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# 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

Phone: (515) 281-3355  
(515) 281-8157

## PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
21	Friday, March 20, 1987	April 8, 1987
22	Friday, April 3, 1987	April 22, 1987
23	Friday, April 17, 1987	May 6, 1987

## 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:

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## Schedule for Rule Making 1987

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. 9	Jan. 28	Feb. 17	Mar. 4	Mar. 25	Apr. 29	July 27
Jan. 23	Feb. 11	Mar. 3	Mar. 18	Apr. 8	May 13	Aug. 10
Feb. 6	Feb. 25	Mar. 17	Apr. 1	Apr. 22	May 27	Aug. 24
Feb. 20	Mar. 11	Mar. 31	Apr. 15	May 6	June 10	Sep. 7
Mar. 6	Mar. 25	Apr. 14	Apr 29	May 20	June 24	Sep. 21
Mar. 20	Apr. 8	Apr. 28	May 13	June 3	July 8	Oct. 5
Apr. 3	Apr. 22	May 12	May 27	June 17	July 22	Oct. 19
Apr. 17	May 6	May 26	June 10	July 1	Aug. 5	Nov. 2
May 1	May 20	June 9	June 24	July 15	Aug. 19	Nov. 16
May 15	June 3	June 23	July 8	July 29	Sep. 2	Nov. 30
May 29	June 17	July 7	July 22	Aug. 12	Sep. 16	Dec. 14
June 12	July 1	July 21	Aug. 5	Aug. 26	Sep. 30	Dec. 28
June 26	July 15	Aug. 4	Aug. 19	Sep. 9	Oct. 14	Jan. 11 '88
July 10	July 29	Aug. 18	Sep. 2	Sep. 23	Oct. 28	Jan. 25 '88
July 24	Aug. 12	Sep. 1	Sep. 16	Oct. 7	Nov. 11	Feb. 8 '88
Aug. 7	Aug. 26	Sep. 15	Sep. 30	Oct. 21	Nov. 25	Feb 22 '88
Aug. 21	Sep. 9	Sep. 29	Oct. 14	Nov. 4	Dec. 9	Mar. 7 '88
Sep. 4	Sep. 23	Oct. 13	Oct. 28	Nov. 18	Dec. 23	Mar. 21 '88
Sep. 18	Oct. 7	Oct. 27	Nov. 11	Dec. 2	Jan. 6 '88	Apr. 4 '88
Oct. 2	Oct. 21	Nov. 10	Nov. 25	Dec. 16	Jan. 20 '88	Apr. 18 '88
Oct. 16	Nov. 4	Nov. 24	Dec. 9	Dec. 30	Feb. 3 '88	May 2 '88
Oct. 30	Nov. 18	Dec. 8	Dec. 23	Jan. 13 '88	Feb. 17 '88	May 16 '88
Nov. 13	Dec. 2	Dec. 22	Jan. 6 '88	Jan. 27 '88	Mar. 2 '88	May 30 '88
Nov. 27	Dec. 16	Jan. 5 '88	Jan. 20 '88	Feb. 10 '88	Mar. 16 '88	June 13 '88
Dec. 11	Dec. 30	Jan. 19 '88	Feb. 3 '88	Feb. 24 '88	Mar. 30 '88	June 27 '88
Dec. 25	Jan. 13 '88	Feb. 2 '88	Feb. 17 '88	Mar. 9 '88	Apr. 13 '88	July 11 '88

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.

## UNIFORM RULES OF STATE AGENCY PROCEDURE

Governor Terry E. Branstad appointed a nine-member Task Force in the summer of 1985 to draft uniform rules of agency procedure.

On December 5, 1986, the Task Force presented a report to the Governor. The Governor has accepted the Task Force recommendations on agency procedure for rule making which have been printed at the front of the Iowa Administrative Code for adoption by state agencies. [Green Tab — Uniform Rules]

The Administrative Rules Review Committee will hold a special meeting Monday, April 13, 1987, 7:30 a.m. and Tuesday, April 14, 1987, 7:30 a.m. in Committee Room 24, State Capitol. This meeting will be held in lieu of the statutory date. The following rules will be reviewed:

DIVISION I		Bulletin
Rules under Notice and Filed Emergency Rules		
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On-site containment of pesticides, fertilizers and soil conditioners, 9.55(1)"a," 9.56(1)"a," 9.56(2), filed emergency ARC 7421.....		3/11/87
Infectious and contagious diseases—rabies control, 30—16.25(1) ARC 7422.....		3/11/87
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Execution and levy on alcoholic liquor, wine, and beer, 4.19 ARC 7485, also filed emergency ARC 7484.....		3/25/87
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## 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>ALCOHOLIC BEVERAGES DIVISION[185]</b>		
Permit secured party to operate under liquor control license or permit to dispose of liquor, wine, or beer under valid execution, 4.19 IAB 3/25/87 ARC 7484	1918 S.E. Hulsizer Ave. Ankeny, Iowa	April 15, 1987 1 p.m.
Beverages defined, 4.1(7); Promotion of certain brands of liquor, 7.2(5) IAB 3/25/87 ARC 7483	1918 S.E. Hulsizer Ave. Ankeny, Iowa	April 15, 1987 1 p.m.
<b>BLIND, DIVISION FOR THE[423]</b>		
Department revision, chs 1 to 12 IAB 3/25/87 ARC 7481	524 Fourth St. Des Moines, Iowa	May 5, 1987 10 a.m.
<b>ENERGY AND GEOLOGICAL RESOURCES[565]</b>		
Energy audits grant programs, 7.1(1), 7.1(2), 7.5(3) IAB 3/25/87 ARC 7488	Conference Room Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	April 15, 1987 10 a.m.
Grant programs for schools and hospitals, amendments to ch 8 IAB 3/25/87 ARC 7489	Conference Room Wallace State Office Bldg. Des Moines, Iowa	April 15, 1987 10 a.m.
<b>ENVIRONMENTAL PROTECTION COMMISSION[567]</b>		
Wastewater treatment and disposal, design standards, 64.2 IAB 3/11/87 ARC 7447	Geological Survey Bureau Trowbridge Hall 123 N. Capitol Iowa City, Iowa	April 1, 1987 11 a.m.
	West Pottawattamie County Extension Service 1705 McPherson Suite GL100 Council Bluffs, Iowa	April 3, 1987 11 a.m.
	Conference Room Fifth Floor, East Wallace State Office Bldg. Des Moines, Iowa	April 6, 1987 11 a.m.
<b>HUMAN SERVICES DEPARTMENT[441]</b>		
Standards for care for mentally ill residents of county care facilities, new ch 37 IAB 3/25/87 ARC 7486	Conference Room First Floor Hoover State Office Bldg. Des Moines, Iowa	April 15, 1987 1 p.m.
Reimbursement, providers of service, reasonable and customary fixed fee schedule; amendments to chs 78 and 79 IAB 3/11/87 ARC 7458	Des Moines District Office City View Plaza Conference Room 100 1200 University Des Moines, Iowa	April 1, 1987 1:30 p.m.
<b>IOWA FINANCE AUTHORITY[524]</b>		
Targeted small business loan guarantee program, new ch 11 IAB 3/25/87 ARC 7480	200 E. Grand, Suite 222 Des Moines, Iowa	April 14, 1987 10:30 a.m.

**LAW ENFORCEMENT ACADEMY[501]**

Hiring standards for  
railway special agents, 2.1(1)  
IAB 3/11/87 ARC 7441

Law Enforcement Academy  
Camp Dodge  
Johnston, Iowa

April 7, 1987  
9:30 a.m.

**NATURAL RESOURCE COMMISSION[571]**

Waterfowl and coot hunting  
seasons, ch 91  
IAB 3/11/87 ARC 7449

Auditorium  
Wallace State Office Bldg.  
Des Moines, Iowa

April 11, 1987  
10 a.m.

Migratory game birds,  
means and methods of  
take, 92.3(3)  
IAB 3/11/87 ARC 7450

Auditorium  
Wallace State Office Bldg.  
Des Moines, Iowa

April 11, 1987  
10 a.m.

Common snipe, Virginia rail,  
sora, woodcock, and ruffed  
grouse, hunting seasons,  
amendments to ch 97  
IAB 3/11/87 ARC 7452

Auditorium  
Wallace State Office Bldg.  
Des Moines, Iowa

April 11, 1987  
10 a.m.

Pheasant, quail, and gray  
partridges, amendments  
to ch 96  
IAB 3/11/87 ARC 7451

Auditorium  
Wallace State Office Bldg.  
Des Moines, Iowa

April 11, 1987  
10 a.m.

Wild turkey, fall hunting,  
amendments to ch 99  
IAB 3/11/87 ARC 7453

Auditorium  
Wallace State Office Bldg.  
Des Moines, Iowa

April 11, 1987  
10 a.m.

Deer hunting regulations,  
ch 106  
IAB 3/11/87 ARC 7454

Auditorium  
Wallace State Office Bldg.  
Des Moines, Iowa

April 11, 1987  
10 a.m.

Rabbit and squirrel hunting,  
amendments to ch 107  
IAB 3/11/87 ARC 7455

Auditorium  
Wallace State Office Bldg.  
Des Moines, Iowa

April 11, 1987  
10 a.m.

Furbearers (except groundhog)  
hunting seasons, amendments  
to ch 108  
IAB 3/11/87 ARC 7456

Auditorium  
Wallace State Office Bldg.  
Des Moines, Iowa

April 11, 1987  
10 a.m.

**PERSONNEL DEPARTMENT[581]**

Amend and transfer IPERS,  
[370]—ch 8 to [581]—ch 21  
and Federal Social Security,  
[370]—ch 9 to [581]—ch 22  
IAB 3/11/87 ARC 7460

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

April 16, 1987  
9:05 a.m.

**PROFESSIONAL LICENSING AND REGULATION DIVISION[193]**

Organization and operation,  
ch 1  
IAB 3/11/87 ARC 7435

Professional Licensing Offices  
1918 S.E. Hulsizer Ave.  
Ankeny, Iowa

April 7, 1987  
9 a.m.

**PUBLIC HEALTH DEPARTMENT[470]**

Public swimming pools,  
analysis, 15.4(3), 15.4(4)  
IAB 3/25/87 ARC 7476

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

April 14, 1987  
1:30 p.m.

Standards for certificate  
of need review, 203.5  
IAB 3/11/87 ARC 7432

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

March 31, 1987  
10 a.m.

**RAILWAY FINANCE AUTHORITY[695]**

Amend and transfer all rules  
from [695] chs 1 to 4 to  
[765] chs 1 to 4  
IAB 3/11/87 ARC 7426

Department of Transportation  
Complex  
800 Lincoln Way  
Ames, Iowa

April 23, 1987

**TRANSPORTATION DEPARTMENT[820]**

Transfer all rules from [820] to [761];  
miscellaneous amendments to  
rules

IAB 3/11/87 ARC 7430

Department of Transportation  
Complex  
800 Lincoln Way  
Ames, Iowa

April 28, 1987

Outdoor advertising,  
amendments to [06,O]ch 5;  
logo signing, new ch 118

IAB 3/11/87 ARC 7413

Department of Transportation  
Complex  
800 Lincoln Way  
Ames, Iowa

April 28, 1987

Outdoor advertising, 5.1(11),  
5.7(1); Private directional  
signing, new ch 120

IAB 3/11/87 ARC 7425

Department of Transportation  
Complex  
800 Lincoln Way  
Ames, Iowa

April 28, 1987

Rescind [06,F] ch 8;

Real property acquisition  
and relocation assistance,  
new ch 111

IAB 3/11/87 ARC 7412

Department of Transportation  
Complex  
800 Lincoln Way  
Ames, Iowa

April 28, 1987

Federal aid urban systems,  
amendments to [06,Q] ch 10

IAB 3/11/87 ARC 7414

Department of Transportation  
Complex  
800 Lincoln Way  
Ames, Iowa

April 28, 1987

Vehicle registration and  
certificate of title,  
amendments to [07,D] ch 11

IAB 3/11/87 ARC 7429

Department of Transportation  
Complex  
800 Lincoln Way  
Ames, Iowa

April 28, 1987

Tourist oriented signing,  
new ch 119

IAB 3/11/87 ARC 7424

Department of Transportation  
Complex  
800 Lincoln Way  
Ames, Iowa

April 28, 1987

Driver licenses, rescind  
[07,C] ch 13; License  
examination, new ch 604,

IAB 3/11/87 ARC 7415

Department of Transportation  
Complex  
800 Lincoln Way  
Ames, Iowa

April 28, 1987

Special permits for  
operation and movement of  
vehicles and loads of excess  
size and weight, [07,F] 2.7 to 2.9

IAB 3/25/87 ARC 7478

Department of Transportation  
Complex  
800 Lincoln Way  
Ames, Iowa

May 12, 1987

**UTILITIES DIVISION[199]**

Tax reform revenue  
adjustment, ch 30

IAB 2/25/87 ARC 7406

Hearing Room  
First Floor  
Lucas State Office Bldg.  
Des Moines, Iowa

March 26, 1987  
10 a.m.

Uniform system of accounts—  
telephone, 16.5

IAB 3/11/87 ARC 7439

Hearing Room  
First Floor  
Lucas State Office Bldg.  
Des Moines, Iowa

April 3, 1987  
10 a.m.

## ARC 7485

ALCOHOLIC BEVERAGES  
DIVISION[185]

## 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 §17A.4(1)"b", Iowa Code.

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 123.21, the Alcoholic Beverages Division hereby gives Notice of Intended Action to amend Chapter 4, "Liquor Licenses—Beer Permits—Wine Permits," Iowa Administrative Code. The substance of this rule is published in this bulletin as ARC 7484, filed emergency, and is incorporated herein by reference.

Any interested party may make written suggestions or comments on this proposed rule prior to April 15, 1987. Such written materials should be directed to the Licensing Manager, Alcoholic Beverages Division, 1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021. Persons who want to convey their views orally should contact the Licensing Manager, Alcoholic Beverages Division at 515/281-7431.

Also, there will be a public hearing on Wednesday, April 15, 1987, at 1 p.m., in the Division's central office at 1918 S.E. Hulsizer Avenue, Ankeny, Iowa. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the Licensing Manager at least one day prior to the date of the public hearing.

Intended Action to amend Chapter 4, "Liquor Licenses—Beer Permits—Wine Permits"; Chapter 6, "Advertising"; and Chapter 7, "Representatives of Distillers, Rectifiers, Manufacturers, Brewers and Vintners." Item 2 defines the term "beverages" as used in Iowa Code section 123.129. Item 2 deletes the rule regarding agency prior approval of advertisements and promotional activities in this state by distillers and licensees. Item 3 prohibits distillers, wholesalers and their representatives from promoting alcoholic liquor which is not listed in the Division's "Wholesale Price Catalog," "Temporary Bailment Listing," or which has not been processed through the Division's Special Order procedure.

Any interested party may make written suggestions or comments on these proposed amendments prior to April 15, 1987. Such written materials should be directed to the Licensing Manager, Alcoholic Beverages Division, 1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021. Persons who want to convey their views orally should contact the Licensing Manager, Alcoholic Beverages Division at 515/281-7431. Also, there will be a public hearing on Wednesday, April 15, 1987, at 1 p.m. in the conference room in the Division's central office at 1918 S.E. Hulsizer Avenue, Ankeny, Iowa. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the Licensing Manager at least one day prior to the date of the public hearing.

The following amendments are proposed:

ITEM 1. Amend rule 185—4.1(123) by adding subrule 4.1(7) as follows:

4.1(7) "Beverages" as used in Iowa Code section 123.129 does not include alcoholic liquor, wine, or beer as defined in Iowa Code sections 123.3(7), 123.3(8), and 123.3(9).

ITEM 2. Amend subrule 6.1(9) by deleting the subrule in its entirety and inserting in lieu thereof the following:  
6.1(9) Reserved.

ITEM 3. Amend subrule 7.2(5) to read as follows:

7.2(5) Solicitation of orders prohibited. Solicitation of orders from liquor control licensees for merchandise brands or varieties of alcoholic liquor which are not listed on the price list of the division in the division's "Wholesale Spirit Catalog" is prohibited. Distillers, wholesalers, their salespersons, agents, employees, or representatives shall promote to liquor control licensees only those brands and varieties of alcoholic liquors which are currently listed by the division in its Wholesale Spirit Catalog. If a distiller, wholesaler, salesperson, agent, employee or representative desires to promote a brand or variety of alcoholic liquor which is not currently listed by the division, it must utilize the Special Order procedures outlined in the division's "Spirit Ordering and Informational Guide" handbook or the procedure outlined in rule 7.3(123) for presentation of proposed new listings. Proposals for new listings may shall be made to the division only.

## ARC 7483

ALCOHOLIC BEVERAGES  
DIVISION[185]

## 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 §17A.4(1)"b", Iowa Code.

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 123.21, the Alcoholic Beverages Division hereby gives Notice of

## NOTICE — AGRICULTURAL CREDIT CORPORATION MAXIMUM LOAN RATE

In accordance with the provisions of Iowa Code section 535.12, the Superintendent of Banking has determined that the maximum rate of interest that may be charged on loans by Agricultural Credit Corporations as defined in Iowa Code section 535.12, subsection 4, shall be:

October 1, 1985 — October 31, 1985	14.65%
November 1, 1985 — November 30, 1985	14.65%
December 1, 1985 — December 31, 1985	14.60%
January 1, 1986 — January 31, 1986	14.60%
February 1, 1986 — February 28, 1986	14.75%
March 1, 1986 — March 31, 1986	14.95%
April 1, 1986 — April 30, 1986	14.95%
May 1, 1986 — May 31, 1986	14.90%
June 1, 1986 — June 30, 1986	14.85%
July 1, 1986 — July 31, 1986	11.90%
August 1, 1986 — August 31, 1986	11.70%
September 1, 1986 — September 30, 1986	11.25%
October 1, 1986 — October 31, 1986	11.20%
November 1, 1986 — November 30, 1986	11.20%
December 1, 1986 — December 31, 1986	11.20%
January 1, 1987 — January 31, 1987	10.90%
February 1, 1987 — February 28, 1987	10.90%
March 1, 1987 — March 31, 1987	10.90%

### ARC 7481

## BLIND, DIVISION FOR THE[423] 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 601K.122 and 601K.126, the Commission for the Blind of the Department of Human Rights hereby gives Notice of Intended Action to rescind 160—Chapters 1 to 10, Iowa Administrative Code, in their entirety and to establish 423—Chapters 1 to 12 as follows: Chapter 1, "Organization and Administration," Chapter 2, "Procedures," Chapter 3, "Rule Making," Chapter 4, "Petition for Rule Making," Chapter 5, "Declaratory Ruling," Chapter 6, "Library for the Blind and Physically Handicapped," Chapter 7, "Business Enterprises Program," Chapter 8, "Appeals Process-Business Enterprises Program," Chapter 9, "Adult Orientation and Adjustment Center," Chapter 10, "Vocational Rehabilitation Services," Chapter 11, "Independent Living Rehabilitation Services," and Chapter 12, "Facilities."

These rules are promulgated to bring the rules of the Commission for the Blind into compliance with the requirements of 1986 Iowa Acts, chapter 1245. The rules have been reordered by elimination, reassignment and reorganization of chapters to make information easily accessible. Inappropriate references have been removed.

Any interested person may make written suggestions or comments on these proposed rules prior to May 5, 1987. Such written responses should be directed to R. Creig Slayton, Acting Administrator, Commission for the Blind, 524 Fourth Street, Des Moines, Iowa 50309.

Persons who wish to convey their views orally may do so at a public hearing to be held at 10 a.m. on Tuesday, May 5, 1987, in the assembly room of the offices of the Commission for the Blind, 524 Fourth Street, Des Moines, Iowa. Either written or oral statements may be submitted for the public hearing.

Persons who wish to make oral presentations at the public hearing should contact the office of the Acting Administrator at 515/281-7986 or 1-800-362-2587, at least one day prior to the date of the public hearing.

These rules are intended to implement Iowa Code chapters 17A and 601C and sections 601K.1 and 601K.121 to 601K.127 (subchapter 8).

Rescind 160—Chapters 1 to 10 and insert 423—Chapters 1 to 12 as follows:

### CHAPTER 1

#### ORGANIZATION AND ADMINISTRATION

**423—1.1(601K) Authority.** There is established within the department of human rights a division for the blind whose administrator shall carry out policies and programs as determined by the commission for the blind.

**423—1.2(601K) History and function.** To respond to the unique needs of the blind of Iowa, the general assembly established the Iowa commission for the blind on April 1, 1925. Although specific programs administered by the commission for the blind have varied even in recent years, the commission's basic mission to promote positive attitudes toward blindness has remained constant.

Services of the commission for the blind include, but are not limited to, those enumerated in Iowa Code sections 601K.123 and 601K.126.

**423—1.3(601K) Definitions.** The following definitions apply to rules promulgated by the commission for the blind:

"Administrator" means the administrator of the commission for the blind and the division for the blind.

"Blind" or "blindness," except as referenced in chapters 7 and 8 of the commission rules, refers to a person who meets one or more of the following criteria: (1) vision not more than 20/200 central visual acuity in the better eye, with ordinary corrective lenses, or a field defect in which the peripheral field has contracted to an extent that the widest diameter of visual field subtends to an angular distance of not greater than twenty degrees; (2) a combination of loss of visual acuity and loss of visual field which imposes an employment handicap which is substantially that of a blind person; (3) medical prognosis indicating a progressive loss of sight which will terminate in the condition described in condition one; (4) a visual impairment sufficient to warrant attendance at the Iowa braille and sight-saving school or programs for the severely visually impaired in the public schools; or (5) a visual impairment which by agreement of the division of vocational rehabilitation services of the Iowa department of education and the commission is such that the individual can be served best by the commission.

"Commission" means the three (3)-member statutory commission for the blind, appointed by the governor and confirmed by the senate. The commission is the state

**BLIND, DIVISION FOR THE[423] (cont'd)**

licensing agency for vending facilities under the Randolph-Sheppard Act.

"Department" means the department of human rights.

"Division" means the division for the blind of the department of human rights.

"Program manager" means the chief of each of the five (5) bureaus of the commission for the blind.

"Staff" means the staff employed by the commission for the blind.

"State" means the state of Iowa.

**423—1.4 (601K) Location and information.** The central office of the division and the commission is located at 524 Fourth Street, Des Moines, Iowa 50309-2364, telephone 515/281-7999 (incoming WATS number 800/362-2587). District offices are located at 332 Higley Building, Cedar Rapids, Iowa 52401-1408, telephone 319/365-9111; First National Building, Suite 400, Waterloo, Iowa 50703-4725, telephone 319/235-1403; and 427 Frances Building, Sioux City, Iowa 51101-1203, telephone 712/258-0293. The general public may obtain information relating to the commission or the division by contacting any of these offices.

**423—1.5(601K) Commission.** There is established a commission for the blind consisting of three (3) members appointed by the governor, subject to confirmation by the senate. Members of the commission shall serve three (3)-year terms beginning May 1 of the year of appointment or until the expiration of the unexpired term to which appointed. As required by Iowa Code section 69.16, no more than two (2) members may be from the same political party. Members are reimbursed for actual expenses incurred in performance of their duties and may also be eligible to receive compensation as provided in Iowa Code section 7E.3.

The members of the commission shall appoint officers for the commission. A majority of the members of the commission shall constitute a quorum. A vote of two (2) members is required to act in the name of the commission.

**1.5(1) Meetings.** The commission members shall hold at least six (6) meetings each year and as many additional meetings as are needed to conduct business expeditiously and efficiently. To the maximum extent practicable, meetings to consider matters such as budgeting and state plans shall be held outside normal working hours to encourage attendance by working blind persons and other members of the public.

**1.5(2) Annual meeting.** The commission shall hold an annual meeting at its Des Moines office at 10 a.m. on the second Wednesday of January of each year.

**1.5(3) Notice.** Notice of meetings, including the proposed agenda, shall be posted on the main bulletin board at the commission's Des Moines office and in the office of the governor. Persons desiring notice of meetings including, but not limited to representatives of the communications media, may file a standing request with the office of the administrator.

**1.5(4) Duties.** The duties and powers of the commission shall be as outlined in Iowa Code sections 601K.123 and 601K.126.

**423—1.6 (601K) Organizational structure.**

**1.6(1) General.** The organizational structure consists of the administrator, the deputy administrators, and five (5) bureaus.

**1.6(2) Administrator.** The administrator shall be the administrative officer for the commission and the

division and shall be responsible for implementing policy set by the commission. In that capacity, the administrator shall administer the programs and services in compliance with applicable federal and state laws and regulations. Other duties of the administrator include, but are not limited to: making recommendations concerning personnel matters to the commission and to the department coordinator; preparing and making budget recommendations to the commission and to the department coordinator; assuring the provision of adequate and uniform services in the application of policies, rules, and regulations; developing, establishing and maintaining cooperative agreements and working relationships with public and voluntary agencies; interpreting program objectives and promoting public interest in and acceptance of the program; maintaining an adequate reporting system for necessary records; and issuing declaratory rulings. The administrator shall serve as an ex-officio member of the commission of persons with disabilities.

The administrator shall be appointed by the governor, subject to confirmation by the senate. The administrator shall serve at the pleasure of the governor and shall receive a salary within the ranges set by the general assembly, as established by the governor.

The program managers of the five (5) bureaus and the deputy administrators report to the administrator.

**1.6(3) Deputy administrators.** One deputy administrator serves as the commission's fiscal officer and administers the accounting and physical plant maintenance sections. The other deputy administrator serves as advisor to the administrator on administrative matters and is responsible for program-related activities.

**1.6(4) Bureaus.** The administrator has established the following bureaus in order to most efficiently and effectively carry out the commission's programs:

1. Library for the blind and physically handicapped
2. Business enterprises program
3. Adult orientation and adjustment center
4. Vocational rehabilitation services
5. Independent living rehabilitation services.

**423—1.7(601K) Private association activity of staff.** Staff shall not, on a significant regular basis, perform work for private associations or organizations (including organizations of or for the blind) during working hours or with use of commission facilities unless arrangements have been formalized through a 28E agreement approved by the commission. Significant organizational activities prohibited in the absence of a formal 28E agreement shall include, but are not limited to, electioneering for organizational office, processing memberships, collecting dues, arranging for meetings and conventions, fundraising, canvassing, leafleting, picketing, preparing organizational mailings, and other activities of a purely organizational nature unrelated to official staff duties. However, the commission shall encourage staff to maintain frequent contact with individual blind persons and organizations of blind persons as well as civic, social, fraternal, and professional groups interested in work with blind persons. This rule is in no way intended to discourage telephone conversations and correspondence with individuals or attendance, with supervisory approval, at meetings of blind or related associations or organizations which may occur in connection with staff duties.

**BLIND, DIVISION FOR THE[423] (cont'd)**

**423—1.8(601K) Report.** The commission shall make a detailed report of its activities, studies, conclusions, and recommendations to the general assembly no later than February 15 of each odd-numbered year.

**423—1.9(601K) Federal aid.** The administrator may accept financial aid from the government of the United States for carrying out rehabilitation and physical restoration of the blind and for providing library services to the blind and physically handicapped. A contribution or grant shall not be accepted if a condition is attached to it for its use or administration other than that it be used for assistance to the blind.

These rules are intended to implement Iowa Code sections 601K.1 and 601K.121 to 601K.127 (subchapter 8).

## CHAPTER 2 PROCEDURES

### **423—2.1(601K) Confidential information.**

#### **2.1(1) General policies.**

a. Upon making application for services, all applicants or clients, representatives of applicants or clients and, as appropriate, service providers, cooperating agencies, and interested persons shall be informed of the confidentiality of personal information, the need for collecting it, and the conditions under which release of or access to the information is granted, including the following policies: (1) identification of the authority under which information is collected; (2) explanation of the principal purposes for which the information will be used or released; (3) explanation of whether the individual's providing of the information is mandatory or voluntary and the effect of not providing requested information; (4) identification of those situations in which informed written consent is or is not required before releasing information; and (5) identification of any other agencies to which information is routinely released.

b. Persons who are unable to communicate in English or who rely on special modes of communication shall be provided explanations about policies and procedures affecting release of personal information through methods they can understand.

c. The commission may establish reasonable fees to cover extraordinary costs of duplicating records or making extensive searches.

d. The commission may release personal information when necessary to protect the individual or others when the individual poses a threat to safety.

**2.1(2) Release in administration of the program.** All current and stored information as to the personal facts and circumstances of individuals given or made available to the commission, its representatives, or employees in the course of administration of the commission's programs, including photographs and lists of names, shall be held to be confidential. The use of the information and records shall be limited to purposes directly connected with the administration of the commission's programs and records containing identifiable personal information may not be disclosed, directly or indirectly, other than in the administration of the program, unless the informed written consent of the individual to the release has been obtained. Release of information directly connected with the administration of the commission's programs to any individual, agency, or organization shall be conditioned upon satisfactory assurance by the individual, agency, or organization that the information

be used only for the purpose for which it is provided and that it not be released to any other person, agency, or organization. Only that information which may be released to the individual, agency, or organization involved shall be released to other programs or authorities and only to the extent that the other agency or organization demonstrates that the information is necessary for its program.

**2.1(3) Release to individuals.** When requested in writing by the involved individual or representative, the commission shall make all information in the case record accessible or release it to the individual or a representative in a timely manner. Medical, psychological, or other information which the staff believes may be harmful to the individual shall not be released directly to the individual, but must be provided through a representative, a physician, or a licensed or certified psychologist. When personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization.

**2.1(4) Release for audit, evaluation and research.** Personal information may be released to an organization, agency, or person engaged in audit, evaluation, or research only for purposes directly connected with the administration of the commission's programs and only if the entity to which the information is released ensures that the information (1) is used only for the purposes for which it is being provided; (2) is released only to individuals officially connected with the audit, evaluation, or research; (3) is not released to the involved individual; (4) is managed in a manner which safeguards confidentiality; and (5) does not appear in a final product in a form which reveals personal information without the informed written consent of the individual or representative.

### **423—2.2(601K) Administration of gifts, bequests and other expendable trust funds.**

**2.2(1) Deposit of funds.** Gifts and bequests received by the commission in accordance with Iowa Code sections 601K.123 and 601K.126 shall be deposited in appropriate expendable trust funds established by the department of management and maintained by the department of revenue and finance and administered by the commission.

**2.2(2) Use of funds.** Expenditures from these trust funds shall be used for provision of services to the blind or for support services for which appropriated state or federal funds are not available to meet current needs. It is the policy of the commission to avoid duplication of other resources available to blind persons. It is also the policy of the commission to provide direct financial assistance to blind Iowans which will materially assist in independent living or vocational success, but in no way is such assistance to be considered income maintenance or to be provided on an ongoing basis.

Any use of expendable trust funds for program operations normally supported by state and federal appropriations shall be approved by the commission on the recommendation of the administrator.

**2.2(3) Grants and loans review committee.** There is established a grants and loans review committee which shall consist of the program managers, as defined in rule 1.3(601K), providing service (ex officio) and two additional staff members appointed for staggered one-year terms, one beginning June 1 and the other beginning

**BLIND, DIVISION FOR THE**[423] (cont'd)

January 1. Neither of the two appointed members shall serve more than two consecutive one-year terms, although an individual shall be eligible for appointment to a new term one year after expiration of a previous appointment. Three blind persons shall be appointed to staggered one-year terms by the commission. These members shall participate fully in deliberations of the grants and loans review committee to the extent permitted under state and federal laws and regulations. However, pursuant to rule 2.1(601K), they may not be provided with confidential information relative to an applicant without the informed written consent of the applicant.

a. A majority of members of the grants and loans review committee shall constitute a quorum. An affirmative vote of a majority of members present shall be required for committee approval and recommendation to the administrator.

b. Meetings of the grants and loans review committee shall be open unless closed under specific exemptions allowed under Iowa Code section 21.5.

c. The grants and loans review committee shall consider all applications for grants and loans of more than one thousand dollars (\$1,000).

**2.2(4) Application process.**

a. Applications for grants or loans under one thousand dollars (\$1,000) shall be made by letter to the administrator. The administrator may approve individual expenditures in unusual or emergency situations for which other funds are not available, but no assistance or loan of more than one thousand dollars (\$1,000) may be made to any individual unless there are acute or emergency circumstances warranting the action and unless the expenditure is recommended by the grants and loans review committee.

b. Applications for grants or loans of one thousand dollars (\$1,000) or more shall be made by letter and be supported by a financial statement and any additional information which may be required by the administrator.

c. Grants shall be made only to blind residents of Iowa who demonstrate a one-time need for assistance which cannot be met through use of appropriated funds or any other available resources.

d. The administrator shall submit the application and a recommendation, along with the recommendation of the grants and loans review committee, to the commission for consideration and decision.

e. Loans from expendable trust funds will be made on the merits of individual applications. Criteria for evaluating applications include, but are not limited to, extent of need, additional personal resources available, availability of funds from lending institutions, and likelihood of repayment.

f. Before funds for an approved loan are released, a promissory note agreement shall be executed in a form approved by the office of the attorney general and signed by the recipient of the loan or holder of the recipient's power of attorney, if appropriate, and the administrator or designee.

**2.2(5) Public accounting.** A full public accounting of all expenditures from trust funds shall be made to the commission as a part of the financial reports prepared for each regular meeting, except that names of recipients shall not be made public if doing so would violate federal statutes or regulations, thereby jeopardizing federal funds. The names may, however, be made available to commission members, auditors, and others entitled to

them in connection with administration of the commission's programs.

These rules are intended to implement Iowa Code sections 601K.121 to 601K.127 (subchapter 8).

**CHAPTER 3  
RULE MAKING  
Reserved**

**CHAPTER 4  
PETITION FOR RULE MAKING**

**423—4.1(17A) Petition.** Any person or agency may file a petition for rule making with the Commission for the Blind, 524 Fourth Street, Des Moines, Iowa 50309. A petition is deemed filed when it is received by that office. The commission must provide the petitioner with a file-stamped copy of the petition if the petitioner provides an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

**IOWA DEPARTMENT OF HUMAN RIGHTS  
Commission for the Blind**

Petition by (name of petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	}	PETITION FOR  RULE MAKING
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The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.

2. A citation to any law deemed relevant to the commission's authority to take the action urged or to the desirability of that action.

3. A brief summary of petitioner's arguments in support of the action urged in the petition.

4. A brief summary of any data supporting the action urged in the petition.

5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.

6. Any request by petitioner for a meeting provided for by rule 4.4(17A).

**4.1(1)** The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

**4.1(2)** The commission may deny a petition because it does not substantially conform to the required form.

**423—4.2 (17A) Briefs.** The petitioner may attach a brief to the petition in support of the action urged in the petition. The commission may request a brief from the petitioner or from any other person concerning the substance of the petition.

BLIND, DIVISION FOR THE[423] (cont'd)

423—4.3(17A) **Inquiries.** Inquiries concerning the status of a petition for rule making may be made to the administrator.

423—4.4(17A) **Commission consideration.**

4.4(1) Within fourteen (14) days after the filing of a petition, the administrator must submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by petitioner in the petition, the administrator must schedule a brief and informal meeting between the petitioner and the commission, a member of the commission, or a member of the staff, to discuss the petition. The commission may request the petitioner to submit additional information or argument concerning the petition. Also, comments on the substance of the petition may be submitted to the commission by any person.

4.4(2) Within sixty (60) days after the filing of the petition, or within any longer period agreed to by the petitioner, the commission must, in writing, deny the petition and notify the petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the commission mails or delivers the required notification to the petitioner.

4.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the commission's rejection of the petition.

These rules are intended to implement Iowa Code chapter 17A.

CHAPTER 5  
DECLARATORY RULINGS

423—5.1(17A) **Petition.** Any person or agency may file a petition for a declaratory ruling concerning the applicability of any statute, rule, policy, decision, or order administered by the commission at its offices at 524 Fourth Street, Des Moines, Iowa 50309. A petition is deemed filed when it is received by that office. The commission must provide the petitioner with a file-stamped copy of the petition if the petitioner provides an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA DEPARTMENT OF HUMAN RIGHTS  
Commission for the Blind

Petition by (name of petitioner) for a Declaratory Ruling on (cite provisions of law involved).	}	<b>PETITION FOR DECLARATORY RULING</b>
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The petition must provide the following information:  
1. A clear and concise statement of all relevant facts on which the ruling is requested.

2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders whose applicability is questioned and any other relevant law.

3. The questions petitioner wants answered, stated clearly and concisely.

4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.

5. The reasons for requesting the declaratory ruling and disclosure of the petitioner's interest in the outcome.

6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.

7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.

8. Any request by petitioner for a meeting provided for by rule 5.4(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

423—5.2(17A) **Briefs.** The petitioner may attach a brief to the petition in support of the position urged in the petition. The administrator may request a brief from the petitioner or from any other person concerning the questions raised in the petition.

423—5.3(17A) **Inquiries.** Inquiries concerning the status of a petition for a declaratory ruling may be made to the administrator.

423—5.4(17A) **Consideration.** Upon request by petitioner in the petition, the administrator must schedule a brief and informal meeting between the petitioner and the administrator or a member of the staff to discuss the petition. The administrator may request the petitioner to submit additional information or argument concerning the petition. The administrator may solicit comments from any person on the questions presented in the petition. Also, comments on those questions may be submitted to the administrator by any person.

Within thirty (30) days after the filing of the petition, or within any longer period agreed to by the petitioner, the administrator must, in writing, issue a ruling on the petition or refuse to do so. The administrator is deemed to have issued a ruling or to have refused to do so on the date the ruling or refusal is mailed or delivered to the petitioner.

423—5.5(17A) **Refusal to issue ruling.** The administrator may refuse to issue a declaratory ruling for good cause. Good cause includes, but is not limited to, the following reasons:

1. The petition does not substantially conform with the required form.

2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the administrator to issue a ruling.

3. The commission does not have jurisdiction over the questions presented in the petition.

4. The questions presented by the petition are also presented in a current rule making, contested case, or other commission or judicial proceeding that may definitively resolve them.

**BLIND, DIVISION FOR THE[423] (cont'd)**

5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue a ruling.

7. There is no need to issue a ruling because the questions raised in the petition have been settled due to a change in circumstances.

8. The petition is not based upon facts calculated to aid in the planning of future conduct, but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a decision which has already been made.

9. The petition requests a declaratory ruling that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

10. The petitioner requests the administrator to determine whether a statute is unconstitutional on its face.

**5.5(1)** A refusal to issue a declaratory ruling must indicate the specific grounds for the refusal and constitutes the administrator's final action on the petition.

**5.5(2)** Refusal to issue a declaratory ruling pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the administrator's refusal to issue a ruling.

**423—5.6(17A) Contents of declaratory ruling — effective date.** In addition to the ruling itself, a declaratory ruling must contain the date of its issuance, the name of petitioner, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory ruling is effective on the date of issuance.

**423—5.7(17A) Effect of a declaratory ruling.** A declaratory ruling is binding on the commission and the petitioner and is applicable only in those circumstances where the relevant facts and the law involved are indistinguishable from those contained in the petition. As to all other persons, a declaratory ruling serves only as precedent and is not binding on the commission. The issuance of a declaratory ruling constitutes the final action of the administrator on the petition.

**423—5.8(17A) Programs exempted.** The vocational rehabilitation services and business enterprises programs are required by federal regulations to conform to similar proceedings delineated by their respective federal government grantor agencies. Therefore, the provisions of this chapter are not applicable to those programs.

These rules are intended to implement Iowa Code chapter 17A.

CHAPTER 6  
LIBRARY FOR THE BLIND  
AND PHYSICALLY HANDICAPPED

**423—6.1(601K) Function.** The library for the blind and physically handicapped provides library services to eligible blind, reading disabled and physically handicapped persons, as delineated in rule 6.3(601K), who cannot use information in standard print formats.

**423—6.2(601K) Services.** Services include, but are not limited to, provision and circulation of books and magazines in braille, recorded disc, recorded cassette, or large type formats; provision and maintenance of playback equipment; transcription, production and duplication of standard print material into braille, recorded cassette, or large type formats; and research, acquisition by loan or purchase, or production of, instructional materials.

**6.2(1) Transcription of standard print reading materials into alternative media.** Transcription of standard print reading materials into the alternative media of braille, cassette tape, or large type shall be provided to the extent that resources are available and following research of the library for the blind and physically handicapped and other libraries, volunteer production agencies, and vendors which confirm that the requested item is not available in any alternative media which can be effectively used by the library patron; or that the item exists, but cannot be acquired by loan, purchase, or duplication. Priority will be given to requests which enable persons to meet a vocational or educational need. Transcription is one method of providing access to standard print reading materials, and will be used in combination with other resources in order to provide as much support as possible to each person requesting transcription services.

Other requests will be honored contingent upon availability of resources.

**423—6.3(601K) Eligibility.** The following persons are eligible for services:

1. Blind persons;
2. Physically handicapped persons
  - a. Whose visual disability, with correction, regardless of visual measurement, prevents the reading of standard print material, or
  - b. Who are unable to read or unable to use standard print material as a result of physical limitations, or
  - c. Who have a reading disability resulting from organic dysfunction, and of sufficient severity, to prevent the reading of print material in a standard manner.

**6.3(1)** Library services are available to children and adults.

**6.3(2)** Eligibility will be determined in compliance with applicable federal and state laws prohibiting discrimination on the basis of age, race, creed, color, sex, national origin, religion, or disability.

**423—6.4(601K) Application procedures.** The "application and certification of eligibility for library services" form must be completed, and must be signed by a competent authority.

**6.4(1)** In cases of blindness, visual disability or physical limitations, "competent authority" is defined as a doctor of medicine; doctor of osteopathy; ophthalmologist; optometrist; registered nurse; therapist; or member of the professional staff of a hospital, institution, public or welfare agency (i.e., a social worker, case worker, counselor, rehabilitation teacher or superintendent). In the absence of any of these, certification may be made by a professional librarian or by any person whose competence under specific circumstances is acceptable to the commission and the Library of Congress.

**6.4(2)** In the case of reading disability from organic dysfunction, "competent authority" is defined as a doctor of medicine or doctor of osteopathy who may consult with colleagues in associated disciplines.

**BLIND, DIVISION FOR THE[423] (cont'd)**

**423—6.5(17A) Forms.** The following forms are used by the library for the blind and physically handicapped:

1. Application and certification of eligibility for library services - provides information needed to establish eligibility for library services and to initiate appropriate library services for blind, physically handicapped or reading disabled persons.

2. Braille books order form, cassette magazines order form, cassette book catalogs order form, cassette book order form, large type books order form, talking book magazines order form, talking book catalogs order form, talking book order form - used by library borrowers to submit requests to the library for books, magazines, or catalogs of available items.

3. Library service form, machine return form - enables borrowers to provide instructions regarding library services.

4. Volunteer registration form, volunteer tapist application form - provides opportunity for potential volunteers to indicate service interests.

5. Volunteer service request form, telephone pioneers service request form, transcription assignment form - provide information needed by volunteers to assist library borrowers.

6. Tape recording critique - provides information to volunteer tapists regarding the quality of their work.

7. Telephone pioneers reporting form - used by volunteers to inform the library about the service needs of borrowers.

8. Transcription progress form - used by volunteers to inform the library of progress on transcription assignments.

These rules are intended to implement Iowa Code sections 17A.3 and 601K.121 to 601K.127 (subchapter 8).

## CHAPTER 7 BUSINESS ENTERPRISES PROGRAM

**423—7.1(601C) Function.** The business enterprises program prepares vocational rehabilitation clients to become independent operators of food service facilities in both public and private buildings. By providing training in management skills, sanitation laws, and business systems, operators are given the necessary technical assistance to increase their income and management skills and to upgrade the customer service level in each facility.

**423—7.2(601C) Rules governing the business enterprises program — scope.** These rules are designed to enable the commission to carry out its responsibilities under the Randolph-Sheppard Act and under Iowa Code chapter 601C. The rules are established to ensure the effective conduct of the state's vending facilities under the program in accordance with conditions contained in the permits for the operation of facilities on federal, state, and other property and with applicable federal and state laws and regulations, local ordinances, and standards and policies prescribed by the commission pursuant to these rules.

**423—7.3(601C) Definitions.** The following definitions apply to chapters 7 and 8 of the commission rules:

"Blind licensee" means a blind person licensed by the commission to operate a vending facility on federal or other property.

"Blind person" means a person who, after examination by a physician skilled in the diseases of the eye or by

an optometrist, whichever the person shall select, has been determined to have (1) not more than 20/200 central visual acuity in the better eye with correcting lenses, or (2) an equally disabling loss of visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

"Business enterprises program" means all the activities of the commission relating to vending facilities on federal, state, or other property.

"Committee" means the state committee of blind vendors.

"Facility," see definition of "vending facility."

"Federal property" means any building, land, or other real property owned, leased, or occupied by any department, agency, or instrumentality of the United States and located within the boundaries of the state of Iowa (including the Department of Defense and the United States postal service).

"Federal regulations" means the regulations published March 23, 1977, in the federal register, implementing the Randolph-Sheppard Act as amended through December 7, 1974.

"Food service" includes restaurant, cafeteria, snack bar, vending machines for food and beverages, and goods and services customarily offered in connection with any of the foregoing.

"License" means a written instrument issued by the commission to a blind person, authorizing the person to operate a vending facility on federal, state, or other property.

"Management services" means supervision, inspection, quality control, consultation, assistance with accounting, regulating, in-service training, and other related services provided on a systematic basis to support and improve vending facilities operated by blind vendors. Management services does not include those services or costs which pertain to the ongoing operation of an individual facility after the initial establishment period.

"Net proceeds" means the amount remaining from the sale of articles or services of vending facilities, and any vending machine income or other income accruing to blind operators after deducting the cost of the sale and other expenses.

"Other property" means property which is not federal property and on which vending facilities are established or operated as a part of the commission's business enterprises program.

"Permit" means the official approval given to the commission by a department, agency, or instrumentality in control of the maintenance, operation, and protection of federal property, or the person in control of other property, whereby the commission is authorized to establish a vending facility.

"Public office buildings" means the state capitol, all county courthouses, all city or town halls, and all buildings used primarily for governmental offices of the state, county, city or town. It does not include public schools or buildings at institutions of the state board of regents or the state department of human services. "Public office buildings," for the purpose of coverage in these rules, are included in the term "other property."

"Randolph-Sheppard Act" means Public Law 74-732 as amended through December 7, 1974, by Public Law 83-565 and Public Law 93-516, 20 U.S.C., Chapter 6A, Section 107.

**BLIND, DIVISION FOR THE[423] (cont'd)**

"RSA commissioner" means the person exercising approval authority for the federal government under the Randolph-Sheppard Act.

"Vending facility" means automatic vending machines, cafeterias, snack bars, cart service shelters, counters, and such other appropriate auxiliary equipment which may be operated by blind operators and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws.

"Vending machine" for the purpose of assigning vending machine income, means a coin or currency operated machine which dispenses articles or services, except that those machines operated by the United States postal service for the sale of postage stamps or other postal products or services, machines providing services of a recreational nature, and telephones shall not be considered to be vending machines.

"Vending machine income" means receipts (other than those of a blind vendor) from vending machines operated on federal property, after deducting the cost of goods sold (including reasonable service and maintenance costs in accordance with customary business practices of commercial vending concerns) where the machines are operated, serviced, or maintained by, or with the approval of, a department, agency, or instrumentality of the United States, or commissions (other than to a blind vendor) by a commercial vending concern which operates services and maintains vending machines on federal property for, or with the approval of, a department, agency, or instrumentality of the United States.

"Vendor" or "operator" means a blind licensee who is operating a vending facility on federal, state, or other property.

**423—7.4(601C) Issuance of licenses.** In order to be issued a license, an applicant shall meet criteria for issuance of a license, which shall include a determination by the commission that the applicant is (1) a blind person, (2) a citizen of the United States, and (3) certified as qualified to operate a vending facility after having completed the commission's business enterprises training program. In issuing such licenses, preference shall be given to blind persons who are in need of employment.

**423—7.5(601C) Termination of licenses and suspension from management duties.**

**7.5(1) Termination of licenses.** Licenses shall be issued for an indefinite period but shall be subject to suspension or termination if, after affording the vendor an opportunity for a full evidentiary hearing, the commission finds that the vending facility is not being operated in accordance with its rules, the terms and conditions of the permit, or the terms and conditions of the agreement between the vendor and the commission. A license may also be terminated for any of the following reasons:

1. Improvement of vision so that the operator no longer meets the definition of blindness.

2. Extended illness with a medically documented diagnosis of prolonged incapacity of the operator to operate the vending facility in a manner consistent with the needs of the location or other available locations in the business enterprises program.

3. Failure of the vendor to sign the agreement for operation of a vending facility between the commission and the operator after accepting the assignment to operate a facility.

4. Withdrawal of the vendor from the program upon written notification to the commission.

5. The abandonment of the location by the vendor.

6. Determination that the operator, based upon demonstrably reasonable, fair, and nondiscriminatory criteria, is not competent to operate the facility.

**7.5(2) Emergency suspension from management of a vending facility.** When on the basis of a periodic survey or other investigation the administrator or designee determines that the vendor has repeated or continued violations of one or more terms of the commission's permit to operate the vending facility or the operating agreement between the vendor and the commission, the administrator or designee shall explain the violation to the vendor (orally where possible but not impracticable because of time or distance), deliver in person where possible a written explanation, offer management assistance, and formally notify the vendor immediately, either in writing or orally, followed immediately by written notice, of any violation which (a) poses an imminent threat to the health of the facility's patrons, or (b) jeopardizes the commission's permit to operate the facility. The written notice shall confirm all efforts to resolve the matter. Time limits herein shall run from the original notice, whether written or oral. The vendor shall, within two (2) days of receiving the notice, correct the violation, clearly demonstrate to administrator or designee a good faith effort to correct it, or demonstrate to the administrator or designee that no violation has occurred.

If the vendor fails to correct the violation or otherwise respond within two (2) days, the administrator or designee may, if applicable, give notice to the vendor by registered certified mail or a written finding (a) that the violation poses an imminent threat to the health of the facility's patrons and that the vendor is suspended from management of the facility twenty-four (24) hours after receipt of the written finding, pending an evidentiary hearing pursuant to rule 8.2(601C) to be held within seven (7) calendar days of receipt of the written notice, or (b) that the violation is contrary to terms of the commission's permit to operate the facility, that it is of such a nature to jeopardize the commission's permit and that the vendor is suspended from management of the facility seven (7) calendar days after receipt of the written finding, pending an evidentiary hearing pursuant to rule 8.2(601C) to be held within seven (7) calendar days of receipt of the written finding.

In suspensions from management of a vending facility, the license of the vendor shall be unaffected unless formal proceedings for suspension or termination of license under subrule 7.5(1) are invoked; and the income from the facility shall, in accordance with the terms of the operating agreement between the vendor and the commission, continue accruing to the operator pending the outcome of the evidentiary hearing. All other provisions of the operating agreement shall, however, be suspended pending the outcome of the evidentiary hearing held pursuant to rule 8.2(601C).

**423—7.6(601C) Vending facility equipment and initial stocks.** The following shall govern the provision by the commission of equipment and initial stocks:

**BLIND, DIVISION FOR THE[423] (cont'd)**

7.6(1) The commission is responsible for furnishing each vending facility with adequate, suitable equipment and initial stocks of merchandise necessary for the establishment and operation of the facility.

7.6(2) The right, title to, and interest in vending facility equipment and stock used in the program is vested in the commission, except that if at any time any operator of a vending facility indicates a desire to become an independent owner-operator and purchase the equipment and stock of a facility, the commission will attempt to negotiate a purchase agreement provided the facility involved can be owned by an individual under applicable law. The purchase price in such cases shall be the fair market value of the equipment provided by the commission plus an amount equal to the purchase price paid by the commission for initial stock for the facility. Such purchase must be outlined in a formal written agreement between the commission and the operator for the purchase. The agreement shall, at a minimum, specify (a) the terms and conditions governing ownership by the vendor in accordance with these rules and regulations and the conditions of the permit; (b) delineation of responsibility for providing maintenance and replacement of equipment; and (c) that the commission retains a first option to repurchase the equipment and stock in the vending facility in the event the vendor-owner dies or for any other reason ceases to be a licensee, or transfers to another vending facility. The ownership of equipment and stock shall become the property of the commission subject to an obligation on its part to pay such vendor-owner or the vendor-owner's estate the fair market value of equity therein. The vendor-owner or personal representative or next of kin shall be provided an opportunity for a full evidentiary hearing with respect to the determination of the amount to be paid by the commission for a vendor's ownership in the equipment and stock. A vendor-owner dissatisfied with a decision rendered as a result of this hearing may file a request for arbitration.

**423—7.7(601C) Maintenance and replacement of equipment.**

7.7(1) The operator shall maintain (or cause to be maintained) all vending facility equipment in good repair and in attractive condition. The commission shall replace (or cause to be replaced) worn-out or obsolete equipment as required to ensure the continued and successful operation of the facility, except that the commission assumes responsibility for costs arising from problems in connection with maintenance or upkeep of equipment during the first forty-five (45) calendar days of an operator's occupancy of a location. It is understood that warranties shall be fully utilized where applicable. In unusual circumstances the commission may pay particular costs in connection with maintenance and upkeep of equipment upon negotiation with the operator.

7.7(2) Each vendor shall take reasonable care of the equipment in the facility and carry out routine day-to-day maintenance procedures.

7.7(3) If it is determined that an operator has on request not made proper repairs in conformity with subrules 7.7(1) and 7.7(2) and that the failure to make these repairs prohibits operation of the facility in a safe, attractive and sanitary manner, the commission may cause the repairs to be made and have the operator billed for their cost.

**423—7.8(601C) Distribution and use of income from vending machines on federal property.**

7.8(1) Vending machine income from vending machines on federal property which has been disbursed to the commission by a property managing department, agency, or instrumentality under the vending machine income sharing provisions in section 395.8 of the federal regulations shall accrue to each blind operator operating a vending facility on federal property in an amount not to exceed the average net income of the total number of blind operators in the state as determined each fiscal year on the basis of each prior year's operation, except that vending machine income shall not accrue to any blind vendor in any amount exceeding the average net income of the total number of blind vendors in the United States.

7.8(2) No blind vendor shall receive less vending machine income than that received during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this ceiling.

7.8(3) No limitation shall be imposed on income from vending machines, combined to create a vending facility, when such facility is maintained, serviced, or operated by a blind vendor.

7.8(4) The commission shall retain vending machine income disbursed by a property managing department, agency, or instrumentality of the United States in excess of the amounts eligible to accrue to blind vendors.

7.8(5) The commission shall disburse vending machine income to blind vendors on at least a quarterly basis.

7.8(6) To the extent permissible under Iowa law, vending machine income retained by the commission shall be used for the establishment and maintenance of retirement or pension plans, for health insurance contributions, and for provisions of paid sick leave and vacation time for blind vendors, if it is so determined by a majority vote of the licensed vendors, after each vendor has been furnished information on all matters relevant to such purposes, shall be used by the commission for replacement of equipment or purchase of new equipment.

**423—7.9(601C) Operating agreement between the commission and blind vendor.** The staff, in consultation with the committee, shall develop and execute with each vendor an operator's agreement which shall cover the following basic terms and conditions:

1. The duties of the vendor and the performance of the duties in accordance with standards prescribed by the commission, applicable health laws and regulations, and with the terms of the permit granted by, or the contract entered into with, the federal or other agency or organization in control of the site of the vending facility.

2. The responsibilities of the commission to provide management services to the vendor, including assistance and supervision, and the ways in which the responsibilities shall be carried out.

3. A statement that the vendor shall receive the net proceeds (in accordance with the definition in section 395.1(k) of the federal regulations) from the vending facility to which assigned as operator.

4. The responsibility of the vendor to furnish such reports as the commission may require.

5. The right of the vendor to terminate the operating agreement at any time.

**BLIND, DIVISION FOR THE[423] (cont'd)**

6. The termination of the operating agreement upon the termination of the permit or contract.

7. The termination or revocation of the operating agreement upon the failure of the vendor to operate the vending facility in accordance with the operating agreement or applicable federal, state, or local laws or regulations.

**423—7.10(601C) Assignment, transfer, and promotion of vendors.**

**7.10(1) Priority assignment.** A vendor who has been displaced from a facility through no fault of the vendor may be given priority as to the determination of the person to be assigned to a new or vacant existing facility if the requirements of operating the facility and its potential or actual earnings are reasonably comparable to those of the facility from which the vendor was displaced.

**7.10(2) Transfer and promotion.** When a new facility is established or when a vacancy occurs in an existing facility to which no person is entitled to be given a priority assignment, all vendors shall, within ten (10) days of the creation of a vacancy, be notified in writing of the availability of the facility, its operating requirements, the current or potential earnings, and the time period in which to request transfer to it. Vendors who wish to transfer or be promoted to the facility shall notify the administrator in writing within ten (10) working days of the date the notification of the vacancy is mailed.

**7.10(3) Selection of vendor for transfer or promotion.** Criteria to determine the vendor to be transferred or promoted shall include but not be limited to the following:

1. Ability to meet the physical requirements of operating the facility;
2. Satisfactory work habits;
3. Work attitudes, including good customer relations, cooperation with property management, participation in instructional conferences concerning the business enterprises program; and
4. Knowledge and application of sound business practices such as adequate and accurate accounting system; maintenance of reasonable productivity standards; cleanliness and sanitation; and reasonable return related to the volume of business.

All applicants for transfer or promotion shall be evaluated and ranked on the basis of the foregoing criteria by appropriate members of the business enterprises program staff and the committee's subcommittee on transfer and promotion. The recommendations of (1) the staff and of (2) the subcommittee on transfer and promotions, together with the reasons therefor, shall be forwarded to the administrator or designee who, with the approval of the commission, shall make the final decision as to the vendor to receive the transfer or promotion. The administrator shall report the appointment to the commission by mail within five (5) days, requesting that the members of the commission respond within five (5) days of receipt if they desire reconsideration of the assignment. If a vendor already in the program wishes to grieve failure to receive a promotion or transfer to a new location for which application has been made in writing, the vendor may petition the commission within fifteen (15) days of notification of the administrator's decision for a hearing by the commission. If, after this hearing, the commission determines that sufficient cause exists for further review of the decision, it may by majority vote refer it to the administrator for

reconsideration and possible subsequent hearing described in rule 8.2(601C).

**423—7.11(601C) Training program.** The staff shall conduct an ongoing training program for vending facility operators as follows:

**7.11(1)** The staff, with the active participation of the committee, shall develop and maintain training and retraining programs for all persons in the field of vending facility operation.

**7.11(2)** The staff shall ensure that effective programs of vocational and other training services, including personal and vocational adjustment, books, tools and other training materials, shall be provided as needed to blind persons as vocational rehabilitation services under the Rehabilitation Act of 1973 (Public Law 93-112), as amended by the Rehabilitation Act amendments of 1974 (Public Law 93-516), and the rehabilitation comprehensive services and developmental disability amendments of 1978 (Public Law 95-602). The programs shall include on-the-job training in all aspects of vending facility operation for blind persons with the capacity to operate a vending facility and who wish to undertake such training. Upward mobility training including further education and additional training or retraining for improved work opportunities shall also be provided for blind vendors as needed.

**7.11(3)** Postemployment services shall be provided as needed to blind vendors as vocational rehabilitation services when necessary to ensure that the maximum vocational potential of a vendor is achieved and suitable employment is obtained within the commission's business enterprises program.

**423—7.12(601C) State committee of blind vendors.** The following rules govern the operation of the state committee of blind vendors:

**7.12(1)** The commission shall ensure that biennial elections of the committee are conducted among the vendors of the program. The committee shall be representative, to the extent possible, of all vendors on the basis of geography and vending facility type with a goal of equitable representation of blind vendors on federal property and blind vendors on other property.

**7.12(2)** The committee shall consist of a chairperson and four (4) members who shall be elected by a majority vote of all vendors in the program who participate in the election. Participation by any blind vendor in the election of the committee members shall not be conditioned upon the payment of dues or any other fees.

**7.12(3)** Nominations for election to the committee may be made by any blind vendor and, if determined by majority vote of participating blind vendors, a nominating committee may be appointed by the chairperson. Elections shall be conducted in even-numbered years at a statewide meeting of blind vendors.

**7.12(4)** If a member of the elected committee of blind vendors ceases to be a vendor or resigns as a member of the committee, a replacement shall be elected for the remainder of the unexpired term at the next statewide meeting of blind vendors.

**7.12(5)** The length of term of membership on the committee shall be two (2) years.

**7.12(6)** The number of consecutive terms a vendor may serve on a committee shall not be limited.

**7.12(7)** The chair, or a designee if the chair is absent, shall preside over all regular and special meetings of

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the committee. The agenda for each meeting of the committee shall be prepared by the administrator or designee in consultation with the chair of the committee. The committee shall conduct at least three (3) regular meetings per year. Unless otherwise determined by the administrator and the committee, meetings shall be held at a time and place within the state determined by a majority of the committee.

7.12(8) The functions of the committee are as follows:

a. Actively participate with the staff in major administrative and policy program development decisions affecting the overall administration of the business enterprises program;

b. Receive and transmit to the staff grievances at the request of blind vendors and serve as advocates for vendors in connection with the grievances;

c. Actively participate with the staff in the development and administration of a state system for the transfer and promotion of blind vendors;

d. Actively participate with the staff in the development of training and retraining programs for blind vendors; and

e. Sponsor, with the assistance of the staff, meetings and instructional conferences for blind vendors within the business enterprises program.

7.12(9) Between regular meetings, the committee carries on its functions through individual members or subcommittees designated by the committee for that purpose.

7.12(10) In order to ensure opportunities for effective and constructive active participation by the committee, the committee shall receive advance written notice from the administrator or designee of matters within its purview that are being considered for decision. Appropriate subcommittees or individual members shall also receive advance invitations to attend important discussions and decision-making meetings in areas of the subcommittee's or individual's interests. The committee at each of its meetings shall have the opportunity to initiate matters for consideration by it and the commission. The committee shall play a key role in the operation and administration of all aspects of the business enterprises program. Although the commission, as state licensing agency, has the ultimate responsibility for the administration of the business enterprises program, staff shall notify the committee in writing of the decision reached or the action taken and the reasons for the decision or action if it does not adopt the views and positions of the committee.

**423—7.13(601C) Access to program and financial information.** Each vendor shall be provided access to all program and financial data relevant to the operation of the business enterprises program, including quarterly financial reports, provided that this financial disclosure does not violate applicable federal or state laws pertaining to the disclosure of confidential information. Insofar as is practicable, data shall be made available in print and in recorded form. At the request of a blind vendor, the staff shall arrange a convenient time to assist in the interpretation of the financial data.

**423—7.14(601C) Explanation to vendor of rights and responsibilities.** The commission shall furnish to each vendor copies of the documents relevant to the operation of the vending facility, including the rules, a written description of the arrangements for providing services, and the agreement and permits covering the operation

of a vending facility. Procedures shall be established for the explanation of these documents to each vendor who will indicate by signed statement that these documents have been furnished and explained.

**423—7.15(601C) Agreement between the commission and the operator of a vending facility or business enterprise.** With a statement of regulations and policies of the commission;

The commission is authorized by the laws of the state of Iowa and by a ruling by the attorney general to carry on a business enterprises program which includes the operation of a vending facilities program (under the Randolph-Sheppard Act, as amended).

In compliance with applicable laws and with the rules and regulations required to be issued by the commission to govern and apply to all vending facilities now operating or to be established under the program, this agreement is entered into by and between \_\_\_\_\_, the operator of a vending facility, located at \_\_\_\_\_ in \_\_\_\_\_, Iowa and the Iowa commission for the blind.

This agreement, executed on \_\_\_\_\_, 19\_\_\_\_, replaces and supersedes any and all other previously executed agreements between the operator and the commission, concerning the operation of the vending facility or business enterprise.

In accordance with the provisions of the above laws, rules and regulations, and in order to provide the greatest possible financial return to the operator and to preserve and promote employment opportunities for other blind persons, the following standards of operation and service are included and made a part of this agreement:

A. The commission shall:

1. Equip the vending facility for carrying out the business authorized by the permit.

2. Furnish initial stocks of merchandise sufficient to enable the vendor to commence operating the business authorized by the permit.

3. Furnish the vendor with a complete inventory of all equipment and initial stocks provided.

4. Purchase licenses and bonds for the operator as may be necessary for the operation of the facility with the understanding that the operator will reimburse the commission.

5. The staff shall furnish all reasonable supervision, consultation, and in-service training in business operation, which may be required for the successful conduct of the facility.

B. The operator shall:

1. Perform faithfully and to the best of the operator's ability the necessary duties in connection with the vending facility in accordance with the standards prescribed by the commission in this agreement and in regulations contained elsewhere in the commission's administrative rules.

2. See that the vending facility is in operation during the hours the building in which it is located is open for business. If this exceeds a reasonable day, the operator may employ an assistant or may make arrangements with the commission for times during the day when the facility may be closed.

3. Insofar as is reasonable and advisable conduct the vending facility as an individual business on a cash basis, paying cash for goods and supplies, and shall not extend credit to customers.

4. Be accountable to the commission for the proceeds of the business of the vending facility, and handle the proceeds, including payments to suppliers and deposits

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of funds, in accordance with instructions from the commission staff. The operator will employ sound business practices including the taking of regular inventories of merchandise, in accordance with the policy of the commission, and may request assistance from the commission in so doing when and if help is needed; except as otherwise agreed between the operator and the commission, maintain a stock of merchandise at least equivalent to that provided by the commission; buy merchandise for the facility conferring with the commission regarding the selection of additional items or lines of merchandise and their source of supply. Records of operator earnings in individual vending facilities shall be made available to the auditor of state upon request provided information on the finances of individuals is in no way made public in a manner as to identify the persons involved or otherwise invade their privacy.

5. Carry on the business of the vending facility in accordance with: (a) the Randolph-Sheppard Act and regulations issued pursuant thereto; (b) the rules and regulations of the commission and the written standards and policies issued thereunder after consultation with the state committee of blind vendors; (c) applicable federal, state, and local laws, ordinances or regulations affecting health, safety and the like; and (d) terms and conditions of the permit.

6. Take proper care of the equipment of the vending facility, and make alterations or changes therein only with the approval of the commission. It is understood that the operator shall assume responsibility for paying the cost in connection with maintenance and upkeep of equipment except that the commission shall assume responsibility for costs arising from problems in connection with maintenance or upkeep of equipment during the first forty-five (45) calendar days of an operator's occupancy of a location. It is understood that warranties will be fully utilized where applicable. In unusual circumstances the commission may pay particular costs in connection with maintenance and upkeep of equipment upon negotiation with the operator.

7. Notify the commission staff a reasonable time in advance of taking of any voluntary leave from the vending facility, and as soon as possible with respect to any involuntary leave.

8. Keep records and make reports as the staff shall reasonably require and furnish information and comply with conditions as may be necessary to ensure the correctness and verification of the records and reports, including participation in management audits of the facility's operation.

9. The operator shall cooperate fully with officials and duly authorized representatives of the commission in connection with their official program responsibilities. It is specifically understood that officials of the commission shall have access to all records involving the facility.

10. The assistants employed by the operator should receive a fair and reasonable rate of pay, and shall have the approval of the commission. Insofar as is reasonable and to the best interest of the operator and the facility, employment should be given to visually handicapped persons.

**C. General:**

1. The business to be carried on at the vending facility shall be limited to that specified and authorized in the permit.

2. It is understood that all right, title to, and interest in all vending facility equipment purchased by the commission is vested in the commission; and the operator shall take no action which would impair such right, title to, or interest. Equipment for the facility shall not be purchased by the operator without the consent of the commission, but if equipment is purchased by the operator, title to such equipment shall be vested in the operator. It is understood that the commission shall purchase an initial supply of dishes and flatware (including serving spoons, small kitchen utensils, etc.) for a facility but that the operator shall purchase replacement supplies of flatware and dishes.

3. Rebates, commissions, or bonuses received by the vendor from suppliers are considered either income or merchandise purchase refunds and must be accounted for by the vendor on financial reports.

4. Merchandise taken from the stock in trade of the vending facility by the vendor for personal use shall be accounted for by the vendor and paid for at cost prices.

5. Each facility shall obtain and pay for insurance, as it and the commission find to be necessary.

6. The income of the vendor shall be 100% of the net profits of the facility.

7. A vendor dissatisfied with an action by the commission arising from the operation or administration of the business enterprises program may request an administrative review and, if necessary, a full evidentiary hearing. If dissatisfied with the decisions of the review and hearing, the vendor may request that an arbitration panel be convened by filing a complaint with the United States Secretary of Education.

As the authorized representative of the commission for the blind, I indicate by my signature below acceptance of the commission's responsibilities to the operator under the terms and conditions of this agreement.

Date: \_\_\_\_\_ by \_\_\_\_\_  
Title \_\_\_\_\_

As an operator in the commission's business enterprises program, I indicate by my signature below acceptance of and agreement to the terms and conditions of this agreement regarding my responsibilities to the commission for the blind.

Date: \_\_\_\_\_ by \_\_\_\_\_  
Vendor \_\_\_\_\_

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

**CHAPTER 8  
APPEALS PROCESS—BUSINESS  
ENTERPRISES PROGRAM**

**423—8.1(601C) Steps in appeals process.** There are four (4) steps in the appeals process of the Iowa commission for the blind's business enterprises program:

- 1. Informal conciliation,
- 2. Hearing before the commission,
- 3. Full evidentiary hearing and,
- 4. Arbitration.

These steps must occur in the order in which they are listed and are more fully described herein, except that step 2 is optional.

**8.1(1) Step 1: Informal conciliation.** This is the necessary first step in the process to resolve any grievance. Either the vendor or the staff can commence informal conciliation. Informal conciliation must occur

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before any other steps in the grievance process can be used.

Informal conciliation occurs all the time and is not usually given a name by the participants, but is sometimes called administrative review. It can, but does not necessarily, involve a personal meeting between the vendor and the staff. Informal conciliation occurs when either the vendor or the staff is dissatisfied with the action of the other and contacts the other to try to work out the dissatisfaction. This contact can be by phone, by letter, or in person and usually involves discussion and negotiation of the point over a period of time. Both vendor and staff have an interest in working out grievances informally since this is the least costly, least time-consuming, and least disruptive way of resolving differences. However, both the vendor and the staff have the right to stick to their opinion and to move to the next step in the grievance process if informal conciliation does not resolve the grievance in a manner satisfactory to them. If either the vendor or the staff remains dissatisfied after a good faith effort by both to resolve the grievance, then either vendor or staff can move to the next step.

8.1(2) Step 2: Hearing before the commission. This step is only available to the vendor. The staff cannot initiate a hearing before its own policy-making entity. This step is simply an option for the vendor. The vendor may choose to skip this step completely and move directly from step 1 to step 3. If the vendor chooses to skip step 2, the vendor has used all administrative remedies available to the vendor, including the option to skip a remedy.

a. The commission makes its own rules concerning procedure case-by-case at the hearing itself. If either the vendor or the staff is unsure about the procedure, the commission members should be asked to explain the procedure before the hearing starts. These hearings are generally informal, conducted by the commission so that both sides have an opportunity to present to the commission whatever the commission believes is relevant to the decision it is being asked to make.

b. It is possible that, under certain circumstances, a hearing before the commission would be a closed hearing. Unless all the proper circumstances exist to close the hearing, the hearing must be held as a part of an open, publicized meeting of the commission and listed on its agenda. One set of circumstances which could close such a hearing will arise when the vendor is seeking, as a part of the commission's decision, that the commission "evaluate the professional competency" of a commission staff member concerning that staff member's "appointment, hiring, performance, or discharge" and when that staff member asks the commission to go into closed session as provided in the Iowa open meetings law, Iowa Code chapter 21.

c. Another set of circumstances which could close the commission hearing may arise if the vendor or the staff wishes to raise during the hearing matters which are considered confidential. The documents which are confidential are likely to be very limited and the decision to close the hearing or to leave it open will have to be made on a case-by-case basis.

d. The Iowa open meetings law, Iowa Code chapter 21, insists that only those meetings or parts of meetings specifically exempted by a precise section of the law may be legally closed; therefore, if an exemption is not

specifically met, the meeting of the commission under this subrule shall be open.

e. A vendor who has used this step in the appeals process and is dissatisfied with the result then moves to step 3.

8.1(3) Step 3: Full evidentiary hearing. Either a vendor or the staff can commence the full evidentiary hearing process, which is a required step in the appeals process. A full evidentiary hearing is part of the appeals process guaranteed to the vendor by the federal Randolph-Sheppard Act.

a. The full evidentiary hearing process is governed by rule 8.2(601C).

b. If the vendor is dissatisfied with the decision after a full evidentiary hearing, then the vendor may move to step 4.

8.1(4) Step 4: Arbitration. A vendor can commence arbitration if dissatisfied with the ruling after a full evidentiary hearing. Arbitration is a required step in the appeals process. Arbitration is a part of the appeals process guaranteed to the vendor by the federal Randolph-Sheppard Act. Essentially, arbitration occurs by the vendor's filing a complaint with the United States Secretary of Education, who then convenes a three (3)-member arbitration panel. The vendor chooses one member of the three (3)-member arbitration panel; the commission chooses the second member; and those two (2) persons choose a third person agreeable to both who serves as chair of the arbitration panel.

At the full evidentiary hearing and the arbitration stages of the appeals process, proceedings shall be conducted much like proceedings in a court of law. Both these proceedings are open to the public. The commission is normally represented at both by an assistant attorney general. The vendor may be represented by an attorney or by a knowledgeable friend at the commission hearing, the full evidentiary hearing, and the arbitration hearing. The court-reported record of testimony and the documents admitted into evidence at the arbitration step shall serve as the complete record of proceedings for any further appeals. No more evidence can be added if the vendor or the commission appeals the arbitration panel's decision into the federal courts. Appeal from the arbitration decision goes to the federal district court and can go as far as the supreme court of the United States.

423—8.2(601C) Full evidentiary hearings. These rules define procedures under which full evidentiary hearings, required by the Randolph-Sheppard Act, shall be conducted in Iowa.

8.2(1) Definitions:

"Day" means a regular working day for employees of the state of Iowa.

"Full evidentiary hearing" means the proceeding defined by the Randolph-Sheppard Act, 20 U.S.C. 107D-1(a) and 34 C.F.R. 395.13, July 1, 1981.

"Petitioner" means the person or agency which files the petition commencing the full evidentiary hearing proceeding.

"Respondent" means the person or agency named by the petitioner as a person or agency against which the petition is brought and from whom the petitioner seeks stated responses.

8.2(2) Commencement of proceeding.

a. How commenced. A full evidentiary hearing proceeding may be commenced by the commission or

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by a vendor. A full evidentiary hearing proceeding is commenced by filing a petition with the administrator and serving the petition on the respondent in the manner described in these rules.

b. Commencement by commission. If the commission believes that a vendor has violated the terms of the operator's agreement then in effect between the commission and the vendor, or believes the vendor has violated the rules governing the business enterprises program in Iowa so as to warrant suspension or revocation of a vendor's operating agreement or license, the commission shall file a petition naming the vendor as respondent. However, in cases of imminent threat to the health or safety of vending facility patrons or concern for retention of the permit to operate a facility as governed by subrule 7.5(2), the commission may remove a vendor as provided in that subrule but at the same time must initiate the evidentiary hearing procedures contained in this subrule.

c. Commencement by vendor. If a vendor believes that the commission has violated a right guaranteed to the vendor by the Randolph-Sheppard Act or Iowa law, or if the vendor is otherwise aggrieved by the action of the commission, the vendor may file a written petition naming the commission as respondent within fifteen (15) days after an adverse decision from an administrative review or within fifteen (15) working days of the occurrence in the absence of an administrative review.

d. Hearing officer involved. When the administrator has received a petition and a response has been filed with the administrator under these rules, the administrator shall provide these documents to an impartial hearing officer selected according to law and shall thereafter act only as the employee of one of the parties. After the administrator has referred the documents as provided in this subrule, then the administrator shall serve notice upon all parties of the identity, telephone number, and address of the hearing officer in the manner prescribed in these rules.

**8.2(3) The petition.**

a. Contents of the petition. The petition shall be a clear, concise written statement which shall:

1. Identify the petitioner;
2. Identify the petitioner's representative;
3. Identify the respondent;
4. Give a general statement of the facts the petitioner believes constitute a violation of respondent's duty to petitioner or a violation of petitioner's rights or a grievance on petitioner's behalf;
5. In the case of the commission, give the specific portion or portions of the operator's agreement or license or rules believed to have been violated;
6. In the case of a vendor, give a statement of the provisions of law on which the vendor bases a claim or violation of a right or other grievance; and
7. Give a general statement of the relief sought and the basis for such relief.

b. Serving of petition. The petitioner shall serve the petition upon the administrator and upon the respondent in the manner described in these rules. If the petitioner is the commission, the filing of the petition with the administrator and serving of the petition upon respondent shall be sufficient to commence the proceeding.

**8.2(4) The response.**

a. Contents of the response. The response shall be a clear, concise statement which shall:

1. Identify the respondent;

2. Identify the respondent's representative;

3. Identify the petitioner;

4. Give a general statement of the facts the respondent believes constitute a legal and complete explanation for respondent's behavior;

5. In the case of the commission, give specific citations to federal or Iowa law upon which it relies to explain its actions;

6. In the case of a vendor, give a statement of the provisions of law upon which the explanation is based;

7. Give a general statement of the appropriate conclusion of the proceeding from the respondent's point of view;

8. Concede as true those facts stated by the petitioner and not disputed by the respondent;

9. Concede the applicability and the correctness of the application of any law or regulation cited by the petitioner and not disputed by the respondent; and

10. Concede the appropriateness of any relief sought by the petitioner which the respondent agrees is appropriate.

b. Serving of response. Within ten (10) days of the service of a petition prepared under subrule 8.2(3), the respondent shall file a response with the administrator. The response shall be served upon the administrator and on the petitioner in the manner described in these rules. If the respondent is the commission, the filing of the response with the administrator is sufficient service upon the commission.

c. Failure to respond. If the administrator receives a petition which is properly served in the manner described in these rules and to which no response is filed within ten (10) days, then the administrator shall refer the petition to the hearing officer as described in subrule 8.2(2), paragraph "d." A party failing to file a response shall be taken by the hearing officer as having conceded each and every fact and application of law alleged in the petition concerning the respondent unless able to show good cause for failing to file within ten (10) days. The hearing officer shall direct in such cases that a response be filed as soon after the ten (10)-day period as the hearing officer deems reasonable.

**8.2(5) Discovery.**

a. Petitioner's discovery, generally. Upon the filing and service of a petition, the petitioner becomes entitled to discovery.

b. Respondent's discovery, generally. Upon the filing and service of a response, a respondent becomes entitled to discovery.

c. Voluntary discovery encouraged. All parties are entitled to take court-reported depositions from persons they believe have relevant evidence, except that a vendor who is a respondent may not be compelled to give a deposition. All parties are entitled to request voluntary production of documents and things in the possession of another party.

d. Commission's duty to disclose. Upon request, the commission must produce for a vendor's inspection and copy any documents and things requested by the vendor and must produce for deposition any commission member or employee requested by the vendor.

e. Discovery by subpoena. If any party seeks relevant evidence not under the control of the commission and cannot obtain the evidence by voluntary compliance, the hearing officer is empowered to use the subpoena power of the commission to subpoena witnesses for depositions

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and to subpoena the production of documents and things for inspection by all parties.

f. Notice of discovery events. All parties shall be given notice in the manner described in these rules of all depositions to be taken and of all productions of documents and things, whether performed voluntarily or pursuant to a subpoena.

g. Hearing officer to supervise. The hearing officer shall supervise discovery and shall ensure:

1. That each side has the opportunity to find and examine all evidence it deems relevant;

2. That all parties conduct discovery as quickly as possible so there is no unnecessary delay of the proceedings to the harm of any party; and

3. That no party or citizen is unnecessarily burdened with repetitive cumulative or harassing requests for discovery except that the commission shall be held strictly to its duty to produce as defined in subrule 8.2(5), paragraph "d."

h. Sanctions. If the hearing officer determines that any party is refusing to cooperate in discovery, is hiding evidence, or is unnecessarily delaying or dawdling in discovery to the harm of any other party, then the hearing officer shall grant some or all of the relief sought by the harmed party.

**8.2(6) Hearing date and scheduling conferences.**

a. Setting of hearing date. As soon after the filing and service of the response as can be arranged, the hearing officer shall hold a conference between the parties to set a date for the hearing. All parties shall provide to the hearing officer their best estimate of how long their discovery will take and shall provide suggested hearing dates. The hearing officer shall then set a date for the hearing, taking into consideration the estimates of each party concerning discovery, the convenience of witnesses and counsel, and the need to conduct the proceedings expeditiously. Testimony shall be taken evenings or weekends if blind persons who are employed are to be called as witnesses. The hearing officer shall write an order scheduling the date for the hearing within fifteen (15) working days of receipt of a response unless the vendor and the commission agree in writing to some other period of time.

b. Rescheduling of hearing date. If any party finds that discovery is taking longer than estimated despite the party's efforts or for any other good cause, the hearing officer may reschedule the hearing for a later date by means of a second conference at which the party seeking rescheduling shall state its reasons and any other party has the opportunity to object. After hearing all relevant statements from the parties, the hearing officer shall reschedule the date or not reschedule the date as required by equity, the provisions of subrule 8.2(5), paragraph "g," giving the hearing officer supervisory authority over discovery, and the provisions of subrule 8.2(6) governing the setting of hearing dates.

c. Methods of holding conferences. Conferences held under this rule may be held in person or by telephone or by a combination of both, according to the convenience of the hearing officer and the parties.

d. Notice. Notice of these conferences shall be served upon all parties in the manner described in these rules.

**8.2(7) Prehearing conference.**

a. Scheduling the conference. The hearing officer shall schedule a prehearing conference so that all parties or representatives may be present. Normally it will be held twenty (20) days before the date set for the hearing, but

the date of this conference may be more than twenty (20) days before the date set for the hearing if all parties agree, if the date would otherwise fall on a weekend, or if the hearing officer's schedule requires it. In no case shall the prehearing conference be nearer to the date set for the hearing than five (5) days. The hearing officer shall serve notice of the prehearing conference at least ten (10) days prior to the date set for the conference in the manner described in these rules. If any party objects to the time set for the conference, the party shall immediately notify the hearing officer and the hearing officer shall conduct an immediate conference with all parties as soon as possible so the prehearing conference can go forward. Aside from the provisions of this paragraph, the hearing officer shall only change the prehearing conference to accomplish the provisions of subrule 8.2(7), paragraph "b."

b. Conference in person. To the greatest extent possible, the hearing officer shall schedule the prehearing conference so that all parties may be present in person or through their representatives being present in person.

c. Facts and law. During the prehearing conference, the hearing officer shall determine the facts on which all parties agree, the facts on which any parties disagree, the applications of law about which all parties agree, and the areas of applications of law about which the parties disagree.

d. Witnesses exchanged. During the prehearing conference, each party shall provide the hearing officer and the other parties with a list of the witnesses the party intends to call at the hearing. If any party does not recognize a witness or the purpose for which the witness is being called, the hearing officer shall require the party intending to call the witness to describe briefly the witness including the witness's relation to any party and shall require a brief summary of the testimony the witness is expected to provide.

e. Documents exchanged. During the prehearing conference, each party shall provide the hearing officer and all other parties a copy of every document the party intends to introduce into evidence and a copy of every document the party might introduce during its case or during rebuttal. The hearing officer may designate those documents intended to be introduced at this time if that is desired. Upon the request of any party, the party offering a document shall be required to identify the person or persons who prepared a document and the source of information presented in a document.

f. Objections to evidence. During the prehearing conference, the hearing officer shall hear and determine all objections to the admission of evidence which can be fully and fairly made at this time so that time at the hearing can be used for the taking of admissible evidence.

g. Settlement. During the prehearing conference, the hearing officer shall encourage the reaching of a settlement agreement which is fair and equitable to all parties.

h. Completing discovery. During the prehearing conference, the hearing officer shall settle all unresolved matters of discovery.

i. Final discovery schedule. At the end of the prehearing conference, the hearing officer and all parties shall jointly make a schedule for completing any discovery to ensure that the hearing shall proceed on schedule.

j. Prehearing order. Within one week of the prehearing conference, the hearing officer shall prepare and serve

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upon all parties in the manner described in these rules a prehearing order which shall:

1. List the participants in the conference and whether they were present in person or by telephone;

2. State the relevant facts and applications of law not in dispute;

3. State the facts and applications of law which constitute the dispute;

4. Attach the list of witnesses of each party;

5. List the exhibits intended to be introduced by each party, giving designations if already assigned;

6. Attach the schedule for completing discovery;

7. Set forth any rulings on the admissibility of evidence together with the reason why the ruling is made.

**8.2(8) The hearing.**

a. Order of presentation. The order of presentation at the hearing shall be as follows:

1. Opening statement by petitioner;

2. Opening statement by respondent;

3. Witnesses and exhibits from petitioner;

4. Witnesses and exhibits from respondent;

5. Rebuttal witnesses and exhibits from petitioner;

6. Rebuttal witnesses and exhibits from respondent;

7. Closing statement by petitioner;

8. Closing statement by respondent; and

9. Rebuttal statement by petitioner.

b. Evidence. During the hearing, the hearing officer shall receive all oral and documentary evidence from witnesses, documents and things which are relevant to the issues in dispute. The hearing officer may exclude totally irrelevant evidence or evidence which is repetitive and shall admit the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, even if it would be inadmissible in a jury trial. During the presentation of evidence by one party, the other party and the hearing officer may cross-examine witnesses. Objections to evidence that it is totally irrelevant or repetitive must be made and ruled upon, where possible, at the prehearing conference. If the hearing officer excludes evidence in the prehearing order, the party offering the evidence may offer the excluded evidence again at the hearing if other evidence makes the excluded evidence relevant to the party's case or rebuttal.

c. Subpoenas. The hearing officer is empowered to use the subpoena power of the commission to compel the attendance of witnesses and the production of documents on behalf of any party which seeks a subpoena and shows that the evidence cannot otherwise be presented.

d. Reporting or recording. The hearing shall be reported by a certified shorthand reporter or, by agreement of all parties, the hearing may be tape recorded. If the hearing is reported, the commission shall pay for the reporter. If the hearing is recorded, any party may transcribe the hearing at the party's own expense. The transcript of testimony, exhibits, and all papers and documents filed in the hearing shall constitute the exclusive record for decision.

e. Offering of new evidence and recesses for reading it. If any party seeks to introduce a document into evidence which was not exchanged with other parties at the prehearing conference as required in subrule 8.2(7), paragraph "e," the hearing officer shall hear objections to the admission of the document on the grounds it was not so exchanged. The document shall be admitted only if the party offering the document can show that the party did not know of the existence of

the document before the prehearing conference or had some other good reason why the document was not exchanged as required. If a document is offered into evidence, any blind hearing officer, blind representative, or blind vendor may automatically have a recess of the hearing for a reasonable time to study the document.

f. Burden of proof. The burden of proof shall rest upon the petitioner at all times, and the decision of the hearing officer shall be rendered according to the preponderance of the evidence.

g. Briefs. Within ten (10) days after the hearing, the petitioner may file with the hearing officer a brief which shall be served upon all other parties in the manner prescribed in these rules and which shall summarize the facts and state the applicable law. Within five (5) days after the filing of petitioner's brief, the respondent may file a reply brief summarizing the facts and stating the law which shall be served upon all parties in the manner described in these rules. Within five (5) days of filing of a reply brief, the petitioner may file a rebuttal brief, which shall be served on all parties. If any party chooses not to file a brief, the parties following it in order may still file briefs. Any party may waive the filing of briefs.

**8.2(9) Decision on the record.**

a. Written decision. Within fifteen (15) working days after receipt of the official transcript, the hearing officer shall render a decision. The decision shall be written and shall be served upon all parties in the manner described in these rules.

b. Finality of decision. The decision of the hearing officer shall be final unless a party appeals the decision as provided in subrule 8.2(10).

c. Contents of decision. The hearing officer's decision shall clearly state the facts found by the hearing officer, the law found by the hearing officer to be applicable, the hearing officer's specific applications of the law to the dispute presented at the hearing, and the relief to be granted, if any, which the hearing officer finds to be fair, equitable, and according to law.

d. Reader services or other communication services. Reader services or other communication services will be arranged for a vendor requesting them. Transportation costs and per diem shall be provided to the vendor if the evidentiary hearing is in a city other than the legal residence of the vendor. The hearing will be held at a time and place convenient and accessible to the vendor.

**8.2(10) Appeal.** A vendor dissatisfied with the decision rendered after a full evidentiary hearing may request that an arbitration panel be convened by filing a complaint with the United States Secretary of Education, as described in 20 U.S.C. 107D-1(a) and 34 C.F.R. 395.13, effective July 1, 1981, and serving upon all other parties the letter demanding arbitration.

**8.2(11) Settlement.** The hearing officer shall at all times encourage settlement by the parties before the hearing. The hearing officer shall be satisfied that any settlement decree proposed by the parties is fair and equitable to all parties and, if so, shall sign the decree along with all the parties and shall retain jurisdiction over the parties for a reasonable period, to be provided for in the decree, to ensure that the decree is implemented.

**8.2(12) Hearing officer.**

a. Generally. The hearing officer shall conduct all proceedings to ensure every party an opportunity to make its case and to avoid unnecessary delay. The hearing officer shall be an impartial, qualified official who has

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no involvement either with the action at issue or with the administration or operation of the vending program. The hearing officer shall be a qualified state agency hearing officer and shall in no case be a staff member of the commission.

b. Interim orders. The hearing officer shall have the power to make all interim orders deemed necessary for the orderly and fair progression of the proceeding. Where appropriate, the hearing officer may make orders determining the interim relation of the parties in the proceeding.

c. Sanctions. The hearing officer shall have the power to supervise the proceeding generally and to fashion those orders for punishment of dawdling or misbehavior of any party which fairness requires. These orders may include the granting of some or all of the relief sought by the party who was harmed by the dawdling or misbehavior of a party.

d. Ex parte communication prohibited. The hearing officer shall not communicate directly or indirectly about any issue of fact or law in the hearing with any party except with notice and opportunity for all parties to participate as provided in these rules.

**8.2(13) Representatives.**

a. Representatives designated. Upon the filing of a petition or response, every party shall designate the person, if any, who will serve as the party's representative, giving work and home telephone numbers and work address of the representative. Vendors may choose to represent themselves and shall, if they choose to do so, indicate that choice on the petition or response. The commission may choose to have one of its employees serve as representative and, if it elects to do so, shall so indicate on the petition or response. Any party may choose to be represented by an attorney. Any party may choose to be represented by a friend, advocate, or representative not licensed to practice law.

b. Change of representative. If, at any time, for any reason, the designation of representative of a party changes, that party shall immediately serve notice in the manner described in these rules upon the hearing officer and all other parties, identifying the new representative and giving the information required to be provided by subrule 8.2(13), paragraph "a."

c. Duties of representatives. The representative designated by a party shall appear with the party at all points in the proceeding. The party may be represented at any point in the proceeding by the representative alone. The representative shall have the power to act for and to bind the party represented, after consultation with that party.

**8.2(14) Notice and service.**

a. Form of notice. Every petition, response, notice, order, decision, and other document required to be served under these rules shall be served on every party in standard print. In addition to the standard print document, a blind vendor, blind representative, or blind hearing officer shall also receive service in braille, tape, or large print at the choice of the vendor, representative, or hearing officer. The commission shall maintain a list of choice of alternative medium of each vendor. Documents served in the alternative medium shall be served in a timely manner.

b. Basic documents. The petition or response, the prehearing order, and the hearing officer's decision shall be served upon the blind vendor, blind representative, or blind hearing officer in the medium of that person's

choice in addition to service in standard print. This requirement cannot be waived.

c. Hearing officer serving notices, orders. In addition to sending scheduling notices to a blind vendor or blind representative in standard print, the hearing officer may telephone the blind person and read the notice over the telephone as the alternative medium for the blind person. If the hearing officer elects this method, the hearing officer shall keep a log showing the time and date of the call. If the hearing officer chooses this method, no discussion of the proceeding shall occur during the call except that the receiver may register objections to scheduling. The prehearing order and the decision will be produced by the commission and in a timely manner unless the hearing officer chooses to tape or braille these documents personally.

d. Waiver. The blind vendor, blind representative, or blind hearing officer may waive service of all documents, except basic documents, in an alternative medium by filing a waiver with the hearing officer and serving the waiver on all parties.

e. Service methods. Service of documents can be made in one of three ways: By a sheriff or deputy who prepares for the serving party a return of service; by certified mail, return receipt requested, with a delivery restricted to the party to be served; or by a person not employed by or related to any party who is over eighteen (18) years of age and who hands the document to the party to be served and makes a return of service for the serving party.

f. Service recorded. Every document served under these rules will be accompanied by a statement of how the document is being served, signed by the party doing the serving. Proofs of service will be maintained by the serving party.

g. Serving the commission. The commission may be served during regular business hours at its Des Moines office through acceptance of the document by the administrator, a deputy administrator, or administrative assistant to the director, any one of whom may sign the return receipt.

h. Serving the vendor. The vendor may be served at home or at work, but only the vendor or the vendor's spouse can accept service. If the vendor designates a representative, the representative shall accept service on behalf of the vendor from the time the representative begins to act on the vendor's behalf. The representative may be served in the same manner the commission is served. The fact that a representative is accepting service for the vendor does not remove the requirement for service to be in the alternative medium as defined in this rule.

i. Disputes. If a dispute arises concerning the receipt of service, the hearing officer shall examine the documents showing service by the serving party, the intended recipient, and any other relevant evidence. Genuine disputes shall be resolved in favor of the person who states that a document was not received except that a document's being served and then lost at the commission shall not constitute failure of service. If the hearing officer finds that a document was not received, the schedule of proceedings shall be adjusted accordingly. If a party misses a deposition, production, or conference due to lack of service, the hearing officer shall fashion an appropriate remedy.

j. Sanctions. If the hearing officer determines that a party deliberately or negligently failed to serve another

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party who was harmed by the lack of service, the hearing officer shall fashion appropriate sanctions which may include granting some or all of the harmed party's relief.

**8.2(15) Referring to these rules.**

a. Official citation. These rules shall be published in the Iowa Administrative Code with each rule preceded by the agency number and followed by the appropriate Iowa Code section or Acts designation in parentheses.

b. Ordinary citation. During the course of a hearing proceeding in all oral and written statements, these rules may be referred to by simple designation, omitting the Iowa Code reference. For example, this paragraph may be referred to as subrule 8.2(15), paragraph "b."

c. Availability. To facilitate the availability and use of these rules, each vendor shall be provided with a copy in a designated medium and the library for the blind and physically handicapped shall have copies in all three media available for borrowing. These shall give the Iowa Administrative Code citation at the beginning and shall thereafter use the ordinary designation method described in subrule 8.2(15), paragraph "b."

This rule is intended to implement Iowa Code chapter 601C.

**CHAPTER 9****ADULT ORIENTATION AND ADJUSTMENT CENTER**

**423—9.1(601K) Function.** The adult orientation and adjustment center is a residential rehabilitation program which provides intensive instruction in alternative techniques of blindness and in development of positive attitudes about blindness. The adult orientation and adjustment center also carries out public relations and educational programs in an effort to gain public awareness and recognition of the ability of blind persons to be in the mainstream of society.

**423—9.2(601K) Eligibility.**

**9.2(1)** Enrollment in the adult orientation and adjustment center shall be limited to persons sixteen (16) years of age or older.

**9.2(2)** Clients of vocational rehabilitation services or independent living rehabilitation services shall be eligible for admission to the adult orientation and adjustment center as specified in their individual written rehabilitation plan.

**9.2(3)** Persons who remain in the caseloads of vocational rehabilitation or independent living programs in other states shall not be accepted as students in the adult orientation and adjustment center, unless a formal written request from the out-of-state agency is received and approved by the commission. Clients of out-of-state agencies will be enrolled only when doing so would not deny training to an otherwise eligible client of the commission.

**423—9.3(601K) General program policies.** Student use of dog guides will not be allowed during program activities of the adult orientation and adjustment center. However, users of dog guides shall otherwise have access to all commission facilities, subject to applicable state or federal laws and regulations.

These rules are intended to implement Iowa Code sections 601K.121 to 601K.127 (subchapter 8).

**CHAPTER 10****VOCATIONAL REHABILITATION SERVICES**

**423—10.1(601K) Function.** Vocational rehabilitation services assist clients to achieve their maximum potential in employment and everyday living.

**423—10.2(601K) Services.** Services may include, but are not limited to: evaluation of rehabilitation potential; counseling, guidance, and referral; physical and mental restoration; vocational and other training services; maintenance; transportation; services to other family members necessary for adjustment or rehabilitation of a blind person; interpreter services for the deaf-blind; rehabilitation teaching services; reader services; orientation and mobility services; telecommunications, sensory, and other technological aids and devices; recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement, and other appropriate public service employment; placement; postemployment services; occupational licenses, tools, equipment, initial stocks (including livestock) and supplies; acquisition of equipment; purchase and distribution of instructional or cultural materials to be used in training, employment, or cultural upgrading of a group of handicapped individuals; purchase and maintenance of equipment in connection with instructional materials; making available special tools, aids and devices to assist clients in achieving self-sufficiency; and provision of other goods and services considered beneficial to rehabilitation.

**10.2(1)** Joint planning between the client and the staff will be employed in the development of the individual written rehabilitation plan in order to determine which specific services will be most beneficial in achieving the client's full potential. The following factors may be taken into account in arriving at a decision as to what services will be provided: the constraints of the prevailing job market, the desires and capabilities of the client, and available resources.

**10.2(2)** Although there is no lower or upper age limit as a condition to receipt of vocational rehabilitation services, specific services to individuals may vary widely since each client's needs will be determined by the potential of services to assist the individual in achieving an appropriate level of independence, self-sufficiency and accomplishment. In determining specific services to be provided to any individual, professional judgment must necessarily be involved to a great extent.

**423—10.3(601K) State plan.** The state plan for vocational rehabilitation of the blind of Iowa is developed by the commission pursuant to federal regulations every three (3) years and submitted to the United States Department of Education, rehabilitation services administration. The plan delineates program goals and guidelines for expenditure of funds.

In accordance with section 361.18(b) of the federal regulations, reports of all statewide studies and a description of methods used to obtain and consider views on matters of public policy expressed by recipients and providers of service, along with those of others active in the field of vocational rehabilitation, are available to the public for review.

**423—10.4(601K) Eligibility.** Eligibility for vocational rehabilitation shall be determined upon the presence of two basic conditions: (1) the existence of blindness as

**BLIND, DIVISION FOR THE[423] (cont'd)**

defined in rule 1.3(601K), according to the examination of an approved licensed eye practitioner, which constitutes or results in a substantial handicap to employment; and (2) reasonable expectation that vocational rehabilitation services may render the individual fit to engage in a gainful occupation.

Eligibility will be determined in compliance with applicable federal and state laws prohibiting discrimination on the basis of age, race, creed, color, sex, national origin, religion, or disability.

**423—10.5(601K) Application procedures.** Persons desiring vocational rehabilitation services should contact the commission office and must complete the "Application for Rehabilitation Services" form.

**423—10.6(601K) Consideration of similar benefits.**

**10.6(1)** Full consideration is given to any similar benefits available to a blind person under any program (for example, workers' compensation, supplemental security income, social security disability insurance) to meet in whole or in part the cost of any vocational rehabilitation services provided to a person except (in accordance with federal regulations) for evaluation of rehabilitation potential; counseling, guidance, and referral; vocational and other training services, including personal and vocational adjustment training; books, tools, and other training materials; services to a member of a blind person's family; placement; and postemployment service necessary to assist blind persons in maintaining suitable employment. No training or training services in institutions of higher education (universities, colleges, community or junior colleges) shall be paid for with rehabilitation funds unless maximum efforts have been made to secure grant assistance in whole or in part from other sources to pay for the training or training services.

**10.6(2)** Full consideration is given to any similar benefit available under any other program to a blind person to meet, in whole or in part, the cost of physical and mental restoration services and maintenance provided to a blind person except where consideration would significantly delay the provision of services to an individual.

**10.6(3)** To the extent that an individual is eligible for similar benefits, they are utilized insofar as they are adequate and do not interfere with achieving the rehabilitation objective of the individual.

**10.6(4) Vocational training.**

a. Within limits imposed by funds available, the commission provides or causes to be provided the vocational training necessary for achievement of optimum vocational success. The extent and type of training will be agreed upon as part of a client's individualized written rehabilitation plan and approved by the program manager.

b. Clients sponsored by the commission in postsecondary education shall apply for scholarships and tuition grants in accordance with federal vocational rehabilitation policy. At a minimum, clients shall apply for federal and state grants and any other grants and scholarships available from the training institutions.

c. In the event that severe revenue shortages make budget reductions necessary, the commission may invoke a limitation on payment of tuition each semester for clients beginning postsecondary education for the first time after January 1, 1984, to a rate no greater than

the maximum tuition rate effective at institutions operated by the Iowa board of regents for each semester of the client's enrollment. When it is necessary to invoke this limitation with general notice to the public and to clients potentially affected, exceptions may be made in cases in which reasonable necessity for waiver can be demonstrated, the client's counselor recommends waiver, and the program manager approves the waiver before the client's enrollment. In no case, however, shall this rule be construed as discouragement of a client's attending private or out-of-state institutions when utilization of other available funds makes it possible to do so.

d. The individual written rehabilitation plan in effect at the time of enrollment shall include such items as books, tools, supplies, reader service, maintenance, and other necessary costs associated with postsecondary education.

**423—10.7(601K) Administrative review and fair hearing.**

**10.7(1)** Any applicant for or recipient of vocational rehabilitation services from the commission who is dissatisfied with a decision with regard to furnishing or denial of services may file a written request for review and redetermination of the decision. The program manager or designee shall review the matter within the time limitations imposed by applicable state or federal laws and regulations.

**10.7(2)** If differences are not settled by administrative review, an opportunity for fair hearing before the administrator or the administrator's designee shall be granted to any individual who is not satisfied with the results of the administrative review. Any applicant for vocational rehabilitation services shall be advised of the right to an administrative review and fair hearing if the application is denied or is not acted upon with reasonable promptness or if dissatisfied with any action arising out of the commission's provision of rehabilitation services. The hearing shall be held at a time and place convenient to the individual requesting it. The individual shall be notified in writing as to the time and place of the hearing within a reasonable time in advance of the hearing. The individual shall also be notified in writing of the right to be represented at the hearing by counsel or a friend, if desired, and the individual shall be so notified in time to have an adequate opportunity to prepare a case. At the hearing the individual and representative, if a representative is desired, will have an adequate opportunity for cross-examination and to present evidence on the appellant's behalf. The hearing shall be held before the administrator or the administrator's designee who, insofar as possible, has not taken part in the action under consideration. Authority to make the final decision based upon the record shall be exercised by the administrator and the responsibility shall not be delegated to any other officer or member of the staff. The verbatim transcript of the testimony and exhibits or an official report containing the substance of what transpired at the hearing, together with all papers and reports filed in the proceedings and the administrator's recommendation, shall constitute the exclusive record for decision and shall be available to the individual at any reasonable time. The decision shall set forth the issue, principle, and relevant facts brought out at the hearing, the pertinent provisions in law and in commission policy,

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and the reasoning that led to the decision. The individual shall be forwarded a copy of the decision or shall be advised in writing of the content.

**10.7(3)** When an individual being provided vocational rehabilitation services is dissatisfied with the final decision resulting from the fair hearing, the individual may request the United States secretary of education to review the decision. When this request is made, the secretary or the secretary's designee reviews the administrator's decision and makes recommendations to the administrator concerning action to be taken to resolve the issue. Within sixty (60) days of receiving these recommendations, the administrator shall advise the appellant and the secretary of the final disposition of the matter.

**10.7(4)** It is the policy of the commission to inform all applicants for or recipients of vocational rehabilitation services of the provisions set forth in this rule.

**423—10.8(17A) Forms.** The following forms are used by the vocational rehabilitation services program:

1. Application for rehabilitation services - used for application for vocational rehabilitation services from the commission. Also contains statement of compliance with the Civil Rights Act of 1964 and release of information form.

2. Individual written rehabilitation plan (IWRP) - used by the counselor and client to develop a blind person's program for rehabilitation. Printed on the form are the following statements: mutual agreement and understanding between client and counselor; commission's program responsibilities; client responsibilities; review and evaluation of progress toward objectives and goal; and client rights and remedies. In addition, the IWRP provides for mutual development of a vocational goal, intermediate objectives, summary of planned services, accepted criteria for review and evaluation purposes and client acceptance and response.

These rules are intended to implement Iowa Code sections 17A.3 and 601K.121 to 601K.127 (subchapter 8).

**CHAPTER 11  
INDEPENDENT LIVING REHABILITATION PROGRAM  
Reserved**

**CHAPTER 12  
FACILITIES**

**423—12.1(601K) Use of facilities—authorization.** The incidental or occasional use of commission facilities and equipment by public and private agencies, organizations, associations, or groups is permissible with the prior authorization of the administrator. The use of the commission building for meetings of groups of blind persons or other groups interested in the commission program or involving blind persons shall be approved by the administrator when the activity does not interfere with the conduct of the commission program.

**423—12.2(601K) Joint activities.** When use is expected to be continual, significant, and for purposes consistent with the statutory responsibilities of the commission, the commission and the one or more public or private agencies shall enter into an agreement pursuant to Iowa Code chapter 28E specifying any joint activities undertaken among the parties to the agreement, the

budget and manner of financing the undertaking and all other necessary and proper matters.

These rules are intended to implement Iowa Code sections 601K.121 to 601K.127 (subchapter 8).

**ARC 7488**

**ENERGY AND GEOLOGICAL RESOURCES[565]**

**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 §17A.4(1)\*b", Iowa Code.

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 93.7(10), the Department of Natural Resources gives Notice of Intended Action to amend Chapter 7 entitled "Energy Measures and Energy Audits Grant Programs for Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions," Iowa Administrative Code.

This chapter deals with energy audits grant programs for schools, hospitals, buildings owned by units of local government, and public care institutions. The amendments are to update the federal regulations reference and correct a typographical error and to change the persons who are qualified to act as energy auditors, particularly since Class A auditor training is no longer available in Iowa.

Any interested person may make written suggestions or comments prior to April 15, 1987. Such written materials should be directed to the Energy and Geological Resources Division, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319.

Persons who wish to convey their views orally should contact Diane Storms, 515/281-4876; or at the Department's offices on the fourth floor of the Wallace State Office Building. Also, there will be a public hearing on Wednesday, April 15, 1987, at 10 a.m. in the conference room on the fourth floor of the Wallace State Office Building, Des Moines, Iowa. Interested persons who wish to present their views orally or in writing at this hearing should contact Diane Storms at least one day prior to the public hearing.

These rules are intended to implement Iowa Code chapter 93 as amended by 1986 Iowa Acts, chapter 1245.

The following amendments are proposed.

ITEM 1. Amend subrule 7.1(1) as follows:

**7.1(1) Purpose and scope.** This chapter establishes requirements for the conduct of preliminary energy audits and energy audits, the qualifications of persons conducting them and allowable costs of energy audits. Preliminary energy audits and energy audits are required in the program of financial assistance for schools and hospitals and the program of financial assistance for units of local government and public care institutions, as provided under subpart B, part 455, chapter II of Title 10, Code of Federal Regulations: (1985).

## ENERGY AND GEOLOGICAL RESOURCES[565] (cont'd)

ITEM 2. Amend subrule 7.1(2), Definitions, as follows:  
 "School" means a public or nonprofit institution which:

1. (No change)
2. (No change)
3. Provides not less than a one (1)-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions cited in subdivisions (a), (b) and (c) of subparagraph "1 2" above; or
4. (No change)

ITEM 3. Amend subrule 7.5(3) as follows:

7.5(3) Qualifications of energy auditors.

a. All Iowa registered architects, Iowa registered engineers, ~~Class A energy auditors~~, ~~associate Class A energy auditors~~ and department approved energy management technicians are qualified as energy auditors for this program.

b. ~~Persons who are certified by the designated course instructor as having attended all phases of the energy audit workshop will be qualified as energy auditors for the building type workshop they attended.~~

(1) ~~Persons who attended the schools workshop are qualified to do energy audits for schools and local governments, and~~

(2) ~~Persons who have attended the hospitals workshop are qualified to do energy audits for hospitals and public care facilities.~~

b. ~~A person who wishes to be approved as an energy auditor by the department should send credentials for review by the engineering staff. The minimum qualifications for approval are completion of a two (2)-year training program at a technical school or four (4) years' experience.~~

- c. (No change)
- d. (No change)
- e. (No change)

a processing fee since no federal matching funds are appropriated for this purpose. Other states have similar provisions, and the U. S. Department of Energy has consented to this practice. Subrule 8.6(3)"a" changes the way the energy use index formula is stated but does not actually change the formula. Subrule 8.6(4) revises the ranking criteria in that paragraph "a" reduces the weight of payback in the ranking criteria; paragraph "b" reduces the emphasis on solar energy; paragraph "c" increases the emphasis on quantity of energy savings; paragraph "d" eliminates points for types of fuel and increases the technical assistance quality score; and paragraph "e" simply clarifies former paragraph "f." Subrule 8.7(1)"a" increases the maximum grant from seven to fifteen percent of the total allocation to the state for the application cycle in grants in excess of \$50,000. Rule 8.8(93) eliminates the reference to Class A energy auditors as that classification has been eliminated.

Any interested person may make written suggestions or comments prior to April 15, 1987. Such written materials should be directed to the Energy and Geological Resources Division, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319.

Persons who wish to convey their views orally should contact Diane Storms, 515/281-4876; or at the Department's offices on the fourth floor of the Wallace State Office Building. Also, there will be a public hearing on Wednesday, April 15, 1987, at 10 a.m. in the Conference Room on the fourth floor of the Wallace State Office Building, Des Moines, Iowa. Interested persons who wish to present their views orally or in writing at this hearing should contact Diane Storms at least one day prior to the public hearing.

These rules are intended to implement Iowa Code chapter 93.

The following amendments are proposed.

ITEM 1. Amend rule 565—8.1(93) as follows:

565—8.1(93) **General.** The technical assistance and energy conservation measures programs are steps two (2) and three (3) of the three (3)-step energy audit and conservation program that is partially funded by the United States Department of Energy. The department rules for step one (1) of this program are in chapter 7. The federal regulations for this program are in 10 C.F.R. 455 and 450: (1985).

ITEM 2. Amend subrule 8.2(2), paragraph "c," as follows:

c. All applications will use the following conversion factors when calculating Btu content of fuels:

Natural gas	<del>1,030</del> 1,000 Btu's per cubic foot;
Distillate fuel oil	<del>138,690</del> 130,000 Btu's per gallon;
Residual fuel oil	<del>149,690</del> 150,000 Btu's per gallon;
Coal	<del>29,000,000</del> 22,000,000 Btu's per standard short ton;
LP gases	95,475 95,000 Btu's per gallon;
Steam	1,050 1,000 Btu's per pound;
Electricity	3,413 Btu's per kilowatt-hour.

ITEM 3. Amend subrule 8.3(1), paragraph "f," as follows:

f. Demonstrate that the simple payback period of each energy conservation measure for which financial assistance is requested is not less than two (2) years nor greater than ten (10) years, and the estimated useful life

ARC 7489

## ENERGY AND GEOLOGICAL RESOURCES[565] 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 93.7(10), the Department of Natural Resources gives Notice of Intended Action to amend Chapter 8 entitled "Technical Assistance and Energy Conservation: Grant Programs for Schools and Hospitals and for Buildings Owned by Units of Local Government and Public Care Institutions," Iowa Administrative Code.

This chapter deals with grant programs for schools and hospitals in connection with technical assistance and energy conservation measures programs and energy audits that are partially funded by the U. S. Department of Energy. Certain correction of errors and technical corrections are made in these amendments, as well as a change in the federal regulations of conversion factors set forth in subrule 8.2(2)"c." Rule 8.4(93) provides for

## ENERGY AND GEOLOGICAL RESOURCES[565] (cont'd)

of the measure is not greater than its simple payback period.

ITEM 4. Amend rule 565—8.4(93) as follows:

**565—8.4(93) Grant application submittals.** All applications for grants must be completed with assistance of energy bureau staff. *Within thirty (30) days of the department's recommendation to the U. S. Department of Energy, the applicant must remit to the department a processing fee of five percent (5%) of the total amount of the application. If the applicant does not receive a grant, the fee will be returned.*

ITEM 5. Amend subrules 8.6(3), 8.6(4), and 8.6(7) as follows:

**8.6(3) Technical assistance ranking criteria.** For technical assistance, the following factors are considered in ranking:

a. An energy use index, according to the formula:  
 $(EUI/10) \times 4$  points;  $EUI \times 0.40$  points,  
 where EUI is yearly energy requirements of the building in BTUs/ft<sup>2</sup> degree-day · yr. When EUI is greater than 50, the value used for EUI will be 50. When EUI is less than 10, the value used for EUI will be 10.

b. to g. (No change)

**8.6(4) Energy conservation measure ranking criteria.** For energy conservation measures, the following factors are considered in ranking:

a. The average simple payback period (ASPP) of all energy conservation measures for the building, according to the formula:

$(\pm 10 - ASPP) \times 3/4$  points,  
 where ASPP is the total estimated cost of all energy conservation measures divided by the total annual estimated energy cost savings.

b. For renewable and coal conversions, estimated energy cost savings will be based on the fuel replaced, according to the formula:

$SI/2$ ,  
 where SI is the percentage of total renewable annual energy displaced (BTU) by the renewable project related to the existing annual energy consumption (BTU).

$SI = \text{renewable savings} : \text{annual consumption}$   
 b. The type of energy source to which conversion is proposed, according to the formulas:

$(SI + 20)/4$  for renewable resources;  
 $(SI + 20)/8$  for coal;

where SI is the percentage of total annual energy costs that will be saved by conversion. The upper limit for SI is ninety-six percent (96%).

c. The annual nonrenewable energy savings, according to the formula:

$QSI \times 4/2$  points,  
 where QSI is the percentage of annual energy requirements (in BTUs) estimated to be saved from all ECMs combined, related to the existing annual energy consumption (BTU), multiplied by 10. When the percentage is greater than or equal to 50 60 percent, the value used for QSI will be 50 60 percent. The maximum point range for this factor is then 0-20 30.

d. The type of energy saved, according to the sum of the formulas:

Oil	R × 20 points
Gas	R × 15 points
LPG	R × 15 points
Electricity	R × 15 points
Other	R × 10 points

where R is the ratio of the net energy savings of that type of the gross energy savings for the building.

e d. Technical assistance quality will be measured for a maximum of 5 8 points, using the following criteria as follows:

(1) All forms are complete and correct (technical assistance report, building energy use worksheet) = 1-6 points.

(2) A minimum of 12 operation and maintenance procedures are addressed/discussed = 1-7 points.

(3) A minimum of 8 energy conservation measures are listed = 1-7 points.

The point range is 0 to 5 points:

(1) General	0.8 points
(2) Descriptions	5.1 points
(3) Analysis	1.9 points
(4) Report format	0.2 points
	8.0 Total

Complete written details may be obtained by contacting the department.

f e. If an application is withdrawn within after two (2) months of the application deadline, that building will be penalized 5 points on each their application for the next cycle. Exception will be granted if there has been a change in the institution's intention to close or dispose of the building, a catastrophe or natural accident occurs, or other unforeseen or uncontrollable events occur.

**8.6(7) State recommendations.** The department will recommend to the U. S. Department of Energy the amount of the grant moneys which an applicant for technical assistance or energy conservation measures should receive. *Within thirty (30) days of the department's recommendation to U. S. Department of Energy, the applicant must remit to the department a processing fee of five percent (5%) of the total amount of their application. If the applicant does not receive a grant, the fee will be returned.*

a. (No change)

b. (No change)

ITEM 6. Amend subrule 8.7(1), paragraph "a," as follows:

a. ECM applications will have a funding limit if the grant requested is in excess of \$50,000. This limit is seven fifteen percent (15%) of the total allocation to the state for the application cycle.

ITEM 7. Amend rule 565—8.8(93) as follows:

**565—8.8(93) Technical assistance analysts.** In order to qualify for a technical assistance analyst, a person must:

1. Be a certified Class A energy auditor as prescribed in chapter 6 of these rules; or

2 1. Be a registered engineer, as defined in Iowa Code chapter 114, Code of Iowa or in the case of an architect, be registered in accordance with Iowa Code chapter 118, Code of Iowa and be a part of an architect-engineer team; and be knowledgeable and experienced in energy conservation matters.

3 2. As of January 1986, the department will select a number of technical analysts to serve all institutional grantees. The selection will occur annually. Selection of qualified analysts will be based on criteria including past performance, qualifications, availability and cost.

Rules 8.1(93) to 8.8(93) are intended to implement Iowa Code section 93.7, as specified by 10 C.F.R. 455.90, April 30, 1985.

ARC 7486

## HUMAN SERVICES DEPARTMENT[441]

### 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)<sup>b</sup>.

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 225C.4 and 227.4, the Department of Human Services proposes to adopt Chapter 37, "Standards for the Care of and Services to County Care Facility Residents with Mental Illness and Mental Retardation," Iowa Administrative Code.

This amendment establishes standards for the care and services for mentally ill and mentally retarded residents of county care facilities. Areas covered by the standards include admission and discharge policies and procedures, annual evaluations of all residents, individual program planning and service coordination, confidentiality, staff training, and residents' safety.

The Sixty-ninth General Assembly, in 1981 Iowa Acts, chapter 78, section 34, [Iowa Code section 227.4] directed the Division of Mental Health, Mental Retardation, and Developmental Disabilities in cooperation with the Department of Public Health to recommend, and the Mental Health and Mental Retardation Commission to adopt, standards for the care of and services to mentally ill and mentally retarded persons in county care facilities. The Seventy-first General Assembly in 1985 Iowa Acts, chapter 122, sections 1 and 2, [Iowa Code sections 225C.4(1)<sup>s</sup>, 227.4] clarified that the standards are to be enforced by the Department of Inspections and Appeals as a part of their licensure inspection.

The objective of the standards as stated in the Iowa Code is to ensure that mentally ill and mentally retarded residents of county care facilities are not only adequately fed, clothed, and housed, but are also offered reasonable opportunities for productive work and recreational activities suited to their physical and mental abilities and offering both a constructive outlet for their energies and, if possible, therapeutic benefit.

The Department was assisted in the development of these rules by an advisory committee which consisted of county care facility administrators, county care facility care review committee members, and county supervisors serving on mental health and mental retardation coordinating boards. Counties may object to these standards because of the cost of implementing the standards. Also, the law requires county care facilities to meet these standards, but private health care facilities are not required to meet the standards. Comments may also be received from those who believe that the protections offered by the standards should not be limited to the mentally ill and mentally retarded, but should apply to all residents in county care facilities.

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 15, 1987.

Oral presentations may be made by appearing at the following meeting. Written comments will also be accepted at that time. Anyone wishing to do so may write the above address or telephone 515-281-3758 to make arrangements to participate in the following meeting at a local office through use of the Department's central information delivery system.

Des Moines - April 15, 1987 1 p.m.

Conference Room - First Floor

Hoover State Office Building

Des Moines, Iowa 50319-0114

These rules are intended to implement Iowa Code sections 225C.4, 227.2(4), and 227.4.

Adopt 441—Chapter 37 as follows:

#### CHAPTER 37 STANDARDS FOR THE CARE OF AND SERVICES TO COUNTY CARE FACILITY RESIDENTS WITH MENTAL ILLNESS AND MENTAL RETARDATION

##### Preamble

This chapter establishes standards for the care of and services to persons with mental illness and mental retardation who live in county care facilities. A county care facility is a health care facility that is owned and operated by a county. Like all health care facilities, a county care facility must be licensed by the department of inspections and appeals. The standards in this chapter are in addition to the regulations a county care facility must meet in order to be licensed as a health care facility.

This chapter also contains standards for an annual evaluation of each resident. The annual evaluation is to be completed for every resident of a county care facility. All other standards for services apply only to residents in the facility with mental illness and mental retardation. Standards for services to other residents of the county care facility are beyond the authority of this chapter.

All standards in this chapter apply only to the publicly owned county care facilities. Standards for services to persons with mental illness and mental retardation who live in health care facilities that are operated in the private sector are also beyond the authority of this chapter.

The standards in this chapter will be enforced as part of the health care facility licensure survey.

##### 441—37.1(227) Definitions.

"Academic services" are those activities provided to assist a person to acquire general information and skills which establish the basis for subsequent acquisition and application of knowledge.

"Age-appropriate" refers to activities, settings, and personal appearance and possessions commensurate with the person's chronological age.

"Commission" means the mental health and mental retardation commission.

"Community living skills training services" are those activities provided to assist a person to acquire or sustain the knowledge and skills essential to the person's independent functioning to the person's maximum potential in the physical and social environment. These services may focus on the following areas:

1. Independent living skills are those skills necessary to sustain oneself in the physical environment and are essential to the management of one's personal property and business. This includes self-advocacy skills.

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

2. Socialization skills include self-awareness and self-control, social responsiveness, group participation, social amenities, and interpersonal skills.

3. Communication skills include expressive and receptive skills in verbal and nonverbal language including reading and writing.

4. Leisure time and recreational skills include the skills necessary for a person to use leisure time in a manner which is satisfying and constructive to the person.

5. Parenting skills are those skills necessary to meet the needs of the person's child. (This service is designed to assist the person with disabilities to acquire or sustain the skills necessary for parenting.)

"Developmental disability" means a severe, chronic disability which:

1. Is attributable to a mental or physical impairment or a combination of mental and physical impairments.

2. Is manifested before a person attains the age of twenty-two (22).

3. Is likely to continue indefinitely.

4. Results in substantial functional limitations in three (3) or more of the following areas of life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency.

5. Reflects a person's need for a combination and sequence of services which are of lifelong or extended duration.

"Division" means the division of mental health, mental retardation, and developmental disabilities of the department of human services.

"Evaluation services" are those activities designed to identify a person's current functioning level and those factors which are barriers to maintaining the current level or achieving a higher level of functioning. These activities provide sufficient information in order to identify appropriate services, service settings, and living arrangements necessary to assist the person to maintain the current level or achieve a higher level of functioning. These services may focus on the following:

1. Screening which is the identification of the possible existence of conditions, situations or problems which are barriers to a person's ability to function.

2. Diagnosis which is the investigation and analysis of the cause or nature of a person's condition, situation or problem.

3. Evaluation which is the determination of the effects of a condition, situation or problem on a person's level of functioning and the provision of sufficient information to identify the appropriate services, service settings, and living arrangements to assist the person to maintain or achieve a higher level of functioning.

"Individual program plan" means a written plan for the provision of services to the resident that is developed and implemented using an interdisciplinary process, that is based on a resident's functional status, strengths and needs, and which identifies service activities designed to enable a person to maintain or move toward independent functioning. The plan is developed in accordance with the developmental model, which is a service approach that recognizes and assumes the potential for positive change, growth and sequential development in all people.

"Individual service plan" means an analysis by a referral agency of the general type of program needed by a person which includes the identification of services

and types of living arrangements appropriate to the person's level of functioning and needs.

"Interdisciplinary team" means the group of persons who develop a single, integrated individual program plan to meet the resident's needs for services. The interdisciplinary team consists of, at a minimum, the resident, the resident's legal guardian, if applicable, referral agency representative, the service coordinator, other appropriate staff members, other providers of services, and other persons relevant to the resident's needs.

"Least restrictive environment" means the availability to the person of programs, services, and settings that give the greatest opportunity (1) for human development; and (2) to associate with and become part of the general society.

"Legal services" are those activities designed to assist the person in exercising the person's constitutional and legislatively enacted rights.

"Mental health professional" means a person who is one of the following and one who holds a current license:

A psychiatrist, psychologist, social worker, psychiatric nurse or mental health counselor; or

A doctor of medicine or osteopathic medicine or a person who has at least a master's degree or its equivalent with course work focusing on diagnosis and evaluation and treatment of mental health problems and mental illness, and who has two (2) years of supervised experience in providing mental health services; or

An employee of a community mental health center or mental health service provider accredited by the commission and who has less than a master's degree but at least a bachelor's degree and sufficient training and experience as determined by the chief administrative officer with the approval of the commission with course work and experience focusing on diagnosis and evaluation and treatment of persons with mental health problems and mental illness.

Psychiatrist, psychologist, social worker, psychiatric nurse, and mental health counselor as used in this definition mean the following:

1. "Psychiatrist" means a doctor of medicine or osteopathic medicine and surgery who is certified by the American Board of Psychiatry and Neurology or who has the documented equivalent in education, training and experience and who is fully licensed to practice medicine in the state of Iowa.

2. "Psychologist" means a person who is licensed to practice psychology in the state of Iowa, or who is certified by the department of public instruction as a school psychologist, or who has the documented equivalent education, training and experience for the above licensure or certification, or who meets the requirements for eligibility for a license to practice psychology in the state of Iowa that were effective prior to July 1, 1985.

3. "Social worker" means a person who is licensed to practice social work in the state of Iowa, or who has the documented equivalent education, training and experience.

4. "Psychiatric nurse" means a person who meets the requirements of a certified psychiatric-mental health nurse practitioner pursuant to board of nursing rules 590—chapter 7, or has the documented equivalent education, training and experience.

5. "Mental health counselor" means a person who is certified or eligible for certification as a mental health counselor by the National Academy of Certified Clinical Mental Health Counselors.

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

"Mental illness" is a substantial disorder of thought or mood which significantly impairs judgment, behavior, or the capacity to recognize reality or the ability to cope with the ordinary demands of life. Mental disorders include the organic and functional psychoses, neuroses, personality disorders, alcoholism and drug dependence, behavioral disorders and other disorders as defined by the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.

"Mental retardation" refers to significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the development period.

1. General intellectual functioning is defined as the results obtained by assessment with one (1) or more of the individually administered general intelligence tests developed for the purpose of assessing intellectual functioning.

2. Significantly subaverage functioning is defined as approximately seventy (70) intelligence quotient (IQ) or below.

3. Adaptive behavior is defined as the effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected for age and cultural group.

4. Developmental period is defined as the period of time between conception and the eighteenth birthday.

"Mental retardation professional" is (1) a person who has a degree from an accredited four (4)-year college or university in one of the following fields: behavioral sciences, education, health care, human service administration, social sciences; who holds a current license when required by law; and who has one (1) year of experience in evaluating the needs of, and in planning and implementing services for persons with mental retardation; or (2) a licensed registered nurse who has had at least three (3) years of experience in evaluating the needs of, and in planning and implementing services for persons with mental retardation.

"Normalization" means helping persons, in accordance with their needs and preferences, to achieve a life-style that is consistent with the norms and patterns of general society and in ways which incorporate the age-appropriate and least restrictive principles. Indicators of normalization include, but are not limited to the following: access to, use of, and interaction with community professional, social and recreational resources, businesses and public services; typical schedules for work or school, mealtimes and leisure activities; freedom of choice and movement; typical dress, personal appearance and personal possessions, and social and sexual behavior; opportunities for interacting in a group of a size and composition that reduces the likelihood of the group as being seen by the community as different or negative; opportunities to face risks which are a typical part of normal growth and development such as the use of electrical appliances, cleaning supplies, cooking facilities, and public transportation (to the extent current licensure rules for health care facilities will allow); opportunities for being related to as an individual as opposed to a member of a group.

"Resident" means a person who has been admitted to the facility to receive care and services.

"Self-care training services" are those activities provided to assist a person to acquire or sustain the knowledge, habits and skills essential to the daily needs

of the person. The activities focus on personal hygiene, general health maintenance, mobility skills, and other activities of daily living.

"Service coordination services" are those activities provided to assure that sufficient information has been obtained to identify appropriate services and service settings, to provide assistance to a person in obtaining appropriate services and living arrangements, to coordinate the delivery of services, and to provide monitoring to assure the continued appropriate provision of services and the appropriateness of the living arrangement. This service includes personal advocacy activities which assist the person to realize the rights to which the person is entitled and remove barriers to meeting the person's needs. (This service is also known as case management.)

"Service coordinator" is the person designated to be responsible for coordinating the development and continued monitoring of the person's individual program plan and the delivery of all services. (This person is also known as a case manager.)

"Substance abuse" means the use of chemical substances by a person to the extent that the person's health is substantially impaired or endangered or that the person's social or economic functioning is substantially disrupted.

"Support services" are those activities provided to or on behalf of a person in the areas of personal care and assistance and property maintenance in order to allow a person to live in the least restrictive environment.

"Transportation services" are those activities designed to assist a person to travel from one place to another to obtain services or carry out life's activities.

"Treatment services" consists of those services designed to assist a person to maintain or improve physical, emotional and behavioral functioning and to prevent conditions that would present barriers to a person's functioning. These services may focus on the following:

1. Psychotherapeutic treatment which are those activities designed to assist a person in the identification or modification of beliefs, emotions, attitudes, or behaviors in order to maintain or improve the person's functioning in response to the physical, emotional and social environment.

2. Physical or physiological treatment which are those activities designed to prevent, halt, control, relieve or reverse symptoms or conditions which interfere with the physical or physiological functioning of the human body.

"Vocational training services" are those activities designed to familiarize a person with production requirements and to maintain or develop the person's ability to function in a work setting. This service includes activities which allow or promote the development of skills, attitudes and personal attributes appropriate to the work setting.

"Written, in writing or recorded" means that an account or entry is made in a permanent form.

**441—37.2(227) Applicability.** These rules shall apply to all mentally ill and mentally retarded residents of county care facilities. In addition, the rule for evaluation services, 37.4(227), with the exception of subrule 37.4(5), shall apply to every resident. These rules are supplemental to any rules the facility must meet for licensure by the department of inspections and appeals in

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

accordance with Iowa Code chapter 135C, health care facilities.

**441—37.3(227) Preadmission and admission.** The facility shall have written preadmission and admission policies and procedures to address each of the following:

**37.3(1) Admission criteria** to include the definition of admission and description of the population to be served (i.e. age, type of disability or presenting problem, types of service needs, etc.).

**37.3(2) Waiting lists and selection priorities.**

**37.3(3) The requirement that each resident shall have a current evaluation pursuant to rule 37.4(227).**

**37.3(4) The requirement that a preplacement visit is completed, except in the case of an emergency admission, for all persons seeking admission to the facility to familiarize the applicant with the facility and services offered.**

The policies and procedures may allow for waiving the requirement that a preplacement visit be completed when the completion of the visit would create a hardship for the person seeking admission. If the distance to be traveled makes it impossible to complete the visit in an eight (8)-hour day, this may be considered to cause a hardship.

a. The requirement to complete a preplacement visit may only be waived with the approval of the person seeking admission or the person's legal guardian.

b. When a person is admitted who has not completed a preplacement visit, the facility shall maintain documentation in the resident's file which specifies the reason the visit was not completed and which shows evidence that the person, or person's legal guardian, agreed to waive the requirement.

c. A person who is unable to complete a preplacement visit shall have the opportunity to receive written and other forms of information which describes the facility and services offered.

**441—37.4(227) Evaluation services.** Evaluation services shall be provided to each resident. An annual evaluation of each resident shall be completed within thirty (30) days after the resident's admission and no less than annually thereafter. For residents who are on leave from a state hospital-school or mental health institution, the hospital-school or institution shall be responsible for the completion of the evaluation. The facility shall assure the completion of the evaluation of all other residents. The evaluation shall identify the resident's current physical health and the resident's current level of functioning and need for services.

**37.4(1) The portion of the evaluation to identify the resident's current physical health shall meet the following requirements:**

a. Include, but need not be limited to, an evaluation of the following areas or systems:

- (1) Head, ears, eyes, nose, throat.
- (2) Hearing.
- (3) Vision.
- (4) Dentition.
- (5) Respiratory.
- (6) Cardiovascular.
- (7) Gastrointestinal.
- (8) Genitourinary.
- (9) Dermatologic.
- (10) Musculoskeletal.
- (11) Nutrition and hydration.
- (12) Personal hygiene.

(13) Current medication regime.

(14) Immunizations.

b. Result in identification of current illness and disabilities and recommendations for treatment and services.

c. Include an evaluation of the resident's ability for health maintenance.

d. Be performed by a medical doctor or doctor of osteopathic medicine who holds a current license to practice medicine in the state of Iowa or if the evaluation is completed out of state by a physician who holds a current license in the state in which the evaluation is performed.

**37.4(2) The portion of the evaluation to identify the resident's current functioning level and need for services shall meet the following requirements:**

a. Identify the resident's level of functioning and need for services in each of the following areas:

- (1) Self-care skills.
- (2) Community living skills.
- (3) Treatment.
- (4) Vocational skills.
- (5) Academic skills.

b. Be of sufficient detail to determine the appropriateness of the resident's placement according to the skills and needs of the resident.

c. Be made without regard to the availability of services.

d. Be performed by a mental health professional or mental retardation professional, as is appropriate to the resident being evaluated, in consultation with the resident's interdisciplinary team. The facility shall ensure that representatives from appropriate professions, disciplines and service areas are available to complete evaluation activities as needed by the mental health professional or mental retardation professional.

e. If the facility does not employ a mental health professional or mental retardation professional, the facility shall enter into an agreement with a person who meets the qualifications.

(1) The agreement shall specify the following: the role and responsibilities of the facility and person, including the service activities to be provided; that services will be provided in accordance with the standards of this chapter; the rate and method of payment; and that the resident's legal and human rights will be protected.

(2) There shall be provisions for monitoring, modifying and terminating the agreement.

(3) The agreement shall be evaluated and renewed annually.

**37.4(3) Information from other sources may be used in the evaluation provided the information meets the requirements of subrules 37.4(1) and 37.4(2).**

**37.4(4) Results of all evaluations shall be in writing and maintained in the resident's record. Evaluations subsequent to the initial evaluation shall be performed in sufficient detail to determine changes in the resident's physical health, skills and need for services.**

**37.4(5) The facility shall have written procedures for obtaining additional evaluation services for residents when indicated by the results of the annual evaluation or recommended by the interdisciplinary team. The procedures shall provide for assurances that the service is delivered by or under the direction of a qualified or licensed professional as applicable to the type of evaluation being performed.**

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

**441—37.5(227) Service coordination, social history, and individual program plan.**

37.5(1) Service coordination services shall be provided to each resident. Services shall be provided by or under the immediate supervision of a person who has at least a bachelor's degree in the behavioral or social sciences, health services, or special education and a minimum of three (3) years of experience in the administration or delivery of human services.

a. A service coordinator shall be designated for each resident. The facility shall specify in written policies and procedures the qualifications required of the service coordinator.

(1) Minimal qualifications shall include a bachelor's degree from an accredited college or university in the behavioral sciences, education, health care, human service administration or the social sciences, and one year of postdegree experience in the delivery, planning, coordination or administration of human services or; a high school diploma (or its equivalent) and five (5) years of postdegree experience in the delivery, planning, coordination or administration of human services or; a combination of post-high school experience in the delivery, planning, coordination or administration of human services and post-high school education in the social or behavioral sciences which totals five (5) years. One of the five (5) years must be experience.

(2) In addition to required monthly in-service training, the service coordinator shall annually complete one (1) continuing education unit or ten (10) hours of equivalent training in the social or behavioral science field or in the area of the planning, coordination, delivery, or administration of human services.

b. The service coordinator shall be responsible for the coordination of services to the resident to include coordination of the following:

(1) Social history development pursuant to subrule 37.5(2).

(2) Individual program planning pursuant to subrule 37.5(3) and to ensure availability, implementation, and coordination of services delivered by other providers.

(3) Transfer or discharge pursuant to rule 37.6(227).

(4) Any other activities needed to provide service coordination services as defined.

37.5(2) A social history shall be completed for each resident.

a. The service coordinator shall be responsible for securing or compiling a social history on each resident within thirty (30) days of the resident's admission.

b. If the social history was secured from another provider, the information contained therein shall be reviewed within thirty (30) days of the resident's admission. The date of the review, signature of the staff reviewing the history and summary of significant changes to the information shall be entered in the resident's record.

c. An annual review of the information contained within the social history shall be incorporated within the individual program plan process.

(1) Significant changes to the information shall be noted and documented in an addendum to the social history, dated and signed by the person writing the addendum.

(2) The coordination of all reviews shall be the responsibility of the service coordinator.

d. The social history shall minimally address the following areas:

(1) Referral source and reason for admission.

(2) Legal status of the resident.

(3) A description of previous living arrangements.

(4) A description of previous services received and a summary of current service involvements.

(5) A summary of significant medical conditions, including, but not limited to illnesses, hospitalizations, past and current drug therapies and special diets.

(6) Substance abuse history.

(7) Work history.

(8) Educational history.

(9) Relationship with family, significant others, and other support systems.

(10) Cultural and ethnic background and religious affiliation.

(11) Hobbies and leisure time activities.

(12) Likes, dislikes, habits, and patterns of behavior.

37.5(3) An individual program plan (IPP) for each resident shall be developed by an interdisciplinary team. The IPP shall be approved by the mental health or mental retardation professional who is responsible for the annual evaluation of the resident. The IPP shall be based on the individual service plan of the referring agency, if available, the information contained in the social history, the need for services identified in the evaluation, and any other pertinent information. The facility shall ensure that academic, community living skills training, legal, self-care training, support, transportation, treatment and vocational training services are available to the resident as needed. The facility may deliver the needed services or use services from other providers. Services to the resident shall be provided in the least restrictive environment and shall incorporate the principle of normalization. If needed services are not available and accessible to the resident, the facility shall document the actions which were taken to locate and access or deliver those services. The documentation shall include the identification of the type of needs which will not be met due to the lack of availability of services.

a. The service coordinator shall be responsible for coordinating the development, implementation and review of the IPP.

b. The IPP shall be developed within thirty (30) days following the resident's admission to the facility and at least annually thereafter.

(1) The IPP shall be in writing, dated, signed by the participating interdisciplinary team members and the mental health or mental retardation professional approving the plan, and maintained in the resident's record.

(2) Written notice of the IPP development shall be sent to all persons to be included in the interdisciplinary team two (2) weeks in advance of the scheduled meeting.

c. The IPP shall include the following:

(1) Goals, which are general statements of attainable, expected accomplishments to be achieved in meeting identified needs.

(2) Objectives, which are specific and time-limited statements of outcomes or accomplishments which are necessary for progress toward the goal.

(3) The specific service(s) to be provided to achieve the objectives, the person(s) or agency(ies) responsible for providing the service(s), and the date of initiation and anticipated duration of service(s).

d. The IPP shall state the evaluation procedure for determining if objectives are achieved which shall

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

include the incorporation of a continuous process for review and revision.

(1) There shall be a review of the IPP by the service coordinator, relevant staff and the resident at least semiannually.

(2) The review shall include the development of a written report which addresses the following: summary of the resident's progress toward objectives; the need for continued services and any recommendation concerning alternative services or living arrangements; any recommended change in guardianship or conservatorship status, if applicable. The report shall reflect those involved in the review and the date of the review, and shall be maintained in the resident's record.

(3) The review shall be approved by the mental health or mental retardation professional who is responsible for approving the IPP.

e. There shall be procedures for recording the activities of each service provider toward assisting the resident in achieving the objectives in the IPP and the resident's response, and which shall include a mechanism for coordination with all service providers.

(1) An entry into the resident's record shall be made by staff whenever possible at the time of service provision but no later than seven (7) days from service provision.

(2) Entries shall be dated and signed by the person providing the service.

(3) When the service includes ongoing activities occurring more than once a week, a summarized entry may be made weekly by staff in the resident's record.

(4) Entries shall reflect objective and subjective observations and specific activities relating to the resident. Entries that involve subjective interpretations of a resident's behavior or progress shall be clearly identified as such and shall be supplemented with the specific information which served as the basis of the interpretation.

(5) The service coordinator shall obtain quarterly verbal or written progress reports from other service providers and this information shall be entered in the consumer's record.

**441-37.6(227) Transfer and discharge.** Each facility shall have written policies and procedures regarding transfer of a resident to another facility or program or discharge from the facility.

**37.6(1)** The policies and procedures shall provide for assurances that any transfer or discharge is in the best interest of the resident and that the resident's needs will be met by the transfer or discharge in the least restrictive manner as defined by the resident's needs. See also department of public health rules 470-57.13(2)"c," 57.36(135C), 58.12(2)"c," 58.40(135C), 63.13(2)"c," 63.34(135C), 64.17(8), 64.17(9), and 64.46(135C).

**37.6(2)** The procedures shall ensure that discharge planning is incorporated within the individual program plan development and review process.

**37.6(3)** The policies and procedures shall incorporate a mechanism providing for continuity of services to the resident upon transfer or discharge.

**441-37.7(227) Release of confidential information.** No information personally identifying the resident shall be requested or released without the written consent of the resident or legal guardian.

**37.7(1)** The resident has the right to refuse to give the release of information.

**37.7(2)** A release of information form shall be used which includes to whom the information shall be released, what is to be released, the reason for the information being released and how the information is to be used, and the period of time for which the release is in effect.

**37.7(3)** Exceptions shall be permitted only for disclosures required by law, bona fide medical and psychological emergencies, and facility licensure purposes. (See also department of public health rules 470-57.35(5), 57.40(135C), 58.39(5), 58.44(135C), 63.33(5), 63.38(135C), 64.45(5), and 64.50(135C), and commission on aging rule 20-4.2(5).)

**441-37.8(227) Staff training.**

**37.8(1)** The facility's staff training program shall include training:

a. In the concept of interdisciplinary individual program planning and staff's role in its development and implementation.

b. Concerning the basic needs of all people and the additional needs of persons with mental retardation, developmental disabilities, mental illness, and substance abuse problems.

c. In providing services in the least restrictive environment and that incorporate the principle of normalization.

d. Concerning the rights and responsibilities of residents.

**37.8(2)** The training required in subrule 37.8(1) shall apply to all staff having direct contact with the residents of the facility. The administrator, through written policy and procedures, may designate other staff and volunteers to participate in the training.

**37.8(3)** The training schedule shall be designed to allow for new staff to receive the required training and to allow for continuing education and training to all staff to increase their knowledge and skills in areas identified in subrule 37.8(1).

**37.8(4)** The training shall be delivered by persons qualified by education or experience in the area of training.

**37.8(5)** A record of the training completed shall be kept in the employee's personnel file.

**441-37.9(227) Resident safety.** Each facility shall make available to staff, through the staff training program, training in basic first aid, and cardiopulmonary resuscitation (CPR) and foreign body obstruction of the airway. At least one (1) staff member shall be on duty at all times who is certified in CPR and basic first aid.

**441-37.10(227) Report to division.** The county care facility shall be required to submit an annual statistical report to the division at the division's request for use in state planning.

**441-37.11(227) Implementation of the rules.** The rules shall be implemented during state fiscal year 1989 with the exception of rule 37.8(227) which shall be implemented during state fiscal year 1988. The facility shall be in compliance with all rules in this chapter no later than July 1, 1989.

## NOTICE — INSURANCE

### NOTICE OF PUBLISHED MONTHLY AVERAGE FOR INTEREST RATES ON LIFE INSURANCE POLICY LOANS

Pursuant to Iowa Code section 511.36, notice is hereby given that the Commissioner of Insurance has determined that "published monthly average" for December of 1986 is 9.23%. This rate corresponds to Moody's corporate bond yield average—monthly average corporates as published in Moody's Investors Services, Inc. This rate was effective March 1, 1987.

## NOTICE — INSURANCE

### NOTICE OF PUBLISHED MONTHLY AVERAGE FOR INTEREST RATES ON LIFE INSURANCE POLICY LOANS

Pursuant to Iowa Code section 511.36, notice is hereby given that the Commissioner of Insurance has determined that "published monthly average" for January of 1987 is 9.04%. This rate corresponds to Moody's corporate bond yield average—monthly average corporates as published in Moody's Investors Services, Inc. This rate will be effective April 1, 1987.

## ARC 7480

## IOWA FINANCE AUTHORITY[524]

### 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 §17A.4(1)"b", Iowa Code.

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 220.111(7), the Iowa Finance Authority hereby gives Notice of Intended Action to adopt Chapter 11, "Targeted Small Business Loan Guarantee Program," Iowa Administrative Code.

The Iowa Finance Authority proposes general rules that specify the eligibility requirements, application procedures, and guarantee limits regarding implementation of the new Targeted Small Business Loan Guarantee Program.

The proposed rule making may have an impact on small businesses.

Any interested person may make written suggestions or comments on the proposed rules prior to 10:30 a.m., April 14, 1987. Such written material should be directed to the Executive Director, Iowa Finance Authority, Suite 222, 200 E. Grand, Des Moines, Iowa 50309. Persons who want to convey their views orally should contact the Executive Director, Larry L. Tuel, at 515/281-4058 or at the offices of the Iowa Finance Authority, Suite 222, 200 E. Grand, Des Moines, Iowa 50309. There will be a public hearing on April 14, 1987, at 10:30 a.m. in the Authority's office at Suite 222, 200 E. Grand, Des Moines, Iowa 50309. Persons may present their views at this public hearing either orally or in writing. The public hearing will be concluded at 11:30 a.m. or whenever all persons wishing to convey their views have finished, whichever is later.

These rules are intended to implement Iowa Code section 220.111.

The following rules are proposed:

### CHAPTER 11

### TARGETED SMALL BUSINESS LOAN GUARANTEE PROGRAM

**524—11.1(220) Definitions.** As used in connection with the targeted small business loan guarantee program, the following terms have the meanings indicated:

"Affiliate or subsidiary of a business dominant in its field of operation" means a business which is at least twenty percent (20%) owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

"Annual gross income" means total sales, before deducting returns and allowances but after deducting corrections and trade discounts, sales taxes and excise taxes based on sales, as determined in accordance with generally accepted accounting principles.

"Application" means those documents required by the participating lender and the authority, which shall include all of the information required by rule 524—11.2(220).

"Dominant in its field of operation" means having more than twenty (20) full-time equivalent positions and more than three million dollars (\$3,000,000) in annual gross revenues.

"Eligible project sponsor" means a targeted small business that has been certified as such by the department of economic development.

"Full-time equivalent position" means any of the following:

1. An employment position requiring an average workweek of forty (40) or more hours;
2. An employment position for which compensation is paid on a salaried full-time basis without regard to the hours worked; or
3. An aggregation of any number of part-time positions which equal one full-time position. For purposes of this definition each part-time position shall be categorized with regard to the average number of hours required per week as a one-quarter, one-half, three-quarter, or full-time position, as shown in the following table:

<u>Average Number of Weekly Hours</u>	<u>Category</u>
More than 0 but less than 15	1/4
15 or more but less than 25	1/2
25 or more but less than 35	3/4
35 or more	1 (full-time)

"Participating lender" means a mortgage lender as defined in Iowa Code subsection 220.1(14).

"Small business" means any enterprise which is located in this state, which is operated for profit under a single management, which has either fewer than twenty (20) employees or an annual gross income of less than three million dollars (\$3,000,000) computed as the average of the three (3) preceding fiscal years, that is not an affiliate or subsidiary of a business dominant in its field of operation.

"Targeted small business" means a small business as defined in rule 11.1(220), which small business is fifty-one percent (51%) or more owned, operated, and actively managed by one or more women or minority persons. As

## IOWA FINANCE AUTHORITY[524] (cont'd)

used in this definition, "minority persons" means an individual who is a Black, Hispanic, Asian or Pacific Islander, American Indian or Alaskan native.

"Time of application" means the date by which a participating lender has received an application from a project sponsor.

**524—11.2(220) Application procedure.** Eligible project sponsors for targeted small business loan guarantees shall apply directly to participating lenders using the application form available from the authority or the department of economic development. The authority board may consider any application that has been certified by a participating lender and is accompanied by a twenty-five dollar (\$25) application fee.

Each application shall include, but not be limited to, the following: name(s) and address of the applicant and participating lender, amount of loan, amount of loan guarantee requested, and certifications of compliance with state law and prudent lending practices. Applications for loan guarantees will be reviewed for completeness and ranked based on the criteria set out in the application and these rules by the authority on a quarterly basis or otherwise, provided funds are available. If a guarantee is not made for an application submitted in the current funding cycle, the application may be considered in the next funding cycle. The authority shall, by a majority vote in a public meeting, approve each targeted small business loan guarantee application before a guarantee is made. The authority may consider recommendations of the department of economic development in its approval or disapproval of an application.

**524—11.3(220) Fees.** The authority shall collect a non-refundable application fee of twenty-five dollars (\$25) that must accompany each application. The authority shall also charge a first-year program participation fee equal to the greater of 1% of the guaranteed portion of the loan or twenty-five dollars (\$25). The application fee shall be applied to the participation fee and the balance of the participation fee shall be due and payable to the authority at the time the loan guarantee is approved. Additionally, the participating lender shall pay the authority an annual fee equal to one half of one percent of the guaranteed portion of the loan, which shall be due and payable to the authority on the anniversary date of the loan.

**524—11.4(220) Loan criteria.**

**11.4(1) Evaluation.** The participating lender shall evaluate each application for a targeted small business loan guarantee to ensure that the following criteria are met:

a. The project sponsor shall show evidence that it is able to operate the business successfully. This shall include an overall business management plan including, but not limited to, the following:

(1) A generalized projection of revenues and expenditures for the three (3)-year period beginning the month of anticipated loan closing;

(2) Capital formation plans, if any, other than from the targeted small business loan guarantee program;

(3) To the extent possible, identification and analysis of risks;

(4) Plans for recordkeeping, personnel and financial management;

(5) Plans for marketing.

b. The project sponsor shall have enough capital in the business so that, with assistance from the targeted small

business loan guarantee program, the project sponsor will be able to operate the business on a financially sound basis. The project sponsor shall provide the participating lender, the authority and the department of economic development, access to its financial records including, but not limited to, information concerning the identity of all persons having an ownership interest in the small business, its capital structure, and its present and projected debt structure.

c. The loan shall be so secured or of sound value as to reasonably ensure repayment. The participating lender may require any collateral, security, or mortgage documents or other filings or protection as are reasonably necessary to insure security subject to the limitations of subrule 11.4(2).

d. The business's past earnings record and future prospects shall indicate an ability to repay the loan out of income from the business. The project sponsor shall provide a summary of past earnings and future earnings prospects for the business and allow the participating lender reasonable access to its books and records.

**11.4(2) Guarantee amount and term.** No guarantee shall exceed seventy-five percent (75%) of the principal of a loan made to a targeted small business. The term of the guarantee is the lesser of the length of the loan or five (5) years. The term may be extended for an additional one (1) year upon a showing of good cause. The lender shall not acquire any preferential security, surety, or insurance to protect the unguaranteed interest in a loan.

**524—11.5(220) Small business assistance program.** The authority may require an applicant for a loan guarantee to consult with a designated small business assistance program as described in Iowa Code section 15.108, subsection 7, paragraph "c," subparagraph 3, prior to approval of the loan guarantee or on an ongoing basis during the term of the loan guarantee.

**524—11.6(220) Minority and women contractors.** Eligible project sponsors shall, to the fullest extent possible, attempt to utilize minority and women contractors, suppliers, and professionals in performance of any project funded by a loan guaranteed under the targeted small business loan program.

**524—11.7(220) Loan eligibility and purposes.** Purposes for which a targeted small business loan guarantee may be issued by the authority are as follows: purchase, construction, rehabilitation, furnishing, equipping, leasing, optioning, sale, exchange or disposition of land, improvements to land, and depreciable property. Loan guarantees may also be issued for working capital, inventory, supplies, or operating expenses.

The authority shall not issue a loan guarantee to facilitate refinancing of an existing loan project. The authority shall not issue a loan guarantee to facilitate financing of a project which would consist of relocation of an existing business.

**524—11.8(220) Employees test.** For the purpose of meeting the employees test, a project sponsor, to be an eligible project sponsor, shall not have had more than twenty (20) full-time positions during each of the twenty-six (26) consecutive weeks within the fifty-two (52)-week period immediately preceding the date on which the project sponsor files an application with a participating lender and shall not have more than twenty (20) full-time equivalent positions on the date of application.

## IOWA FINANCE AUTHORITY[524] (cont'd)

**524—11.9(220) Business dominant in its field of operation.** For the purposes of the employment position test and the gross revenue test of the Act, a business shall be considered dominant in its field of operation if:

1. It has had more than twenty (20) full-time positions during each of twenty-six (26) consecutive weeks within the fifty-two (52)-week period immediately preceding the date on which the project sponsor, which is an affiliate or is a subsidiary of the business to which the test is being applied, files an application with a participating lender, or has more than twenty (20) full-time equivalent positions on the date of application; and

2. It has more than three million dollars (\$3,000,000) in gross revenues as computed for the preceding fiscal year or as the average of the three (3) preceding fiscal years.

**524—11.10(220) Lender responsibilities.** Participating lenders shall take affirmative action to encourage targeted small businesses to apply for loans which would be guaranteed under the targeted small business loan guarantee program. Lenders shall assist applicants in preparation of loan applications and supporting documentation and in determination of financial feasibility of proposed targeted small business ventures. Lenders shall prepare the targeted small business loan guarantee applications and shall submit them for consideration and action to the authority. Lenders shall perform all necessary and standard loan servicing activities for each loan secured by a targeted small business loan guarantee.

**524—11.11(220) Administration of loans.** Participating lenders shall hold the loan instruments and shall receive all payments of principal and interest. The participating lender (noteholder) shall not, without prior consent of the authority:

1. Make or consent to any substantial changes in the terms of any loan instrument;

2. Make or consent to releases of security or collateral on the loan;

3. Accelerate the maturity of the note;

4. Sue upon any loan instrument;

5. Waive any claim against any borrower, cosigner, guarantor, obligor, or standby creditor arising from any of the loan documents. All loan servicing actions shall be the responsibility of the participating lender, who shall follow accepted standards of loan servicing employed by prudent lenders.

**524—11.12(220) Events of default.** After a loan is in default for a period of sixty (60) days, the lender shall within ten (10) days notify the authority of the default and recommended course of action.

**524—11.13(220) Default and eligibility for payment.** A default is not eligible for payment until the lender has satisfied all administrative and legal remedies for settlement of the loan and the loan has been reduced to judgment by the lender. After the default has been reduced to judgment and the guarantee paid from the loan reserve account, the authority is entitled to an assignment of the judgment. The attorney general shall take all appropriate action to enforce the judgment or may enter into an agreement with the lender or the authority to provide for enforcement. Upon collection of the amount guaranteed, any excess collected shall be ap-

plied first to principal and then to interest and be paid to the lender or to the authority as their respective interests may appear.

**524—11.14(220) Costs of collection.** The participating lender is responsible for all costs and fees, including but not limited to attorney's fees, associated with the collection of loans and reducing any default to judgment.

**524—11.15(220) Sharing of repayment proceeds and collateral.** All repayments, security, or guarantee of any nature, including without limitation, rights of setoff and counterclaim, which the lender or the authority jointly or severally may at any time recover from any source whatsoever or have the right to recover on any guaranteed loan, shall repay and secure the interest of the lender and the authority in the same proportion as such interest bears respectively to the unpaid balance of the loan. Any loan made by the lender to a borrower subsequent to a guaranteed loan, secured by security or collateral pledged for the guaranteed loan, will be subordinated to the guaranteed loan.

**524—11.16(220) Reserve account.** The authority shall establish a loan reserve account from funds provided for this program, from which any default on a guaranteed loan shall be paid. In administering the program, the authority shall not guarantee loan values in excess of the amount credited to the reserve account and only money set aside in the loan reserve account may be used for the payment of a default. All moneys designated for the targeted small business loan guarantee program shall be credited to the loan reserve account except that the authority may establish an administrative account from which the operating costs of the program shall be paid. The authority may transfer moneys between the reserve and the administrative accounts. The reserve account shall at all times be actuarially sound.

**524—11.17(220) Waiver.** The authority may by resolution waive or vary particular provisions of these rules to conform to requirements of the federal government in connection with a small business loan with respect to which federal assistance, insurance, or guaranty is sought, provided the waiver does not conflict with Iowa Code chapter 220.

**524—11.18(220) Program description.** This program is intended to allow targeted small business to obtain loan guarantees for qualified purposes. Loans will be available from a participating lender and project sponsors shall apply directly to the participating lender, who shall make credit and risk evaluations and otherwise make the decision, based on sound lending practices, of whether or not to extend credit to the project sponsor. Part of the lender's consideration as to whether or not to extend credit to a project sponsor will include the value of the guarantee offered by the Iowa finance authority under this program.

After the decision to extend credit has been made by the participating lender, the authority will review and rank the loan applications and, for approved applications, enter into a loan guarantee agreement with the participating lender guaranteeing payment to the lender in the event the project goes into default.

Rules 11.1(220) through 11.18(220) are intended to implement Iowa Code section 220.111.

**ARC 7475****LOTTERY DIVISION[705]  
NOTICE OF TERMINATION**

Pursuant to Iowa Code subsection 17A.4(1), paragraph "b," the Iowa Lottery Division terminates the rule-making proceedings initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin as **ARC 7225** on December 17, 1986. The subject of the notice was Chapters 4 and 10. This notice was published to solicit public comments, and a hearing was held for this purpose on January 6, 1987. No one appeared at the hearing, and no oral or written comments have been received regarding this amendment. This rule-making proceeding is being terminated as this amendment was adopted and implemented by emergency procedure published as **ARC 7224** on December 17, 1986.

**ARC 7463****NURSING HOME  
ADMINISTRATORS,  
BOARD OF EXAMINERS [600]****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 §17A.4(1)"b", Iowa Code.

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 Iowa Board of Nursing Home Administrators gives Notice of Intended Action to amend Chapter 2, "Licensure of Nursing Home Administrators," of the Iowa Administrative Code.

The proposed rule clarifies and changes the national examination fee to sixty dollars and the state examination fee to forty dollars.

Any interested person may make written comments no later than April 14, 1987, addressed to Irene G. Howard, Director, Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319.

The proposed rule is intended to implement Iowa Code sections 258A.3 and 135E.5.

Amend subrule 2.5(1) to read as follows:

**2.5(1)** The basic application fee required for all applicants is fifty dollars (\$50). ~~If the applicant has not successfully passed the examinations, an additional fee of fifty dollars is required for the national examination and an additional fee of fifty dollars is required for the state examination.~~ *The fee for the national examination is sixty dollars (\$60). The fee for the state examination is forty dollars (\$40).*

**ARC 7476****PUBLIC HEALTH  
DEPARTMENT[470]****NOTICE OF INTENDED ACTION**

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

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 135.11, the Department of Public Health hereby gives Notice of Intended Action to amend 470—Chapter 15, "Swimming Pools."

The proposed rules are editorial changes which (1) clarify the sampling and analysis requirements for public swimming pools, and (2) correct two references to the former Department of Water, Air, and Waste Management.

Any interested person may attend a public hearing to be conducted on April 14, 1987, at 1:30 p.m. in the Lucas State Office Building, Third Floor Conference Room, Des Moines, Iowa, or make written comments concerning the proposed rules not later than April 14, 1987, addressed to Kenneth Choquette, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These rules are intended to implement Iowa Code section 135.11.

**ITEM 1.** In subrule 15.4(3), paragraph "c," subparagraph (1), change the words "Iowa state department of water, air, and waste management" to "environmental protection division, Iowa department of natural resources".

**ITEM 2.** In subrule 15.4(3), paragraph "d," subparagraph (1), change the words "department of water, air, and waste management" to "environmental protection division, Iowa department of natural resources".

**ITEM 3.** Rescind subrule 15.4(4), paragraph "c," in its entirety and insert in lieu thereof the following:

c. Bacteriological quality.

(1) A sample of water must be collected from a swimming pool and analyzed for total coliform bacteria at least once during each month that the swimming pool is open for use. The analysis must be performed by a laboratory certified by the University of Iowa Hygienic Laboratory for the determination of total coliform bacteria in drinking water.

(2) If any sample is positive for total coliform bacteria, immediate action must be taken to evaluate the cause and to assure compliance with the water quality standards.

1. Superchlorinate the swimming pool water to the level of ten (10) mg/l.

2. The action taken must include steps to correct any deficiencies relative to:

Chlorine residual

Water clarity

Filter backwashing or cleaning

Swimming pool cleanliness

Swimmer adherence to adequate showering.

3. Submit recheck samples collected at the time the swimming pool disinfectant level is at or below three (3) milligrams per liter (mg/l).

4. If the recheck sample is positive for total coliform, the swimming pool must be closed and not reopened until

**PUBLIC HEALTH DEPARTMENT[470] (cont'd)**

appropriate corrective measures are taken which restore water quality to the acceptable level.

5. All findings and corrective actions must be recorded.

**ARC 7477****PUBLIC HEALTH  
DEPARTMENT[470]****BOARD OF SOCIAL WORK EXAMINERS****NOTICE OF INTENDED ACTION**

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

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.9, the Board of Social Work Examiners hereby gives Notice of Intended Action to amend Chapter 161 of the Iowa Administrative Code.

The proposed amendments provide a procedure for foreign-trained social workers and change experience requirements to allow part-time social workers to be eligible for licensure.

Any interested person may make written comments concerning the proposed rules not later than April 14, 1987, addressed to Irene G. Howard, Director, Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319.

The proposed amendments are intended to implement Iowa Code section 17A.9.

ITEM 1. Subrule 161.4(1) is amended to read as follows:

**161.4(1)** Possess a master's or doctoral degree in social work from a college or university accredited by the accrediting body of the council on social work education at the time of graduation; or for foreign-school graduates equivalent academic training as determined by the board. Foreign-trained social workers shall submit an English translation and a board-approved evaluation of the professional curriculum. Applicant will bear the expense of the curriculum evaluation.

ITEM 2. Subrule 161.4(3) is rescinded and the following adopted in lieu thereof:

**161.4(3)** Have at least two(2) years' social work experience consisting of at least three thousand (3,000) hours or social work experience of at least four thousand (4,000) hours over more than a two (2)-year period of time. This experience must be obtained after the granting of the master's or doctoral degree in social work.

**ARC 7472****RACING AND GAMING  
DIVISION[195]****TERMINATION OF NOTICE**

Pursuant to the authority of Iowa Code subsection 17A.4(1), paragraph "b," the Iowa State Racing Commission hereby terminates the proposed amendments to Chapter 7, "Rules of Greyhound Racing," and Chapter 8, "Mutuel Rules," Iowa Administrative Code. Published as ARC 6354 in the February 26, 1986, Iowa Administrative Bulletin, these amendments were filed under Notice of Intended Action to solicit public comments. A public hearing was held March 18, 1986, at 9 a.m. in the Auditorium of the Wallace State Office Building, Des Moines, Iowa. No one appeared at that time and no oral or written comments were received regarding the proposed amendments. This termination of notice is necessary due to failure of adoption of these rules within the established time limit.

**ARC 7490****REVENUE AND FINANCE  
DEPARTMENT[701]****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 421.14, the Iowa Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 71, "Assessment Practices and Equalization," Iowa Administrative Code.

These amendments are being made to clarify the procedures used in determining productivity and net earning capacity for agricultural realty.

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

The Department has determined that these proposed rules 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 14, 1987, to the Policy Section, Technical Services Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the 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

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

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 these proposed amendments on or before April 24, 1987. Such written comments should be directed to the Policy Section, Technical Services Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

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

Requests for a public hearing must be received by April 17, 1987.

These amendments are intended to implement Iowa Code chapter 421.

The following amendments are proposed:

ITEM 1. Amend subrule 71.12(1), paragraph "a," subparagraph (1), next to last paragraph, to read as follows:

Determine the five(5)-year average ~~diverted~~ acres ~~participating in applicable government programs~~. Obtain data from the U.S. Agricultural Stabilization and Conservation Service, including ~~but not limited to~~ acreage devoted to the Payment-In-Kind (PIK), ~~diverted and deficiency~~ programs.

ITEM 2. Amend subrule 71.12(1), paragraph "a," subparagraph (2), last paragraph, to read as follows:

Hay yield in tons: Number of tons per acre harvested. ~~In the absence of specific number of tons per acre harvested as reported by the Iowa Crop and Livestock Reporting Service, number of tons per acre shall be determined in accordance with hay-corn yield correlations developed by Iowa State University.~~

ITEM 3. Amend subrule 71.12(1), paragraph "a," subparagraph (3), by striking unnumbered paragraphs 6 and 7 beginning with "diverted acreage program" and "Payment-In-Kind (PIK) Program," respectively, and inserting in lieu thereof the following new unnumbered paragraph:

Government programs: Gross income shall be one-half of the five(5)-year average amount of cash payments or equivalent (such as PIK bushels) including but not limited to diverted, deficiency and PIK programs as reported by the U.S. Agricultural Stabilization and Conservation Service.

ITEM 4. Amend subrule 71.12(1), paragraph "a," subparagraph (3), last paragraph, to read as follows:

Other acres: Income shall be the product of the number of other acres times ~~one-half~~ *seventeen percent (17%)* of the net income per acre for all other land uses.

ITEM 5. Amend subrule 71.12(1), paragraph "a," subparagraph (4), by striking the paragraph "Facilities costs." and numbered paragraphs "1" and "2" and inserting in lieu thereof the following unnumbered paragraph:

Production cost adjustment. The production costs for corn, soybeans, oats, and hay are adjusted for each county by multiplying the difference between the five(5)-year state average yield per acre and the five(5)-year county average yield per acre by the five(5)-year average

facilities costs. If a county's yield exceeds the state yield, production costs are increased by this amount. If a county's yield is less than the state yield, production costs are reduced by this amount.

ITEM 6. Amend subrule 71.12(1), paragraph "a," subparagraph (7), to read as follows:

(7) Computation of county tax adjustment. Subtract the five(5)-year average per acre real estate taxes levied for land and structures *including drainage and levee district taxes* but excluding those levied against agricultural dwellings. Taxes shall be the tax levied for collection during the five(5)-year period as reported by county auditors, and reduced by the amount of the agricultural land tax credit as reported by the state ~~comptroller~~.

ARC 7478

TRANSPORTATION,  
DEPARTMENT OF[820]

07 MOTOR VEHICLES  
NOTICE OF INTENDED ACTION

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

Pursuant to the authority of Iowa Code sections 307.12, 307A.2, and 321E.15, the Department of Transportation hereby gives Notice of Intended Action to amend 820—[07.F] Chapter 2, "Special Permits for Operation and Movement of Vehicles and Loads of Excess Size and Weight," Iowa Administrative Code.

This chapter is being amended to administer axle weight restrictions for vehicles and loads in excess of 80,000 pounds in a uniform manner. The current chapter has one set of restrictions for vehicles and loads in excess of 80,000 pounds but not in excess of 100,000 pounds, and another set for vehicles and loads in excess of 100,000 pounds. The revised language states that no axle shall exceed 20,000 pounds for vehicles and loads in excess of 80,000 pounds.

These amendments are intended to implement Iowa Code chapter 321E.

On May 12, 1987, at their regular meeting at the Department of Transportation Complex, 800 Lincoln Way, Ames, Iowa, the Transportation Commission shall consider these proposed administrative rules.

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.

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

3. Indicate the general content of a requested oral presentation.

4. Be addressed to the Department of Transportation, Office of Financial/Operational Analysis, 800 Lincoln Way, Ames, Iowa 50010.

5. Be delivered to this office or postmarked no later than April 28, 1987.

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

Proposed rule-making actions:

ITEM 1. Amend [07,F] paragraphs 2.7(1)"d," 2.7(2)"d," 2.7(3)"d," 2.7(4)"d," 2.7(5)"d," 2.8(1)"d," 2.8(2)"d," and 2.8(4)"d" by deleting the phrase "(see subrule 2.9(1) of this chapter)".

ITEM 2. Amend paragraph 2.8(3)"d" as follows:

d. Weight. Including registration tolerances, 100,000 pounds, total gross weight. See ~~subrules subrule 2.9(1) and 2.9(2) of this chapter~~ for maximum axle weights weight. The allowable weights for construction machinery are found in subrule 2.9(4) of this chapter.

ITEM 3. Rescind subrule 2.9(1) and insert in lieu thereof the following:

2.9(1) For vehicles and loads in excess of 80,000 pounds, no axle shall exceed 20,000 pounds.

ITEM 4. Rescind subrules 2.9(2) and 2.9(3) and reserve for future use.

## NOTICE — USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

August 1, 1985 - August 31, 1985	12.25%
September 1, 1985 - September 30, 1985	12.25%
October 1, 1985 - October 31, 1985	12.25%
November 1, 1985 - November 30, 1985	12.25%
December 1, 1985 - December 31, 1985	12.25%
January 1, 1986 - January 31, 1986	11.75%
February 1, 1986 - February 28, 1986	11.25%
March 1, 1986 - March 31, 1986	11.25%
April 1, 1986 - April 30, 1986	10.75%
May 1, 1986 - May 31, 1986	9.75%
June 1, 1986 - June 30, 1986	9.25%
July 1, 1986 - July 31, 1986	9.75%
August 1, 1986 - August 31, 1986	9.75%
September 1, 1986 - September 30, 1986	9.25%
October 1, 1986 - October 31, 1986	9.25%
November 1, 1986 - November 30, 1986	9.50%
December 1, 1986 - December 31, 1986	9.50%
January 1, 1987 - January 31, 1987	9.25%
February 1, 1987 - February 28, 1987	9.00%
March 1, 1987 - March 31, 1987	9.00%
April 1, 1987 - April 30, 1987	9.25%

**ARC 7484****ALCOHOLIC BEVERAGES  
DIVISION[185]**

Pursuant to the authority of Iowa Code section 123.21, the Iowa Alcoholic Beverages Division emergency adopts and implements an amendment to Chapter 4, "Liquor Licenses—Beer Permits—Wine Permits," Iowa Administrative Code to permit a secured party or sheriff to operate for a reasonable period of time under a liquor control license or permit to dispose of the secured party's collateral or to levy on alcoholic liquor, wine, or beer under a valid execution. The rule further provides for notice to this Division and prescribes the persons or entities to whom the secured party or the sheriff may sell or auction alcoholic liquor, wine, or beer.

In compliance with Iowa Code section 17A.4(2), the Division finds that notice and public participation are unnecessary and contrary to the public interest because the rule merely reflects that the legal rights and responsibilities enumerated in Iowa Code chapters 554 (concerning the rights and duties of secured creditors with regard to disposal of collateral when a debtor defaults) and 626 (Executions) are applicable to alcoholic liquor, wine, and beer inventories of licensees and permittees.

In compliance with Iowa Code section 17A.5(2)"b"(2), the Division finds that the normal effective date of this rule, thirty-five days after publication, should be waived. This rule will become effective upon filing on March 6, 1987, because it confers a benefit on the public. The Division has received numerous inquiries from lending institutions, county sheriffs, and the Small Business Administration since the passage of 1986 Iowa Acts, chapter 1246, section 741, (which permits the sale of alcoholic liquor in the private sector) expressing concern regarding a security interest in the alcoholic liquor, wine, and beer inventories of licensees and permittees. The lending institutions have expressed reluctance to finance a Class "E" liquor control licensee's establishment if the secured creditor could not take a security interest in the liquor inventory. In many cases, the liquor inventory is the most valuable asset of the licensee. County sheriffs have questioned whether or not they may levy on alcoholic liquor, wine, or beer owned by a licensee to satisfy a judgment against a licensee. The public will benefit by emergency adoption of these rules because any perceived legal obstacle to obtaining a valid security interest in a licensee's alcoholic liquor, wine, or beer inventory on which a secured party could foreclose in the event of default has been removed. Lending institutions may be more willing to extend loans to Class "E" licensees to finance private liquor establishments and thereby spur economic growth in the private sector.

This rule is also being published as a Notice of Intended Action, **ARC 7485**, to solicit public input.

This rule implements Iowa Code section 123.38.

This rule became effective March 6, 1987.

The following rule is adopted.

Rescind rule 4.19(123) and the implementation sentence following the rule and insert in lieu thereof the following:

**185—4.19(123) Execution and levy on alcoholic liquor, wine, and beer.** Judgments or orders requiring the payment of money or the delivery of the possession of property may be enforced against liquor control licensees

and beer and wine permittees by execution pursuant to the provisions of Iowa Code chapter 626, entitled "Executions."

**4.19(1)** A secured party as defined in Iowa Code section 554.9105(1)"m" may take possession of and dispose of a liquor control licensee's or permittee's alcoholic liquor, wine, and beer in which the secured party has a security interest in such collateral pursuant to the provisions of Iowa Code chapter 554. The secured party may operate under the liquor control license or permit of its debtor as defined in Iowa Code section 554.9105(1)"d" for the purpose of disposing of the alcoholic liquor, wine, and beer. However, if the debtor is a Class "E" liquor control licensee, the secured party may not purchase alcoholic liquor from the division to continue to operate its debtor's business. A secured party operating under the liquor control license or permit of its debtor shall dispose of the alcoholic liquor, wine, and beer by sale only to persons authorized under Iowa Code chapter 123 to purchase alcoholic liquor, wine, and beer from the debtor. When a secured party takes possession of a liquor control licensee's or permittee's alcoholic liquor, wine, and beer, the secured party shall notify the division in writing of such action. A secured party shall further inform the division of the manner in which it intends to dispose of the alcoholic liquor, wine, and beer and shall state the reasonable length of time in which it intends to operate under the liquor control license or permit of its debtor. The secured party shall notify the division in writing when the disposition of its collateral has been completed, and the secured party shall cease operating under the liquor control license or permit of its debtor.

**4.19(2)** A sheriff or other officer acting pursuant to Iowa Code chapter 626 may take possession of a liquor control licensee's or permittee's alcoholic liquor, wine, and beer, and may dispose of such inventory according to the provisions of Iowa Code chapter 626; however, the sheriff or other officer must sell the alcoholic liquor, wine, and beer only to those persons authorized by Iowa Code chapter 123 to purchase alcoholic liquor, wine, and beer from the liquor control licensee whose inventory is subject to the execution and levy. The sheriff or other officer shall notify the division in writing at the time the sheriff or officer takes possession of a liquor control licensee's or permittee's alcoholic liquor, wine, and beer, and shall further notify the division of the time and place of the sale of such property.

This rule is intended to implement Iowa Code sections 123.4, 123.21(3), and 123.38.

[Filed emergency 3/6/87, effective 3/6/87]

[Published 3/25/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/25/87.

**ARC 7470****HUMAN SERVICES  
DEPARTMENT[441]**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 65, "Administration," appearing in the Iowa Administrative Code.

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

Under current policy for food stamp households entitled to expedited service, the Department is to have the household's food stamp coupon allotment available for the household or its representative to pick up at the local office no later than the close of business on the fifth calendar day following the day the application was filed. When the fifth calendar day falls on a weekend or holiday, the following guidelines are followed:

1. When the fifth calendar day is a Saturday, the coupons must be available on the previous Friday.
2. When the fifth calendar day is a Sunday, the coupons must be available on the following Monday.
3. When the fifth calendar day is a holiday which falls on a Monday, the coupons must be available the following Tuesday.
4. When the fourth or fifth calendar day is a holiday which falls on a Friday, the coupons must be available on the previous Thursday.

For residents of drug addiction or alcoholism treatment centers and residents of group living arrangements, the Department needed to have the coupons available no later than seven (7) working days following the date the application was filed.

Federal regulations were published January 12, 1987, which require the availability of food coupons to all households entitled to expedited services no later than five (5) calendar days following the date of application. There is no longer a provision for an exception for weekends or holidays. The revised regulation also applies to eligible residents of treatment centers and other group living arrangements. Federal regulations call for this change to be implemented no later than February 11, 1987.

The Department of Human Services finds that public comment on this rule is impracticable. The Department must comply with provisions of the January 12, 1987, regulations in order to avoid being out of compliance and risk error sanctions. These regulations were received January 16, 1987. The United States Department of Agriculture did not give the state sufficient time to allow for a public comment period and also meet the mandated effective date of February 11, 1987. There were no options adopted with this change. Therefore, this rule is filed pursuant to rule 441-1.5(17A) and Iowa Code section 17A.4(2).

The Department finds that this rule confers a benefit on the public by making the food coupons available more quickly to some households in need of expedited service. Therefore, this rule is filed pursuant to Iowa Code section 17A.5(2)"b"(2).

The Council on Human Services adopted this rule February 24, 1987.

This rule is intended to implement Iowa Code section 234.12.

This rule became effective February 25, 1987.

Amend rule 441-65.3(234) as follows:

**441-65.3(234) Administration of program.** The food stamp program shall be administered in accordance with the Food Stamp Act of 1977 and in accordance with federal regulation, Title 7, Parts 270 through 282 as amended to ~~December 31, 1986~~ *January 12, 1987*.

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

This rule is intended to implement Iowa Code section 234.12.

[Filed emergency 2/25/87, effective 2/25/87]  
[Published 3/25/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/25/87.

## ARC 7491

SAVINGS AND LOAN  
DIVISION[197]

Pursuant to the authority of 1986 Iowa Acts, chapter 1245, section 702, and Iowa Code section 534.401, the Savings and Loan Division of the Department of Commerce hereby adopts emergency rules to transfer rules of Auditor of State 130—Chapters 2 to 13 to Savings and Loan Division 197—Chapters 2 to 13, and to make non-substantive amendments to those rules which are necessitated by the implementation of 1986 Iowa Acts, chapter 1245—State Government Reorganization. In addition, these rules make nonsubstantive corrections to outdated Iowa Code references found in the existing rules.

In compliance with Iowa Code section 17A.4(2), the Division finds that public notice and participation is unnecessary because no substantive changes are being adopted.

The Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of these rules, thirty-five days after publication, should be waived and the rules be made effective upon filing with the Administrative Rules Coordinator on March 10, 1987, as it confers a benefit upon the public by eliminating confusion caused by the failure of the existing rules to conform to existing statutory authority.

These rules implement Iowa Code chapter 534, as amended by 1986 Iowa Acts, chapter 1245, section 756.

The following amendments are adopted:

ITEM 1. Transfer Chapters 2 to 13 of Auditor of State [130] to Savings and Loan Division [197] and change the title of 197—Chapter 2 to "Branch Offices."

ITEM 2. Amend renumbered 197—Chapters 2 to 13 by striking the word "supervisor" and inserting "superintendent" wherever it appears.

ITEM 3. Amend renumbered 197—Chapters 2 to 13 by striking the words "State Capitol" and "State Capitol Building" and inserting "Suite 390, 200 East Grand Avenue" wherever it appears.

ITEM 4. Amend renumbered rule 197-2.1(534) by striking the words "office of Auditor of State".

ITEM 5. Amend renumbered subrule 2.2(2) by striking the words "or auditor of state".

ITEM 6. Amend renumbered rule 197-2.4(534) by striking the words "and the auditor of state".

ITEM 7. Amend renumbered rule 197-2.5(534) by striking the words "office of the auditor of state".

SAVINGS AND LOAN DIVISION[197] (cont'd)

ITEM 8. Rescind renumbered rule 197—2.7(534) and insert in lieu thereof the following:

197—2.7(534) Published notice of branch. If the application is approved the superintendent shall give the association written notification to publish the following notice:

NOTICE OF FILING APPLICATION FOR THE PURPOSE OF ESTABLISHING A BRANCH OFFICE

Notice is hereby given that the Savings and Loan Association, Iowa, has filed with the Savings and Loan Division, 200 East Grand, Suite 390, Des Moines, Iowa, an "Application for Permission to Establish a Branch Office". Said application provides for the office to be located in the immediate vicinity of Iowa. Any person may file communications in favor or in protest of said branch office at the Savings and Loan Division within twenty days after the date of this publication. The application, together with all communications received in favor or in protest thereof, are available for inspection by interested persons at the aforesaid office.

Savings and Loan Association, Iowa

The association shall publish the notice in a newspaper of general circulation in the community in which the branch office is to be located within fifteen (15) days of the superintendent's notification to do so. A copy of the notice accompanied by a publisher's affidavit will be furnished to the superintendent by the association immediately after publication.

ITEM 9. Amend renumbered rule 197—2.8(534), last paragraph, by striking the paragraph and inserting in lieu thereof the following:

If the application is approved by the superintendent, the superintendent shall issue a certification indicating the approval. If any person requests an oral hearing on the matter, that person should notify the superintendent in writing within the twenty (20)-day communication period. The oral presentations will be heard by the superintendent or the superintendent's designee. A final decision shall be issued within thirty (30) days following the hearing.

ITEM 10. Amend renumbered subrule 4.2(2), subparagraph (e), by striking the words ", office of auditor of state".

ITEM 11: Amend renumbered subrule 5.1(1) by striking the words "auditor of state" and inserting "superin-

tendent" wherever it appears and by striking the word "housing".

ITEM 12. Amend renumbered subrule 5.2(3) by striking the words ", auditor of state" and the word "housing".

ITEM 13. Amend renumbered rule 197—5.4(534), by striking the words "auditor of state" and inserting "superintendent", by striking the words "Office of Auditor of State," and by striking the figure "50319" and inserting "50309".

ITEM 14. Amend renumbered 197—Chapters 2 through 13 by striking the following outdated Code citation and inserting the corresponding new citation:

Table with 2 columns: Outdated Citation and New Citation. Lists various code citations and their corresponding new citations, including Acts of the 68th G.A., 1980, and 1982 Iowa Acts.

ITEM 15. Strike "housing" where it appears in the phrase "Iowa housing finance authority" in subrule 12.3(4), paragraph "a".

ITEM 16. Eliminate gender references in rules 6.5(534) and 6.6(534) and in subrules 2.8(5), 5.1(1), 6.7(3), and 10.9(2) by changing "he" to "the superintendent" and "his" to "the superintendent's".

[Filed emergency 3/10/87, effective 3/10/87]

[Published 3/25/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/25/87.

## ARC 7471

### AGRICULTURAL DEVELOPMENT AUTHORITY[25]

Pursuant to the authority of Iowa Code section 175.6(14), the Iowa Agricultural Development Authority at its meeting held on February 26, 1987, adopted Chapter 7, "Appeals," Iowa Administrative Code.

The new Chapter 7 contains the detailed procedure for appeals of actions taken by the Iowa Agricultural Development Authority with respect to all of its programs.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 31, 1986, as ARC 7270.

These rules are identical to those published as Notice of Intended Action.

These rules will become effective April 29, 1987.

These rules are intended to implement Iowa Code section 17A.20.

#### CHAPTER 7 APPEALS

**25—7.1(17A) Scope.** This chapter is intended to govern the procedure for appeals of actions taken by the Iowa agricultural development authority.

**25—7.2(17A) Definitions.** For the purpose of these rules governing appeals, the following definitions shall govern:

"Authority" means the Iowa agricultural development authority.

"Authority board" means the eleven-member board which exercises the powers of the Iowa agricultural development authority.

"Complainant" means the person or persons appealing the authority's action.

"Executive director" means the executive director of the Iowa agricultural development authority.

"Issuance of proposed decision or order" means the date on which the order or decision is signed by the chairperson of the authority or the hearing officer.

"Presiding officer" means the individual assigned to hear and decide the appeal. The individual assigned may be either a hearing officer appointed according to Iowa Code chapter 17A, or if the appeal is heard by a quorum of the authority board, the chair or the chair's designee of the authority will preside.

**25—7.3(17A) Commencement of appeal.** In any case in which the legal rights, duties, or privileges of a party are required by Constitution or statute to be determined after an opportunity for an evidentiary hearing, any party aggrieved by an action of the authority taken in conjunction with any of the programs administered by the authority, may request review of that action. The request for review should be submitted in writing by certified mail, return receipt requested, to the Iowa Agricultural Development Authority, Wallace State Office Building, Des Moines, Iowa 50319.

An aggrieved party may request either an informal resolution of the complaint or may request a contested case hearing. The executive director may also initiate a contested case hearing without a request by an aggrieved party. An evidentiary hearing need not be provided if there is no dispute of material facts. In those cases, involving questions of law or policy, a party may

present briefs and oral argument at a subsequent meeting of the authority board.

**25—7.4(17A) Time limit for request.** A request for a contested case hearing must be made by the complainant within sixty (60) days after official notification of an action, provided however that the authority may defer the granting of any relief until the next bond issue if the bond proceeds necessary to give a party relief from a previous issue have been exhausted.

**25—7.5(17A) Members participating.** All contested cases shall be heard by a quorum of the authority board or by a hearing officer. Orders and decisions shall be signed by the presiding officer, shall name the members participating, and shall state the date on which the decision has been signed. Decisions shall affirm, modify, remand, or reverse the action being appealed. Written dissenting decisions may be filed.

**25—7.6(17A) Appointment of hearing officer.** Upon receipt of a proper request for a contested case hearing which presents material, factual issues, the chairperson shall determine whether the appeal should be heard by a quorum of the authority board or a hearing officer. If the chairperson determines that a hearing officer should hear the appeal, the chairperson shall direct the executive director to appoint a hearing officer pursuant to Iowa Code section 17A.11(3).

**25—7.7(17A) Notice of hearing.** After receiving a proper, timely request for a contested case hearing, or when a contested case hearing has been initiated by the executive director without a complainant's request, notice complying with Iowa Code section 17A.12(2) shall be mailed by the executive director by certified mail, return receipt requested.

**25—7.8(17A) Prehearing conference.** At the discretion of the presiding officer or on the motion of any party to the appeal, including the executive director, a prehearing conference may be held for the purpose of settlement of the appeal, facilitating the hearing, or facilitating the decision of the presiding officer. Notice shall be given to the parties of the time and place of the conference and its purpose. A record shall be made of all agreements and action resulting from any conference. The presiding officer may issue an order setting forth all agreements and actions.

**25—7.9(17A) Informal settlement.** The executive director and the parties may at any time in the proceeding reach a settlement agreement subject to the approval of the authority board.

**25—7.10(17A) Communications.** Except when parties who have received notice are absent from proceedings, the presiding officer or members of the authority board shall not communicate directly or indirectly in connection with any issue of fact or law in that contested case hearing with any person or party except upon notice and opportunity for all parties to participate. However, the presiding officer and members of the authority board may communicate with the members of the authority, the authority staff, or the executive director and may have the aid and advice of persons other than those with a personal interest in, or those directly engaged in prosecuting or advocating in either the case under consideration, or in a similar pending case involving the same parties.

**AGRICULTURAL DEVELOPMENT AUTHORITY[25] (cont'd)**

Parties or their representatives shall not communicate directly or indirectly in connection with any issue of fact or law with the presiding officer or members of the authority board except upon notice and opportunity for all parties to participate. The recipient of any prohibited communication shall submit the communication, if written, or a summary of the communication, if oral, for inclusion in the record of the proceeding. The presiding officer may impose sanctions upon a party making a prohibited communication, including censure, or the rendering of a decision against the party making the prohibited communication.

**25—7.11(17A) Subpoenas.** The authority shall have subpoenas available on the request of any party to the appeal. When necessary for the full presentation of an appeal the presiding officer shall issue subpoenas for the attendance and testimony of witnesses and for the production of written or recorded materials of any kind which are relevant or material to any matter at issue in the hearing. Any party who desires the issuance of a subpoena shall file a request with the presiding officer, designating the witnesses or documents to be produced and describing their address and location. When prepared by the presiding officer, the subpoena shall be returned to the requesting party for service. Service may be made in any manner allowed by law, but must be performed prior to the hearing date. A party objecting to the subpoena may file a motion to quash with the presiding officer.

**25—7.12(17A) Discovery.** Discovery procedures may be utilized as permitted under the procedures of the Iowa rules of civil procedure. Depositions taken in accordance with the Iowa rules of civil procedure may be used as evidence with the approval of the presiding officer.

**25—7.13(17A) Rules of evidence.** The presiding officer is not bound to follow the technical common law rules of evidence. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. The presiding officer may give probative effect to evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs. Irrelevant, immaterial, or unduly repetitious evidence may be excluded. The presiding officer shall give effect to the rules of privilege recognized by law. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form. Any party intending to submit evidence in written verified form, shall notify any other parties at least seven (7) working days prior to the hearing so that any objections can be filed with the presiding officer.

Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

**25—7.14(17A) Role of the presiding officer.** The presiding officer shall:

1. Open the record and receive appearances.
2. Administer oaths and subpoenas.
3. Enter the notice of hearing and other pleadings and motions into the record.

4. Receive testimony and exhibits presented by the parties.

5. Interrogate witnesses.

6. Rule on objections and motions.

7. Close the hearing.

8. Issue a decision containing findings of facts and conclusions of law.

**25—7.15(17A) Failure to appear.** If any party fails to appear at the hearing and no continuance has been granted, the presiding officer may proceed with the hearing and render a decision in the absence of the complainant.

**25—7.16(17A) Proceedings recorded and open to the public.** The hearing shall be recorded by tape recording. A party may demand that the hearing be recorded by a certified shorthand reporter, but that party must bear all costs associated with the shorthand reporter. The record of hearing or a transcript shall be filed with the authority and maintained for a period of five (5) years.

**25—7.17(17A) Presentation of testimony and evidence.** In the hearing each party shall have the right to present evidence and the testimony of witnesses, who shall testify under oath, and to cross-examine the witnesses of another party. A person who has submitted testimony in written form is subject to cross-examination if that person is available. Opportunity shall be afforded to each party for redirect and recross-examination, and to present evidence and testimony as rebuttal to evidence presented by another party. Witnesses shall be subject to examination by the presiding officer. The presiding officer may, upon the motion of any party or its own motion, order the sequestration of witnesses.

**25—7.18(17A) Briefs.** The presiding officer may order the filing of briefs on any of the issues presented in the appeal.

**25—7.19(17A) Decision.** The presiding officer's decision shall be in writing and consist of the following parts:

1. Findings of fact which must be solely based on the evidence in the record and matters of which official notice may be taken.

2. Conclusions of law which must be supported either by cited authority or reasoned opinion.

3. A decision or order which must set forth the action to be taken or the disposition of the appeal.

Any party may file proposed findings of fact and conclusions of law. The presiding officer may require that the parties submit proposed findings of fact and conclusions of law. If a party submits proposed findings of fact, the decision shall include a ruling upon each proposed finding. The decision or order shall be mailed to the complainant by certified mail, return receipt requested, or delivered by personal service.

**25—7.20(17A) Proposed and final decisions.** When the contested case has been heard by a quorum of the members of the authority board, the decision is the final decision of the authority. When the appeal has been heard by a hearing officer, the hearing officer issues a proposed decision.

**7.20(1)** The decision of the hearing officer automatically becomes the final decision of the authority, unless a party appeals to the authority board or the executive director, or the authority board moves to review the proposed decision within thirty (30) days of the issuance of the proposed decision.

## AGRICULTURAL DEVELOPMENT AUTHORITY[25] (cont'd)

7.20(2) A party may appeal a proposed decision to the authority board by mailing a notice of appeal by certified mail, return receipt requested, to the Iowa Agricultural Development Authority, Wallace State Office Building, Des Moines, Iowa 50319, within thirty (30) days of the issuance of the proposed decision.

7.20(3) On appeal, the authority board has all the authority which it would have in initially making a final decision and may uphold the proposed decision or reverse it in whole or in part, or modify the proposed decision.

7.20(4) Each party to the appeal shall be given the opportunity to file briefs and present oral arguments to the authority board which shall render a final decision. The appellant must set forth all exceptions and issues on which it relies in its initial brief. The appeal will be limited to the evidence and issues presented at the hearing unless compelling reasons justify the taking of new evidence or the consideration of new issues, in which case the authority board may remand the case to the hearing officer or hear the new issues initially. Nothing herein limits the power of the authority board to raise and consider new issues on its own motion.

25—7.21(17A) **Waiver.** Any of the rights established in Iowa Code chapter 17A or these rules may be waived by the complainant.

[Filed 3/6/87, effective 4/29/87]  
[Published 3/25/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/25/87.

**ARC 7464****HUMAN SERVICES  
DEPARTMENT[441]**

Pursuant to the authority of Iowa Code sections 17A.7 and 17A.9, the Department of Human Services hereby amends Chapter 4, "Petition for Rule Making," and Chapter 5, "Declaratory Rulings," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these rules on February 24, 1987. Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin on December 31, 1986, as **ARC 7262**.

Governor Terry E. Branstad appointed a nine-member task force in the summer of 1985 to draft proposed uniform rules of agency procedure.

On December 16, 1985, the task force presented a report to the Governor. The Governor has accepted the task force recommendations on petitions for rule making and petitions for declaratory rulings for adoption by state agencies.

This amendment adopts the uniform rules recommended by the task force with the following exceptions for declaratory rulings:

1. The petitioner's state identification number is added to the information the petitioner must provide.
2. A simplified alternative petition form is allowed.
3. The provision to allow the petitioner to agree to waive the time limit was deleted because the time limits are jurisdictional.

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

These rules are intended to implement Iowa Code sections 17A.7 and 17A.9.

These rules shall become effective May 1, 1987.

ITEM 1. Rescind 441—Chapter 4 and insert in lieu thereof the petition for rule-making segments of the Uniform Administrative Rules which are printed in the front of Volume I of the Iowa Administrative Code with the following amendments:

**CHAPTER 4  
PETITION FOR RULE MAKING**

**441—4.1(17A) Petition for rule making.** In lieu of the words "designate office" insert "the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114".

In lieu of the words "AGENCY NAME", the heading on the petition should read:

**BEFORE THE  
DEPARTMENT OF HUMAN SERVICES**

**441—4.3(17A) Inquiries.** Inquiries concerning the status of a petition for rule making may be made to the Rules Coordinator, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114.

ITEM 2. Rescind 441—Chapter 5, and insert in lieu thereof the petition for declaratory rulings segments of the Uniform Administrative Rules which are printed in the front of Volume I of the Iowa Administrative Code, with the following amendments:

**CHAPTER 5  
DECLARATORY RULINGS**

**441—5.1(17A) Petition for declaratory ruling.** In lieu of the words "designate office" insert "the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114".

In lieu of the words "AGENCY NAME", the heading on the petition should read:

**BEFORE THE  
DEPARTMENT OF HUMAN SERVICES**

Amend **441—5.1(17A)** by adding the following information required to be in the petition:

"9. The petitioner's state identification number, if applicable."

Further amend **441—5.1(17A)** by substituting the following paragraphs for the parenthetical sentence at the end:

"For requests for an application of agency policy to specific facts, the request may be submitted in letter format. The letter should recite all pertinent facts.

"For public assistance policy rulings, the request should state facts such as the amount of income and resources of a person who may be affected by the policy. While the petitioner may indicate the desired outcome, a request which seeks to change rather than to declare or determine policy will be denied."

**441—5.3(17A) Inquiries.** Inquiries concerning the status of a petition for a declaratory ruling may be made to the Rules Coordinator, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114.

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

**441—5.4(17A) Agency consideration.** Delete the words "or within any longer period agreed to by the petitioner" in the first sentence of the second paragraph.

[Filed 3/3/87, effective 5/1/87]  
[Published 3/25/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/25/87.

**ARC 7465****HUMAN SERVICES  
DEPARTMENT[441]**

Pursuant to the authority of Iowa Code sections 217.6 and 239.18, the Department of Human Services hereby amends Chapter 56, "Burial Benefits," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these rules on February 24, 1987. Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin on December 17, 1986, as **ARC 7227**.

This amendment updates the rules on burial benefits to include payment for burial of refugee children. The Refugee Act of 1980 does allow states to pay for the burial of refugees otherwise eligible for the state's burial program. The Department has been providing burial assistance to refugees, but there has been no reference in the rules.

The rules providing burial payment for children receiving care under the Aid to Dependent Children—Foster Care (ADC-FC) program are deleted since the ADC-FC program no longer exists.

The rules are reorganized for clarity and brevity.

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

These rules are intended to implement Iowa Code sections 239.9 and 249.9.

These rules shall become effective May 1, 1987.

Rescind 441—Chapter 56 and insert in lieu thereof the following:

**CHAPTER 56****BURIAL BENEFITS****Preamble**

This chapter establishes the application process, eligibility criteria, and the procedures for obtaining payment for burial benefits for certain categorically eligible recipients.

**441—56.1(239,249) Application.** An application for burial benefits shall be filed at the local office of the department by the person responsible for making funeral arrangements for the deceased. The procedure listed below shall be followed.

**56.1(1)** Application shall be made on Form PA-5301-0, Application for Burial Benefits.

**56.1(2)** Application shall be made prior to the interment of the deceased, except when interment takes place on a day when the local office of the department is not open for business. In that instance, an application for burial benefits shall be filed within three (3) working days of the date of interment.

**56.1(3)** The decision to approve or deny the application shall be made and the notice mailed or given to the applicant and the funeral director within one (1) working day of the date the application is filed.

This rule is intended to implement Iowa Code sections 239.9 and 249.9.

**441—56.2(239,249) Categorical eligibility.** The following categories of people may be eligible for burial benefits:

**56.2(1)** Recipients of state supplementary assistance during the month of death.

**56.2(2)** Recipients of old age assistance, aid to the blind, and aid to the disabled prior to January 1, 1974.

**56.2(3)** Children who are eligible for aid to dependent children or refugee cash assistance in the form of a money payment. This includes:

a. A child receiving aid to dependent children or refugee assistance during the month of death.

b. A child for whom an aid to dependent children assistance grant or refugee cash assistance grant has been approved, but on whose behalf an assistance check has not yet been issued.

c. A newborn or stillborn child who would have otherwise been found eligible for an aid to dependent children grant or refugee cash assistance grant except there has not been sufficient time to add the child to the eligible group of an active aid to dependent children or refugee cash assistance case.

d. A child born to an eligible child in an active aid to dependent children case who would have been eligible for aid to dependent children as the child of an underage payee, except there has not been sufficient time to approve the case.

This rule is intended to implement Iowa Code sections 239.9 and 249.9.

**441—56.3(239,249) Determination of benefit amount.** The department shall pay up to four hundred dollars (\$400) toward the burial of categorically eligible persons according to the formula outlined below:

**56.3(1)** Resources other than the death benefits described in subrule 56.3(2) and prepaid burial contracts of the decedent or available to the decedent's estate or beneficiary shall first be applied to the cost of the burial. If funds from these sources are not sufficient to pay the full cost of the burial, the remaining unpaid balance shall be considered for payment through the department's burial benefit program up to a maximum of four hundred dollars (\$400).

**56.3(2)** The department's liability shall be reduced by applying against the four hundred dollar (\$400) maximum or remaining balance from subrule 56.3(1), whichever is less, any benefits due the decedent's estate or beneficiary as a result of the death of the decedent as outlined in Iowa Code sections 239.9(2) and 249.9(2).

This rule is intended to implement Iowa Code sections 239.9 and 249.9.

**441—56.4(239,249) Claim for payment.** A vendor's claim for payment for burial services shall be filed at the local office of the department as follows:

**56.4(1)** The claim shall be filed on Form AA-4149-0, Burial Claim, within ninety (90) days of the date of interment.

**56.4(2)** When more than one (1) person or firm has rendered service in caring for or burying the body of the deceased, the claim shall be submitted and signed

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

by only one (1) person or firm. That person or firm shall be responsible for reimbursing the other parties involved.

This rule is intended to implement Iowa Code sections 239.9 and 249.9.

[Filed 3/3/87, effective 5/1/87]

[Published 3/25/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/25/87.

**ARC 7469****HUMAN SERVICES  
DEPARTMENT[441]**

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 24, 1987. Notice of Intended Action regarding this rule was published in the Iowa Administrative bulletin on December 31, 1986, as **ARC 7264**.

The Department has received a petition for rule making from Legal Services. The petitioners are requesting that the Department establish a procedure for reimbursement for medical bills paid by any applicant for any Medicaid eligibility category whose application was denied by the Social Security Administration or the Department and who subsequently successfully appealed that denial.

This amendment implements that request with the following conditions stipulated in the request:

1. Medicaid eligibility will be established effective with the date on which eligibility would have existed if the correct decision had been made in the first place.

2. The reimbursement will be made directly to the recipient on the basis of the reasonable out-of-pocket expenses for services within the scope of the Medicaid program.

3. Any unpaid bills will continue to be reimbursed to providers under existing Medicaid procedures.

In addition to the payment to the applicant for paid medical bills, the Department will also make payment to any county relief agency which paid medical bills on the recipient's behalf under the above conditions and which has not received reimbursement.

Medicaid does not ordinarily reimburse recipients for paid bills because no federal financial participation can be obtained for direct payments to recipients. The federal government does allow an exception, however, for corrective action resulting from an appeal. (See 42 CFR 431.246 and 250.) These recipients would originally have been eligible for Medicaid had the correct decision been made on eligibility in the first place.

This rule is identical to that published under Notice of Intended Action.

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

This rule shall become effective May 1, 1987.

Amend 441—Chapter 75 by adding the following new rule:

**441—75.8(249A) Medical assistance corrective payments.** If a decision by the department or the Social Security Administration following an appeal on a denied application for any of the categories of medical assistance

eligibility set forth in rule 441—75.1(249A) is favorable to the claimant, reimbursement will be made to the claimant for any medical bills paid by the claimant that were incurred during the period between the date on which eligibility would have existed if the correct decision had been made prior to the denial and the date regular medical assistance coverage began based on the following conditions:

**75.8(1)** These bills must be for services covered by the medical assistance program as set forth in 441—chapter 78.

**75.8(2)** Reimbursement will be based on the recipient's reasonable out-of-pocket expenses.

**75.8(3)** If a county relief agency has paid medical bills on the recipient's behalf and has not deducted these amounts from the recipient's initial retroactive Supplemental Security Income (SSI) benefit under the provisions of the interim assistance reimbursement program (441—chapter 57), the department will reimburse the county relief agency directly on the same basis as if the reimbursement was made to the recipient. If the county relief agency has deducted these costs from the recipient's initial retroactive SSI benefit, the department will reimburse the recipient directly.

**75.8(4)** Recipients and county relief agencies shall file claims for payment under this subrule by submitting Form 470-2224, Verification of Paid Medical Bills, to the department. A supply of these forms is available from the local office. All requests for reimbursement shall be acted upon within sixty (60) days of receipt of all Form 470-2224 in the local office.

**75.8(5)** Any adverse action taken by the department with respect to an application for reimbursement is appealable under 441—chapter 7.

[Filed 3/3/87, effective 5/1/87]

[Published 3/25/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/25/87.

**ARC 7466****HUMAN SERVICES  
DEPARTMENT[441]**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," 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 Council on Human Services adopted these rules February 24, 1987. Notices of Intended Action regarding these rules appeared in the Iowa Administrative Bulletin on December 17, 1986, as **ARC 7228**; on December 31, 1986, as **ARC 7265**; and on January 14, 1987, as **ARC 7296**.

The Medical Assistance Advisory Council recommended that the Department adopt rules to allow payment for reserve bed days in skilled nursing facilities.

These amendments will allow reserve bed payment to skilled nursing facilities at seventy-five percent (75%) of their regular Medicaid rate when recipients who have been in the facility for over three months are absent

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

overnight for home visits or to participate in special social or rehabilitation programs. The three-month requirement is to restrict payment to those residents for whom the facility has become a home.

Payment will be made for up to ten (10) consecutive calendar days at a time not to exceed eighteen (18) days in a calendar year. Advance approval must be received from the Bureau of Medical Services for payment to be made. In order for approval to be granted the following conditions must be met:

1. The resident or the resident's representative must have chosen to have the resident leave the facility.

2. The family members or agency responsible for providing the alternative care must be able to provide the care and make no charge to the Department for the care.

3. The absence must be approved in the physician's plan of care.

4. The facility must provide the usual medical equipment and supplies needed by the resident.

Based on comments received, this amendment was revised to allow payment for reserve bed days for hospitalization on the same basis as reserve bed days are paid for hospitalization in intermediate care facilities. Unlike intermediate care facilities it was necessary to require approval prior to billing to accommodate the skilled nursing facility payment system. The requirement that the resident be in the facility three months, which is applicable for reserve bed days for visitation in skilled nursing facilities, also applies to hospitalizations.

The payment of reserve bed days is expected to increase annual expenditures a total of \$13,500 for visitation and \$40,500 for hospitalization. This \$54,000 consists of \$32,611 in federal dollars and \$21,389 in state dollars.

These amendments also reorganize all of the rules on skilled nursing facilities so that conditions of participation, what services will be covered, and the method of determining the payment rate are in the correct chapters. This reorganization in no way changes policy, but places policy in a more logical order. Corrections are made in departmental responsibilities because of state reorganization, and the skilled nursing facility agreement form is added to the rules by name and number.

Current rules list conditions under which Medicaid will pay for the use of an emergency room. One of the conditions under which Medicaid will pay is if the patient is evaluated or treated for a medical emergency.

The Department agreed to clarify current policy on how the determination of whether a medical emergency exists is made in a settlement agreement for the class action lawsuit, *Azbill vs. Reagen*.

This amendment provides that in determining if a medical emergency did in fact exist, that the evaluation will take into consideration not only the patient's present condition but also the patient's condition prior to presentation in the emergency room and pertinent symptoms and medical history.

The state was paying pharmacists for drugs for Medicaid clients based on the average wholesale prices of the drugs. The United States Department of Health and Human Services, Office of Inspector General (DHHS, OIG) determined that published wholesale prices are approximately sixteen percent (16%) higher than the prices actually paid by providers. States were asked by DHHS, OIG to develop Medicaid drug pricing

levels that more accurately reflect prices that pharmacists are paying for drug ingredients.

The General Assembly directed the Department to establish a new reimbursement system for drugs based on estimates of actual acquisition costs derived from data obtained from the Department's survey of drug product costs and professional fees. The Department was also directed to adjust the maximum professional fee to reflect the change in the reimbursement system from average wholesale price reimbursement. Beginning on the date the new reimbursement system was implemented, the professional fees were to be reduced by three and eighty-five hundredths percent (3.85%) rather than five and twenty-one hundredths percent (5.21%).

The Department implemented the changes mandated by DHHS, OIG and the General Assembly in an emergency rule **ARC 7295**, effective February 1, 1987, published in the Iowa Administrative Bulletin on January 14, 1987. The rules were also placed under Notice to solicit comment. A study conducted by a consultant from the University of Nebraska, School of Pharmacy, determined that the average wholesale reimbursement is ten and fifty-nine hundredths percent (10.59%) higher than the actual acquisition cost. Therefore, the average wholesale cost was reduced by that percentage.

The percentage reduction averages \$1.23 per prescription. Therefore, the professional fee was increased from \$3.78 to \$5.01. The professional fee was reduced by six and thirty-five hundredths percent (6.35%) rather than seven and seventy-one hundredths percent (7.71%) (three and eighty-five hundredths percent (3.85%) plus the two and one-half percent (2.5%) which is still in effect).

Notice of Intended Action, **ARC 7228**, subrule 78.3(12), paragraph "a," was revised by changing the order of the sentence to clarify that both the patient's presenting symptoms and medical history will be used to determine whether a medical emergency exists to justify payment for use of the emergency room.

Notice of Intended Action, **ARC 7296**, was not revised.

Notice of Intended Action, **ARC 7265**, was revised as follows:

1. Subrule 78.12(5) was revised by adding a new paragraph to allow payment of reserve bed days for hospitalization based on comments received. The rest of the rule was revised to clarify the approval process and to delete a sentence stating hospitalization will not be paid.

2. The subrule number 79.1(8) was changed to 79.1(9). These rules are intended to implement Iowa Code section 249A.4 and 1986 Iowa Acts, chapter 1246, sections 309 and 314.

Rules adopted under emergency rule-making procedures as **ARC 7295** are rescinded, effective May 1, 1987.

These rules shall become effective May 1, 1987.

ITEM 1. Rescind rule 441—77.12(249A) and insert the following in lieu thereof:

**441—77.12(249A) Skilled nursing homes.** Nursing homes and hospitals or distinct parts thereof currently licensed as skilled nursing homes by the department of inspections and appeals are eligible to participate in the Medicaid program providing these facilities meet all of the conditions for participation as skilled nursing facilities in the Medicare program (Title XVIII of the Social Security Act). Facilities shall enter into a written

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

agreement with the department, Form 470-0396, Agreement for Skilled Nursing Facility Participation in the Medicaid Program.

Skilled nursing homes in other states are also eligible if they participate in the Medicaid program in that state.

Skilled facilities that wish to participate in the Medicaid program, but not in the Medicare program, shall contact the department of inspections and appeals which will provide the facility with an application form. The department of inspections and appeals reviews all facilities and notifies the department whether certification is approved or denied. Facilities are resurveyed to ascertain continued compliance. The facility will be notified by the department of inspections and appeals of the decision following a resurvey. A finding and certification that the facility is no longer in compliance shall terminate eligibility for participation in the Medicaid program through a decertification action by the department.

A facility may appeal a decertification action according to subrule 81.13(28).

ITEM 2. Amend subrule 78.2(1), paragraph "d," as follows:

d. Nonprescription drugs as specified in subrule 78.1(2)"f." The basis of payment shall be the same as specified in subrule 78.2(2)"a" except that a maximum allowable reimbursable cost for these drugs shall be established by the department at the median of the average wholesale prices *less ten and fifty-nine hundredths percent (10.59%)* of the chemically equivalent products available. No exceptions for reimbursement for higher cost products will be approved.

ITEM 3. Amend subrule 78.2(2), paragraph "a," as follows:

a. In accordance with 42CFR 447.331-333, as amended October 1, 1985, the basis of payment for legend drugs shall be the pharmacist's usual, customary, and reasonable charge, but shall not exceed the average wholesale price of the drug *less ten and fifty-nine hundredths percent (10.59%)* plus the professional fee which represents the seventy-fifth percentile of fees charged to the private paying public by Iowa pharmacies, not to exceed ~~\$3.78; less seven and seventy-one hundredths percent \$5.01 less six and thirty-five hundredths percent (6.35%)~~. The maximum allowable reimbursable cost for drug products for which there is available a lower cost alternative equivalent product shall be established at the average wholesale price of the lower cost equivalent product dispensed *less ten and fifty-nine hundredths percent (10.59%)*. If a physician certifies in the physician's handwriting that, in the physician's medical judgment, a specific brand is medically necessary for a particular recipient, the maximum allowable reimbursement does not apply and the department will pay the average wholesale price of the brand name product *less ten and fifty-nine hundredths percent (10.59%)*. If a physician does not certify in the physician's handwriting that, in the physician's judgment a specific brand is medically necessary, and if a lower cost equivalent product is not substituted by the pharmacy, the department will pay for the product an amount equal to the upper level of the range of average wholesale prices of equivalent products *less ten and fifty-nine hundredths percent (10.59%)*.

Equivalent products shall be defined as those products which meet therapeutic equivalence standards as

published in the Federal Food and Drug Administration document "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations" and which are normally available from drug wholesalers servicing pharmacies in this state as determined by surveys of these wholesalers.

ITEM 4. Amend subrule 78.3(12), paragraph "a," as follows:

a. The patient is evaluated or treated for a medical emergency, accident, or injury. Medical emergency is defined as a sudden or unforeseen occurrence or combination of circumstances presenting a substantial risk to an individual's health unless immediate medical treatment is given.

*The determination of whether a medical emergency exists will be based on the patient's medical condition including presenting symptoms and medical history prior to treatment or evaluation.*

ITEM 5. Rescind rule 441—78.12(249A) and insert the following in lieu thereof:

**441—78.12(249A) Skilled nursing homes.** Payment will be approved for all medically necessary inpatient care in certified beds and outpatient services under the same conditions as the Medicare program to skilled nursing facilities in Iowa. Medical necessity of initial admissions and continued stay is determined by the Iowa Foundation for Medical Care.

A Case Activity Report, Form AA-4166-0, shall be submitted to the department whenever a Medicaid applicant or recipient enters the facility, changes level of care, or is discharged from the facility.

**78.12(1) Exceptions to the Medicare policies** are as follows:

a. Medicaid does not limit the number of days in care in a skilled facility as long as the services are medically necessary.

b. Medicaid does not require that the person be previously hospitalized.

c. Medicaid recipients in skilled nursing facilities who are determined by the Iowa Foundation for Medical Care to require intermediate care facility (ICF) level of care but who cannot be transferred to an appropriate facility are covered with payment made at the statewide average medical assistance intermediate care facility rate. The average rate shall be calculated from the two (2) compilations of reported ICF costs completed during the previous calendar year. This rate is effective as of the date of final notice by the Iowa Foundation for Medical Care that the lower level of care is required.

d. Respite care for recipients eligible for the home and community based services program. (See 441—chapter 83.)

**78.12(2) Inpatient services** to be included in the charges billed to the fiscal agent include, but are not limited to:

a. Nonprescription drugs, medical equipment, appliances and supplies required by the recipient.

b. Therapy services (occupational, speech, and physical therapy).

c. Prescribed drugs not covered under 441—chapter 78.

d. The day of admission but not the day of discharge.

**78.12(3) Outpatient services** will be approved for physical therapy, speech therapy, or occupational therapy for outpatients provided by a therapist on the

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

staff of the facility or under arrangements with the facility. Payment will be approved only when a physician has certified that:

a. Services are or were required because the individual needed therapy services on an outpatient basis.

b. A plan for furnishing the service has been established and is periodically reviewed by the physician. The plan of treatment shall prescribe the type, amount, and duration of the therapy services to be furnished the individual.

c. Services are or were furnished while the individual is or was under the care of a physician.

**78.12(4)** Noncovered skilled facilities services include, but are not limited to:

a. A private room.

b. Care in a noncertified part of the facility.

c. Payment to hold a bed for a recipient absent from the facility without prior approval.

**78.12(5)** Services requiring approval by the Department of Human Services, Central Office, Long Term Care Section prior to billing are as follows:

a. Medical assistance payment shall be approved to out-of-state skilled nursing facilities at the rate established by the state in which the facility is located under the following conditions:

(1) The facility has agreed to participate in the Iowa Medicaid program.

(2) The facility has been certified for Medicaid participation by the state in which the facility is located.

(3) The attending physician recommends placement for one (1) or more of the following reasons:

A medical emergency or when a recipient's health would be endangered if required to travel to Iowa.

The recipient lives near an Iowa border and needed services are traditionally or more appropriately available from a facility in a bordering state.

Needed services are not otherwise readily available within the state of Iowa.

(4) Approval by the department is obtained prior to admission of the recipient.

b. Payments may be allowed with advance approval for a facility to reserve a bed for a resident while the resident is absent overnight for home visits or for participation in special social or rehabilitation programs. Approval shall be requested by sending a letter to the Bureau of Medical Services giving the purpose for the absence and stating that the following conditions are met:

(1) The resident or the resident's representative chooses to have the resident leave the facility for this purpose.

(2) The family members or agency responsible for providing the alternative care can and will provide the care and make no charge to the department for the care.

(3) The absence is approved in the physician's plan of care.

(4) The facility provides the usual medical equipment and supplies needed by the resident.

Periods of paid absence from a skilled nursing facility shall not exceed ten (10) consecutive calendar days at a time with a maximum of eighteen (18) days in a calendar year and shall be available only after a resident has required care in a skilled nursing facility for at least three (3) consecutive months.

Payments for periods of approved absence shall be made at seventy-five percent (75%) of the regular Medicaid rate.

c. Payments may be allowed with approval prior to billing for a facility to reserve a bed for a resident while

the resident is absent overnight for hospitalization if the resident has required care in a skilled nursing facility for at least three (3) consecutive months.

Periods of paid absence from a skilled nursing facility shall not exceed ten (10) days in any calendar month. Payment will not be authorized for over ten (10) days for any continuous hospital stay whether or not the stay extends into a succeeding month or months.

Payments for periods of approved absence shall be made at seventy-five percent (75%) of the regular Medicaid rate.

**78.12(6)** Client participation shall be determined as follows. When a recipient enters a skilled nursing home, the local office of the department shall determine by contact with the attending physician the expected duration of care.

a. When the expected length of stay is thirty (30) days or less, no special treatment of income is necessary.

b. When the expected length of stay is in excess of thirty (30) days, monthly income determined by the department to be available for client participation shall be applied on the cost of care in the facility.

ITEM 6. Amend rule 441—79.1(249A) as follows:

Amend subrule **79.1(2)**, institutional provider category, number 4, as follows:

<u>Institutional</u>	<u>Basis of Reimbursement</u>	<u>Upper Limit</u>
4. Skilled nursing facilities	Prospective reimbursement. (See <del>78.12(1)</del> 79.1(8))	Sixtieth percentile of costs inflated by 4.3%

Amend subrule **79.1(7)** by transferring the substance of subrule **79.1(10)** to paragraph "m."

Add the following new subrule:

**79.1(9)** Skilled nursing facility reimbursement. 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 Medicaid 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. In addition, all rates in effect June 30, 1986, shall be inflated by four and three-tenths percent (4.3%).

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. Effective July 1, 1986, a ceiling of allowable cost shall be established at the sixtieth percentile for each classification based on facility rates in effect on June 30, 1986, inflated by four and three-tenths percent (4.3%). The allowable cost shall be weighted by Medicaid patient days.

e. A skilled nursing facility serving a disproportionate share of Medicaid recipients shall be exempt from the payment ceiling. For skilled nursing facilities, a disproportionate share of Medicaid recipients shall exist when the total cost of services rendered to Medicaid

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

recipients in any one provider fiscal year is greater than or equal to fifty-one percent (51%) of the entire 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.

[Filed 3/3/87, effective 5/1/87]  
[Published 3/25/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/25/87.

**ARC 7467****HUMAN SERVICES  
DEPARTMENT[441]**

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services hereby amends Chapter 175, "Abuse of Children," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these rules on February 24, 1987. Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin on December 31, 1986, as **ARC 7266**.

This amendment makes the following changes:

1. Current rules allow access to child abuse information requested about a child only to parents having legal custody of the child. A legal opinion has been received indicating this is more restrictive than the statute intended and all parents, whether custodial or noncustodial, need to have full access to child abuse information on their children to meet the children's emotional needs. Therefore, this amendment will allow both custodial and noncustodial parents access.

2. Prior to the passage of 1986 Iowa Acts, chapter 1177, persons conducting bona fide research on child abuse were allowed information only if all the details identifying any subjects were removed. The legislation made it possible for these persons to have information identifying individuals if the information is essential to the research or evaluation and the child's guardian or guardian ad litem gives permission to release the information. This amendment implements that legislation.

3. Iowa Code sections 235A.18(3) and 235A.19(2) provide for a delay in expunging unfounded and undetermined information if a request for correction has been made. The delay continues until the issue is resolved. The Department has received a legal opinion that this delay only is logical if someone other than the alleged perpetrator is the first to seek correction. The only reason to delay the expungement would be to change the information from unfounded or undetermined to founded. Delaying the expungement would, therefore, be a penalty to the alleged perpetrator.

This amendment provides that expungement be delayed until the issue is resolved only if the request is first made by a person other than the alleged perpetrator.

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

These rules are intended to implement Iowa Code sections 235A.15, 235A.18, and 235A.19.

These rules shall become effective May 1, 1987.

ITEM 1. Amend rule 441—175.8(235A) as follows:

Amend subrule 175.8(4), paragraph "a," subparagraphs (7), (9), and (10) as follows:

(7) To a parent having legal custody of the child about whom information is requested, the information disseminated shall be limited to that which is requested.

Rescind and reserve subparagraph (9).

Amend subparagraph (10) as follows:

(10) To a person who, in accordance with provisions of rule 441—175.9(235A), is determined to be conducting bona fide research, the information disseminated shall be limited to that which is necessary to implement the research design and shall contain no details identifying any subject of any child abuse report deidentified unless the information is essential to the research or evaluation and the child's guardian or guardian ad litem gives permission to release the information.

Amend subrule 175.8(5) as follows:

**175.8(5) Access to unfounded child abuse information.** Access to unfounded child abuse information is authorized only to persons identified in subrule 175.8(4), paragraph "a," subparagraphs (11), (12), (16) and (17).

ITEM 2. Amend rule 441—175.9(235A) as follows:

**441—175.9(235A) Person conducting research.** The person in charge of the central registry shall be responsible for determining whether a person requesting child abuse information is conducting bona fide research and whether identified information is essential to the research design. To make this determination, the central registry may require such the person to submit credentials and the research design. If the registry determines that identified information is essential to the research design, the registry shall also determine the method by which written permission is to be secured from the guardian or guardian ad litem of any child who could be identified by the information to be researched. Any costs incurred by the department in securing written permission from the guardian or guardian ad litem or in the dissemination of the information shall be assumed by the researcher. The department will keep a public record of persons conducting such this research.

ITEM 3. Amend rule 441—175.15(235A) as follows:

**441—175.15(235A) Request for correction or expungement and appeal.** Within six (6) months of the date of the notice of the investigation results, a person may file with the department a written statement to the effect that child abuse information referring to the person is partially or entirely erroneous. The person may also request a correction of that information or of the findings of the investigation report.

Unless the department corrects the information or findings as requested, the department shall provide the person with an opportunity for a hearing as provided by 441—chapter 7 to correct the information, or the findings. The department shall delay the expungement of information which is not determined to be founded until the conclusion of a proceeding to correct the information or findings. The department may defer the hearing until the conclusion of a pending juvenile court or district court case relating to the information or findings.

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

*The department shall delay the correction or expungement of information which is not determined to be founded if a request for correction is first made by a person other than the person alleged to be responsible for the abuse. When this occurs, the expungement shall be delayed until the issue is resolved. If the person alleged to be responsible for the abuse is the first to seek correction, then information cannot be determined to be founded and shall be expunged at the time specified by statute without delay.*

This rule is intended to implement Iowa Code section 235A.19.

[Filed 3/3/87, effective 5/1/87]

[Published 3/25/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/25/87.

## ARC 7468

HUMAN SERVICES  
DEPARTMENT[441]

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby amends Chapter 202, "Foster Care Services," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these rules on February 24, 1987. Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin on December 31, 1986, as ARC 7267.

This amendment makes the following changes in administration of the foster care program:

1. The requirement to invite former foster care providers to Department initial and ongoing foster care reviews is deleted. Past providers attend only two percent (2%) of the reviews. Those past providers who do attend reviews lack current information and so are able to make only a minimal contribution to the review. Therefore, identifying and notifying the past providers is a time-consuming, costly process with minimal results. The Department recognizes some past providers still maintain an active concern for the children who have been in their care. For that reason, reviews will remain open to past providers who maintain a license. The license requirement is necessary to maintain standards of confidentiality.

2. A separate form is established for voluntary placements of children over age eighteen (18). Previously, eighteen (18)-year-olds used the same form for voluntary placement as parents of minor children. That form did not really apply to their situation.

3. Policy is clarified that children over eighteen (18) can only enter voluntary foster care if they have been in foster care or a state institution immediately prior to age eighteen (18).

4. District administrators or their designees are now required to sign all voluntary placement agreements, not just those extending beyond six (6) months.

5. Currently foster care workers are required to visit all children placed with agencies at least every six (6) weeks. This amendment allows workers to visit children placed with agencies for whom the goal is long-term foster care every other month, not to exceed sixty-five (65) days. This change allows workers the flexibility to determine the frequency of the visits based on the needs

of the child, yet maintains minimum standards. Most children in long-term foster care are already in a permanent placement and visits can be less frequent without having a negative effect on the child. Also, since the change only affects children in purchased placements, there is also a private agency worker meeting with the child.

6. Foster care workers are now required to make personal contact with the parents of the child in foster care every month. This change allows the worker, with supervisory approval, to set the frequency of the parental visits and requires that the worker specify the frequency in the case plan. The current requirement allows no flexibility and is unrealistic in cases where the parents have disappeared or refuse contact. The requirement is also unrealistic where the child is in a permanent placement, the parents are actively involved, and the worker's only role is in monitoring.

These rules are identical to those published under Notice of Intended Action

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

These rules shall become effective May 1, 1987.

ITEM 1. Amend subrule 202.2(5), paragraphs "b" and "c," as follows:

b. The review shall be open to the participation of the parents or the guardian of the child, local and area education staff, and juvenile court staff, and the guardian ad litem, *current service providers and previous service providers who have maintained a license.*

c. The present foster care provider, if any, and previous foster care providers who have cared for the child in the thirty-six months prior to the review month shall be notified of the review and have the opportunity to participate. ~~If the provider is no longer licensed, consent of the parents is required to allow participation.~~

ITEM 2. Rescind rule 441—202.3(234) and insert the following in lieu thereof:

## 441—202.3(234) Voluntary placements.

202.3(1) All voluntary placement agreements shall terminate after six (6) months unless the placement is extended or court action is taken to commit the child to the commissioner or to transfer legal custody to the department. Voluntary placements may be extended for six (6) months at a time only when:

a. The placement is of a child aged eighteen (18) or older and the child has demonstrated a willingness to participate in case planning and to fulfill responsibilities as defined in the case plan, or

b. There is documentation that the child has an emotional, physical, or intellectual handicap which necessitates care and treatment of a longer duration than six (6) months and documentation that the child's parents or guardian have demonstrated a willingness to participate in case planning and to fulfill their responsibilities to the child as defined in the voluntary placement agreement and the case plan.

202.3(2) When the voluntary placement is of a child who is under age eighteen (18) a Voluntary Placement Agreement with Parents or Guardian, Form SS-2604, shall be completed and signed by the parent(s) or guardian and the local office where the parent or guardian resides.

202.3(3) Voluntary placement agreements shall only be used to extend the placement of a child aged eighteen

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

(18) or older if the child meets the definition of "child" in subrule 202.1(3) and has been in foster care or a state institution immediately prior to reaching age eighteen (18).

a. When the voluntary placement is of a child who is age eighteen (18) or older and who has a court-ordered guardian, a Voluntary Placement Agreement with Parents or Guardian, Form SS-2604, shall be completed and signed by the guardian and the local office where the guardian resides.

b. When the voluntary placement is of a child who is age eighteen (18) or older and who does not have a court-appointed guardian, a Voluntary Placement Agreement with Child Age Eighteen or Older, Form 470-2081, shall be completed and signed by the child and the local office where the child resides.

202.3(4) All voluntary placements shall be approved by the district administrator or designee.

This rule is intended to implement Iowa Code section 234.6(6)"b."

ITEM 3. Amend subrule 202.11(2) as follows:

202.11(2) When the child is placed ~~with an agency in group foster care, purchased foster family care, or purchased independent living~~, the services worker shall visit the child ~~at least every six weeks regularly~~ to fulfill responsibilities set forth in the case plan and to review the progress of the child.

a. *If the permanency goal for the child is long-term foster care, visits shall be at least every other month, not to exceed sixty-five (65) days.*

b. *For all other cases, visits shall be at least every forty-five (45) days.*

ITEM 4. Amend subrule 202.12(4) as follows:

202.12(4) Personal contact shall be made ~~at least monthly regularly~~ with the ~~natural~~ parents and the progress towards goals attainment reviewed and ~~the progress~~ documented in the case record. *The frequency of the personal contact shall be specified in the child's case plan.*

[Filed 3/3/87, effective 5/1/87]

[Published 3/25/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/25/87.

## ARC 7482

## INSURANCE DIVISION[191]

Pursuant to the authority of Iowa Code sections 505.8 and 514B.19, the Insurance Division of Iowa hereby adopts amendments to Chapter 40, "Health Maintenance Organizations," Iowa Administrative Code, in order to provide for the licensing of agents who engage in solicitation or enrollment for a health maintenance organization.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 28, 1987, as ARC 7319.

Editorial changes were made and the effective date of the licensing requirement is delayed until July 1, 1987.

These rules are intended to implement Iowa Code section 514B.19.

These rules will become effective on July 1, 1987.

ITEM 1. Amend rule 40.1(514B) by deleting the subrule number of each definition and adding the following definition in alphabetical order:

"Agent" means a person engaged in solicitation or enrollment for a health maintenance organization and who ultimately delivers the certificate of membership or policy to a member.

ITEM 2. Amend 191—Chapter 40 by adding a new rule as follows:

191—40.19(514B) **Agents' duties.** In order to qualify for solicitation, enrollment, or delivery of a certificate of membership or policy in a health maintenance organization, an agent must comply with the licensing rules set forth in 191—chapter 10 of the Iowa Administrative Code and in particular submit to an examination to determine the applicant's competence to sell accident and health insurance as described in rule 10.7(522), classification 6.

[Filed 3/6/87, effective 7/1/87]

[Published 3/25/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/25/87.

## ARC 7474

## LOTTERY DIVISION[705]

Pursuant to the authority of Iowa Code section 99E.9, the Iowa Lottery Board adopted, on February 12, 1987, an amendment to Chapter 4, "Operation of the Lottery," Iowa Administrative Code.

A new rule was added implementing Iowa Code section 99E.9(3)"m" regarding the type of advertising permitted by the Lottery which communicates information concerning the benefits accomplished through the use of lottery proceeds.

Notice of Intended Action was published in the Iowa Administrative Bulletin, Volume IX, Number 13, on December 17, 1986, as ARC 7226.

This rule was modified by the Board following publication of the Notice of Intended Action. The modification provides that the use of lottery proceeds will be communicated by posters, brochures and flyers and deletes the previous language providing for radio and television ads.

This rule will become effective on April 29, 1987.

Amend 705—Chapter 4 by adding the following rule:

705—4.20(99E) **Advertising.**

4.20(1) Advertising for the lottery instant games and the lottery on-line games may include print advertisements, radio and television advertisements, billboards, and point of purchase display materials. Other promotional and advertising items may include brochures; posters; signs; buttons; hats; T-shirts; video and audio tapes; hot air balloons, large and small; umbrellas; canopies; awnings; slides; black and white and color pictures; food items; bags, paper or plastic; flyers; pins; coins; certificates; cups; fans; glasses; life-size depictions of lottery equipment; pens, pencils; and any other materials deemed appropriate advertising, informa-

LOTTERY DIVISION[705] (cont'd)

tional, and educational media by the lottery.

4.20(2) All game brochures shall contain a section addressing the use of lottery proceeds. In addition, the lottery shall produce special posters, brochures or flyers describing the uses of lottery revenue and provide these to lottery retailers to post or distribute.

This rule is intended to implement Iowa Code section 99E.9(3)"m."

[Filed 3/6/87, effective 4/29/87]  
[Published 3/25/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/25/87.

## ARC 7479

### PUBLIC SAFETY DEPARTMENT[680]

Pursuant to the authority of Iowa Code chapter 100 and 1986 Iowa Acts, chapter 1246, section 206, the Iowa Department of Public Safety adopts amendments to Chapter 5, "Fire Marshal," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin, January 14, 1987, as ARC 7303.

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

These amendments will become effective on April 29, 1987.

These rules are intended to implement Iowa Code chapter 100 and 1986 Iowa Acts, chapter 1246, section 206.

The following amendments are adopted:

ITEM 1. Amend subrule 5.552(1) by adding the following sentence as the last sentence in the subrule:

Class 3A shall include facilities licensed as residential care facilities for the mentally retarded (RCF-MR), housing not more than five (5) persons in buildings constructed after 1950 and shall be equipped with automatic smoke detection on each floor including basements.

ITEM 2. Amend subrule 5.552(4) by adding the following exception:

EXCEPTION: Class 3A facilities shall have interior or exterior stairways having a minimum clear width of not less than thirty (30) inches.

ITEM 3. Amend subrule 5.552(5), paragraph "d," by adding after (4) the following exception:

EXCEPTION: In Class 3A facilities the "FIRE DOOR — PLEASE KEEP CLOSED" marking may be omitted provided the doors are self-closing and kept closed and locked at all times. The use of this exception may be revoked by the authority having jurisdiction for due cause.

ITEM 4. Amend subrule 5.552(5), paragraph "d," by adding after (5) the following exception:

EXCEPTION: In Class 3A facilities all resident room doors shall be at least 1 3/8-inch solid wood core or

equivalent, except in Class 3A facilities protected throughout by an approved automatic sprinkler system as defined in subrule 5.552(7), doors may be constructed of any material provided the doors are substantially smoke tight.

ITEM 5. Amend subrule 5.552(7) by adding the following exception after paragraph "b":

EXCEPTION: Class 3A facilities may be protected with a sprinkler system meeting the requirements of National Fire Protection Association Standard No. 13D, 1984 edition.

ITEM 6. Amend subrule 5.552(8), paragraph "a," by adding the following:

All Class 3A facilities shall be equipped with either an automatic fire detection system meeting 5.552(8)"b" through 5.552(8)"d" or shall have smoke detection meeting National Fire Protection Association Standard No. 74 installed on each occupied floor including basements. Smoke detectors shall be interconnected so that activation of any detector will sound an audible alarm throughout.

ITEM 7. Amend subrule 5.552(10), paragraph "a," by adding the following exception:

EXCEPTION: In Class 3A facilities all hazardous areas normally found in one- and two-family dwellings, such as laundry, kitchen, heating units, and closets need not be separated with walls if all equipment is installed in accordance with the manufacturer's listed instructions.

ITEM 8. Amend subrule 5.552(12), paragraph "a," by adding the following exception:

EXCEPTION: In Class 3A facilities "No Smoking" signs may be omitted provided there shall be no smoking in resident sleeping areas and smoking and no smoking policies shall be strictly adhered to. The use of this exception may be revoked by the authority having jurisdiction for due cause.

ITEM 9. Amend subrule 5.552(13), paragraph "a," by adding the following exception:

EXCEPTION: In Class 3A facilities exit lights and signs may be omitted.

ITEM 10. Amend subrule 5.552(15) by adding the following new paragraph:

d. In Class 3A facilities basements shall not be used for sleeping rooms. Split-level type homes may be used for housing provided each level has a direct exit to the outside. The second exit from each level shall not involve the use of windows.

ITEM 11. Rescind subrule 5.552(16); paragraph "a," and insert in lieu thereof the following:

a. All fire and life safety equipment or devices shall be regularly and properly maintained in an operable condition at all times in accordance with nationally recognized standards. This includes fire extinguishing equipment, alarm systems, doors and their appurtenances, cords and switches, heating and ventilating equipment, sprinkler systems, and exit facilities.

[Filed 3/6/87, effective 4/29/87]  
[Published 3/25/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/25/87.

## ARC 7473

RACING AND  
GAMING DIVISION[195]

Pursuant to the authority of Iowa Code sections 99D.7 and 99D.9, the State Racing Commission hereby adopts rules to amend Chapter 1, "Organization and Operation," Chapter 8, "Mutuel Departments," and Chapter 9, "Harness Racing," Iowa Administrative Code.

The changes simply clarify existing language in Commission rules.

Due to the nature of the rule changes, the Division Administrator adopted these rules in their final form on Wednesday, March 4, 1987. No written suggestions or comments on these proposed rule changes were received.

The Commission's Notice of Intended Action to adopt the rules was published in the Iowa Administrative Bulletin on January 14, 1987, as ARC 7307. No changes have been made in the rules as submitted.

These rules are necessary for implementation of Iowa Code chapter 99D.

These rules will become effective April 29, 1987.

ITEM 1. Amend subrule 1.2(3), introductory paragraph, as follows:

1.2(3) The commission meets periodically throughout the year and will meet in July of each year at Des Moines, Iowa. Notice of a meeting is published at least five (5) days in advance of the meeting or will be mailed to interested persons upon request. The notice will contain the specific date, time, and place of the meeting. Agendas are available to any interested persons not less than five (5) days in advance of the meeting. All meetings will be open to the public, unless a closed session is voted by four (4) members or all members present for the reasons specified in Iowa Code section 28A.5 21.5. The operation of commission meetings will be governed by the following rules of procedure:

ITEM 2. Amend subrule 8.2(4), introductory paragraph, as follows:

8.2(4) Calculation and distribution of pools. The only pari-mutuel wagering pools permitted in this state shall be for win, place, show, daily double, and exacta, *trifecta*, *twin trifecta*, *superfecta*, quiniela, quiniela double, and pic six, each with separate and independent calculation and distribution. From each pool there shall be deducted by each association the take-out percentage as provided by Iowa Code section 99D.11, with the remainder being the net pool for distribution as payoffs to ticket holders as follows:

ITEM 3. Amend subrule 8.2(4), paragraph "j," subparagraphs (5), (9), first paragraph, and (13), as follows:

(5) The term "first part of divided pool" shall mean one half of the net distributable pool of the total moneys wagered in the twin trifecta on the current program only and, specifically excluded therefrom shall be *excluding* any carryover of any special cumulative second race twin trifecta pool from any previous program.

(9) After the official declaration of the first three (3) greyhounds to finish in the first race of the twin trifecta, each bettor holding a winning ticket must, prior to the running of the second twin trifecta race, exchange *such the* winning ticket for both the monetary value established by the mutuel department and a twin trifecta

exchange ticket, and at *such that* time shall select the three (3) dogs to finish in the second race of the twin trifecta in exact order as officially posted. No further money shall be required of holders of the winning tickets in order to make the exchange.

(13) In the event there is no twin trifecta ticket issued accurately selecting the officially declared first three (3) finishers of the second twin trifecta race, in the exact order, *such the* second race pool, as divided earlier, shall be held for the next consecutive racing program and combined with that program's second race twin trifecta pool. Distribution of this special cumulative second race twin trifecta pool will be made only upon accurate selection, in exact order, of the first three (3) officially declared finishers of the second twin trifecta race.

ITEM 4. Amend subrule 8.3(2) as follows:

8.3(2) If after exacta, *trifecta*, quiniela, and quiniela double wagering has commenced, a runner not coupled with another as a betting interest is excused by the stewards or is prevented from racing because of failure of the starting gate/box to open properly, then exacta, *trifecta*, quiniela, and quiniela double wagers combining such runner with any other runner or betting interest shall be deducted from the exacta, *trifecta*, quiniela, and quiniela double pool and refunded upon presentation and surrender of exacta, *trifecta*, quiniela, and quiniela double tickets thereon.

ITEM 5. Amend rule 195—8.10(99D) as follows:

195—8.10(99D) **Prior approval required for betting pools.** Each association desiring to offer daily double, exacta, *trifecta*, quiniela, or quiniela double wagering, shall first apply in writing to the commission and obtain specific approval as to number of betting races and type of wagering to be offered on a single day.

ITEM 6. Amend subrule 9.7(9), paragraph "c," as follows:

c. Proper check-in and check-out of horses and drivers. *Handing out color-coded back pads and numbers for the purpose of identification of horses during warm-ups and races, and collection of them after each race.*

ITEM 7. Amend rule 195—9.16(99D) as follows:

195—9.16(99D) **Ambulance for racing strip.** The licensee shall furnish a manned ambulance at least two (2) hours prior to post time on each day that the main track is open for racing, equipped ready for immediate duty, and to be placed at the entrance of the racing strip, which is at no time obstructed by people, vehicles, or equipment, so that no time may be lost in times of emergency. *The licensee shall report to paddock judge upon arrival. No races are run if the ambulance has to leave the grounds.*

ITEM 8. Amend rule 195—9.23(99D) as follows:

195—9.23(99D) **Sale of horse with entrance due.** If any person shall sell a horse to be free and clear and it appears *thereafter later* that payments were due or to become due in races of any description and for which suspension has been or is subsequently ordered, *such the* seller shall be held for the amount due *with the plus* a penalty *on the same* and fined an amount equal to the amount of suspension. Unless that horse has been suspended prior to a sale, a subsequent suspension for unpaid entry fees will have no effect as against a bona fide purchaser for value without notice. *In the event of*

## RACING AND GAMING DIVISION[195] (cont'd)

*change of ownership after the horse is entered, horses must race in the name of the current owner on eligibility certificate.*

ITEM 9. Amend rule 195—9.37(99D), introductory paragraph, as follows:

**195—9.37(99D) Elimination heats.** In any race where the number of horses declared in to start exceeds eleven (11) on a half-mile track or ~~sixteen (16)~~ *twelve (12)* on a  $\frac{1}{8}$ -mile track or ~~fourteen (14)~~ on a larger track, the race, at the option of the track ~~conducting same stated~~ before positions are drawn, may be raced in elimination heats. No more than two (2) tiers of horses, allowing eight (8) feet per horse, will be allowed to start in any race.

ITEM 10. Amend subrule 9.69(12) as follows:

**9.69(12)** The stewards may declare a horse a nonstarter if any of the circumstances set forth in this rule are applicable, and; ~~if the starter has not dismissed the horse or ordered a recall the public notified immediately and a refund made on the tickets.~~

ITEM 11. Amend rule 195—9.83(99D) as follows:

**195—9.83(99D) Driver's bench.** Drivers wearing colors, but not competing in a particular race, shall view ~~said~~ that race from benches set aside for them by the racetrack operator. *No driver is allowed to talk over the*

*fence to the public when in the paddock area or on the racetrack.*

ITEM 12. Amend rule 195—9.98(99D) as follows:

**195—9.98(99D) Complaints.** All complaints by drivers of any foul driving or other misconduct during a heat or dash must be made at the termination thereof, unless the driver is prevented from doing so by an accident or injury. *At the conclusion of each heat or dash, every driver shall return in the sulky to the starting gate to be dismissed by the judges or starter.* Any driver desiring to enter a claim of foul or other complaint of violation of the rules, must before dismounting indicate to the ~~barrier judge starter~~ a desire to enter ~~such the~~ claim or complaint and upon dismounting shall proceed *immediately* to the telephone or judges' stand where and when ~~such the~~ claim, objection, or complaint shall be ~~immediately~~ *entered and considered and give driver and number of horses involved if possible and location in race.* The judges shall not cause the official sign to be displayed until the claim, objection, or complaint shall have been entered and considered.

[Filed 3/6/87, effective 4/29/87]

[Published 3/25/87]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/25/87.

EFFECTIVE DATE DELAY

[Pursuant to §17A.4(5)]

AGENCY	RULE	EFFECTIVE DATE DELAYED
Natural Resource Commission[571]	24.1, 24.4(1), 24.4(3), 24.5(4), 24.6(1), 24.6(2), 24.6(5), 24.6(6), 24.7(1), 24.7(3)"f," 24.8, 24.9, 24.10, 24.11, 24.12(1), 24.12(3), 24.15(1), 24.15(4), 24.15(5), 24.15(6), 24.16, 24.17(1), 24.18, 24.20(1), 24.20(2), 24.20(3) [IAB 2/25/87, ARC 7402]	Seventy days from effective date of April 1, 1987.



**State of Iowa**  
**Executive Department**

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

EXECUTIVE ORDER NUMBER 27

WHEREAS, the State of Iowa should pursue a comprehensive effort to assist recipients of welfare to obtain productive employment, to lead independent lives, and to break the cycle of poverty; and

WHEREAS, the educational and job placement programs and services available to Iowa's welfare recipients are the responsibility of several state agencies; and

WHEREAS, the federal government has undertaken a process to revise its programs and participation in welfare; and

WHEREAS, the State of Iowa must develop a coordinated and efficient mechanism to maximize the utilization of the resources available for Iowa's welfare recipients.

NOW THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by the power and authority vested in me by the Laws and Constitution of the State of Iowa, do hereby order that:

I. An Interagency Council is created to analyze and recommend modifications to the state's welfare, job training, and job placement delivery systems; develop policies, procedures and programs which will coordinate those systems; and implement such directives as may be necessary to accomplish the purposes of this order.

II. The Council shall consist of six voting members:

- a. the Director of the Department of Economic Development;
- b. the Director of the Department of Education;

- c. the Director of the Department of Employment Services;
- d. the Director of the Department of Human Rights;
- e. the Director of the Department of Human Services;
- f. the Director of the Department of Management; and
- g. such other members as the Governor shall deem appropriate.

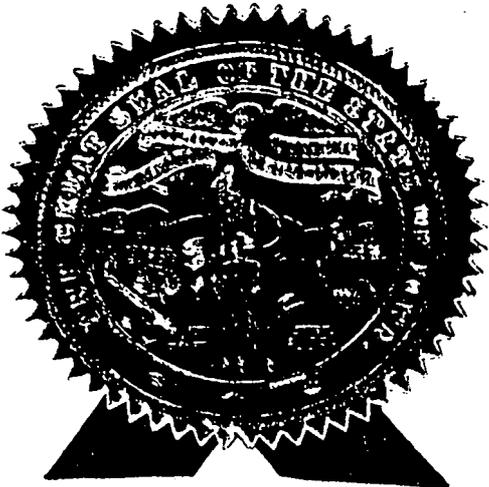
The Chair of the Council shall serve at my pleasure.

III. Further, the Council shall undertake the following:

- a. Develop an overall framework for welfare reform in the state by identification of means of cooperation among agencies; identification of barriers to cooperation in state and federal statute, policy and procedure; and promulgation of recommendations on ways to overcome such barriers and enhance cooperation.
- b. Review and analyze the various existing state programs relating to both welfare and job placement and recommend for implementation any changes in them which will support the purposes of this order.
- c. Develop plans to assure that those resources dedicated to assist Iowa's welfare recipients become self-sufficient are effectively and efficiently deployed and coordinated, including, but not limited to, the following:
  - 1. the expansion of the WIN program statewide;
  - 2. incentive awards to local JTPA Service Delivery Areas for serving more ADC clients;
  - 3. mandatory registration of incapacitated welfare recipients with vocational rehabilitation for possible services;
  - 4. mandatory job registration of recipients upon application for welfare benefits;
  - 5. the establishment of a pilot grant diversion program;

6. increased monetary incentives for working;
  7. extension of coverage for child care and medical assistance during the initial employment period;
  8. development of increased child care resources;
  9. intensive job search assistance for all ADC applicants; and
  10. coordinated, multi-agency case management.
- d. Cause the implementation of all directives made by the Governor as a result of the deliberations and recommendations of the Council.

IN TESTIMONY WHEREOF, I have here unto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 3rd day of March in the year of our Lord one thousand nine hundred eighty-seven.



Terry E. Branstad  
GOVERNOR

ATTEST:

Chaine Baxter  
SECRETARY OF STATE



State of Iowa  
Executive Department

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

EXECUTIVE ORDER NUMBER TWENTY-EIGHT

WHEREAS, the case of State vs. Pribyl has raised questions about the enforceability of the gift law (1985 Iowa Code Chapter 68B) and

WHEREAS, the Attorney General has advised in a press release dated December 11, 1986, that state officials and employees should conform to the strictest interpretation of the gift law that might be used by a District Court. This would mean conforming to the provisions of the 1979 Iowa Code Chapter 68B in certain respects and the 1980 Iowa Code Chapter 68B in others.

WHEREAS, the Governor has authority as chief executive of the State of Iowa to issue an executive order relating to the reporting of gifts made to officials and employees of the executive department of the state and their immediate family members.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, do hereby establish the following gift reporting requirements for the executive department of state government.

ARTICLE I. SCOPE OF APPLICATION

"Employee" means any full-time, salaried employee of the State of Iowa including clerical employees but not including part-time employees or independent contractors.

"Official" means any official of the State of Iowa receiving a salary or per diem whether serving full-time or part-time including supervisory personnel and members of state agencies but not including members of the general assembly or legislative employees.

"Official" or "Employee" includes any firm or association of which an official or employee is a member or partner and any corporation of which an official or employee holds ten percent or more of the stock either directly or indirectly. The use of the above terms shall also include spouses and unemancipated minor children.

"Immediate family members" means the spouse or minor children of a person required to file reports pursuant to this executive order.

## ARTICLE II. GIFTS SOLICITED OR ACCEPTED

A. Officials and employees shall abide by not soliciting, accepting or receiving any gift having a value of \$25 or more whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form in any one occurrence.

B. No person shall offer or give any gift to any official or employee which has a value in excess of \$25 in any one occurrence.

C. A gift, for purposes of this executive order, does not include campaign contributions or gifts which are unrelated to state government pursuant to 1979 Iowa Code Section 68B.5.

D. A person shall not directly or indirectly join with one or more persons to offer or give any gift or series of gifts to an official or employee which has a total value of \$25 or more in any occurrence. In determining the value of a gift to the donee the gift is not divisible by the number of persons participating in providing the gift.

## ARTICLE III. DISCLOSURE REPORT

A. An official or employee who receives or whose immediate family receives a gift in any one occurrence which has a value in excess of fifteen dollars shall file a written report with the Secretary of State.

B. A person who gives any gift in any one occurrence to a state official or employee or immediate family member which has a value in excess of fifteen dollars shall file a written report with the Secretary of State.

C. An official or employee or immediate family member who receives a gift or a series of gifts exceeding an aggregate value of fifty dollars in any one calendar year from one donor, shall file a written report with the Secretary of State.

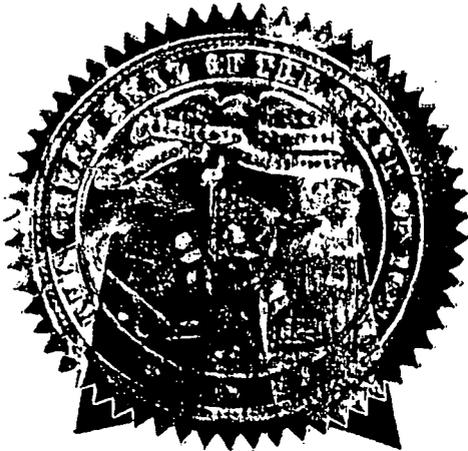
D. If a person gives a gift or series of gifts exceeding an aggregate value of fifty dollars in any one calendar year to any official or employee or immediate family member, the person shall file a written report with the Secretary of State.

E. The report shall be filed by the fifteenth day of the month following the month in which the gift was received or given. The report shall show the donor, donee, nature, value and date of the gift.

F. The Secretary of State shall make available forms for filing of these reports, upon request, to any person required to file a report. The reports shall be available for public inspection under conditions consistent with 1985 Iowa Code Chapter 22, relating to public records.

**ARTICLE IV. PARTIES IN HONOR OF STATE OFFICIALS OR EMPLOYEES**

Parties given by a lobbyist or lobbyists in the honor of officials or employees shall not be allowed.



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 4th day of March, in the year of our Lord one thousand nine hundred eighty-seven.

Terry E. Branstad  
GOVERNOR

Clair Baxter  
SECRETARY OF STATE





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