved policy and procedure for handling client appeals and grievances and shall provide information to clients about their rights to appeal.

h. Client reports. The provider shall maintain the following client records:

(1) Provider service plan or individual program plan. Providers shall have a written service plan or individual program plan for each client within thirty days of service initiation. This shall include a concise description of the situation or area which will be the focus of the service; statement of the goal(s) to be achieved through the delivery of services; time limited and measurable objectives which will lead to the attainment of the goal to be achieved; specific service components, frequency, and the assignment of responsibility for the provision of the components; and the month and year when it is estimated the client will be able to achieve the current goal(s) and objectives.

(2) Progress reports. Progress reports shall be sent to the department caseworker responsible for the client at the frequency which is specified in the RFP. The progress report shall include a description of the specific service components provided, their frequency, and who provided them, the client's progress with respect to the goals and service objectives; any recommended changes in the service plan or individual program plan and for all placement cases: Interpretation of client's reaction to placement; a summary of medical or dental services that were provided; a summary of educational and vocational progress and participation; and a summary of the involvement of the family with the client and the services.

Reports for mental health services, purchased foster family home services, and independent living service shall also include supporting contacts, type of contact, person(s) contacted, and a brief explanation of the focus of each contact. Each unit of service for which payment is sought should be the subject of a written progress note.

(3) Termination of service summary. A termination of service summary shall be sent to the department caseworker responsible for the client within two weeks of terminating the service. The termination of service summary shall include the rationale for service termination and the impact of the service components on the client in relationship to the established goals and objectives.

i. Maintenance of client records. Client records must be retained by the provider for a period of three years after service to the client terminates.

j. Statistical records. Each provider of service shall maintain sufficient statistical records, including program and census data, to document the validity of the billings and reports submitted to the department.

(1) The records shall be available for review at any time during normal business hours by department personnel, the purchase of service fiscal consultant, and state or federal audit personnel.

(2) These records shall be retained for a period of five years after final payment.

k. Certification by public transit division. Each service provider shall provide current documentation to the applicable district office of compliance with or exemption from public transit co-ordination requirements as found in Iowa Code chapter 601J and Iowa Administrative Code 820—[09,A] chapter 2 within ten days of notification by the Iowa department of transportation, public transit division. Failure to co-operate in obtaining or providing

the required documentation of compliance or exemption is grounds for termination of the contract.

**150.10(15) Client eligibility and referral.**

a. Program eligibility. Clients in this category of eligibility, in order to receive services through the purchase of service system, shall have been determined eligible and formally referred by the department. The department shall not make payment for services provided prior to the client's application, eligibility determination, and referral.

The following forms shall be used by the department to authorize services:

(1) Form SS-1701-0, County Authorized Local Administrator Referral of Client for Purchase of Social Services.

(2) Form SS-2611-0, Placement Agreement: Child Placing or Child Caring Agency (Provider).

b. Subrule 150.10(8) notwithstanding, when a court orders services to a client and the department has no responsibility for supervision or placement of the client, purchasing services for the client shall not affect this contract except that the department will pay the rate established by these rules for maintenance and service provided by the facility when the client receives service through this contract.

**150.10(16) Client fees.** Rules governing client fees may be found in rule 498—130.4(234).

This rule is intended to implement Iowa Code section 234.6 and 1985 Iowa Acts, chapter 259, section 11.

**ARC 6410****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 adopt Chapter 206, "Community Supervised Apartment Living Arrangements Services Program."

The General Assembly directed the Department to adopt rules establishing minimum standards for the programming of community supervised apartment living arrangements and to approve those arrangements for per diem or per hour purchase-of-service reimbursement or for grants. Notice of Intended Action setting forth the minimum standards for programming was published in the Iowa Administrative Bulletin on January 29, 1986, as **ARC 6303**. [Proposed Chapter 36 entitled "Community Supervised Living Arrangements"]

This new chapter establishes the requirements for purchase of service of the community supervised apartment living arrangement program and sets forth eligibility criteria. Clients must require some supervision but not the level of care and supervision provided in licensed residential care facilities. Clients must also be diagnosed as mentally ill, mentally retarded, or developmentally disabled.

**HUMAN SERVICES DEPARTMENT[498] (cont'd)**

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 50319-0114, on or before April 2, 1986.

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

Des Moines - April 2, 1986 3:00 p.m.  
Hoover State Office Building  
First Floor, Conference Room, Side 1  
Des Moines, Iowa 50319-0114

These rules are intended to implement Iowa Code section 234.6 and 1985 Iowa Acts, chapter 259, section 1.

**CHAPTER 206**

**COMMUNITY SUPERVISED APARTMENT LIVING ARRANGEMENTS SERVICES PROGRAM**

**Preamble**

The intent of this chapter is to establish requirements for the purchase of community supervised apartment living arrangements for adults by the department of human services. Community supervised apartment living arrangements is a program of services for adults with mental illness, mental retardation or developmental disabilities who are capable of living semi-independently. Services are provided to enable the adults to live in the community with minimal supervision. Community supervised apartment living arrangements are approved by the department according to rules found in 498—chapter 36.

**498—206.1(234) Definitions.**

“Adult” means a person eighteen years of age or older or a legally emancipated minor.

“Approved provider” means an agency that has been approved to provide community supervised apartment living arrangements according to 498—chapter 36.

“Community supervised apartment living arrangements” means the provision of or assistance to secure a residence, and supervision to one or more persons who have mental illness, mental retardation, or a developmental disability and who are capable of living semi-independently in a community setting.

“Community supervised apartment living arrangements services program” means a program of service as defined in rule 498—36.3(225C).

“Department” means the Iowa department of human services.

“Project manager” means a department employee who is designated as responsible for the development, monitoring, and evaluation of service arrangements with agencies that provide a community supervised apartment living arrangements program of services.

**498—206.2(234) Client eligibility.**

**206.2(1) Financial.** Financial eligibility shall be determined according to rule 498—130.3(234).

**206.2(2) Need for service.** The need for community supervised apartment living arrangements program of services shall be established through the assessment process as set forth in 498—chapter 131. The person shall also meet the following conditions:

a. The person shall require minimal supervision but not the level of care and supervision provided in licensed residential care facilities as documented by Form SS-1719, Physician's Report.

b. The person shall be diagnosed as mentally ill, mentally retarded, or developmentally disabled as defined in rule 498—36.1(225C).

c. The person shall be an adult as defined in rule 498—206.1(234).

**498—206.3(234) Goals.** Appropriate goals for persons living in community supervised living arrangements are those described in subrule 130.7(1), paragraphs “a,” “b,” and “d.”

**498—206.4(234) Elements of service provision.**

**206.4(1) Provider standards.** Services under this chapter shall be purchased by the department only from a provider who has been approved pursuant to subrule 36.10(1) or 36.10(2). The provider shall submit a copy of the department's approval to the project manager.

**206.4(2) Required services.** The provider shall ensure the following services as outlined in subrule 36.3(1) are available to the client as needed: Service co-ordination services (case-management services), diagnostic and evaluation services, community living skills training, self-care and support services. In addition, the provider shall ensure that the client receives necessary supervision as required in subrule 36.2(2).

The provider may deliver the services directly or subcontract for the services from another provider. If some services are delivered by subcontracting, the provider shall include the costs for these services in its unit rate. No payment shall be allowed for the other services outlined in subrule 36.3(1).

**206.4(3) Method of payment.** The provider may request a reimbursement rate be established on a per diem or a per hour basis. Rates will be developed in accordance with the requirements and procedures in 498—chapter 150 for purchase of service providers.

**206.4(4) Department responsibilities.** Case management and case plan development shall adhere to the provisions of rules 498—130.6(234) and 498—130.7(234). A copy of the case plan shall be submitted to the provider at the time of referral, if possible, but in no event later than thirty days after the client's application for services.

**206.4(5) Service provider responsibilities.** The provider shall adhere to the following guidelines:

a. The provider shall submit a written report to the department summarizing the results of the diagnostic and evaluation services as required in subrule 36.6(3) within thirty days following the client's admission to the program and no less than annually thereafter.

b. The provider shall submit a copy of the social history as required by subrule 36.6(5) to the department within thirty days of the client's admission to the program.

c. The provider shall submit a copy of the individual program plan as required in subrule 36.6(6) to the department within thirty days following the client's admission to the program and no less than annually thereafter.

d. Based on ongoing service co-ordination responsibilities as defined in rule 498—36.1(225C) and subrule 36.6(4), the provider shall communicate needs not adequately addressed in the department case plan at any time during the provision of service.

**498—206.5(234) Adverse service actions.** Services may be denied, terminated, or reduced according to the provisions of rule 498—130.5(234).

**498—206.6(234) Appeals.** Notice of adverse actions and the right of appeal shall be given clients in accordance with 498—chapter 7.

## HUMAN SERVICES DEPARTMENT[498] (cont'd)

**498—206.7(234) Compliance transition period.** All purchase of service contracts for community supervised living arrangements services shall comply with subrule 206.4(1) no later than six months from the effective date. During this six-month transition period, a purchase of service contract may be entered into prior to the department's approval of the provider's program pursuant to subrule 36.10(1) or 36.10(2) if copies of the following are submitted to and approved by the project manager:

**206.7(1)** A copy of the provider's "Application for Approval of a Community Supervised Living Arrangements Program," Form 470-2070.

**206.7(2)** The provider's operating plan.

**206.7(3)** A completed Self-Survey Form, Form 470-2068.

**206.7(4)** A corrective action plan with time frames for implementation for each standard that the provider indicates on the self-survey form is out of compliance.

These rules are intended to implement Iowa Code section 234.6 and 1985 Iowa Acts, chapter 259, section 1.

**ARC 6411****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)"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 234.6, the Department of Human Services proposes to amend Chapter 207, "Residential Services for Adults," appearing in the Iowa Administrative Code.

This amendment is a revision of the existing chapter. It makes the following major changes to the existing rules:

1. It consolidates two block grant programs, residential care services and residential treatment services into a single program called residential services for adults. Having two block grant programs to provide very similar services has created confusion and has not been useful. Both providers and Department personnel agree that these services could be integrated into one program.

2. Vocational service components are deleted from residential services. Vocational services should be a part of work activity or sheltered workshop programs, not residential services.

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 50319-0114 on or before April 2, 1986.

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

Des Moines - April 2, 1986  
Hoover State Office Building  
First Floor Conference Room - Side 1  
Des Moines, Iowa 50319-0114

3:00 p.m.

These rules are intended to implement Iowa Code section 234.6(6)"i."

Rescind 498—chapter 207 and insert the following in lieu thereof:

**CHAPTER 207  
RESIDENTIAL SERVICES FOR ADULTS****Preamble**

These rules define the residential services program for handicapped adults administered by the Iowa department of human services. This program provides habilitation, rehabilitation and related services for adults who are not able to live independently due to a physical or mental handicap or developmental disability. Persons enrolled in this program must live in a licensed, twenty-four-hour-per-day residential care facility operated by a service provider.

Residential services are individually planned for each person by the person's interdisciplinary team and are based on assessments by a physician and other relevant professional people. These services are integrated with the room and board, supervision, personal care, and other services required of residential care facilities by licensure regulations.

The residential services program is one in a continuum of service programs available to Iowa's handicapped adults. Its purpose is to provide services which will enable handicapped adults to achieve or maintain their optimum in self-care, self-reliance and independence. Persons who successfully complete this program may advance into a community supervised apartment living arrangement, an independent living arrangement or return to their families or other previous living arrangements. They now have increased knowledge, skills and interests, and they are better able to care for themselves and contribute to the work in their households.

These rules describe the residential services program for handicapped adults in the department's purchase of services program.

Rules for the two related programs of residential services and respite care in residential services for handicapped adults, provided in the department's Title XIX waiver program, are in 498—chapter 83.

**498—207.1(234) Definitions.**

"Department" means the Iowa department of human services.

"Individual program plan" means a written goal-oriented plan of care and services developed for a person by the person's interdisciplinary team.

"Interdisciplinary team" means a group of people representing the client, the provider, the department and relevant professionals, who plan, monitor and replan the care and services for a person.

"Person" means a recipient of residential services or someone for whom residential services has been requested.

"Provider" means an organization which has a written purchase-of-service agreement with the department to furnish residential services.

"Qualified professional" means personnel who meet the following professional standards:

1. "Qualified physician" means a person licensed to practice medicine and surgery under the provisions of Iowa Code chapter 148, or to practice osteopathic medicine and surgery under Iowa Code chapter 150A.

2. "Qualified social worker" means a person who is licensed as a social worker under Iowa Code chapters 147

## HUMAN SERVICES DEPARTMENT[498] (cont'd)

and 154C, or who is certified as a social worker by the Academy of Certified Social Workers, or who holds a bachelor's or master's degree in social work from an accredited college or university, or who has a bachelor's degree in a field other than social work from an accredited college or university and three years of social work experience under the supervision of a qualified social worker and who, in all cases, has one year or more of experience in providing services to physically or mentally handicapped persons.

3. "Qualified psychologist" means a person who is licensed to practice psychology under Iowa Code chapters 147 and 154B or who has at least a master's degree in psychology from an accredited college or university and specialized training, or one year or more of postgraduate experience, in providing services to physically or mentally handicapped persons.

4. "Qualified nurse" means a person who holds a bachelor's degree in liberal arts or a bachelor of science degree from an accredited college or university and is a registered nurse under the provisions of Iowa Code chapter 152 and has one year or more of experience under the supervision of a qualified professional in providing services to physically or mentally handicapped persons.

"Reserve bed days" means a payment mechanism which allows state supplementary assistance and social service block grant residential care payments to continue for a specified period during a recipient's vacation, visitation or hospitalization. The purpose of these payments is to enable recipients to pay providers to "hold" their bed in the residential care facility and their enrollment in the providers' program during prescribed absences.

"Residential services" means a program of habilitation, rehabilitation, and other services which will enable adults who are unable to live independently, due to handicapping physical or mental conditions or developmental disability, to achieve or maintain their optimums in self-care, self-reliance and independence.

Residential services includes the following component services: Basic living skills training, social living skills training, independent living skills training, health screening services, leisure-time and recreational services, special treatment services, behavior therapy, support services, transportation, and transition services.

"Respite care" means a program of residential services for handicapped adults, provided on a temporary basis, for up to thirty-six days per year, to give needed relief to the handicapped adult person's usual caregiver(s). Respite care is one of the department's Title XIX waiver programs.

"Title XIX waiver services" means the department's Title XIX programs described in 498—chapter 83(234), which includes programs of residential services and respite care.

**498—207.2(234) Eligibility requirements.** Residential services shall be available to persons who meet the eligibility requirements for services from the department, as defined in rule 498—130.3(234) and the following additional conditions:

**207.2(1)** The person must be handicapped due to a physical, mental or developmental condition and because of this requires supervision, personal care or other assistance on a daily basis to live in reasonable safety and comfort.

**207.2(2)** The person must live in a licensed residential care facility or a licensed residential care facility for the mentally retarded, operated by a provider that has a purchase-of-service agreement with the department to provide residential services.

**207.2(3)** A licensed physician of medicine or osteopathy must complete Form SS-1719-0, Physician's Report, certifying that the person needs care, personal services or supervision on a daily basis but does not need nursing services and the person's needs can be met in a licensed residential care facility. The Physician's Report shall be completed yearly and used for all redeterminations of eligibility.

**207.2(4)** Persons are eligible for those specific components of residential services which:

a. Are needed to enable them to achieve or maintain self-care, self-reliance or independence.

b. Have been planned for them by their interdisciplinary team and are included in their individual program plan.

c. Are directed toward the goals specified in subrule 130.7(1), paragraph "b," "d," or "e."

**498—207.3(234) Services provided.** Recipients of residential services receive both purchased services and direct services.

**207.3(1)** Direct services. Case management services shall be provided to persons by a department service worker, as described in rule 498—130.6(234). These services shall also be provided to persons who have applied for or are receiving residential services purchased by a county government, provided the following conditions are met:

a. The county board of supervisors requests such services.

b. The person meets the eligibility requirements for the department's block grant residential service program.

c. The residential services received or sought meet the requirements for residential services described in this chapter.

d. The services are furnished by a provider that has a purchase-of-service agreement with the department to provide residential services.

**207.3(2)** Purchased services. Purchased residential services shall include the following component services:

a. Basic living skills training. This component consists of instruction, planned experiences and guidance in activities which are essential to a person's successful functioning in daily living. It includes training in self-help, physical development, socialization, and personal health.

(1) Self-help training consists of services which enable a person to develop the knowledge, habits and skills essential to care of the self. It includes training in the areas of eating and drinking, toileting, bathing and grooming, dressing and undressing, and physical movement.

(2) Physical development training consists of services which enhance motor and sensory development and services which enable the person to acquire or maintain the knowledge, attitudes and skills needed for physical fitness. It includes special training and physical exercise programs.

(3) Personal health training consists of services designed to enable the person to develop the knowledge, habits and skills essential to maintain good personal health and avoid the spread of disease. It includes

**HUMAN SERVICES DEPARTMENT[498] (cont'd)**

training in the areas of personal hygiene and sanitation, nutrition, sickness, communicable disease, medication and health habits.

b. Social living skills training. This component consists of instruction, planned experiences and guidance in matters which are essential to a person's successful functioning in interpersonal and group relationships and in the activities of the family, neighborhood and community. It includes socialization training and communication training.

(1) Socialization training consists of services designed to enable the person to develop self-awareness, self-control, social responsiveness, interpersonal and group relationship skills, social amenities, and other useful personal characteristics and social skills.

(2) Communication training consists of instruction and guided practice in verbal, nonverbal and written language, provided to develop the person's receptive and expressive communication and knowledge of communication techniques and processes.

c. Independent living skills training. This component consists of planned instruction and experiences and guidance in matters which are essential to a person's management of personal property, physical environment, personal and family business affairs and community living. It includes arithmetic training and training in meal preparation and menu planning, laundry and care of clothing, housekeeping, use of telephone, money management, time management, travel, shopping, banking, the use of other private businesses and of public services, and personal safety.

Arithmetic training consists of services designed to enable the person to develop number recognition and skills in the numerical computations useful in daily living, such as counting, making change, telling time, addition and subtraction.

d. Health screening services. This component consists of the examination, testing and study of persons to identify and assess their physical, mental and sensory problems or conditions. These services are provided by members of the health professions, for the purpose of early detection and referral of persons for treatment of acute and chronic health conditions and correction of or compensation for sensory deficits.

e. Leisure time and recreational services. This component consists of instruction, planned activities and guidance, provided to persons to help them develop recreational, social, hobby and cultural skills and the ability to use leisure time constructively. Activities include tours, performances, lectures, training experiences and guided active or spectator participation in crafts, games, gardening, sports, the arts and other avocational pursuits.

f. Special treatment services. This component consists of those services which reduce or eliminate the personal and social problems and functional limitations associated with acute and chronic physical, mental or developmental conditions. These services are provided by individuals licensed by the state or certified by their professions and include occupational therapy, physical therapy, psychotherapy, and speech therapy.

g. Behavior therapy. This component consists of behavior modification programs, including token economy, positive reinforcement and other programs planned by a qualified psychologist or other qualified professional trained in this treatment modality. In behavior therapy, the desirable and undesirable behaviors of persons are

identified and prescribed measures are taken by caretaker and professional staff to change, modify or reinforce the behaviors.

h. Support services. This component consists of counseling, guidance and other services provided to enable persons to resolve problems, achieve understandings, enhance their personal development or make successful adaptations to their environment, living arrangement, the significant people in their lives, and to their conditions of work and programs of training and service.

(1) Counseling consists of planned interviews and discussions provided on an individual, small group or family basis.

(2) Guidance consists of coaching, advising, modeling, encouragement and informal instruction or correction provided to instruct or to reinforce or change the behavior or performance of persons.

i. Transportation. This component consists of the movement of persons from one place to another in a car, van or bus to enable them to receive services or meet essential needs. This service may be provided to persons on an individual or group basis and by public or private-sector carrier.

j. Transition service. This component consists of those case-planning, counseling, consultation and other services which enable persons to make a successful transition and adaptation to a new living arrangement or job or training program.

**498—207.4(234) Administration.**

**207.4(1) Providers eligible.** The department may purchase residential services from a provider who meets the requirements in 498—chapter 150 for purchase of service contracts and who meets the following additional conditions:

a. The provider must have a licensed residential care facility, which is used as a living arrangement and also as a training site for recipients of residential services.

b. The provider must arrange a day activity program for each client based upon the client's individual program plan.

c. The provider must be able to furnish all of the components of residential services either directly or through subcontracting as allowed in subrule 207.4(2).

**207.4(2) Provisions of components.** The provider must furnish the components of residential services to persons in its residential service program either directly or by written contract or agreement with another source as follows:

a. The support services, including counseling and guidance, the program of behavior therapy and transition services shall be provided directly by provider staff.

b. The provider may subcontract for some, but not all of each of the following components: Leisure-time and recreational services, independent living skills training, social living skills training, and basic living skills training services. These services, whether subcontracted or not, must be provided by qualified professionals or when appropriate by personnel who meet the requirements of health department subrule 470—64.1(21) or by people who work under the direction and supervision of these individuals.

c. The provider may provide directly or subcontract for health screening services and special treatment services. These services must be provided by or under the direction and supervision of individuals who are licensed by the state of Iowa or certified by their professions to provide the services to be rendered.

## HUMAN SERVICES DEPARTMENT[498] (cont'd)

d. The provider may provide directly or subcontract for transportation services with providers meeting the requirements of subrule 150.5(3)"d."

**207.4(3) Payment.** The following policies shall apply to payment for residential services under the department's purchase of services program:

a. Services eligible. Payment may be made for only those services described in subrule 207.3(2). Prevocational, vocational and religious training services are not eligible for payment.

b. Subcontracted services. The provider agency shall include all residential services furnished by subcontract in their unit cost.

c. Unit of service. For payment purposes, one day of service to a client shall be considered a unit of service.

d. Rate of payment. Payment for residential services shall be determined by the department's rate setting procedures described in rule 498—150.3(234).

e. Out-of-state placement. Payment for residential services provided by an agency out of Iowa shall be determined in accord with rule 498—150.3(234).

**207.4(4) Reserve bed days.** The policies governing reserve bed days for service payment shall be the same as those established for reserve bed days in the department's state supplementary assistance residential care program. (See subrule 52.1(3), "e" and "f.") Form SS-1107-0, Request for Reserved Bed Payment, shall be used to authorize payments for reserve bed days.

**498—207.5(234) Method of provision.** Residential services must be integrated with the standards and requirements of state licensure for residential care facilities, contained in the health department rules, 470—chapters 57, 60 and 63. In addition, the requirements of the department's state supplementary assistance residential care program apply for persons who are recipients of that program. Other considerations regarding service planning and service delivery are as follows:

**207.5(1) Interdisciplinary team.** Residential services shall be individually planned for each person, by the person's interdisciplinary team.

a. Membership. The interdisciplinary team shall include, at minimum:

(1) The person, and as appropriate, the person's representative as designated by the person or the court.

(2) Representatives of the provider who are, or will be, directly involved in providing services to the person.

(3) The person's department service worker.

(4) At least one qualified professional.

Individuals writing reports which are to be used in developing a person's individual program plan, shall be invited to meetings of the interdisciplinary team and to participate in planning for the person.

b. Meetings. The interdisciplinary team shall meet as often as necessary, but at least semiannually, to review the person's health status, performance and needs, and to replan and rewrite the person's individual program plan.

**207.5(2) Individual program plan.** Each person receiving residential services shall have an individual program plan less than one year old, written by their interdisciplinary team.

a. Contents. The individual program plan shall include the following:

(1) A description of the person's development, physical and mental health, and functional abilities and limitations.

(2) Short and long range goals and specific objectives the person is to achieve.

(3) The specific components of service, supervision, maintenance and care to be provided the person, and for each, the expected date of initiation, the number of units, the expected duration of each component, and the person or agency responsible for each component.

(4) The schedules for evaluation and for rewriting of the individual program plan.

b. Reports. To assist them in developing the individual program plans, the interdisciplinary team shall have current reports from a qualified physician and from other representatives of professions, disciplines and services areas relevant to identify the person's needs and designing programs to meet them.

**207.5(3) Provider responsibilities.** The provider shall assure that the following conditions apply for each person in its residential service program.

a. An interdisciplinary team is established and appropriately staffed and individual program plans are developed as required by these rules.

b. The care, supervision, and services provided each person are based on the person's own individual program plan.

c. Residential services are provided by qualified professionals, or when appropriate by personnel who meet the requirements of health department subrule 470—64.1(21); or by people who work under the direction and supervision of these individuals.

d. All the components of residential services are available and provided when needed.

e. Other services are made available to the person when they are needed.

f. Semiannual reports and termination reports are submitted to the department service worker responsible for the person, as specified in subrule 150.3(3).

**498—207.6(234) Reduction, denial or termination of services.** Residential services may be denied, terminated or reduced according to rule 498—130.5(234). In addition, services may be denied or terminated, when in the judgment of the person's interdisciplinary team any of the following conditions apply:

**207.6(1)** The person could live in a less restrictive living arrangement and receive needed services.

**207.6(2)** The person's behavior or condition is such that the person requires a higher level of care.

**207.6(3)** The person has not made progress toward the goals and objectives of the person's individual program plans during the past twelve months.

**498—207.7(234) Appeals.** Decisions made by the department or its designee adversely affecting clients may be appealed pursuant to 498—chapter 7. Decisions made by the department adversely affecting service providers may be reviewed pursuant to subrule 150.3(9) or 150.10(7).

These rules are intended to implement Iowa Code section 234.6(6)"i."

**ARC 6403****IOWA LOTTERY AGENCY[526]****NOTICE OF TERMINATION**

Pursuant to Iowa Code subsection 17A.4(1), paragraph "b," the Iowa Lottery Agency hereby terminates the rulemaking proceedings initiated by its Notices of Intended Action affecting Chapter 4, published as **ARC 6206** on December 18, 1985, and Chapters 1 through 8, published as **ARC 5785** on July 31, 1985. These Notices were published to solicit public comment. Public hearings were held on August 27, 1985, pursuant to the Notice published as **ARC 5785** and on January 7, 1986, pursuant to the Notice published as **ARC 6206**. No one appeared at the time and place set for the hearings and no oral or written comments have been received regarding the amendments. The rulemaking proceedings are being terminated because these amendments were also emergency adopted and implemented as **ARC 5568**, published on June 5, 1985; **ARC 5678**, published on July 3, 1985; **ARC 5784**, published on July 31, 1985; and **ARC 6205**, published on December 18, 1985, in the Iowa Administrative Bulletin.

**ARC 6404****IOWA LOTTERY AGENCY[526]****NOTICE OF TERMINATION**

Pursuant to Iowa Code subsection 17A.4(1), paragraph "b," the Iowa Lottery Agency hereby terminates the rulemaking proceedings initiated by its Notice of Intended Action affecting Chapters 2, 3, 4, 5, 8, and 9, published as **ARC 6295** on January 15, 1986. This Notice was published to solicit public comment. Public hearing was held on February 4, 1986, pursuant to the Notice published. No one appeared at the time and place set for the hearing and no oral or written comments have been received regarding the amendments. The rulemaking proceedings are being terminated because these amendments were also emergency adopted and implemented as **ARC 6294**, published on January 15, 1986, in the Iowa Administrative Bulletin.

**ARC 6402****IOWA LOTTERY AGENCY[526]****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 1985 Iowa Code Supplement chapter 99E, the Iowa Lottery Agency hereby gives Notice of Intended Action to amend Chapter 3, "Licensing," Chapter 5, "Purchasing Procedure," Chapter 8, "Instant Game General Rules," and Chapter 9, "On-Line Game General Rules," Iowa Administrative Code.

Chapter 3 is amended by replacing the one-year renewable license with a general license without a fixed expiration date and by giving the commissioner the power to extend a provisional license more than one time.

Chapter 5 is amended by deleting the agency's female and minority set-aside rule and replacing it with the identical language of the rule used by the general services department and other agencies.

Chapter 8 is amended by changing the definition of "instant ticket" to include other types of tickets besides latex-covered tickets.

Chapter 9 is amended by adding a rule which provides for a periodic service fee.

These amendments were submitted as an emergency adopted and implemented rule, **ARC 6401**, published in the Iowa Administrative Bulletin on March 12, 1986. The purpose of this Notice is to solicit public comment on the rules, which are incorporated here by reference. Any interested person may make written suggestions or comments on the rules prior to April 8, 1986. Written comments or suggestions should be directed to Nichola Schissel, Iowa Lottery, 2015 Grand Avenue, Des Moines, Iowa 50312. Persons who want to convey their views orally should contact Nichola Schissel at (515) 281-7870 or at the address above. A public hearing will be held on April 8, 1986, at 1:00 p.m. at 2015 Grand Avenue, Des Moines, Iowa. Persons may present their views at this public hearing either orally or in writing.

These rules implement 1985 Iowa Code Supplement chapter 99E and sections 18.177 to 18.179.

**ARC 6389****PUBLIC INSTRUCTION  
DEPARTMENT[670]****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 257.9(2), the Iowa Department of Public Instruction hereby gives Notice of Intended Action to amend Chapter 3, "Approved Schools and School Districts."

This proposed subrule amendment clarifies or broadens the definition of a teacher's aide to show that, with respect to the aide's supervisory and monitorial duties, the aide need not be personally under the direct supervision of a certificated staff member.

Any interested person may make written suggestions or comments on this proposed amendment prior to April 2, 1986. Such written materials should be directed to Kathy L. Collins, Administrative Legal Consultant, Department of Public Instruction, Grimes State Office Building, Des Moines, Iowa 50319-0146. Persons who want to convey their views orally should contact Kathy Collins at 515-281-5295 or in the Administrative Support area on the second floor of the Grimes State Office Building. No public hearing is anticipated.

## PUBLIC INSTRUCTION DEPARTMENT[670] (cont'd)

This rule is intended to implement Iowa Code chapter 257.

The following amendment is proposed:

Subrule 3.4(5) is amended to read as follows:

**3.4(5) Educational aides.** Educational aides shall be defined as employed or volunteer persons who, *in the presence or absence of professional instructional staff members but under the direction, supervision, and control of the instructional professional staff:* (a) Supervise students on a monitorial or service basis; (b) work with students in a supportive role under conditions determined by the instructional professional staff responsible for the students, but not as a substitute for or a replacement of functions and duties of a teacher as established in 3.4(4).

**ARC 6393****REVENUE DEPARTMENT[730]****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 421.14 and 422.68(1), the Iowa Department of Revenue hereby gives Notice of Intended Action to amend Chapter 54, "Allocation and Apportionment," Iowa Administrative Code.

Iowa Code section 422.33 provides for the apportionment of income by an Iowa domiciled corporation whose business is carried on partly within and partly without the state. The proposed rule sets forth the minimum activities which are considered to be carrying on business without the state.

The proposed rule will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

The Department has determined that this proposed rule may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.31(4). The Department will issue a regulatory flexibility analysis as provided in Iowa Code sections 17A.31 to 17A.33 if a written request is filed by delivery or by mailing postmarked no later than April 1, 1986, to the Policy Section, Technical Services Division, Iowa Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the administrative rules review committee, the governor, a political subdivision, at least 25 persons who qualify as a small business under Iowa Code sections 17A.31 to 17A.33, or an organization of small businesses representing at least 25 persons which is registered with this agency under Iowa Code sections 17A.31 to 17A.33.

Any interested person may make written suggestions or comments on this proposed amendment on or before April 11, 1986. Such written comments should be directed to the Policy Section, Technical Services Division, Iowa Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to orally convey their views should contact Clair R. Cramer, Policy Section, Technical Services Division, Iowa Department of Revenue, at 515/281-4250 or at Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by April 4, 1986.

The amendment is intended to implement Iowa Code section 422.33.

The following new rule is proposed:

Amend rule 730—54.1(422) by adding the following new subrule 54.1(4):

**54.1(4) Definition - carrying on a trade or business partly within and partly without the state.** Carrying on a trade or business partly within and partly without the state means having business activities in at least one other state sufficient to meet the minimum constitutional standards for doing business in a state under the due process and commerce clauses of the United States Constitution. The determination of whether a corporation is carrying on a trade or business partly within and partly without the state must be made on a tax-year-by-tax-year basis. The activities of a past or future tax year have no bearing on the current year.

The following nonexclusive activities if carried on in a regular and continuing basis by corporate officers or employees in at least one other state would constitute the minimum activities which would meet the constitutional standards for doing business in a state under the due process and commerce clauses of the United States Constitution:

- a. Delivery of company goods or products in company owned or leased vehicles.
- b. Solicitation of sales by corporate officers or employees.
- c. Collection of overdue accounts.
- d. Installation of company goods or products.
- e. Inspection of company goods or products after installation.
- f. Picking up damaged or obsolete inventory from customers.
- g. Picking up raw materials or finished goods for resale in company owned or leased vehicles.
- h. Repair or warranty work on company goods or products after sale.
- i. Any other activities carried on in advancement, promotion, or fulfillment of the business of the corporation.

Some of the above activities may not create a tax liability in another state because of the protections afforded by Public Law 86-272, 15 USCA sections 381-385, which prohibit the taxation of a corporation if its only activities in the state are the solicitation of orders which are approved and filled by shipment or delivery from outside the state. Irrespective of whether the corporation is taxable in another state, it may apportion its income if it carries on one or a combination of the above activities in a regular and continuing basis by corporate officers or employees in at least one other state.

The mere shipment of goods via common carrier or the United States Postal Service to non-Iowa destinations does not constitute doing business partly within and partly without the state. *Irvine Co. v. McColgan*, 26 Cal.2d 160, 157 P.2d 847 (1945); *W. J. Dickey & Sons, Inc. v. State Tax Commission*, 212 Md. 607, 131 A.2d 277 (1957); *State of Georgia v. Coca-Cola Bottling Co.*, 214 Ga.

## REVENUE DEPARTMENT[730] (cont'd)

316, 104 S.E.2d 574 (1958); E. F. Johnson Company v. Commissioner of Taxation, 224 N.W.2d 150 (Minnesota 1975); 1980 O.A.G. 588, and Kuehn to Bair # 85-5-3(L).

**ARC 6395**

## WATER, AIR AND WASTE MANAGEMENT DEPARTMENT[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 sections 455B.105 and 455B.173, the Water, Air and Waste Management Commission intends to revise rules in Chapter 64, "Wastewater Construction and Operation Permits," of Title IV, "Wastewater Treatment and Disposal." These rules may have an impact on small businesses, Iowa Code sections 17A.31 to 17A.33.

Iowa Code chapter 455B, division III, part 1, (455B.171 to 455B.187) authorizes the Department to administer, among other things, a construction permit program for wastewater disposal systems. Iowa Code section 455B.173(3) requires the Commission to adopt rules relating to the location and construction of disposal systems.

Revision of the section of the chapter dealing with variances is proposed in order to present examples of circumstances which would warrant consideration of a variance. Additional changes are proposed to correct references to agree with federal regulations and to delete obsolete or duplicate material.

Item 1 revises the subrule on variances. Subrule 64.2(9), paragraph "c," has been revised to list in greater detail the criteria to be used in considering requests for variances.

Item 2 rescinds subrule 64.3(6). The deleted rule permitted the Department to consider an application submitted to the Corps of Engineers prior to 1972 as fulfilling the requirements for application for an operation permit. The rule is obsolete because any COE application still on file is too outdated to be used in drafting an NPDES permit today.

Item 3 amends subrule 64.5(4), paragraph "d." The rule prior to this amendment required the Department to send a public notice and fact sheet for any discharge in a 208 management area to the local designated management agency. CIRALG (Central Iowa Regional Association of Local Governments) and CVRSA (Chariton Valley Regional Services Agency) no longer exist. The rule is being revised to reflect this change.

Item 4 amends subrule 64.6(5) by adding paragraph "j." This paragraph is being added in response to an EPA permit review in 1984.

Item 5 amends rule 64.9(455B). This rule adopts by reference the federal regulations that deal with discharges from silvicultural activities. The 40 CFR citation has changed since the previous departmental rule was adopted, necessitating this change.

Item 6 rescinds rule 64.10(455B). This rule pertained to agricultural activities and irrigation return flows, which were exempt from permit requirements. Since this exclusion is now included in subrule 64.3(1), rule 64.10(455B) is redundant.

**ARC 6398**

## SUBSTANCE ABUSE, IOWA DEPARTMENT OF[805]

## 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 125.7, the Iowa Department of Substance Abuse hereby gives Notice of Intended Action to amend the rules appearing in Chapter 3 of the Iowa Administrative Code entitled "Licensure Standards for Substance Abuse Treatment Programs."

Legislation enacted as the result of the passage of 1986 Iowa Acts, House File 244 established an additional category for treatment services which a program may provide; deletes the definition "intermediate treatment"; and changes the duration of a license which a program will now be eligible to receive. 1986 Iowa Acts, House File 244 became effective January 31, 1986. The present rules of the Iowa Department of Substance Abuse do not provide any regulations for these changes.

The substance of these rules is being submitted as Emergency Adopted and Implemented Rules **ARC 6397**, published in the Iowa Administrative Bulletin March 12, 1986.

The purpose of this Notice is to solicit public comment on these rule changes, the subject matter of which is incorporated herein by this reference.

Interested persons may submit written data, views, suggestions, or arguments, or make oral presentation by contacting the Iowa Department of Substance Abuse, Suite 500, Colony Building, 507 Tenth Street, Des Moines, Iowa 50319, or by telephoning 515/281-3641 no later than 4:30 p.m., April 1, 1986.

Rule 805—3.1(125) is being amended to include a new definition for "concerned family member" and placed in alphabetical order. In addition, the term "intermediate treatment" and accompanying definition are being deleted.

Rule 805—3.3(125) is being amended to reflect the current category of licenses issued by the department.

Rule 805—3.9(125) is being amended to reflect the current category of licenses issued by the department.

## WATER, AIR AND WASTE MANAGEMENT DEPARTMENT[900] (cont'd)

Item 7 amends rule 64.12(455B). This rule adopts by reference the federal regulations pertaining to separate storm sewers. Separate storm sewers are defined and a permit is required. The change is needed due to the renumbering of federal regulations.

Any interested person may file written comments on the proposed rule changes through April 14, 1986, with the Executive Director of the Department of Water, Air and Waste Management, 900 East Grand Avenue, Des Moines, Iowa 50319. Persons who want to convey their comments orally should contact Wayne Reed at 515/281-6010 by that date. Persons are also invited to present oral or written comments at a public hearing which will be held on April 1, 1986, at 10:00 a.m. in the 5th floor conference room, Henry A. Wallace Building, at the above address. Copies of the proposed changes in Chapter 64 may be obtained from the Records Center of the Department (Ph.: 515/281-8895).

These rules are intended to implement Iowa Code chapter 455B, division III, part 1.

ITEM 1. Subrule 64.2(9), paragraph "c," is amended by striking the existing paragraph and inserting in lieu thereof the following paragraphs:

c. Variances from the design standards and siting criteria which provide in the judgment of the department for substantially equivalent or improved effectiveness may be requested when there are unique circumstances not found in most projects. The executive director may issue variances when circumstances are appropriate. The denial of a variance may be appealed to the commission.

d. When reviewing the variance request, the executive director may consider the unique circumstances of the project, direct or indirect environmental impacts, the durability and reliability of the alternative, and the purpose and intent of the rule or standard in question.

e. Circumstances that would warrant consideration of a variance (which provides for substantially equivalent or improved effectiveness) may include the following:

(1) The utilization of new equipment or new process technology that is not explicitly covered by the current design standards.

(2) The application of established and accepted technologies in an innovative manner not covered by current standards.

(3) It is reasonably clear that the conditions and circumstances which were considered in the adoption of the rule or standard are not applicable for the project in question and therefore the effective purpose of the rule will not be compromised if a variance is granted.

f. Variances will not normally be granted when the principal reason for noncompliance is economic or the justification is based largely on the preference or convenience of the owner or the owner's agent or on the opinion of the owner or the owner's agent that compliance with the rule is not necessary or practical.

ITEM 2. Rescind subrule 64.3(6).

ITEM 3. Amend subrule 64.5(4), paragraph "d," as follows:

d. The department shall mail the public notice and fact sheet, if any, for any proposed NPDES permit within the ~~geographical area jurisdiction of the Chariton Valley Regional Services Agency or the Central Iowa Regional Association of Local Governments a designated and approved management agency under section 208 of the Act (33 U.S.C. 1288).~~

ITEM 4. Amend subrule 64.6(5) by adding the following new paragraph "j."

j. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the terms of this permit.

ITEM 5. Amend rule 64.9(455B) as follows:

**900—64.9(455B) Silvicultural activities.** The following is adopted by reference: 40 CFR § ~~124.85 as promulgated June 18, 1976 (41 FR 24711)~~ 122.27 as promulgated April 1, 1983 (48 FR 14153).

ITEM 6. Rescind rule 64.10(455B).

ITEM 7. Amend rule 64.12(455B) to read as follows:

**900—64.12(455B) Separate storm sewers.** The following is adopted by reference: 40 CFR § ~~124.83 as promulgated March 18, 1976 (41 FR 11458)~~ 122.26 as promulgated September 26, 1984 (49 FR 38050).

## ARC 6405

WATER, AIR AND WASTE  
MANAGEMENT DEPARTMENT[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 Iowa Code section 455B.412(2) the Water, Air and Waste Management Commission proposes to amend Chapter 141, "Hazardous Waste," which pertains to the identification and management of hazardous wastes generated, treated, stored, or disposed of in Iowa.

Iowa Code section 455B.412(2) authorizes the Water, Air and Waste Management Commission to adopt rules establishing criteria for identifying those wastes which are to be regulated as "hazardous wastes" as defined in Iowa Code section 455B.411(3). Pursuant to this authority the Commission has adopted, by reference, 900—141.2 (455B), those wastes identified by EPA as regulated wastes.

Individual waste streams, however, may vary, depending on raw materials, industrial processes, and other factors. Therefore, while a waste that is described in these regulations generally is hazardous, a specific waste meeting the listing description from an individual facility may not be. For this reason the Commission has adopted, by reference, federal rules which provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

## WATER, AIR AND WASTE MANAGEMENT DEPARTMENT[900] (cont'd)

The Maytag Company, on October 15, 1985, submitted a petition to exclude from regulation a sludge generated at its Waste and Water Treatment Plant. This waste, previously listed as F006 and K063, has been demonstrated by the Maytag Company not to meet any of the criteria for which it was listed originally. This same determination was previously made by the Environmental Protection Agency in 1981. Therefore, the waste sludge described in the Maytag petition is excluded from regulation as a hazardous waste.

The federal regulations which are adopted by reference and which contain the guidance for the exclusion of hazardous wastes from regulation and the Maytag Company petition are available for review upon request.

Any interested person may file written comments on the above proposed rule changes through April 11, 1986, 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 on April 1, 1986, at

10:00 a.m. in the Fifth Floor Conference Room, Henry A. Wallace Building, 900 East Grand Avenue, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code section 455B.412.

The following amendment is proposed:

Rescind rule 900—141.2(455B) and insert in lieu thereof the following:

**900—141.2(455B) Identification, listing, and exclusions of hazardous waste.**

**141.2(1)** The following is adopted by reference: 40 C.F.R. Part 261 as amended through October 23, 1985.

Provided that any general reference to 40 C.F.R. Part 124 shall mean 141.13(455B) of these rules.

**141.2(2) Exclusions:**

a. The Maytag Company, Newton, Iowa. Wastewater treatment sludge (EPA Hazardous Waste No. F006, K063) generated by Maytag Waste and Water Treatment Plant.

b. Reserved.

**ARC 6416****COLLEGE AID COMMISSION[245]**

Pursuant to the authority of Iowa Code section 261.37(5), the College Aid Commission emergency rescinds Chapter 10, entitled "Iowa Guaranteed Student Loan Program" and adopts a new Chapter 10, Iowa Administrative Code.

In compliance with Iowa Code section 17A.4(2), the Commission finds that public notice and participation is contrary to the public interest since it would prevent implementation for the 1986-87 school year.

The Commission also finds, pursuant to section 17A.5(2)"b"(2), that the normal effective date of this rule 35 days after publication should be waived and the rules be made effective upon filing with the Administrative Rules Coordinator on February 24, 1986, as it confers a benefit upon the public to ensure speedy implementation of these rules.

The Commission adopted these rules at its January 14, 1986, meeting.

These rules are intended to implement Iowa Code section 261.37.

These rules are also being filed as a Notice of Intended Action, **ARC 6417**.

Pursuant to Iowa Code section 17A.6(3), these rules are being omitted from this publication; however, full text is published in the Iowa Administrative Code.

[Filed emergency 2/24/86, effective 2/24/86]  
[Published 3/12/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/12/86.

**ARC 6415****HUMAN SERVICES  
DEPARTMENT[498]**

Pursuant to the authority of Iowa Code sections 234.6 and 237.3, the Department of Human Services hereby amends Chapter 116, "Licensing and Regulation of Residential Facilities for Mentally Retarded Children," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these rules on February 19, 1986. Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin on January 1, 1986, as **ARC 6237**.

Under current rules there are two levels of licensing for residential facilities serving children who are not mentally retarded, community residential facilities and comprehensive residential facilities. Comprehensive residential facilities serve children who require a higher level of supervision than children in community residential facilities, who need minimal supervision. Thus some of the requirements, such as staffing patterns, for comprehensive residential facilities are higher.

The rules in 498—Chapter 114 establish minimum standards for all residential facilities for children and the rules in 498—Chapter 115 establish additional standards necessary for comprehensive residential facilities.

There have not been two levels of licensing for residential facilities serving mentally retarded children.

Residential facilities serving mentally retarded children have been required to meet all of the standards in 498—Chapters 114 and 115. This has resulted in all residential facilities serving mentally retarded children needing to meet the higher standards required for comprehensive residential facilities.

The Iowa Association of Rehabilitation and Residential Facilities has asked the Department to amend 498—Chapter 116 to establish two levels of licensing for facilities serving mentally retarded children also. There are facilities serving mentally retarded children who do not require all of the services currently required in a comprehensive residential facility. This causes unnecessary expense.

The Department considered doing an extensive review and rewrite of the rules for licensing facilities serving mentally retarded children. This will be done at a later date, but prompt action is needed to address the current issue.

Therefore, this amendment establishes two levels of care for residential facilities serving mentally retarded children, community and comprehensive.

The Department of Human Services finds these rules confer a benefit on the public by eliminating unnecessary services and resulting expenses. Therefore, these rules are filed pursuant to Iowa Code section 17A.5(2)"b"(2).

These rules are identical to those published under Notice.

These rules are intended to implement Iowa Code section 237.3.

These rules became effective March 1, 1986.

ITEM 1. Amend rule 498—116.1(237) as follows:

**498—116.1(237) Applicability.** This chapter relates specifically to the licensing and regulation of residential facilities serving mentally retarded children. Refer to 498—chapter 112 for basic licensing and regulation of all foster care facilities, 498—chapter 114 for definitions and minimum standards for all group living foster care facilities, including community care facilities, and 498—chapter 115 for definitions and standards for comprehensive residential facilities for children. Chapters 112 and 114 apply to community residential facilities for mentally retarded children and chapters 112, 114 and 115 apply to comprehensive residential facilities serving for mentally retarded children with the exception of the areas discussed specifically in this chapter.

This rule is intended to implement Iowa Code chapter 237.

ITEM 2. Rescind rule 498—116.2(237) and insert the following in lieu thereof:

**498—116.2(237) Definitions.**

"Community residential facility for mentally retarded children" means a community residential facility as defined in rule 498—114.2(237) which serves children who meet the definition of mentally retarded as defined in Iowa Code chapter 222.

"Comprehensive residential facility for mentally retarded children" means a comprehensive residential facility as defined in rule 498—115.2(237) which serves children who meet the definition of mentally retarded as defined in Iowa Code chapter 222.

"Direct-service provider" means any employee of an agency whose primary responsibility is the care and programming of the children through direct interactions. The definition of "child care worker" in rule 498—

## HUMAN SERVICES DEPARTMENT[498] (cont'd)

114.2(237), and all other references to child care workers shall be replaced by this definition and the term "direct-service providers" when reading the other applicable rule chapters.

"Indirect-service provider" means an employee of an agency who supervises, co-ordinates and administers employees and program components. The definitions of "caseworker" and "casework supervisor" in rule 498—114.2(237), and all other references to caseworkers or casework supervisors shall be replaced by this definition and the term "indirect-service providers" when reading the other applicable rule chapters.

[Filed emergency after Notice 2/21/86, effective 3/1/86]  
[Published 3/12/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/12/86.

## ARC 6401

## IOWA LOTTERY AGENCY[526]

Pursuant to the authority of the 1985 Iowa Code Supplement chapter 99E, the Iowa Lottery Agency adopts and implements, by emergency filing, amendments to Chapter 3, "Licensing," Chapter 5, "Purchasing Procedures," Chapter 8, "Instant Game General Rules," and Chapter 9, "On-Line Game General Rules," Iowa Administrative Code.

Chapter 3 is amended by replacing the one-year renewable license with a general license without a fixed expiration date and by giving the commissioner the power to extend a provisional license more than one time.

Chapter 5 is amended by deleting the agency's female and minority set-aside rule and replacing it with the identical language of the rules used by the general services department and other agencies.

Chapter 8 is amended by changing the definition of "instant game" to include other types of tickets besides latex-covered tickets.

Chapter 9 is amended by adding a rule which provides for a periodic service fee.

In accordance with Iowa Code section 17A.4(2), the Agency finds that public notice and participation is unnecessary and contrary to the public interest in that the economic condition of the state of Iowa and the condition of the state treasury require immediate implementation of these rules to produce the revenue identified in the enabling Act to be distributed for economic development.

In accordance with Iowa Code section 17A.5(2)"b"(2), the Agency also finds that the usual effective date of this rule, thirty-five days after publication, should be waived and the rule made effective on February 21, 1986, as it confers a benefit upon the public to ensure effective and efficient compliance with the Agency's legislative mandate.

The Iowa Lottery Board adopted these amendments on February 20, 1986.

These rules implement 1985 Iowa Code Supplement chapter 99E and sections 18.177 to 18.179.

These rules are also being published as a Notice of Intended Action, ARC 6402, to solicit public comment.

ITEM 1. Amend subrule 3.2(2) to read as follows:

**3.2(2)** The general license shall be valid for one year after the date of issuance unless suspended or revoked until:

- a. Terminated by the mutual agreement of the licensee and the lottery agency,
- b. Suspended or revoked by action of the commissioner, or
- c. Surrendered by the licensee.

ITEM 2. Amend subrule 3.3(1) to read as follows:

**3.3(1)** The commissioner may issue a provisional license to an applicant for a general license after receipt of a person's fully completed licensed retailer's application, the authorization of a complete personal background check, completion of a credit check and completion of a preliminary background check. The provisional license shall expire at the time of issuance of a general license or ninety days from the date the provisional license was issued, whichever occurs first. *Effective February 1, 1986,* a The provisional license may be extended by the commissioner for one additional ninety-day period of time.

ITEM 3. Amend chapter 3 by rescinding rule 526—3.8(99E).

Reserve the rule number for future use.

ITEM 4. Rescind rule 526—5.8(99E,18) and insert in lieu thereof the following:

**526—5.8(99E,18) Set-aside for contracts with Iowa female and minority small businesses.** The purpose of this rule is to establish requirements for moneys administered by the agency that are set aside for contracts with female and minority small businesses.

**5.8(1)** No more than five percent of the value of anticipated total state procurement by the Iowa lottery agency of goods and services, including construction, may be set aside for contracts with female and minority small businesses each fiscal year.

**5.8(2)** Utility services shall not be considered for set-aside contracts.

**5.8(3) Definitions:**

"Control" in the above context means exercising the power to make policy decisions.

"Economically disadvantaged" means socially disadvantaged individuals whose ability to compete in the free enterprise system is impaired due to diminished opportunities to obtain capital and credit as compared to others who are not socially disadvantaged. Individuals who certify that they are members of named groups: Black Americans, Hispanic Americans, Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians), Asian-Pacific Americans (person with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Island, Northern Mariana Islands, Laos, and Cambodia) are to be considered socially and economically disadvantaged.

"Female small business" means a small business concern that is (a) at least 51 percent owned by one or more individuals who are females, or is a publicly owned concern where at least 51 percent of the stock is owned by one or more women, (b) and has its management and daily business controlled and operated by one or more women.

"Labor surplus area" means an area whose average unemployment rate was at least twenty percent above the average rate for all states (including the District of

## IOWA LOTTERY AGENCY[526] (cont'd)

Columbia and Puerto Rico) during the two previous calendar years. During periods of high national unemployment, the twenty percent ratio is disregarded and an area is classified as a labor surplus area if its unemployment rate during the previous two calendar years was ten percent or more.

"Minority small business" means a small business concern that is (a) at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or is a publicly owned concern where at least 51 percent of the stock is owned by one or more minorities (b) and has its management and daily business controlled and operated by one or more such individuals.

"Operate" in this context means being actively involved in the day-to-day management.

"Small business" means a business organized for profit which has its principal place of business in Iowa and which is neither dominant in its field nor an affiliate or subsidiary of business dominant in its field as defined by 1985 Iowa Code Supplement section 18.176.

"Socially disadvantaged" means individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their qualities as individuals.

**5.8(4)** Negotiated price or bid contract. The commissioner may use either a negotiated price or bid contract procedure in the awarding of a contract under this set-aside program.

a. The amount of an award shall not exceed by more than five percent the commissioner's estimated prices for the goods or services if they were purchased on the open market or under the competitive bidding procedures of Iowa Code section 18.6.

b. Surety bonds guaranteed by the federal small business administration are acceptable security for a construction award under this rule.

**5.8(5)** Certification.

a. Small businesses owned and operated by women or socially and economically disadvantaged persons are eligible to be certified by acceptance by the commissioner of the vendor application form.

b. The commissioner may determine on a case-by-case basis that individuals who are not members of the groups indicated in subrule 5.8(3)"a" "Minority small business," must establish their social disadvantage on the basis of clear and convincing evidence. A clear and convincing case of economic disadvantage must include the following elements:

1. The individual's economic disadvantage must stem from color; national origin; gender; physical handicap; long-term resident in an environment isolated from the mainstream of American society; or other similar cause not common to small business persons who are not socially disadvantaged.

2. The individual must demonstrate that the individual has personally suffered social disadvantage, not merely claim membership in a nondesignated group which could be considered socially disadvantaged.

3. The individual's social disadvantage must be rooted in treatment which has been experienced in American society, not in other countries.

4. The individual's social disadvantage must be chronic, long-standing, and substantial, not fleeting or insignificant.

5. The individual's social disadvantage must have negatively impacted on the individual's entry into, or advancement in the business world. The commissioner or

contract compliance manager will entertain any relevant evidence in assisting this element of an applicant's case. The contract compliance manager will particularly consider and place emphasis on the following experience of the individual where relevant: Education, employment, and business history.

c. Determination of eligibility may include self-certification, provided that the commissioner retains the ability to verify a self-certifier.

d. The commissioner, through an Iowa Code chapter 28E agreement with the Iowa civil rights commission, contract compliance division, shall maintain a current directory of small businesses which have been certified as eligible for this program, and conduct random checks of businesses to verify that the self-certification is accurate.

e. Vendor eligibility may be reviewed and verified on at least an annual basis.

f. Any misrepresentation shall be cause for removal from the qualified vendor list and any other penalties allowed by law.

g. Any third party may challenge the social and economic status by writing to the commissioner and addressing any misrepresentation.

**5.8(6)** Application to participate in the set-aside program may be done by completing a vendor application form available from the Small Business Division of the Iowa Development Commission, 600 E. Court Avenue, Des Moines, Iowa 50309, or by phone number 800-532-1216. Once the form is completed, it should be returned to the same address.

**5.8(7)** Female and minority small businesses shall meet the performance standard required by law and the purchasing procedures of the Iowa lottery agency.

a. This determination shall include consideration of production and financial capacity and technical competence.

b. This determination shall be made before a set-aside award is announced.

**5.8(8)** Inability to perform. When the commissioner of the Iowa lottery agency determines that a female or minority small business is unable to perform under a set-aside contract, the director of the Iowa development commission shall be informed.

a. The development commission shall assist the small business in attempting to remedy the causes of the inability to perform.

b. Any management or financial assistance programs available through governmental agencies such as the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration or private sources may be used to assist the small business.

c. Primary responsibility for assisting small businesses to attempt to remedy the causes of inability to perform rests with the director of the Iowa development commission.

This rule is intended to implement 1985 Iowa Code Supplement sections 18.177 to 18.179 and 99E.9.

**ITEM 5.** Amend the first two definitions set out in rule **526—8.2(99E)** to read as follows:

"Instant game" means a game in which a ticket is purchased and upon removal of a ~~latex~~ covering on the ~~front~~ of the ticket, the ticket bearer determines the winnings, if any.

"Player numbers" means the numbers or symbols appearing on the ~~designated areas~~ as under the removable covering on the ~~front~~ of the ticket.

## IOWA LOTTERY AGENCY[526] (cont'd)

ITEM 6. Amend chapter 9 by adding the following new rule:

**526—9.11(99E) Service fee.** The commissioner may impose a periodic service fee on on-line game licensees.

This rule implements 1985 Iowa Code Supplement section 99E.9(3).

[Filed emergency 2/21/86, effective 2/21/86]  
[Published 3/12/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/12/86.

**ARC 6397**

**SUBSTANCE ABUSE,  
IOWA DEPARTMENT OF[805]**

Pursuant to the authority of Iowa Code section 125.7, the Iowa Department of Substance Abuse hereby emergency adopts and implements amended rules to implement 1986 Iowa Acts, House File 244. These rules will appear in Chapter 3 "Licensure Standards for Substance Abuse Treatment Programs," Iowa Administrative Code.

Legislation enacted as the result of the passage of House File 244 established an additional category for treatment services which a program may provide; deletes the definition "intermediate treatment"; and changes the duration of a license which a program will now be eligible to receive. House File 244 became effective January 31, 1986. The present rules of the Iowa Department of Substance Abuse do not provide any regulations for these changes.

In compliance with Iowa Code section 17A.4(2), the Department finds it impractical for public notice and participation inasmuch as this legislation became effective January 31, 1986.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(3), 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 February 21, 1986, because they will more adequately meet the current needs of substance abuse treatment programs.

These rules shall become effective immediately upon filing with the administrative rules coordinator on February 21, 1986, and shall be published in the March 12, 1986, Iowa Administrative Bulletin.

These rules are intended to implement 1986 Iowa Acts, House File 244. They are being submitted simultaneously under a Notice of Intended Action as **ARC 6398**.

ITEM 1. Amend rule **805—3.1(125)** by adding the following new definition in alphabetical order and further amend rule by deleting the term "intermediate treatment" and accompanying definition.

*"Concerned family member" means an individual who is involved with or interested in a substance abuser or client and is affected by the behavior of the substance abuser or client.*

ITEM 2. Amend rule **805—3.3(125)** to read as follows:

**805—3.3(125) Type of licenses.** ~~Four~~ *Three* types of licenses may be issued by the department. A ~~standard~~ renewal license may be issued for *one or two* years. ~~when the commission has determined the applicant is substantially in compliance with the intent of all of these rules. Treatment programs applying for their first license may also be issued a license for two hundred seventy days.~~ Licenses may be issued for *one hundred eighty, two hundred seventy days, or one year* (at the discretion of the commission) to an applicant who is determined by the commission to be temporarily unable to substantially comply with these rules. A license issued for *one hundred eighty or two hundred seventy* days shall not be renewed or extended. ~~A one year license shall be issued no more than two consecutive times.~~

~~All standard~~ Licenses shall expire *one or two* calendar years from the date of issue, and a renewal of the license shall be issued *only* on application, as required herein. The renewal of a *one year* license shall be contingent upon demonstration of ~~substantial~~ continued compliance with licensure standards. The renewal of a two-year license shall be contingent upon demonstration of substantial continued compliance with licensure standards. Failure to apply for and receive renewal of the license prior to the expiration date shall result in immediate termination of license and require reapplication.

ITEM 3. Amend rule **805—3.9(125)** to read as follows:

**805—3.9(125) Corrective action plan.** Programs approved for a license for ~~one hundred eighty days or two hundred seventy days~~ by the commission will submit a corrective action plan to the director no later than thirty days following the licensure hearing. The corrective action plan shall include, but not be limited to:

1. Specific problem areas.
2. A delineation of corrective measures to be taken by the program.
3. A delineation of target dates for completion of corrective measures for each problem area.

These rules are intended to implement Iowa Code chapter 125.

[Filed emergency 2/21/86, effective 2/21/86]  
[Published 3/12/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/12/86.

**ARC 6387****FAIR BOARD[430]**

Pursuant to the authority of Iowa Code section 173.14(8) and chapter 17A, the Iowa State Fair Board adopts a new rule to 430—Chapter 1, Iowa Administrative Code.

The rule 1.6(173) clarifies retention and storage of records for the State Fair.

The rule adopted is the same as stated in Notice of Intended Action published December 18, 1985, in the Iowa Administrative Bulletin, Volume VIII, Number 13, as **ARC 6202**.

The Iowa state fair board approved this rule at their regular meeting on February 11, 1986.

This rule implements Iowa Code section 173.14 and will become effective April 16, 1986.

Chapter 1 is amended by adding the following new rule:

**430—1.6(173) Records.** The Iowa state fair board will retain its records in accordance with the standards of the records management manual of the Iowa state records commission.

[Filed 2/14/86, effective 4/16/86]

[Published 3/12/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/12/86.

**ARC 6394****HEALTH DEPARTMENT[470]****BOARD OF BARBER EXAMINERS**

Pursuant to the authority of Iowa Code section 258A.2, the Board of Barber Examiners hereby amends Chapter 152 of the Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin January 15, 1986, as **ARC 6281**.

The rules remove the requirement for the licensee to report continuing education, but require the licensee to retain the certificate for at least three years, and require the sponsor to report to the Board a list of names of persons attending continuing education with hours completed within thirty days after the activity.

The rules are the same as published under Notice except the word "continuing" was deleted from the first sentence of rule 470—152.106(258A).

The rules are intended to implement Iowa Code section 258A.2.

The rules shall become effective April 16, 1986.

ITEM 1. Rule 470—152.105(258A) is rescinded and the following adopted in lieu thereof:

**470—152.105(258A) Certificate for continuing education.** Each licensee shall retain the certificate issued by the sponsor indicating completion of continuing education for a period of at least three years from the date of the continuing education.

ITEM 2. Rule 470—152.106(258A) is rescinded and the following adopted in lieu thereof:

**470—152.106(258A) Attendance record report.** The person or organization sponsoring continuing education activities shall make a written record of the Iowa licensees in attendance including number of hours completed and send a signed copy of the attendance record to the board

upon completion of the educational activity, but in no case later than thirty days following completion of the educational activity. The report shall be sent to the Board of Barber Examiners, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319. Failure to submit the report within thirty days following the completion of the continuing education activity may result in denial or revocation of sponsor approval by the board.

[Filed 2/20/86, effective 4/16/86]

[Published 3/12/86]

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**ARC 6412****HUMAN SERVICES  
DEPARTMENT[498]**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 75, "Conditions of Eligibility," appearing in the Iowa Administrative Code.

The Council on Human Services adopted this rule on February 19, 1986. Notice of Intended Action regarding this rule was published in the Iowa Administrative Bulletin on January 15, 1986, as **ARC 6287**.

Under current rules when a couple reside in the same room in a medical institution their eligibility for Medicaid is determined as a couple. This means, at the present time, that the resources of both combined must not exceed \$2,550.00 and their combined incomes must not exceed \$2,016.00 per month. Both pay one half of the amount they are required to pay towards the cost of their care from their joint income.

Federal Supplemental Security Income (SSI) policy has now been changed for couples who continue to live together in the same room for six months. The Department must also change its policy to stay in compliance and avoid possible sanctions. This amendment implements that change.

Effective on the first of the seventh calendar month these couples shall be treated as individuals. This means that the resources of each must not exceed \$1,700.00 and the income of each must not exceed \$1,008.00 per month. The financial participation in the cost of care shall be determined individually.

This change in policy will help some couples and harm others. The couple's combined individual resources may now total \$3,400.00 rather than \$2,550.00. However, some spouses may become ineligible for assistance if one spouse's income exceeds \$1,008.00.

The phrase "the first of the seventh month" was changed to "the first of the seventh calendar month" for clarification.

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

This rule shall become effective May 1, 1986.

Amend subrule 75.5(4), paragraph "a," as follows:

a. Members of a couple who are residing in the same room in a medical institution shall be *treated as a couple until the first of the seventh calendar month they reside together*. They shall be subject to the resource limitation for a couple and the combined income of the couple shall be ~~less than~~ *not exceed* twice the amount of the income

**HUMAN SERVICES DEPARTMENT[498] (cont'd)**

limit established in *subrule* 75.1(7) to establish financial eligibility for medical assistance. Financial participation in the cost of care for each member of the couple shall be based on one-half of the couple's combined income.

*They shall be treated as individuals effective the first of the seventh calendar month. The income level for each spouse shall not exceed the amount of the income limit established in subrule 75.1(7). The resource limit for each spouse is the limit for a single person. Financial participating in the cost of care shall be determined individually from each person's income.*

[Filed 2/21/86, effective 5/1/86]  
[Published 3/12/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/12/86.

**ARC 6413****HUMAN SERVICES DEPARTMENT[498]**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 76, "Application and Investigation," appearing in the Iowa Administrative Code:

The Council on Human Services adopted this rule on February 19, 1986. Notice of Intended Action regarding this rule was published in the Iowa Administrative Bulletin on January 1, 1986, as **ARC 6252**.

The legislature directed the Department to promulgate rules for determining the overuse of services in Iowa Code section 249A.4, subsection 7.

This amendment defines overuse of Medicaid services and describes the method of determining such overuse.

Determination of the overuse of services is based on utilization data generated by the Medicaid Management Information System. Statistically unusual cases of utilization, such as a high number of prescriptions per quarter or a high number of physician visits per quarter are reported to the Department. These cases are then checked to determine if the information is valid and if the statistically unusual situation is also unusual based on professional medical judgment.

If overuse is determined to have occurred, the recipient may be restricted to receiving services only from designated providers for six months or longer. The recipient is allowed to select the providers. However, exceptions may be made in emergencies allowing consultation by the designated provider with another provider, or referral by the designated provider to another provider. A restriction code is printed on the recipient's medical card.

This rule is identical to that published under Notice.

This rule is intended to implement Iowa Code section 249A.4, subsection 7.

This rule shall become effective May 1, 1986.

Amend rule 498—76.9(249A) as follows:

Amend the introductory paragraph of rule 498—76.9(249A) as follows:

**498—76.9(249A) Recipient lock-in.** In order to promote high quality health care and to prevent harmful practices such as duplication of medical services, drug abuse or overuse, and possible drug interactions, recipients that

utilize medical assistance services or items at a frequency or in an amount which is **not medically necessary considered to be overuse of services as defined in subrule 76.9(7)** may be restricted (locked-in) to receive services from a designated provider(s).

Add the following new subrules:

**76.9(7)** Overuse of services is defined as receipt of treatments, drugs, medical supplies or other Medicaid benefits from one or multiple providers of service in an amount, duration, or scope in excess of that which would reasonably be expected to result in a medical or health benefit to the patient.

**76.9(8)** Determination of overuse of services shall be based on utilization data generated by the Surveillance and Utilization Review Subsystem of the Medicaid Management Information System. The system employs an exception reporting technique to identify recipients most likely to be program overutilizers by reporting cases in which the utilization exceeds the statistical average. An investigation process determines if actual overutilization exists by verifying that the information reported by the computer system is valid and that the statistically higher than average situation is also unusual based on professional medical judgment. Medical judgments shall be made by physicians, pharmacists, nurses and other health professionals either employed by, under contract to, or consultants for the department. These medical judgments shall be made by the health professionals on the basis of the body of knowledge each has acquired which meets the standards necessary for licensure or certification under the Iowa licensing statutes for the particular health discipline.

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[Published 3/12/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/12/86.

**ARC 6414****HUMAN SERVICES DEPARTMENT[498]**

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

The Council on Human Services adopted these rules on February 19, 1986. Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin on December 18, 1985, as **ARC 6221**, on January 1, 1986, as **ARC 6253**, and on January 15, 1986, as **ARC 6288**.

1. **ARC 6221** - The Health Care Financing Administration (HCFA) is requiring Iowa to establish a new method of reimbursement for skilled nursing facilities.

This amendment provides for a new reimbursement methodology for skilled nursing facilities. The new methodology will be prospective based on a base-year rate to which an annual index will be applied.

## HUMAN SERVICES DEPARTMENT[498] (cont'd)

The annual index which will be used is the Skilled Nursing Facility Market Basket Index as developed by Data Resources, Inc. This index includes both forecasted and historical data.

The Department chose to establish separate classifications for hospital-based and free-standing (nonhospital-based) facilities to avoid a disproportionate negative effect for hospital-based facilities.

Following application of the annual index, a ceiling of allowable cost shall be established at the sixtieth percentile for each classification. The sixtieth percentile was chosen as it will obtain savings in payment to skilled nursing facilities in the amount required by Executive Order No. 19.

These rules were previously submitted without Notice as **ARC 6220** published in the Iowa Administrative Bulletin on December 18, 1985.

These rules are identical to those published under Notice.

2. **ARC 6253** - Under current rules composite resin or plastic type fillings on posterior teeth are payable benefits only on facial (buccal) surfaces through the second bicuspid.

The state dental advisory committee has recommended that this payment be extended to facial surfaces of all posterior teeth and occlusal surfaces because composite resin fillings usually require less removal of tooth structure than amalgam alloys and in some cases are superior to amalgam alloys as restorative materials in posterior teeth.

This amendment implements that recommendation.

This rule was revised to include the facial surfaces of all teeth at the request of the state dental advisory committee.

3. **ARC 6288** - 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. Reagan*, 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 approval, preprocedure review, and preadmission review is clarified. The conditions which must be present to cover certain Medicaid services are more clearly defined.

The phrase "and not for obesity control" was changed to "but not for obesity control" in the second paragraph of subrule 78.1(2), paragraph "a," subparagraph (2) for grammatical correctness.

The address of the Iowa Foundation for Medical Care was revised in subrules 78.1(19), 78.3(18), 78.26(3), 78.28(1), paragraph "e," and 79.8(1) and in the introductory paragraphs to rule 498—78.3(249A) for consistency.

The term "Iowa Foundation for Medical Care" was changed to its abbreviation, "IFMC," wherever it had been spelled out once previously in the same rule.

Uses of the word "such" were removed from subrules 78.4(1), paragraph "h," subparagraph (1), 78.11(3), 78.28(1), paragraphs "a" and "e," 78.28(2), paragraph "i," 78.28(5), paragraph "c," and 78.28(6), paragraph "b."

The word "for" was added to the introductory paragraph to subrule 78.6(2).

The word "thereof" was removed from subrule 78.28(1), paragraph "b."

Subrule 78.28(2), paragraph "h," subparagraph (2) was revised to make the subparagraphs parallel. The words "as follows" were deleted from the introductory paragraphs of subrules 78.28(4) and 78.28(5).

The word "as" was removed from subrule 79.8(7), paragraphs "a" and "b."

Subrule 79.8(7) was changed to more clearly state the Department's intent and to remove the impression that all criteria apply to any services not specifically mentioned.

Subrules 79.9(3), 79.9(4), 79.9(5) and 79.9(6) were included as paragraphs under subrule 79.9(2) to improve organization of the rules. Subrules 79.9(7) and 79.9(8) were renumbered to 79.9(3) and 79.9(4).

Subrule 79.10(2) was revised for clarity.

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

These rules shall become effective May 1, 1986.

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 approval 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 ~~but 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~~ *approval* 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 folie acid per dose.~~) (Cross-reference 78.28(1)"b")

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

e. Prior ~~authorization~~ *approval* 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 gastrointestinal 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.

## HUMAN SERVICES DEPARTMENT[498] (cont'd)

(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")

Amend subrule 78.1(18) as follows:

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

Amend subrule 78.1(19) as follows:

**78.1(19)** ~~Prior approval of Preprocedure review by the Iowa Foundation for Medical Care (IFMC) will be required if payment under Medicaid is to be made for certain frequently performed surgical procedures which have high coefficients of variation a wide variation in the relative frequency the procedures are performed.~~ Preprocedure surgical review applies to surgeries performed in hospitals (outpatient and inpatient) and ambulatory surgical centers. Approval by the IFMC will be granted only if such procedures are determined to be medically necessary based on the condition of the patient and the published criteria established by the IFMC and the department. If not so approved by the IFMC, payment will not be made under the program to the physician or to the facility in which the surgery is performed. *The criteria are available from IFMC, 3737 Woodland Avenue, Suite 500, West Des Moines, Iowa 50265, or in local hospital utilization review offices.*

The "Preprocedure Surgical Review List" shall be published by the department in the provider manuals for physicians, hospitals and ambulatory surgical centers. The "Preprocedure Surgical Review List" shall be developed by the department with advice and consultation from the Iowa Foundation for Medical Care IFMC and appropriate professional organizations and will list the procedures for which prior review is required and the steps that must be followed in requesting such review.

The department shall update the "Preprocedure Surgical Review List" annually. (Cross-reference 78.28(1)"e")

ITEM 2. Amend rule 498—78.3(249A) as follows:

Amend the introductory paragraph of rule 498—78.3(249A) as follows:

**498—78.3(249A) Hospitals.** ~~Payment will be approved for inpatient hospital care determined to be medically necessary.~~ *admission is approved when it meets the criteria for inpatient hospital care as determined by the Iowa Foundation for Medical Care (IFMC) or the delegated hospital. All cases are subject to review prior to admission; however, in most instances the preadmission review will focus on problem areas identified by the department and Iowa Foundation for Medical Care IFMC or its delegated hospitals rather than routinely on all admissions. Obstetric cases admitted for delivery may have medical necessity determined the review performed following admission. Medicaid payment for inpatient hospital admissions is approved when it is determined to meet the criteria for inpatient hospital care.* (Cross-reference 78.28(5)) ~~Continuing medically necessary hospitalization shall be approved not to exceed, unless medically necessary, the fiftieth percentile of length of stay as indicated by recipient's diagnosis on the Length of Stay in Professional Activity Studies (PAS) Hospitals by Diagnosis, United States, North Central Region, January-December 1980 if the patient's condition meets the severity of illness and intensity of services criteria established by the IFMC and the department. The criteria are available from IFMC, 3737 Woodland Avenue, Suite 500, West Des Moines, Iowa 50265, or in local hospital utilization review offices. Payment will be made in excess of the fiftieth percentile only after utilization review approval. No payment will be made for waiver days. Limitations shall be updated annually.~~

There are no limitations on the amount of outpatient care for which payment will be made so long as such care is medically necessary.

If the recipient is eligible for inpatient or outpatient hospital care through the Medicare program, payment will be made for deductibles and coinsurance applicable in that program.

Amend subrule 78.3(18) as follows:

**78.3(18)** ~~Prior approval Preprocedure review by the Iowa Foundation for Medical Care IFMC will be is required if hospitals are to be reimbursed for certain frequently performed surgical procedures as set forth under subrule 78.1(19). Criteria are available from IFMC, 3737 Woodland Avenue, Suite 500, West Des Moines, Iowa 50265, or in local hospital utilization review offices.~~ (Cross-reference 78.28(5))

ITEM 3. 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:

## HUMAN SERVICES DEPARTMENT[498] (cont'd)

(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 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 approval is required for these services except for emergency root canal therapy. Emergency root canal treatment may be done without prior authorization approval 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 (3), (4), (6), and (7), as follows:

(3) Composite resin or plastic type fillings on posterior teeth are payable only as Class V restorations, i.e., facial (buccal) surfaces through the second bicuspid and as Class I restorations, i.e., occlusal surfaces. Class I restorations are reimbursable only once in a two-year period.

(4) All cast restorations require prior authorization approval. *(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 approved. 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 approval. *(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 approval. A request to perform such a an orthodontic procedure must be accompanied by an interpreted cephalometric radiograph and study models trimmed such so 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. Salzmann, D.D.S., American Journal of Orthodontics, October 1968. (Cross-reference 78.28(2)"i")*

ITEM 4. Amend subrule 78.6(2) as follows:

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

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))*

ITEM 5. 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

## HUMAN SERVICES DEPARTMENT[498] (cont'd)

ITEM 6. Rescind subrule 78.12(11) and insert the following in lieu thereof:

**78.12(11)** Skilled nursing facility reimbursement shall be prospective based on a per diem rate calculated for each facility by establishing a base year per diem to which an annual index is applied.

a. The base year per diem rate shall be the medical assistance cost per diem as determined using the facility's 1984 fiscal year-end cost report. The base per diem rate for facilities enrolled since 1984 will be determined using the facility's first finalized cost report. Determination of allowable costs for the base year will be made using Medicare methods in place on December 31, 1984.

b. The Skilled Nursing Facility Market Basket Index will be applied annually to reflect health care costs of skilled nursing facilities.

c. Skilled nursing facilities shall be classified as either hospital-based or free-standing (nonhospital-based). A hospital-based facility is a skilled nursing facility under the management and administration of a hospital regardless of where the skilled beds are physically located.

d. A ceiling of allowable cost shall be established at the sixtieth percentile for each classification based on calendar year 1984 data. The allowable cost shall be weighted by medical assistance patient days.

e. A skilled nursing facility serving a disproportionate share of medical assistance recipients shall be exempt from the payment ceiling. For skilled nursing facilities, a disproportionate share of medical assistance recipients shall exist when the total cost of services rendered to medical assistance recipients in any one provider fiscal year is greater than or equal to fifty-one percent of the total facility's total allowable cost for the same fiscal year. The department will determine which providers qualify for this exemption.

f. The current method for submitting billings and cost reports shall be maintained. All cost reports will be subject to desk review audit and if necessary a field audit.

ITEM 7. 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 the 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~~ approval. *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 8. Amend subrule 78.26(3) as follows:

**78.26(3)** ~~Prior approval~~ *Preprocedure review* by the Iowa Foundation for Medical Care (IFMC) ~~will be is~~ required if ambulatory surgical centers are to be reimbursed for certain frequently performed surgical procedures as set forth under subrule 78.1(19). *Criteria are available from IFMC, 3737 Woodland Avenue, Suite 500, Des Moines, Iowa 50265, or in local hospital utilization review offices. (Cross-reference 78.28(6))*

ITEM 9. Amend 498—chapter 78 by adding the following new rule:

**498—78.28(249A)** List of medical services and equipment requiring prior approval, preprocedure review or preadmission review.

**78.28(1)** Services, procedures, and medications prescribed by a physician (M.D. or D.O.) which are subject to prior approval or preprocedure review are as follows:

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

b. Prior approval is required for multiple vitamins, tonic preparations and combinations 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 approval is not required for products principally marked as prenatal vitamin-mineral supplements.) (Cross-reference 78.1(2)"a"(2))

c. Gastrointestinal surgery for treatment of obesity requires prior approval.

(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.

## HUMAN SERVICES DEPARTMENT[498] (cont'd)

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 require prior approval and 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")

e. Preprocedure review by the Iowa Foundation for Medical Care (IFMC) will be required if payment under Medicaid is to be made for certain frequently performed surgical procedures which have a wide variation in the relative frequency the procedures are performed. Preprocedure surgical review applies to surgeries performed in hospitals (outpatient and inpatient) and ambulatory surgical centers. Approval by IFMC will be granted only if the procedures are determined to be necessary based on the condition of the patient and on the published criteria established by the department and the IFMC. If not so approved by the IFMC, payment will not be made under the program to the physician or to the facility in which the surgery is performed. The criteria are available from IFMC, 3737 Woodland Avenue, Suite 500, West Des Moines, Iowa 50265, or in local hospital utilization review offices.

The "Preprocedure Surgical Review List" shall be published by the department in the provider manuals for physicians, hospitals, and ambulatory surgical centers. (Cross-reference 78.1(19))

**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 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 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 of 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, steel post 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) Payment shall be approved for only anterior fixed bridgework (including acid etch 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 so 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. Salzmann, 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))

## HUMAN SERVICES DEPARTMENT[498] (cont'd)

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

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))

**78.28(5)** Hospital services which must be subject to prior approval, preprocedure review or preadmission review are:

a. Any medical or surgical procedure requiring prior approval as set forth in chapter 78 is subject to the conditions for payment set forth although a request form does not need to be submitted by the hospital as long as the approval is obtained by the physician. (Cross-reference 498—78.1(249A))

b. All inpatient hospital admissions are subject to preadmission review. Payment for inpatient hospital admissions is approved when it meets the criteria for inpatient hospital care as determined by the IFMC or its delegated hospitals. Criteria are available from IFMC, 3737 Woodland Avenue, Suite 500, West Des Moines, Iowa 50265, or in local hospital utilization review offices. (Cross-reference 498—78.3(249A))

c. Preprocedure review by the IFMC is required if hospitals are to be reimbursed for the inpatient and outpatient surgical procedures set forth in subrule 78.1(19). Approval by the IFMC will be granted only if the procedures are determined to be necessary based on the condition of the patient and the criteria established by the department and IFMC. The criteria are available from IFMC, 3737 Woodland Avenue, Suite 500, West Des Moines, Iowa 50265, or in local hospital utilization review offices.

**78.28(6)** Ambulatory surgical centers are subject to prior approval and preprocedure review as follows:

a. Any medical or surgical procedure requiring prior approval as set forth in chapter 78 is subject to the conditions for payment set forth although a request form does not need to be submitted by the ambulatory surgical center as long as the prior approval is obtained by the physician.

b. Preprocedure review by the IFMC is required if ambulatory surgical centers are to be reimbursed for surgical procedures as set forth in subrule 78.1(19). Approval by the IFMC will be granted only if the procedures are determined to be necessary based on the condition of the patient and criteria established by the IFMC and the department. The criteria are available from IFMC, 3737 Woodland Avenue, Suite 500, West Des Moines, Iowa 50265, or in local hospital utilization review offices.

ITEM 10. Amend subrule 79.1(2), institutional category, number 4, as follows:

<u>Institutional</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
4. Skilled nursing facilities	Medicare less 7.86% Prospective reimbursement. See 78.12(11)	Per diem rate for facility in effect 6/30/85

ITEM 11. Amend rule 498—79.8(249A) as follows: Amend subrule 79.8(1) as follows:

**79.8(1)** All requests for prior ~~authorization approval~~ 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 approval 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 approval in the same manner as other requests for prior approval in 79.8(1).

**79.8(7)** Requests for prior approval of services shall be reviewed according to rule 498—79.9(249A) and the conditions for payment as established by rule in 498—chapter 78. Where ambiguity exists as to whether a particular item or service is covered, requests for prior approval shall be reviewed according to the following criteria in order of priority:

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

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

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

d. Whether there are other less expensive procedures which are covered and which would be as effective.

e. 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 approval 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 approval 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 12. Amend 498—chapter 79 by adding the following new rules:

**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.

## HUMAN SERVICES DEPARTMENT[498] (cont'd)

**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 meet the medical need of the patient.
- e. Be eligible for federal financial participation unless specifically covered by state law or rule.
- f. Be within the scope of the licensure of the provider.
- g. 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.
- h. 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(3)** 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(4)** 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.

**498—79.10(249A) Requests for preadmission review.** The inpatient hospitalization of Medicaid recipients is subject to preadmission review by the Iowa Foundation for Medical Care (IFMC) as required in rule 498—78.3(249A).

**79.10(1)** The patient's admitting physician, the physician's designee or the hospital will contact the IFMC to request approval of Medicaid coverage for the hospitalization, according to instructions issued to providers by the IFMC and instructions in the Medicaid providers' manual.

**79.10(2)** Medicaid payment will not be made to the hospital if the IFMC denies the procedure requested in the preadmission review.

**79.10(3)** A letter of denial will be issued by the IFMC to the patient, physician and hospital when a request is denied. The patient, physician or hospital can request a reconsideration of the decision by filing a written request with the IFMC within sixty days of the date of the denial letter.

**79.10(4)** A denial by the IFMC of a request for reconsideration can be appealed by the aggrieved party to the department according to 498—chapter 7.

**498—79.11(249A) Requests for preprocedure surgical review.** The Iowa Foundation for Medical Care (IFMC) conducts a preprocedure review of certain frequently performed surgical procedures to determine the necessity of the procedures and if Medicaid payment will be approved according to requirements found in subrules 78.1(19), 78.3(18), and 78.26(3).

**79.11(1)** Approval must be requested by the physician from the IFMC when the physician expects to perform a surgical procedure appearing on the department's preprocedure surgical review list published in the Medicaid providers' manual.

All requests for preprocedure surgical review shall be made according to instructions issued to physicians,

hospitals and ambulatory surgical centers appearing in the Medicaid providers' manual and instructions issued to providers by the IFMC.

**79.11(2)** The physician shall be issued a validation number for each request by the IFMC and advised if payment for the procedure will be approved or denied.

**79.11(3)** Medicaid payment will not be made to the physician and other medical personnel or the facility in which the procedure is performed, i.e., hospital or ambulatory surgical center, if the IFMC does not give approval.

**79.11(4)** A denial letter will be issued by the IFMC to the patient, physician and facility when the requested procedure is not approved. The patient, physician or facility can request a reconsideration of the decision by filing a written request with the IFMC within sixty days of the date of the denial letter.

**79.11(5)** A denial letter of a request for reconsideration by the IFMC can be appealed by the aggrieved party to the department in accordance with 498—chapter 7.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/12/86.

**ARC 6390****TRANSPORTATION,  
DEPARTMENT OF[820]****09 PUBLIC TRANSIT**

Pursuant to the authority of Iowa Code section 307.10, the Transportation Commission, on February 18, 1986, adopted amendments to 820—[09.A] Chapter 1 entitled "Contracts Set Aside for Disadvantaged Business Enterprises," [09,A] Chapter 2 entitled "Co-ordination of Public Transit Services," [09.B] Chapter 1 entitled "Financial Assistance," and [09,B] Chapter 2 entitled "Advance Allocations of State Transit Assistance Funding," and adopted a new Chapter 3 entitled "Federal Transit Assistance."

A Notice of Intended Action for these rule amendments was published in the January 1, 1986, Iowa Administrative Bulletin as **ARC 6239**. The following items were also adopted under emergency rulemaking procedures, were published as **ARC 6238** in the January 1, 1986, Iowa Administrative Bulletin, and were effective on this date:

1. Item 7.
2. Paragraph "d" of Item 9.
3. The first sentence of paragraph "d" in Item 10.
4. Item 11 except for paragraph "d."
5. Item 12.
6. Item 13 except for the amendment to the definition of "operations expense" and the changing of "public transit division" to "air and transit division" in the definition for "programmed eligibility."

The rule amendments herein are identical to the ones published under Notice and, insofar as they correspond, to the ones adopted under emergency rulemaking procedures except for the following:

1. In Items 5, 10, 13 and 23, "public transit division" was changed to "air and transit division". In Items 5 and 23, the division's address was also updated.

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

2. In Item 11, paragraph "d." the rule number referenced was changed from [09,B] chapter 2 to [09,A] chapter 2. This was incorrect in the Notice.

3. Items 24 and 25 are new. In Item 24, "public transit division" is being changed to "air and transit division". In Item 25, the address of the division is being updated.

Following is a summary of the amendments which were not included in the emergency rules:

In Item 5, a requirement that transit systems applying for state transit assistance maintain their records of revenues and expenses in accordance with the Department's uniform data management system or with section 15 of the Urban Mass Transportation Act of 1964 has been deleted. However, each system must continue to use a centralized accounting system that documents revenues and expenses.

In Item 8, a provision has been added stating that a special project may either involve assistance to an individual transit system or to several systems as a group.

In Item 10, a new provision has been added stating that state assistance for a special project involving operating support shall be limited to 50 percent of the project's total operating expense.

In Item 11, a provision has been added stating that a transit system's eligibility for programmed project assistance may be reduced if it is subject to the sanctions outlined in Iowa Code section 601J.5 or rules 820—[09,A] chapter 2.

In Item 13, the definition for "operations expense" has been amended to delete a cross reference.

In Item 16, an additional type of advance allocation of state transit assistance funds has been added: The entire amount of state transit assistance for a project may be advanced.

In Item 21, the repayment procedure for overpayment of advance allocations has been revised: The Department will review the transit system's calculations and invoice the system for the amount of the repayment due.

In Item 23, a new chapter has been added which provides for the administration of federal Section 18 and Section 16(b)(2) funds.

As previously described, Items 24 and 25 update the name and address of the air and transit division.

In several items, references to Iowa Code sections and administrative rules have been added or corrected, and amendments have been made to simplify wording or to delete repetition.

These rule amendments are intended to implement Iowa Code chapter 601J.

These rule amendments are to be published as adopted in the March 12, 1986, Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective April 16, 1986. Also, the emergency rules published as ARC 6238 are to be rescinded effective April 16, 1986.

Pursuant to the authority of Iowa Code section 307.10, rules 820—[09,A] Chapter 1 entitled "Contracts Set Aside for Disadvantaged Business Enterprises," [09,A] Chapter 2 entitled "Co-ordination of Public Transit Services," [09,B] Chapter 1 entitled "Financial Assistance" and [09,B] Chapter 2 entitled "Advance Allocations of State Transit Assistance Funding" are hereby amended, and a new [09,B] Chapter 3 entitled "Federal Transit Assistance" is hereby adopted.

ITEM 1 Amend the title of [09,B] chapter 1 as follows:  
~~Financial Assistance~~ State Transit Assistance

ITEM 2. Amend the rule numbers of [09,B] chapter 1 where necessary by deleting "(307)" or "(370)" and inserting in lieu thereof "(601J)."

ITEM 3. Amend [09,B] chapter 1 by deleting the implementation clauses which appear at the end of each rule, and by inserting at the end of the chapter the following:

These rules are intended to implement Iowa Code chapter 601J.

ITEM 4. Amend the first paragraph of rule [09,B] 1.1(601J) as follows:

**820—[09,B] 1.1(601J) Statement of policy.** State financial assistance to any public transit system shall be restricted to joint projects with the department that hold substantial promise of accomplishing the following goals:

ITEM 5. Rescind rule [09,B] 1.2(601J) and insert in lieu thereof the following:

**820—[09,B] 1.2(601J) General information.** The department shall send annually to each public transit system in Iowa the required forms and instructions for applying for state transit assistance. Requests for assistance and questions about application preparation should be directed to: Air and Transit Division, Iowa Department of Transportation, State Capitol, Des Moines, Iowa 50319.

ITEM 6. Amend the definitions for "urban transit system" and "regional transit system" found in [09,B] 1.3(601J) as follows:

Urban transit system. ~~is defined in~~ *A system designated by the department which meets the requirements of Iowa Code subsection 324.57(9) 601J.1(6).* ~~In this chapter of rules it also means a system serving~~ *To be designated as an urban transit system for the purposes of this chapter, the system must serve a city or urbanized area with a population of 20,000 or more. The system shall must also be managed by a board of local officials who have either been elected by the public; or appointed by elected officials, and who are responsible for policy and oversight of transit services for one or more incorporated areas within Iowa. Nothing in this paragraph shall be construed to exclude any provider of transit services in an urbanized area from state transit assistance funding if that system was in operation on November 10, 1976, and since that time has provided transportation services on a continuing basis to both the general public and the transportation disadvantaged.*

Regional transit system. *See Iowa Code subsection 601J.1(7). An entity providing services within one of the multicounty regional planning areas designated by the governor. Any exception to these area boundaries must be approved by the department. The regional transit system serves the rural areas as well as those cities within the regional planning area, except those cities which are served by an urban transit system. Within a region, each county, through its board of supervisors, shall be responsible for determining the service and funding within its own county. However, the administration and overhead support services for the overall regional transit system shall be consolidated into one agency to be mutually agreed upon by the participating members.*

ITEM 7. Amend rule [09,B] 1.3(601J) by adding the following definition:

Programmed project assistance. State transit assistance appropriations minus funds reserved for special projects.

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

ITEM 8. Amend subrule [09,B]1.4(2) by adding new paragraph "c" as follows:

c. A special project may either involve assistance to an individual public transit system or to several systems as a group.

ITEM 9. Subrule [09,B]1.5(1) is amended as follows:

1.5(1) Requirements for transit system. A public transit system ~~may apply~~ *is eligible* for project assistance if the system is in compliance with all of the following criteria:

a. ~~It uses~~ ~~Has established~~ a centralized accounting system that maintains primary documentation for all revenues and expenses ~~as specified in subrule 1.2(2) of this chapter.~~

b. ~~Has invested one person with the responsibility~~ *One person is responsible* for managing the assets, operations and funding of the system.

c. ~~It~~ ~~M~~aintains its policies, routes, schedules, fare structure, and budget in a manner that encourages public review, responsiveness to user concerns, energy conservation, and fiscal solvency.

d. ~~It has received departmental approval of its plan or schedule for repayment of any loan administered by the department.~~

ITEM 10. Amend subrule [09,B]1.5(2), paragraph "d," as follows:

d. State assistance for a *special* project involving capital expense shall not exceed thirteen point three percent of the project's total capital expense. *State assistance for a special project involving operating support shall not exceed fifty percent of the project's total operating expense. In special or emergency situations, these* ~~This~~ requirements may be waived by the director of the ~~public~~ *air and transit* division to permit a fiscal-year maximum of five thousand dollars for any one system.

ITEM 11. Amend subrule [09,B]1.5(4) as follows:

1.5(4) Determination of system ~~programmed~~ eligibility for *programmed project assistance*.

a. ~~Prior to the beginning of each fiscal year, each A~~ transit system's ~~programmed~~ *programmed* eligibility for ~~programmed~~ *project assistance from any given appropriation* shall be determined through the process shown in the appendix located at the end of this chapter of rules and included as part of this chapter.

(1) ~~Transit system data~~ ~~Information~~ used in determining ~~programmed~~ *programmed* eligibility for ~~project assistance~~ is derived from the last fiscal year for which complete information is available.

(2) ~~The process shown in the appendix establishes the~~ *percentage of available state transit assistance funds not reserved for special projects for which each transit system is eligible during the fiscal year.*

b. ~~If a known dollar amount of state transit assistance has been appropriated for the fiscal year, the amount of each system's~~ *eligibility for programmed project assistance*

*from this appropriation shall be determined by multiplying the system's programmed eligibility by the amount of the appropriation not reserved for special projects.*

c. ~~If the dollar amount of state transit assistance is not known until the funds are actually deposited in the state transit assistance fund, the amount of each system's~~ *eligibility for programmed project assistance from these funds shall be determined as follows: At the beginning of each fiscal quarter, the system's programmed eligibility shall be multiplied by the amount of new funds not reserved for special projects that were deposited in the state transit assistance fund during the previous quarter.*

d. ~~A transit system's~~ *eligibility for programmed project assistance may be reduced if it is subject to the sanctions outlined in Iowa Code section 601J.5 or rules 820-[09,A] chapter 2.*

ITEM 12. Amend rule [09,B]1.5(601J) by adding subrule 1.5(5) as follows:

1.5(5) Determination of amount reserved for special projects. Each fiscal year, three hundred thousand dollars shall be reserved from state transit assistance appropriations for special projects if the appropriations for the year are expected to equal or exceed five hundred thousand dollars. Any special project funds not obligated in the previous fiscal year and any funds made available through closeout of previously approved projects shall also be reserved for special projects. Special project funds are distributed by the department on a discretionary basis in accordance with subrule 1.4(2) of this chapter.

ITEM 13. Amend the Appendix to 820-[09,B]1.5(601J) as follows:

Delete the definitions for "PPA," "ROA," "ROAF," "RPF," "SBPF," "SPF," "STA," and "UPF."

Amend the definition for "OpExp" as follows:

Operations expense. All eligible transit system expenses related to operating, maintaining, and administering transit operations ~~as specified in subrule 1.2(2) of this chapter of rules.~~

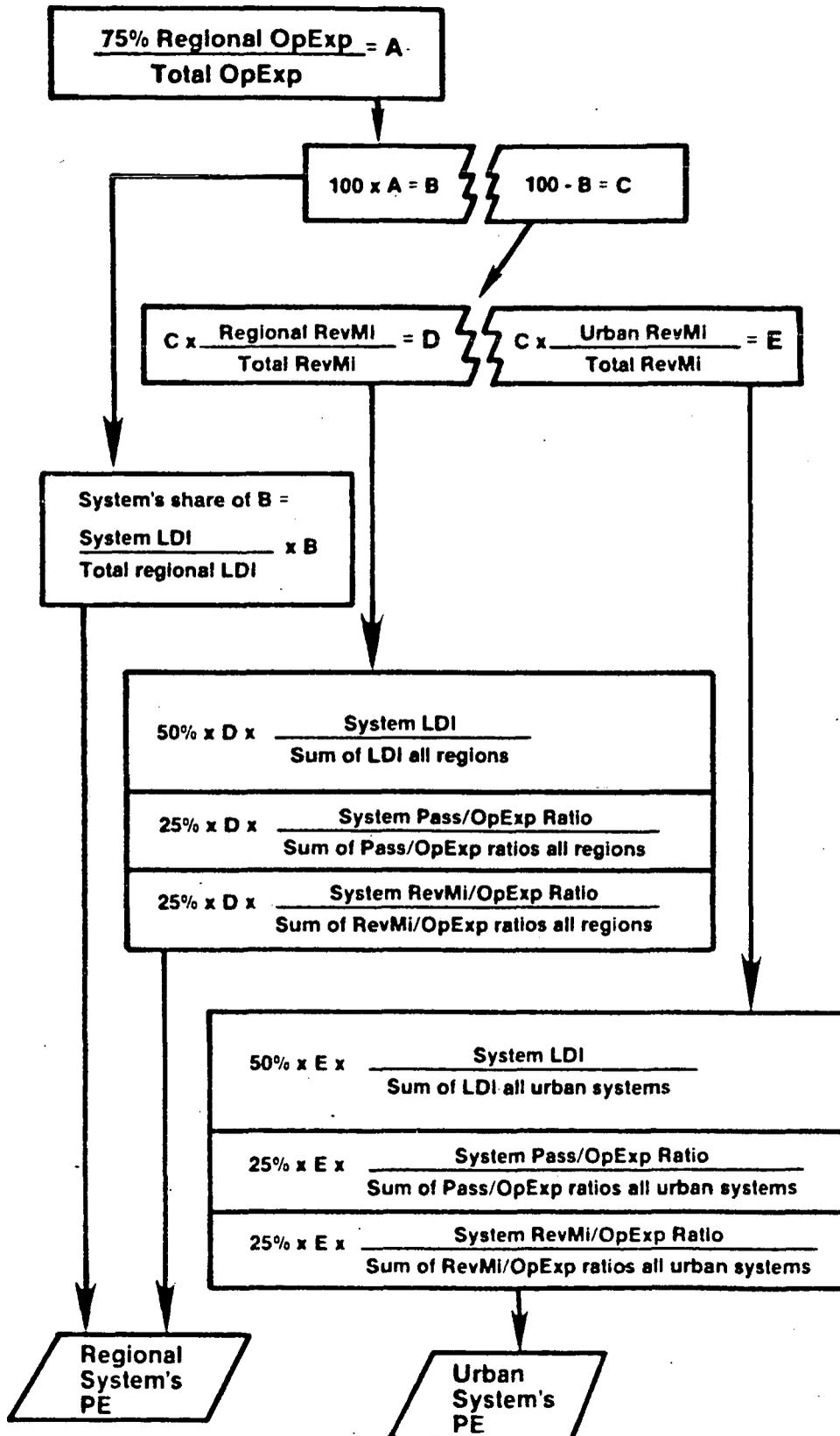
Amend the definition for "PE" as follows:

Programmed eligibility. The ~~amount~~ *percentage* of any state transit assistance appropriation that a public transit system is eligible to receive from the nondiscretionary portion of the appropriation. Determination of a public transit system's "programmed eligibility" shall be made using the method diagrammed in this appendix.

System programmed eligibility is reduced by twenty-five percent for each quarter of any fiscal year in which no joint participation agreement with the department has been executed. The director of the ~~public~~ *air and transit* division may ~~elect to~~ waive this reduction.

Strike the two-page flowchart contained in this Appendix and insert in lieu thereof the following flowchart:

**APPENDIX TO  
820—[09,B]1.5(601J)**



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

ITEM 14. Amend the rule numbers of [09,B]chapter 2 by deleting "(307)" and inserting in lieu thereof "(601J)".

ITEM 15. Amend rule [09,B]2.1(601J) as follows:

**820—[09,B]2.1(601J) Scope of chapter.** This chapter shall apply only to those transit systems eligible for, and having or proposing to have a "Joint Participation Agreement" in force with the Iowa department of transportation for state transit assistance funding as set forth in rules 820—[09,B] chapter 1, IAC. This chapter implements provisions for advance allocations of state transit assistance funding as set forth by the ~~Sixty-eighth General Assembly, chapter 11, section 4, subsection 3, paragraph "a" in Iowa Code subsection 601J.6(5).~~ The requirements for the award of state funds for state transit assistance and subsequent procedures are found in rules 820—[09,B] chapter 1, IAC.

ITEM 16. Amend rule [09,B] 2.2(601J) as follows:

**820—[09,B]2.2(601J) Basic types of advance allocations.** *Advance allocations of state transit assistance are paid prior to the time actual expenditures are incurred. Two Three* basic types of advance allocations shall be available to transit systems eligible for state transit assistance:

**2.2(1) Allocation** *Payment of state transit assistance to a transit system prior to the time actual expenditures are incurred such that one-fourth (or twenty-five percent) of the total "Joint Participation Agreement" amount is paid to the system prior to or during each fiscal quarter, successive three-month period (which end September 30, December 31, March 31, and June 30) starting on the execution date of the "Joint Participation Agreement; or."*

**2.2(2) Allocation** *Payment of state transit assistance to a transit system prior to the time actual expenditures are incurred such that an amount to be denoted in the state transit assistance "Joint Participation Agreement" or "Joint Participation Agreement" amendment is paid to the system prior to or during each fiscal quarter, successive three-month period (which end September 30, December 31, March 31, and June 30) starting on the execution date of the "Joint Participation Agreement."*

**2.2(3) Payment of the total "Joint Participation Agreement" amount prior to or during the project period, starting on the execution date of the "Joint Participation Agreement."**

ITEM 17. Amend subrule [09,B]2.3(3) as follows:

**2.3(3) No application for advance allocation pursuant to subrule 2.2(1) of this chapter of rules (i.e., twenty-five percent per quarter) shall be complete without:**

- a. The name of the transit system.
- b. A specific statement of the reasons why an advance allocation is required by the transit system.
- c. A statement from the transit system which indicates the specific existing or proposed "Joint Participation Agreement" from which advance allocations are to be derived.
- d. A statement from the transit system which indicates that the contract officer has read these administrative rules and certifies that ~~he or she~~ *the contract officer* shall comply with them.
- e. The signature of the contract officer of the transit system, and the date of signature.

*f. If varied advance allocations per quarter are requested pursuant to subrule 2.2(2), the following shall also be included in the application:*

*(1) A statement denoting the proposed advance allocations for each quarter, including the dollar amounts and the percentage of each quarter's proposed advance allocation to the total "Joint Participation Agreement" amount.*

*(2) A statement of justification for the varied allocation amounts requested.*

*(3) A detailed transit system cash flow analysis projected for the performance period of the "Joint Participation Agreement."*

ITEM 18. Rescind subrule [09,B]2.3(4).

ITEM 19. Amend rule [09,B] 2.5(601J) by rescinding subrules 2.5(1) and 2.5(2), renumbering subrule 2.5(3) as subrule 2.5(2), and adding new subrule 2.5(1) as follows:

**2.5(1)** The justification submitted with the application pursuant to subrule 2.3(3).

ITEM 20. Rescind rule [09,B]2.6(601J) and reserve for future use.

ITEM 21. Amend the introductory paragraph of subrule [09,B]2.9(1) as follows:

**2.9(1)** Each transit system receiving advance allocations payments shall, as part of the end-of-the-year financial and statistical report, calculate the total "Joint Participation Agreement" amount eligible for payment by the Iowa department of transportation within the limits stated in the state transit assistance "Joint Participation Agreement."; ~~and in consultation with the public transit division.~~ This eligible "Joint Participation Agreement" amount shall be compared to the total amount of the advance allocations for that "Joint Participation Agreement." If the advance allocations total is greater than the eligible "Joint Participation Agreement" amount, the transit system must repay the Iowa department of transportation the difference between the total of advance allocations for that "Joint Participation Agreement" and the total eligible "Joint Participation Agreement" amount. This repayment must accompany the end of the year financial and statistical report. ~~After verification of these calculations, the department shall issue to the public transit system an invoice for the amount of the required repayment.~~ Failure to make this repayment shall be grounds for:

ITEM 22. Strike the implementation clause which appears at the end of [09,B] chapter 2 and insert in lieu thereof the following:

These rules are intended to implement Iowa Code chapter 601J.

ITEM 23. Add the following new chapter:

**CHAPTER 3  
FEDERAL TRANSIT ASSISTANCE**

**820—[09,B]3.1(601J) Projects in nonurbanized areas and projects for private nonprofit transportation providers.**

**3.1(1) General information.** Section 18 of the federal Urban Mass Transportation Act of 1964, as amended, established a program of federal financial assistance for support of public transportation projects in areas outside urbanized areas of 50,000 or more population as defined by the U.S. Census Bureau. Section 16(b)(2) of the same Act established a program of federal financial assistance for support of capital acquisitions for private nonprofit providers of specialized transportation services for elderly and handicapped persons. In accordance with the

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

requirements of the Urban Mass Transportation Act, the Iowa transportation commission has been designated by the governor as responsible for administering both programs within the state of Iowa, subject to the review of the federal urban mass transportation administration.

3.1(2) State management plan. Procedures for administration of the Section 18 and Section 16(b)(2) federal transit assistance programs within the state of Iowa shall be those set forth in the December 21, 1984, "Section 18 State Management Plan: Iowa," prepared by the Iowa department of transportation and approved by the urban mass transportation administration in conformance with the requirements of UMTA Circular 9040.1. Copies of the current state management plan can be obtained from: Air and Transit Division, Iowa Department of Transportation, State Capitol, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code chapter 601J.

ITEM 24. Amend [09,A] chapters 1 and 2 and [09,B] chapters 1 and 2 by changing all references to "public transit division" to "air and transit division".

ITEM 25. Amend rule [09,A] 2.2(17A) and subrule [09,B]2.3(1) by deleting "5268 Northwest Second Avenue" and inserting in lieu thereof "State Capitol", and by changing the zip code from "50313" to "50319."

[Filed 2/20/86, effective 4/16/86]

[Published 3/12/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/12/86.

## ARC 6396

WATER, AIR AND WASTE  
MANAGEMENT DEPARTMENT[900]

## WATER, AIR AND WASTE MANAGEMENT COMMISSION

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Water, Air and Waste Management Commission amends 900—Chapter 64, "Wastewater Construction and Operation Permits," pertaining to design standards for wastewater construction permits.

Notice of Intended Action was published in the September 11, 1985, Iowa Administrative Bulletin, at ARC 5912, concerning Chapter 20 of the manual of design standards to be adopted by reference in subrule 900—64.2(9), paragraph "b." Notice of Intended Action was published in the November 20, 1985, Iowa Administrative Bulletin, at ARC 6137, concerning adoption of Chapter 15 and revision of Chapter 18C of the manual of design standards to be adopted by reference in subrule 900—64.2(9), paragraph "b."

There were several changes in the design standards found in Chapters 15 and 20 that were made in response to comments from consulting engineers. These rule changes were adopted on February 18, 1986. The changes were minor corrections and clarifications. The commenters have been made aware of the Department's responses and a summary of the changes in Chapters 15 and 20 will be provided to the Code Editor. A copy may be obtained upon request to the Department. The Department is still in the process of responding to comments concerning Chapter 18C of the design standards and making changes or corrections deemed appropriate in response to such comments.

These rules will become effective on April 16, 1986.

ITEM 1. Amend subrule 64.2(9), paragraph "b," "Chapter 15," by striking the word "Reserved" and inserting the date of final adoption, "February 18, 1986".

ITEM 2. Amend subrule 64.2(9), paragraph "b," "Chapter 20," by striking the word "Reserved" and inserting the date of final adoption, "February 18, 1986".

[Filed 2/21/86, effective 4/16/86]

[Published 3/12/86]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/12/86.



State of Iowa  
Executive Department

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

EXECUTIVE ORDER NUMBER TWENTY-TWO

- WHEREAS, on December 17, 1985, the House of Representatives of the United States Congress passed H.R. 3838, the Tax Reform Act of 1985 (the "Act");
- WHEREAS, the Act imposes restrictions on the total principal amount of certain state or local bonds designated as "Nonessential Function Bonds" under the Act and certain other State or local bonds which require an allocation under the Act (the "Bonds") the interest on which is exempt from federal income taxes under Section 103 of the Internal Revenue Code of 1954, as amended (the "1954 Code"), or of the Internal Revenue Code of 1985 (the "1985 Code"), which may be issued by any state of the United States during each calendar year;
- WHEREAS, the provisions of the Act, if enacted into law in the Act's present form would be effective retroactively on January 1, 1986;
- WHEREAS, the Act provides a method of allocating the total amount of Bonds which may be issued within a State in any calendar year among the various political subdivisions and issuing agencies and authorities of a State (collectively the "Political Subdivisions" or singularly the "Political Subdivision"), which method of allocation will become effective at the time the Act is enacted into law and will apply retroactively from January 1, 1986, unless the legislature of a State or the Governor of a State, on an interim basis, provides for an alternative method of allocating the total amount of Bonds which may be issued within the State by Political Subdivisions in any calendar year;
- WHEREAS, if enacted into law the provisions of the Act relating to the allocation of the total amount of Bonds which may be issued within the State of Iowa (the "State") in any calendar year would result in a decrease in the amount of Bonds which could be issued by Political Subdivisions of the State for the purpose of financing industrial, agricultural and commercial development, pollution control and health care facilities, single-family and multi-family housing, financial aid to students and certain essential governmental programs; and

WHEREAS, in accordance with the provisions of the Act and to permit the issuance of Bonds within the State during either (i) the period while the Act is pending within the United States Congress, or (ii) the period following the date of enactment of the Act but prior to the date of enactment by the legislature of the State of an alternative method of allocating the amount of Bonds which can be issued by Political Subdivisions of the State during any calendar year, the Governor of the State deems the best interest of the citizens of the State to be served by an Executive Order that will permit, on an interim basis only, an orderly and equitable allocation of the amount of Bonds which can be issued by Political Subdivisions of the State during each calendar year until the later of the date on which the Act is defeated or is no longer pending or the date on which an alternative allocation method is enacted by the legislature of the State.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by the power and authority vested in me by the Constitution and by the laws of the State of Iowa, do hereby order and decree that the following procedure be used to allocate the total principal amount of Bonds which can be issued by Political Subdivisions of the State during any calendar year until the later of the date on which the Act is defeated or is no longer pending or the date on which an alternative allocation method is enacted by the Legislature of the State, it being fully understood that the procedure ordered hereby is for the purpose of promoting commerce, including municipal, industrial, agriculture and commercial development within the State, controlling pollution of the air or water, creating and improving health care facilities and insuring the availability of financial aid to students of the State, on an interim basis only, and is not intended to be a permanent solution to or acceptance of the provisions contained in the Act relating to the amount of Bonds which can be issued within the State during any calendar year:

Section 1. The aggregate principal amount of Bonds which may be issued by all Political Subdivisions during a calendar year shall not exceed the total "State Ceiling" provided in the Act for the State (the "State Ceiling") for that calendar year, except as provided in Section 5. The State Ceiling shall be allotted among Bonds issued for various purposes as follows:

(a) an amount of the State Ceiling equal to the product of \$25 times the population of the State shall be allotted solely to Qualified 501(c)(3) Bonds, as defined in the Act;

(b) an amount of the State Ceiling equal to the product of \$75 times the population of the State shall be collectively allotted solely to the Qualified Mortgage Bonds, Qualified Veterans' Mortgage Bonds, Bonds for Qualified Residential Rental Projects and Qualified Redevelopment Bonds, all as defined in the Act, which amount shall further be allotted as follows:

- (i) From January 1 through October 25 of each calendar year, the aforementioned amount shall be allotted as follows:
- (A) an amount equal to the product of \$25 times the population of the State shall be allotted solely to Qualified Mortgage Bonds and Qualified Veterans' Mortgage Bonds;
- (B) an amount equal to the product of \$25 times the population of the State shall be allotted solely to the Bonds for Qualified Residential Rental Projects;
- (C) an amount equal to the product of \$4 times the population of the State shall be allotted solely to Qualified Redevelopment Bonds; and
- (D) an amount equal to the product of \$21 times the population of the State shall be allotted, in addition to the amount allotted in (A) and (B) above, to Qualified Mortgage Bonds, Qualified Veterans' Bonds and Bonds for Qualified Residential Rental Projects, without priority of one over the other except as otherwise provided in Sections 2 and 9 hereof.
- (ii) From October 26 through December 23 of each calendar year an amount equal to the product of \$75 times the population of the State less the amount of the State Ceiling previously allocated for the purposes set forth in Section 1(b)(i) above shall be allotted solely for the purposes set forth in Section 1(b)(i)(A), (B) and (C) above without priority of one over the other except as otherwise provided in Sections 2 and 9 hereof.
- (c) an amount of the State Ceiling equal to the product of \$75 times the population of the State shall be collectively allotted to all Bonds, except Qualified 501(c)(3) Bonds, Qualified Mortgage Bonds, Qualified Veterans' Mortgage Bonds and Bonds for Qualified Residential Rental Projects without priority of one over the other except as otherwise provided in Sections 2 and 9 hereof and except that from the amount allotted in this subsection (c) an amount equal to the product of \$10 times the population of the State shall be collectively allotted solely to the Qualified Redevelopment Bonds and Bonds issued by Political Subdivisions the proceeds of which are used by the issuing Political Subdivision and which require an allocation of the State Ceiling under the Act during the period from January 1 through October 25 of each calendar year. From October 26 through December 23 of each calendar year, an amount equal to the product of \$75 times the population of the State less the amount of the State Ceiling previously allocated for the purposes set forth in this Section 1(c) shall be allotted for all Bonds (including Qualified 501(c)(3) Bonds provided the amount of the State Ceiling allotted in

Section 1(a) hereof has been allocated and used and Qualified Mortgage Bonds, Qualified Veterans' Mortgage Bonds and Bonds for Qualified Residential Rental Projects provided the amount of the State Ceiling allotted in Section 1(b) hereof has been allocated and used) without priority in one over the other except as otherwise provided in Sections 2 and 9 hereof.

The population of the State shall be determined in accordance with the provisions of the Act.

Section 2. The State Ceiling shall be allocated among all Political Subdivisions on a statewide basis on the basis of the chronological order of receipt by the Governor's designee of the applications with respect to a definitive issue of Bonds described in Section 3 (as determined by the day, hour and minute time-stamped on the application immediately upon receipt by the Governor's designee).

Section 3. A Political Subdivision which proposes to issue Bonds for a particular project or purpose must make an application, which application may be made by the Political Subdivision or its representative, by the beneficiary of the project or purpose or by a person acting on behalf of the beneficiary, for an allocation of a portion of the State Ceiling, prior to the issuance of the Bonds, by submitting an application to the Governor's designee, in the form prescribed by the Governor's designee, which contains, where appropriate, the following information:

(a) Name and mailing address of the Political Subdivision.

(b) Name of the chief elected or appointed executive officer of the Political Subdivision.

(c) If the project to be financed by the Bonds is not to be owned by the Political Subdivision, name or description and location by mailing address or other definitive description of the project or purpose for which the allocation is requested.

(d) Name and mailing address of both the initial owner, beneficiary, or operator of the project or projects and an appropriate person from whom information regarding the project or purpose can be obtained.

(e) Date of adoption by the governing body of the Political Subdivision of an inducement or other preliminary resolution for the purpose of taking "official action" as required by the United States Treasury regulations promulgated under either the 1954 Code or the 1985 Code, if the Bonds require the taking of "official action" under the Internal Revenue Code of 1954, or the date of adoption by the governing body of the Political Subdivision of any initial governmental action with respect to the Bonds.

(f) Amount of the State Ceiling which the Political Subdivision is requesting be allocated to the Bonds.

(g) Other information which the Governor's designee deems reasonably required to carry out the purposes of this chapter.

Section 4. Upon the receipt of a completed application, the Governor's designee shall promptly certify to the Political Subdivision the amount of the State Ceiling allocated to the Bonds for the purpose or project with respect to which the application was submitted. The allocation shall remain valid for thirty days from the date the allocation is certified, subject to the following conditions:

(a) If the Political Subdivision does not reasonably expect to issue and deliver the Bonds within the thirty-day period and evidence of an executed valid and binding agreement to purchase the Bonds is obtained from an entity with the legal ability to purchase and this agreement is filed with the Governor's designee, the thirty-day allocation period shall be automatically extended for an additional forty-five days. The allocation period shall not be extended beyond that additional forty-five days.

(b) If the Bonds are issued and delivered for the purpose or project within the thirty-day period or the forty-five day extension period, the Political Subdivision or the Political Subdivision's representative shall within ten days following the issuance and delivery of the Bonds or in any event, if Bonds have been issued and delivered prior to October 26 of any year, not later than October 25 of such year, file with the Governor's designee, either by delivery in the office of the Governor's designee or by depositing in a United States Post Office depository, first class postage prepaid, in such form or manner as the Governor's designee may prescribe, a notification of the date of issuance and the delivery of the Bonds, and the actual principal amount of Bonds issued and delivered. If the actual principal amount of Bonds issued and delivered is less than the amount of the allocation, the amount of the allocation is automatically reduced to the actual principal amount of the Bonds issued and delivered.

(c) The allocation will cease to be valid unless the Bonds are issued and delivered prior to December 24 of the calendar year in which the allocation is certified, except as provided in Section 5.

Section 5. It is the intention of the Governor that the maximum use be made of all carryforward provisions in the Act. Therefore, if the aggregate principal amount of Bonds issued by all Political Subdivisions in a calendar year is less than the State Ceiling for that calendar year, a Political Subdivision may apply to the Governor's designee

for an allocation of a specified portion of the excess State Ceiling to be applied to a specified carryforward project or purpose. The Governor's designee shall determine the time and manner in which applications for an allocation of excess State Ceiling shall be made for this purpose and may, in his discretion, refuse to permit any and all requests for carryforward. However, the procedures for applications, the method of identifying carryforward projects or purposes and the types of carryforward projects or purposes permitted shall comply with the carryforward provisions of the Act and regulations promulgated thereunder.

Section 6. If the expiration date of either the thirty-day period or the forty-five day extension period described in Subsection (a) or (b) of Section 4 hereof is a Saturday, Sunday, or any day on which the offices of the State, banking institutions or savings and loan associations in the State are authorized or required to close, the expiration date is extended to the first day thereafter which is not a Saturday, Sunday, or other previously described day.

Section 7. If an allocation becomes no longer valid as provided in Section 4 hereof, the Political Subdivision may resubmit its application for the same project or purpose. The resubmitted application shall be treated as a new application and preference, priority or prejudice shall not be given to the application or the Political Subdivision as a result of the prior application, other than as provided in Section 9 hereof.

Section 8. The Governor shall designate a person, agency, or authority to administer this Executive Order. The person, agency or authority so designated shall serve at the pleasure of the Governor and shall be selected primarily for administrative ability and knowledge in the area of public finance.

In addition to the powers and duties specified in Sections 1 through 7 hereof, the Governor's designee shall maintain appropriate records of all applications filed by Political Subdivisions pursuant to Section 3 and all Bonds issued pursuant to these applications including, but not limited to, a daily accounting of the amount of the State Ceiling available for allocation, the amount of the State Ceiling which has been allocated but not used and the names, addresses, and telephone numbers of those Political Subdivisions for whom an allocation has been approved or disapproved and the amount of the allocation approved or disapproved for such Political Subdivision, all of which shall be made available to the general public upon request.

Section 9. Notwithstanding any other provisions of this Executive Order, the Governor's designee shall give priority in the allocation of the State Ceiling:

- (i) to all Bonds which have been delivered prior to the date of this Executive Order and after December 31, 1985; and
- (ii) to all Bonds which must be issued and delivered on or prior to December 31 of any calendar year in order for the interest on the Bonds to be exempt from federal income taxation. Applications for an allocation with respect to such Bonds shall be accompanied by an opinion of nationally recognized Bond counsel to the effect that such Bonds must be issued and delivered on or prior to December 31 in such calendar year in order for the interest on the Bonds to be exempt from federal income taxation.

Section 10. The provisions of this Executive Order are in addition to the provisions of the Iowa Code Chapter 7C, as amended, and it is the intention of the Governor that this Executive Order not supercede the provisions of Iowa Code Chapter 7C, as amended.

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 19th day of February in the year of our Lord one thousand nine hundred and eighty-six.

Terry E. Branstad  
GOVERNOR



Mary Jane Odell  
SECRETARY OF STATE

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWAFILED - February 19, 1986

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. 84-1923. HOEKSTRA v. FARM BUREAU MUTUAL INSURANCE CO.  
Appeal from the Iowa District Court for Hardin County, David R. Hansen, Judge. Affirmed. Considered by Reynoldson, C.J., and McGiverin, Larson, Carter, and Wolle, JJ. Opinion by Reynoldson, C.J. (27 pages \$10.80)

Defendant appeals from the judgment entered upon a jury's verdict awarding damages for breach of contract. Plaintiffs cross-appeal from a directed verdict for defendant on their claim of bad faith failure to settle. OPINION HOLDS: I. Under the record before trial court when summary judgment was sought, a factual issue remained relating to plaintiffs' compliance with the "reasonably require" standard of the cooperation clause in the contract. II. A showing of substantial compliance with the proof of loss provision of the policy is all that is required of an insured to avoid the consequences of failure to comply. The insurer's objection to the trial court's instruction on substantial compliance was not specific enough to preserve error on its claim that the particular language used was inappropriate. The circumstances disclosed by this record were minimally sufficient to generate a jury question as to whether plaintiffs substantially complied with the provisions of the insurance contract. III. The trial court did not abuse its discretion by imposing a limitation on an expert's testimony as a sanction for failure to supplement a misleading response to an interrogatory. IV. The insurer suffered no prejudice as a result of the admission of evidence concerning its net worth. No punitive or compensatory damages were awarded on the intentional infliction of emotional distress claim and the evidence was not misused by the jury in awarding damages on the breach of contract claim because instructions were given that appropriately limited the manner in which such evidence could be considered. V. Trial court committed no error in refusing to include defendant's proposed instructions. VI. The circumstances of this case do not create an issue as to the insurer's bad faith failure to settle a first-party claim.

No. 84-995. WARFORD v. DES MOINES METROPOLITAN TRANSIT AUTHORITY.  
Appeal from the Iowa District Court for Polk County, Anthony M. Critelli, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and McGiverin, Larson, Carter, and Wolle, JJ. Opinion by Reynoldson, C.J. (7 pages \$2.80)

The plaintiffs were injured when their car was struck by a bus owned and operated by the Des Moines Metropolitan

Transit Authority (MTA). They later filed the present negligence suit against the MTA and the bus driver. The defendants moved to dismiss on the ground the plaintiffs had failed to comply with the notice requirements of Iowa Code chapter 613A (Tort Liability of Governmental Subdivisions). The district court granted this motion to dismiss, and the plaintiffs have appealed. OPINION HOLDS: The trial court erred by granting the motion to dismiss. In ruling on a motion to dismiss, we are limited to the well-pleaded facts of plaintiffs' petition, which are taken as true. The trial court erred by considering a supposed "intergovernmental agreement" creating MTA because the agreement was outside the scope of the petition and was not subject to judicial notice. The petition alleged that MTA is a "corporation and/or public franchise," neither of which would be governed by chapter 613A. We cannot conclude from the fact of the petition that MTA is a municipality governed by chapter 613A.

No. 85-336. CITY OF CARLISLE v. FETZER.

Appeal from the Iowa District Court for Warren County, M. C. Herrick, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and McGiverin, Larson, Carter, and Wolle, JJ. Opinion by Reynoldson, C.J. (6 pages \$2.40)

Trial court denied a motion for summary judgment filed by defendant in response to plaintiff's petition, which alleged breach of implied warranties in the sale of a street sweeper the defendant manufactured. OPINION HOLDS: Applying Iowa Code section 554.2725(2), the alleged breach of warranty in this case occurred when the sweeper was delivered, regardless of plaintiff's lack of knowledge of the breach, unless the implied "warranty [of fitness] explicitly extend[ed] to future performance of the goods and discovery of the breach must await the time of such performance," in which case plaintiff's cause of action occurred when the breach was or should have been discovered. We hold the implied warranty of fitness pleaded in plaintiff's petition did not explicitly extend to the future performance of the sweeper. Plaintiff's action was barred by the five-year statute of limitations. Trial court erred in overruling defendant's motion for summary judgment.

No. 85-155. STATE V. RAIM.

Appeal from the Iowa District Court for Johnson County, John R. Sladek, District Associate Judge. Reversed and remanded. Considered by Reynoldson, C.J., and Harris, McGiverin, Schultz and Wolle, JJ. Opinion by McGiverin, J. (8 pages \$3.20)

Defendant had been charged previously with an OWI violation on June 10, 1978, and was subsequently convicted on October 16. In the case pending against defendant, he was arrested on September 23, 1984, and charged with second offense OWI more than six years after the June 1978 charge but less than six years after his October 1978 conviction on that charge. Defendant asserted that because the earlier OWI violation occurred more than six years prior to his present OWI charge, it was improperly considered by the State and the court in determining his current violation was a

second offense. The State resisted defendant's motion in arrest of judgment by arguing that the six-year time limitation set out in section 321.281(2)(c) began to run from the date of Raim's earlier conviction on October 16, 1978, not when the violation occurred; therefore, defendant was properly charged with second offense OWI. After hearing, the district court sustained defendant's motion. The court then entered judgment of conviction and sentenced defendant accordingly for OWI, first offense. See Iowa Code §§ 321.281(2)(a); 903.1; 911.2. The State appealed. OPINION HOLDS: I. The State appealed from the district court's ruling which sustained defendant's motion in arrest of judgment. Therefore, the State properly appealed as of right, and no application for discretionary review under Iowa Code section 814.5(2) was necessary. II. Section 321.281 provides for a "scheme of escalating punishments based on the number of defendant's prior 'offenses.'" Our prior interpretations of this statute have held that it is the previous OWI conviction or plea of guilty which affects enhancement of punishment. A defendant is protected with a presumption of innocence before conviction, and it is consistent with this presumption to conclude that a charge of an OWI violation alone cannot be used to enhance any punishment. Therefore, only convictions occurring on a date within the six years prior to the most recent offense are to be used in determining whether the current violation charged is a second, third or subsequent offense. III. The district court incorrectly sustained defendant's motion in arrest of judgment and amended the trial information to charge only first offense OWI, and, therefore, the order and judgment are reversed and the case remanded for further proceedings that charges defendant with OWI, second offense.

NO. 85-856. MARY v. IOWA DEPARTMENT OF TRANSPORTATION.

Appeal from the Iowa District Court for Worth County, B. C. Sullivan, Judge. Reversed. Considered by Reynoldson, C.J., and Harris, McGiverin, Schultz, and Wolle, JJ. Opinion by Schultz, J. (11 pages \$4.40)

In a hearing before the Department of Transportation (department), the agency sustained the revocation of Mary's driver's license because his blood test yielded an alcohol concentration of .10 or more. On judicial review the district court found that Mary never consented to the blood test. The court concluded that the failure to have a licensed physician present and take the blood specimen from Mary was in violation of his rights. The court further concluded that the blood sample could not be used as a basis to revoke Mary's license and ordered the department to return his driver's license. OPINION HOLDS: I. The district court should not have considered matters that arose in another hearing or case. II. We believe that section 321B.11 applies only when the person is in such a condition that the person is incapable of manifesting a choice concerning whether to withdraw the statutory implied consent to take the test. In the present case, no dispute exists that Mary manifested a capacity to exercise his statutory right to refuse the test. The agency did not err in rejecting Mary's contention that a physician's certificate was required prior to the withdrawal of the specimen. We also believe substantial evidence supports the agency finding that Mary did not refuse to take the test.

NO. 85-345. ARMSTRONG v. STATE OF IOWA BUILDINGS AND  
 GROUNDS.

Appeal from the Iowa District Court for Polk County,  
 Anthony Critelli, Judge. Affirmed on the Appeal; Reversed  
 on the Cross-Appeal. Considered en banc. Opinion by Schultz,  
 J. (13 pages \$5.20)

The industrial commissioner's representative (commis-  
 sioner) awarded the worker a 10 percent permanent partial  
 disability; however, on judicial review the district court  
 raised the amount to 50 percent. On appeal the worker  
 claims the district court erred in not recognizing total  
 permanent disability, while the employer maintains the  
 district court erroneously modified the commissioner's  
 award. OPINION HOLDS: We agree with the employer that this  
 is not a case which the district court could determine the  
 facts as a matter of law and modify the commissioner's  
 award. We believe there is substantial evidence in the  
 record to support the commissioner's conclusion of 10 per-  
 cent permanent partial disability in this case.

NO. 84-1617. GERING v. STATE.

Appeal from the Iowa District Court for Polk County,  
 Gene L. Needles, Judge. Reversed and remanded. Considered  
 en banc. Opinion by Carter, J. (12 pages \$4.80)

The State appeals from district court's order granting  
 postconviction relief from arson conviction for errors in  
 instructions to the jury. OPINION HOLDS: I. We believe  
 that the failure to instruct the jury on unanimity of  
 verdict in the present case was harmless. Prior to arriving  
 at its verdict, the jury sent a written message to the trial  
 judge advising that it was deadlocked ten to two, a  
 circumstance strongly suggesting that the jurors were aware  
 that their verdict was required to be unanimous. Evidence  
 was offered at the postconviction hearing that a poll of the  
 jurors was conducted before their discharge which revealed  
 that each was in agreement with the verdict rendered.  
 Finally, there was evidence that a private investigator  
 interviewed several of the jurors following trial, at the  
 request of Gering's counsel, and obtained information  
 confirming that the jury had been deadlocked at ten to two  
 for conviction for some period of time but ultimately  
 arrived at a unanimous verdict for conviction. Three  
 separate factors thus indicate that the verdict was  
 unanimous. II. An instruction on reasonable doubt did not  
 state that the source of reasonable doubt should be limited  
 to a lack or failure of evidence produced by the State.  
 Another instruction did tell the jury that it could find  
 Gering guilty only if the State "has proved beyond a  
 reasonable doubt each and all of the ... elements." We  
 conclude that, for purposes of collateral attack, Gering has  
 not established that the use of the disapproved instruction  
 resulted in actual prejudice sufficient to warrant  
 overturning a conviction. See Strickland v. Washington,  
U.S. \_\_\_\_\_, \_\_\_\_\_, 104 S. Ct. 2052, 2069, 80 L. Ed. 2d 674,  
 669 (1984). III. There is no merit to Gering's contention  
 that, if his appellate lawyer had raised the two defects in  
 the jury instructions discussed in the prior division as  
 points on direct appeal and sought to excuse the absence of  
 timely objection on the ground of ineffective assistance of  
 trial counsel, a reversal of his conviction could have been

obtained on direct appeal. For purposes of applying the Strickland prejudice standard, the gravity of counsel's error, whether at trial or on appeal, must be measured in terms of its probable consequences at trial. For the reasons stated in Division I of this opinion, the matters complained of do not satisfy this test.

NO. 85-121. LEITCH v. LEITCH.

Appeal from the Iowa District Court for Pottawattamie County, Keith E. Burgett, Judge. Affirmed as modified. Considered by Uhlenhopp, P.J., and Harris, Larson, Carter, and Wolle, JJ. Opinion by Carter, J. (11 page \$4.40)

The parties were divorced by a Canadian decree. The husband later moved to Iowa. The wife then filed a petition in the Iowa district court seeking to collect arrearages in the husband's support obligations under the Canadian decree. The Iowa district court entered judgment against the husband for arrearages and also increased the husband's future support obligations. The husband has appealed. OPINION HOLDS: I. We give effect to the support provisions of the Canadian divorce decree under principles of comity. We reject the husband's argument that local enforcement of the Canadian decree violates public policy because the Canadian decree's economic determinations were influenced by the relative fault of the parties in causing the breakdown of the marriage. II. The district court did not err in ordering the husband to pay interest on the arrearages found to exist under the Canadian judgment. III. Because the wife's petition sought only to enforce her rights under the Canadian decree, the Iowa district court had no authority to increase the husband's future obligations. This conclusion is not affected by the fact that the husband's answer requested a reduction in his future obligations. IV. The judgment against the husband for arrearages is modified to credit the husband with certain payments previously made. Each party is to pay his or her own attorney's fees; the costs of appeal shall be assessed seventy-five percent to the appellant husband and twenty-five percent to the appellee wife.

NO. 84-1494. COUNTRYMAN v. McMAINS.

On review from Iowa Court of Appeals. Appeal from the Iowa District Court for Wapello County. Dan F. Morrison, Judge. Decision of court of appeals vacated; district court orders affirmed. Considered en banc. Opinion by Larson, J. (8 pages \$3.20)

Plaintiff sued for damage to her car, alleging both negligence and an intentional tort. The district court denied plaintiff's motions for continuance made at the commencement of trial and after the defendant testified. The district court also denied plaintiff's motion for new trial. The court of appeals reversed on the continuance issue but did not address the new trial issue. OPINION HOLDS: The district court was within the scope of its discretion when it denied the continuance motions. We find no merit in any of the plaintiff's new trial issues.

NO. 85-334. PAYNE PLUMBING & HEATING CO., INC. v.  
BOB McKINNESS EXCAVATING & GRADING, INC.

Appeal from the Iowa District Court for Cerro Gordo County, Ralph F. McCartney, Judge. Affirmed in part; reversed in part and remanded. Considered en banc. Opinion by Larson, J. (13 pages \$5.20)

Problems with a construction project on the campus of Northern Iowa Area Community College (NIACC) in Mason City, Iowa, resulted in a lawsuit and a procedural free-for-all, among the contractors, over the apportionment of damages. OPINION HOLDS: I. Alleged acts of negligence by a party previously removed from the action by a directed verdict may not be considered in assessing percentages of negligence. II. The active-passive negligence basis of indemnity is inapplicable to the facts of this case. III. The written indemnifying agreement with the subcontractor entitled the general contractor to full indemnity despite the fact it was itself found to be negligent. IV. The indemnifying agreement prevented recovery by the subcontractor on its cross-claim against the general contractor. V. Because the subcontractor's recovery on its cross-claim was barred, several issues concerning the motion for directed verdict and the instructions are moot.

NO. 85-98. FARRIS v. GENERAL GROWTH DEVELOPMENT CORP.

Appeal from the Iowa District Court for Black Hawk County, Forest Eastman, Judge. Affirmed. Considered by Reynoldson, C.J., and McGiverin, Larson, Carter, and Wolle, JJ. Opinion by Larson, J. (6 pages \$2.40)

Plaintiff was injured as an employee for a subcontractor on a construction site. He received workers' compensation benefits, then sued the general contractor for damages. The workers' compensation insurer filed a lien in the negligence action to recover the amount of the workers' compensation benefits it had paid to plaintiff. The workers' compensation insurer was also the liability carrier for the defendant. Plaintiff obtained a judgment against the general contractor, and the workers' compensation insurance company was reimbursed for its workers' compensation payments. This appeal involves the narrow question of whether the district court erred in deducting attorney fees from the amount the workers' compensation insurer had recovered. OPINION HOLDS: I. We believe that the district court's independent determination of reasonableness of the apportionment of attorney fees was well supported by the record. II. We agree with plaintiff's argument that the workers' compensation insurer should pay its share of the attorney fees. We do not believe it is fair, or in conformity with the intent of Iowa Code section 85.22(1), to penalize an employee in a third-party suit because it happened that one insurance company had both ends of the insurance coverage.

No. 85-587. RUSHING v. STATE.

Appeals from the Iowa District Court for Jones County, Thomas L. Koehler and Robert E. Ford, Judges. Reversed. Considered by Reynoldson, C.J., and Harris, McGiverin, Schultz and Wolle, JJ. Opinion by McGiverin, J. (9 pages \$3.60)

The applicants, two inmates of the Iowa State Men's Reformatory, were required to provide urine specimens for detection of marijuana (THC) usage. Results for both inmates were positive. During disciplinary hearings both inmates presented defenses, namely their own testimony denying recent marijuana use. Both inmates were subjected to prison discipline for use and possession of marijuana. However, both inmates then sought and were granted postconviction relief in district court. The State now appeals. OPINION HOLDS: Because there are fundamental constitutional rights involved here, we reviewed the case de novo in light of the totality of the circumstances and the record upon which the postconviction court ruling was made. I. We do not believe that a prison disciplinary committee must expressly state in its written decision that the committee has considered the inmate's defenses in reaching its decision. The committee's decision need only be supported by "some evidence." II. We conclude that in this case the committee's decision was supported by "some evidence" (the positive urinalysis results for THC). III. We believe that prison officials may testify in court, if necessary, to further explain the reason for the committee's procedure and decision. Because testimony taken during the postconviction relief proceedings from the adjustment committee member indicates that the committee did consider the applicants' defenses, we conclude the applicants' due process rights were not violated.

No. 84-1292. TAYLOR V. PECK.

On review from Iowa Court of Appeals. Appeal from the Iowa District Court for Poweshiek County, James D. Jenkins, Judge. Decision of court of appeals vacated; judgment of district court affirmed. Considered by Reynoldson, C.J., and Harris, McGiverin, Schultz and Wolle, JJ. Opinion by McGiverin, J. (12 pages \$4.80)

One of the plaintiffs was injured in an industrial accident. After collecting workers' compensation benefits from her employer, she and her husband sued two supervisory employees, Peck and Ladely, alleging gross negligence. A jury returned a verdict for the plaintiffs against one supervisor, Peck, but the district court then granted Peck a judgment notwithstanding the verdict. The plaintiffs appealed, and the court of appeals reversed the district court's judgment and reinstated the jury's verdict. The defendants have applied for further review. OPINION HOLDS: I. There was insufficient evidence of gross negligence under Iowa Code section 85.20 to permit the jury to impose liability on the defendant Peck. The district court correctly granted Peck a judgment notwithstanding the verdict. II. We expressly affirm the district court's judgment in favor of defendant Ladely based on the jury's verdict for Ladely.

NO. 85-750. PEOPLES NATURAL GAS CO. v. IOWA STATE COMMERCE COMMISSION.

Appeal from the Iowa District Court for Pottawattamie County, J. C. Irvin, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and McGiverin, Larson, Carter, and Wolle, JJ. Opinion by Carter, J.

(13 pages \$5.20)

The Iowa State Commerce Commission and the Office of Consumer Advocate appeal from orders of the district court which interpret Iowa Code section 476.6(7) (1983) to require a contested case hearing procedure for reconciliation of automatic pass-through adjustments to the gas cost component of utility rate structures. OPINION HOLDS: I. Neither Iowa Code section 476.6(7) (1983) nor Iowa Code section 17A.2(2) requires a contested case hearing. II. In the absence of a relevant factual dispute, due process does not require an evidentiary hearing. III. Because the court erred in its determination that an evidentiary hearing was required, we reverse the judgment of the district court and remand this matter to that court for consideration of the remaining issues presented in the petition for judicial review. Because the stay order previously entered in this action by the district court fails to comply in several respects with our decision in Teleconnect Co. v. Iowa State Commerce Commission, 366 N.W.2d 515 (Iowa 1985), we direct that that order shall cease to be effective upon issuance of the procedendo from this court.

NO. 85-790. GRAHAM v. IOWA DEPARTMENT OF JOB SERVICE.  
Appeal from the Iowa District Court for Polk County,  
Glenn E. Pille, Judge. Affirmed. Considered en banc.  
Per curiam. (2 pages \$ .80)

An unemployment compensation claimant appeals from the order in a judicial review action sustaining a special appearance based on lack of jurisdiction. OPINION HOLDS: The district court was correct in sustaining the special appearance. The instructions for rehearing procedures contained in the notice of the final agency decision were not so misleading as to constitute a violation of statute and a deprivation of due process.

NO. 85-739. BOARD OF DIRECTORS OF THE DAVENPORT COMMUNITY  
SCHOOL DISTRICT v. THE QUAD CITY TIMES.  
Appeal from the Iowa District Court for Scott County,  
Linda K. Neuman, Judge. Reversed. Considered en banc.  
Opinion by Wollé, J. Dissent by Carter, J.  
(15 pages \$6.00)

Newspaper appeals from declaratory judgment denying it access to the transcript of termination proceedings involving a non-probationary school administrator undertaken pursuant to Iowa Code section 279.24 (1985). OPINION HOLDS: Iowa Code section 272A.8 explicitly converts the section 279.24 proceeding before the hearing officer into a contested case hearing under chapter 17A which must be "open to the public and shall be recorded" by the clear mandate of section 17A.12(7). Specifically exempted from chapter 22, the public records statute, are the record of the private conference, findings of fact and exceptions. The transcript of evidence the board considers is not specifically exempted. DISSENT ASSERTS: I fully agree with the district court that the legislature intended, in enacting section 279.24, that all of the steps in the statutory process are to be accorded confidentiality. The Iowa Administrative Procedure Act was not written so as to apply to section 279.24 hearings.

NO. 84-1943. WHITEAKER v. STATE.

Appeal from the Iowa District Court for Polk County, Theodore H. Miller, Judge. Affirmed. Considered by Reynoldson, C.J., and McGiverin, Larson, Carter, and Wolle, J. Opinion by Wolle, J. (13 pages \$5.20)

The plaintiff purchased several postal vending machines as an investment from a California company, UPC. He later came to believe that UPC had defrauded him. He was represented in various legal proceedings by an attorney from the consumer protection division of the Iowa Attorney General's office. His legal proceedings had reached no conclusion when UPC terminated its corporate existence. The plaintiff later filed the present tort claim action against the State, alleging that the assistant attorney general who handled his case against UPC had committed malpractice. Following a bench trial, the district court found that the plaintiff had failed to prove several elements of his malpractice action. The district court therefore entered judgment for the State. The plaintiff has appealed. OPINION HOLDS: I. When the trial court following a bench trial denies recovery because a party has failed to sustain its burden of proof on an issue, we will not interfere unless we find the party carried its burden as a matter of law. II. The plaintiff's evidence did not establish as a matter of law that any potential judgment against UPC would have been collectible. III. The plaintiff's evidence also did not establish as a matter of law that the plaintiff suffered damages by being deprived of a settlement opportunity.

No. 85-752. RUTHVEN CONSOLIDATED SCHOOL DISTRICT v. EMMETSBURG COMMUNITY SCHOOL DISTRICT.

Appeal from the Iowa District Court for Palo Alto County, James H. Andreasen, Judge. Affirmed in part, reversed in part and remanded with instructions. Considered by Reynoldson, C.J., and Harris, McGiverin, Schultz, and Wolle, JJ. Opinion by Harris, J. (12 pages \$4.80).

Two school districts assigned land that was within a school district that went out of existence under a reorganization plan appeal from a declaratory judgment that they were not school districts "affected by" the reorganization for purposes of a proceeding dividing the assets and liabilities of the former district. OPINION HOLDS: I. Failure to seek an administrative declaratory ruling does not bar the declaratory judgment action brought by the former district and the newly reorganized district. II. A statute adopted after this dispute arose has no application. The district court properly refused to permit testimony of an administrative expert concerning legislative intent when the statute was adopted. III. Under relevant statutes defendant school districts were "affected by" the reorganization.

NO. 85-575. H.L.O. v. HOSSLE.

Appeal from the Iowa District Court for Montgomery County, Keith E. Burgett, Judge. Affirmed in part, reversed in part. Considered en banc. Opinion by Uhlenhopp, J.  
(10 pages \$4.00)

The plaintiffs, parents and children, sued the defendant on several tort theories arising from the defendant's sexual abuse of the children. The claims of the children themselves were settled. The district court later granted the defendant a summary judgment on the parents' claims. The parents have appealed from this summary judgment. OPINION HOLDS: I. The parents' petition adequately raised a claim under Iowa R. Civ. P. 8 for medical expenses incurred on behalf of the children. The district court erred by granting the defendant a summary judgment as to this portion of the petition. II. The district court did not err by granting the defendant a summary judgment on the parents' claims for intentional infliction of severe emotional distress on themselves. The parents contend they suffered severe emotional distress upon learning of the sexual abuse about two months after it happened. However, an action for intentional infliction of emotional distress based on injury to a third person can be maintained only if the plaintiff is present at the time the third person suffers injury. In the present case liability did not arise under this theory because the parents were not present when the sexual abuse occurred.

NO. 85-359. ARGENTA v. CITY OF NEWTON.

Appeal from the Iowa District Court for Polk County, Richard A. Strickler, Judge. Affirmed. Considered en banc. Opinion by Wolle, J. Dissent by Reynoldson, C.J.  
(13 pages \$5.20)

The plaintiff Joseph Argenta was injured on a job site where his employer was performing work for the city of Newton. Argenta and his wife sued several defendants, including the city of Newton. The district court granted the city a summary judgment on the ground the plaintiffs had not complied with Iowa Code section 613A.5 because they had neither given the city written notice of their claims within sixty days nor commenced the court action within six months of the incident. The plaintiffs have appealed from the summary judgment for the city. OPINION HOLDS: I. The summary judgment terminating the plaintiffs' claims against the city was a final order appealable as of right because those claims were separate and distinct from the claims asserted against the other defendants. II. The plaintiffs did not comply with the notice requirements of section 613A.5. There is no merit to the plaintiffs' contentions that the city received statutorily adequate notice of the accident from a city inspector's handwritten entry in a daily log, or from a newspaper report describing the accident. These purported forms of notice were inadequate because they were not presented by the plaintiffs or by someone on their behalf, and because they did not indicate that the plaintiffs were making any sort of claim. III. The written notice requirement of Iowa Code section 613A.5 does not deny equal protection or due process under the

federal or state constitutions. We decline the plaintiffs' invitation to apply the strict scrutiny test to the equal protection challenge. The statute bears a rational relationship to a legitimate public purpose. DISSENT ASSERTS: I respectfully dissent on the rationale which I advanced in the dissent in Lunday v. Vogelmann, 213 N.W.2d 904, 908 (Iowa 1973).

NO. 85-395. STATE v. MOYER.

Appeal from the Iowa District Court for Monroe County, James Jenkins, Judge. Sentence vacated; remanded. Considered by Reynoldson, C.J., and Harris, McGiverin, Schultz, and Wolle, JJ. Opinion by Wolle, J. (10 pages \$4.00)

Defendant appeals from the sentence imposed following conviction of operating a motor vehicle while under the influence of alcohol (OWI), third offense. OPINION HOLDS: Defendant had a right under Iowa Code section 321.281(2)(c) (1985) to have a substance abuse evaluation made available to the sentencing court before sentence was imposed. Because no such evaluation was ordered, we vacate the sentence and remand for further proceedings in the district court.

NO. 85-827. GOOD'S FURNITURE HOUSE, INC. V. IOWA  
STATE BOARD OF TAX REVIEW.

Appeal from the Iowa District Court for Polk County, Harry Perkins, Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, McGiverin, Schultz, and Wolle, JJ. Opinion by Wolle, J. (16 pages \$6.40)

An Illinois furniture retailer appeals from a judicial review decision upholding a determination that the retailer must collect use tax on sales to Iowa customers. OPINION HOLDS: I. Iowa Code chapter 423 imposes the duty to collect and remit a use tax on retailers who maintain a place of business in Iowa, and one definitional subparagraph extends the obligation to a retailer who has "any agent operating within this state under the authority of the retailer." It is apparent that the legislature intended non-selling truckers delivering goods into Iowa to be agents of persons by whom they are employed, in order that out-of-state merchandisers would not have an unfair competitive edge over Iowa retailers who must collect sales and use tax. The department and the district court on judicial review correctly determined that Good's Furniture was obligated by Iowa statute to collect and remit use tax on its sales of merchandise for use in Iowa. II. We conclude that the nexus test stated in Miller Brothers Co. v. Maryland, 347 U.S. 340, 74 S. Ct. 535, 98 L. Ed. 744 (1954), as refined by later Supreme Court cases, was satisfied by the department's showing that Good's Furniture directly solicited a large volume of Iowa sales by intensive television advertising, then regularly serviced its Iowa customers by delivering merchandise in its own trucks with its own employees. Good's Furniture had sufficient Iowa contacts to allow the department to impose upon it the requirements of Iowa's use tax statute without violating constitutional due process requirements. III. Because the agency as fact finder

determined that Good's Furniture had not met its burden of proof, we will not interfere with that determination unless estoppel was established as a matter of law. Good's Furniture has not established as a matter of law that it had a right to rely upon any of the alleged statements it attributes to department employees made over the phone. The claim for refund of use taxes paid is without merit.

NO. 85-141. STATE ex rel. MILLER v. AMERICAN PROFESSIONAL MARKETING, INC.

Appeal from the Iowa District Court for Polk County, Rodney J. Ryan, Judge. Reversed. Considered en banc. Opinion by Schultz, J. (14 pages \$5.60)

Defendants appeal from a district court determination that their multilevel marketing programs are illegal referral sales plans. The court permanently enjoined defendants' sales practices in the state. OPINION HOLDS: Defendants' programs are neither pyramiding nor illegal referral merchandise sales plans banned by Iowa Code section 714.16 (2)(b). Section 714.16(2)(b) should not be interpreted to per se ban all multilevel marketing plans that offer incentives for the recruitment of sales personnel.

No. 85-152. STATE ex rel. IOWA DEPARTMENT OF HUMAN SERVICES v. MEYER.

Appeal from the Iowa District Court for Pocahontas County, Newt Draheim, Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, McGiverin, Schultz, and Wolle, JJ. Opinion by Harris, J. (4 pages \$1.60).

Respondent appeals from an adverse judgment in a paternity action. OPINION HOLDS: I. The evidence clearly establishes paternity. II. This action is not barred by the two dismissal rule under Iowa R. Civ. P. 215 when one of the dismissals was procured through extrinsic fraud.

NO. 84-1506 and 84-1632. STATE v. MCGEE.

Appeal from the Iowa District Court for Polk County, Louis Lavorato, Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, McGiverin, Schultz, and Wolle, JJ. Opinion by Schultz, J. (8 pages \$3.20)

Defendant appeals from judgment and sentence upon his convictions of possession of a controlled substance with intent to deliver in violation of Iowa Code section 204.401 (1) and carrying a dangerous weapon in violation of section 724.4. OPINION HOLDS: I. In his appeal the defendant maintained that he was illegally seized by police officers without a warrant in violation of his fourth amendment rights. Our de novo review of the facts does not indicate that a seizure took place prior to defendant's arrest. II. Defendant maintained that a Terry (stop and frisk) search should not be extended to minor offenses like possession of narcotics. We do not agree that narcotics offenses are minor offenses and conclude that the investigatory stop procedures announced in Terry are well suited for enforcing the narcotics laws. III. Defendant maintained that the warrantless search of his automobile was without exigent

circumstances and not incident to a lawful arrest. We disagree and conclude that the vehicle search was conducted only after the officers had reasonable cause to arrest the defendant and was incident to his arrest. Here, the officers were justified in making a protective search of the automobile because they had reasonable belief that defendant was dangerous and could gain access to a weapon hidden in the car.

NO. 84-160. WYCOFF v. STATE.

On review from Iowa Court of Appeals. Appeal from the Iowa District Court for Lee County, John C. Miller, Judge. Decision of court of appeals vacated, decision of district court affirmed. Considered en banc. Opinion by Uhlenhopp, J. (25 pages \$10.00)

Further review was granted of the court of appeals decision reversing the district court's denial of postconviction relief. OPINION HOLDS: The record establishes neither prosecutorial misconduct nor ineffective assistance of counsel.

NO. 85-220. DOTTS v. BENNETT.

Appeal from the Iowa District Court for Wayne County, Thomas S. Bown, Judge. Reversed and Remanded. Considered en banc. Opinion by Uhlenhopp, J. Dissent by Carter, J. Dissent in part by Wolle, J. (16 pages \$6.40)

Defendants, sellers of hay, appeal from an adverse judgment based on breach of implied warranty of merchantability and fitness. OPINION HOLDS: I. The standard of review of trial court's denial of a directed verdict is whether substantial evidence was produced upon which a jury issue was created. II. There was no substantial evidence upon which the jury could find defendant had reason to know plaintiff was relying on his skill and judgment to select or furnish suitable hay and was subject to an implied warranty of fitness for a particular purpose under Iowa Code section 554.2315. III. There was substantial evidence upon which the jury could find defendant was a merchant with respect to hay and subject to a warranty of merchantability under Iowa Code sections 554.2314 and 554.2104(1). IV. The trial court's instruction did not sufficiently define the term "deals" in describing the term merchant. DISSENT ASSERTS: I believe that whether defendant was a merchant is an issue of fact and that the jury was adequately instructed on the criteria to be applied in making that determination. I would affirm the judgment. DISSENT IN PART ASSERTS: I believe defendants were also entitled to a directed verdict on the merchantability issue. Defendants were not merchants within the meaning of Iowa Code section 554.2104(1).

# IOWA ADMINISTRATIVE BULLETIN

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SUPREME COURT

IAB 3/12/86

NO. 84-1908. STATE v. MYERS.

Appeal from the Iowa District Court for Polk County, Thomas A. Renda, District Associate Judge. Affirmed. Considered en banc. Opinion by Schultz, J. Dissent by Harris, J. Dissent by Wolle, J. (24 pages \$9.60)

Defendant appeals from his conviction for indecent contact with a child, a violation of Iowa Code section 709.12(2) (1983). OPINION HOLDS: The trial court abused its discretion by admitting expert opinion testimony that children generally are truthful when they relate that they have been sexually abused. DISSENT ASSERTS: The majority's analysis accords the trial court no discretion on the admission of the challenged expert testimony. The subject matter of the testimony would be helpful to the jury. This case is inappropriate for a retreat from a liberal standard governing admissibility of expert testimony. DISSENT ASSERTS: I believe the trial court did not abuse its discretion in determining that the expert testimony would be helpful to the jury in performing its function.