IOWA ADMINISTRATIVE BULLETIN

Published Biweekly VOLUME XI NUMBER 12
December 14, 1988 Pages 1101 to 1164

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PUBLISHED BY THE
STATE OF IOWA
UNDER AUTHORITY OF IOWA CODE SECTION 17A.6

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.

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PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
13	**Friday, December 9, 1988**	**December 28, 1988**
14	**Friday, December 23, 1988**	**January 11, 1989**
15	**Friday, January 6, 1989**	**January 25, 1989**

SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

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

First quarter	July 1, 1988, to June 30, 1989	$160.95 plus $6.45 sales tax
Second quarter	October 1, 1988, to June 30, 1989	$120.45 plus $5.01 sales tax
Third quarter	January 1, 1989, to June 30, 1989	$ 81.40 plus $3.26 sales tax
Fourth quarter	April 1, 1989, to June 30, 1989	$ 40.70 plus $1.63 sales tax

Single copies may be purchased for $4.50 plus $0.18 tax. Back issues may be purchased if the issues are available.

Iowa Administrative Code

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

Prices for the Iowa Administrative Code and its Supplements are as follows:

Iowa Administrative Code - $847.00 plus $33.90 sales tax
(Price includes 16 volumes of rules and index, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin. Additional or replacement binders can be purchased for $3.30 plus $0.13 tax.)

Iowa Administrative Code Supplement - $255.20 plus $10.21 sales tax
(Subscription expires June 30, 1989)

All checks should be made payable to the Iowa State Printing Division. Send all inquiries and subscription orders to:

Iowa State Printing Division
Grimes State Office Building
Des Moines, IA 50319
Phone: (515) 281-8796

Schedule for Rule Making
1988

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. 8	Jan. 27	Feb. 16	Mar. 2	Mar. 23	Apr. 27	July 25
Jan. 22	Feb. 10	Mar. 1	Mar. 16	Apr. 6	May 11	Aug. 8
Feb. 5	Feb. 24	Mar. 15	Mar. 30	Apr. 20	May 25	Aug. 22
Feb. 19	Mar. 9	Mar. 29	Apr. 13	May 4	June 8	Sep. 5
Mar. 4	Mar. 23	Apr. 12	Apr 27	May 18	June 22	Sep. 19
Mar. 18	Apr. 6	Apr. 26	May 11	June 1	July 6	Oct. 3
Apr. 1	Apr. 20	May 10	May 25	June 15	July 20	Oct. 17
Apr. 15	May 4	May 24	June 8	June 29	Aug. 3	Oct. 31
Apr. 29	May 18	June 7	June 22	July 13	Aug. 17	Nov. 14
May 13	June 1	June 21	July 6	July 27	Aug. 31	Nov. 28
May 27	June 15	July 5	July 20	Aug. 10	Sep. 14	Dec. 12
June 10	June 29	July 19	Aug. 3	Aug. 24	Sep. 28	Dec. 26
June 24	July 13	Aug. 2	Aug. 17	Sep. 7	Oct. 12	Jan. 9 '89
July 8	July 27	Aug. 16	Aug. 31	Sep. 21	Oct. 26	Jan. 23 '89
July 22	Aug. 10	Aug. 30	Sep. 14	Oct. 5	Nov. 9	Feb. 6 '89
Aug. 5	Aug. 24	Sep. 13	Sep. 28	Oct. 19	Nov. 23	Feb. 20 '89
Aug. 19	Sep. 7	Sep. 27	Oct. 12	Nov. 2	Dec. 7	Mar. 6 '89
Sep. 2	Sep. 21	Oct. 11	Oct. 26	Nov. 16	Dec. 21	Mar. 20 '89
Sep. 16	Oct. 5	Oct. 25	Nov. 9	Nov. 30	Jan. 4 '89	Apr. 3 '89
Sep. 30	Oct. 19	Nov. 8	Nov. 23	Dec. 14	Jan. 18 '89	Apr. 17 '89
Oct. 14	Nov. 2	Nov. 22	Dec. 7	Dec. 28	Feb. 1 '89	May 1 '89
Oct. 28	Nov. 16	Dec. 6	Dec. 21	Jan. 11 '89	Feb 15 '89	May 15 '89
Nov. 11	Nov. 30	Dec. 20	Jan. 4 '89	Jan. 25 '89	Mar. 1 '89	May 29 '89
Nov. 25	Dec. 14	Jan. 3 '89	Jan. 18 '89	Feb. 8 '89	Mar. 15 '89	June 12 '89
Dec. 9	Dec. 28	Jan. 17 '89	Feb. 1 '89	Feb. 22 '89	Mar. 29 '89	June 26 '89
Dec. 23	Jan. 11 '89	Jan. 31 '89	Feb. 15 '89	Mar. 8 '89	Apr. 12 '89	July 10 '89

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

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]

To All Agencies:

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

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]		
Rural revitalization program, amendments to ch 10 IAB 11/30/88 **ARC 9475** (See also ARC 9474)	Conference Room First Floor East Wallace State Office Bldg. Des Moines, Iowa	December 21, 1988 10 a.m.
CORRECTIONS DEPARTMENT[291]		
Jail facilities, jailing of juveniles, 50.1, 50.11(2)"a"(1), 50.13(1)"f," 50.13(2)"a"(6) IAB 12/14/88 **ARC 9505**	Conference Room 523 East 12th Street Des Moines, Iowa	January 3, 1989 1 p.m. to 4 p.m.
Temporary holding facilities, jailing of juveniles, 51.11(2)"a"(4) IAB 12/14/88 **ARC 9504**	Conference Room 523 East 12th Street Des Moines, Iowa	January 3, 1989 1 p.m. to 4 p.m.
EDUCATION DEPARTMENT[281]		
Standards for teacher education, 77.10, 77.12, 77.14, 77.15 IAB 11/30/88 **ARC 9476**	Conference Room Second Floor Grimes State Office Bldg. Des Moines, Iowa	January 4, 1989 10 a.m.
HISTORICAL DIVISION[223]		
State Historical Society of Iowa, 13.5, 13.11, ch 14, 490—5.26 IAB 11/30/88 **ARC 9485**	Auditorium State Historical Bldg. Capitol Complex Des Moines, Iowa	December 21, 1988 9 a.m.
HUMAN SERVICES DEPARTMENT[441]		
Corporate guardians and corporate conservators, ch 23 IAB 12/14/88 **ARC 9507**	Conference Room First Floor Hoover State Office Bldg. Des Moines, Iowa	January 5, 1989 10 a.m.
INSURANCE DIVISION[191]		
Workers' compensation self-insurance for individual employers, 57.3(1), 57.4(2), 57.9(1) IAB 11/30/88 **ARC 9478**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	December 20, 1988 9 a.m.
IOWA FINANCE AUTHORITY[524]		
Housing assistance fund, ch 15 IAB 11/30/88 **ARC 9484**	Authority Office Suite 222 200 East Grand Ave. Des Moines, Iowa	December 20, 1988 10:30 a.m.
LAW ENFORCEMENT ACADEMY[501]		
Certification of law enforcement officers, 3.1, 3.9 IAB 12/14/88 **ARC 9495**	Conference Room Law Enforcement Academy Camp Dodge Johnston, Iowa	January 3, 1989 9:30 a.m.
NATURAL RESOURCE COMMISSION[571]		
Concessions, amendments to ch 14 IAB 11/30/88 **ARC 9481**	Conference Room Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	December 21, 1988 10 a.m.
Salvage of fish and game, ch 80 IAB 11/30/88 **ARC 9480**	Conference Room Fourth Floor West Wallace State Office Bldg. Des Moines. Iowa	December 20, 1988 10 a.m.

AGENCY IDENTIFICATION NUMBERS

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

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

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

Other agencies are included alphabetically in lowercase type at the left-hand margin, e.g., Beef Industry Council, Iowa [101].

Implementation of reorganization is continuing and the following list will be updated as changes occur:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
- Agricultural Development Authority[25]
- Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

Beef Industry Council, Iowa[101]

BLIND, DEPARTMENT FOR THE[111]

CAMPAIGN FINANCE DISCLOSURE COMMISSION[121]

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COMMERCE DEPARTMENT[181]
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- Banking Division[187]
- Credit Union Division[189]
- Insurance Division[191]
- Professional Licensing and Regulation Division[193]
  - Accountancy Examining Board[193A]
  - Architectural Examining Board[193B]
  - Engineering and Land Surveying Examining Board[193C]
  - Landscape Architectural Examining Board[193D]
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- Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]
- Historical Division[223]
- Public Broadcasting Division[225]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
- City Development Board[263]
- Iowa Finance Authority[265]
- High Technology Council[267]

EDUCATION DEPARTMENT[281]
- College Aid Commission[283]
- Higher Education Loan Authority[284]
- Iowa Advance Funding Authority[285]
- Professional Teaching Practices Commission[287]
- School Budget Review Committee[289]

Egg Council[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPLOYMENT SERVICES DEPARTMENT[341]
- Industrial Services Division[343]
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- Labor Services Division[347]

EXECUTIVE COUNCIL[361]

Fair Board[371]

GENERAL SERVICES DEPARTMENT[401]

Health Data Commission[411]

ARC 9505

CORRECTIONS DEPARTMENT[291]

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 356.36, the Department of Corrections hereby gives Notice of Intended Action to amend Chapter 50, "Jail Facilities," Iowa Administrative Code.

These amendments are proposed to establish compliance with Iowa Code supplement section 232.22(2)"c" as amended by 1988 Iowa Acts, House File 2278, section 2, regarding the jailing of juveniles.

A public hearing will be held on January 3, 1989, from 1 p.m. to 4 p.m. in the Corrections Conference Room at 523 East 12th Street, Des Moines, Iowa 50319. Written comments may be submitted to the Director at the same address prior to January 3, 1989.

These amendments were approved by the Corrections Board at the regular meeting of the Board on November 4, 1988.

These rules are intended to implement Iowa Code chapter 232.

ITEM 1. Amend rule **291—50.1(356,356A)** by adding in alphabetical sequence the following new definitions:

"Continuous visual observation." Uninterrupted visual contact unaided by C.C.T.V.

"Monitoring." A reasonable degree of knowledge or awareness of what activities arrestee is engaged in during incarceration.

ITEM 2. Amend subrule **50.11(2)**, paragraph "a," subparagraph (1), as follows:

(1) The individual shall hold a Red Cross standard first aid certificate or the equivalent; or a crash injury management certificate from the Iowa department of public health; or be certified as having completed an emergency medical technician program; *or sheriff departments may develop their own first aid training program appropriate to jail usage. First aid training criteria shall include at a minimum, the following topics:*

Shock
Bleeding
Internal bleeding
Burns
Chemical burns
Chest injuries
Eye injuries
Poisoning by mouth
Head and face injuries
Spine injuries
Pain
Acute abdomen
Allergic reaction
Bites and stings
Convulsions/seizures
Diabetic coma and insulin shock
Heat stroke
Hypothermia
Fractures
Drug overdose
Hanging
Childbirth

All instructors providing this training shall be certified pursuant to subrule 50.12(2) entitled "Jailer Training Certification"; or be licensed to practice as a licensed practical nurse or medical practitioner in the state of Iowa.

ITEM 3. Amend subrule **50.13(1)** by adding the following new paragraph:

f. All staff involved in the booking process or the supervision of inmates shall be trained in suicide prevention. At the time of booking, an attempt shall be made (either by observation for marks or scars or direct questioning of the inmate) to determine if the inmate is suicidal. The following questions, or others of equal meaning, shall be incorporated into the booking process with appropriate documentation:

(1) Does the inmate show signs of depression?

(2) Does the inmate appear overly anxious, afraid, or angry?

(3) Does the inmate appear unusually embarrassed or ashamed?

(4) Is the inmate acting or talking in a strange manner?

(5) Does the inmate appear to be under the influence of alcohol or drugs?

(6) Does the immate have any scars or marks which indicate a previous suicide attempt?

If any of the above are answered yes, the following will be asked of the inmate:

Have you ever tried to hurt yourself?

Have you ever attempted to kill yourself?

Are you thinking about hurting yourself?

ITEM 4. Rescind subrule **50.13(2)**, paragraph "a," subparagraph (6), and insert in lieu thereof the following:

(6) All juveniles arrested for intoxication due to substance abuse shall be personally observed on a continuous basis throughout the period of detention. The activities of juveniles arrested for crimes other than the above shall be monitored at all times, and the juvenile shall be observed by means of personal supervisory checks at no more than 30-minute intervals.

ARC 9504

CORRECTIONS DEPARTMENT[291]

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 356.36, the Department of Corrections hereby gives Notice of Intended Action to amend Chapter 51, "Temporary Holding Facilities," Iowa Administrative Code.

These amendments are proposed to establish compliance with Iowa Code supplement section 232.22(2)"c" as amended by 1988 Iowa Acts, House File 2278, section 2, regarding the jailing of juveniles.

A public hearing will be held on January 3, 1989, from 1 p.m. to 4 p.m. in the Corrections Conference Room at 532 East 12th Street, Des Moines, Iowa 50319. Written comments may be submitted to the Director at the same address prior to January 3, 1989.

These amendments were approved by the Corrections Board at the regular meeting of the Board on November 4, 1988.

CORRECTIONS DEPARTMENT[291] *(cont'd)*

These rules are intended to implement Iowa Code chapter 232.

Amend subrule **51.11(2)**, paragraph "a," subparagraph (4), as follows:

(4) Detainees considered to be in physical jeopardy because of physical or mental condition (to include all those arrested for intoxication) ~~or those held pursuant to Iowa Code chapter 232~~ shall be checked personally at least once every half hour.

All juveniles arrested for intoxication due to substance abuse shall be personally observed on a continuous basis throughout the period of detention. The activities of juveniles arrested for crimes other than the above shall be monitored at all times, and the juvenile shall be observed by personal supervisory checks at no more than 30-minute intervals.

ARC 9494

EDUCATION DEPARTMENT[281]

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 259.3, the Iowa Department of Education proposes to amend Chapter 56, "Vocational Rehabilitation Division," Iowa Administrative Code.

The amendments reflect changes brought about by Federal Regulation (42 CFR 361) published May 13, 1988, to implement Public Law 99-506, the Rehabilitation Act Amendments of 1986. The rule calls for an impartial hearing officer, sets time limits, and allows the administrator of the Division of Vocational Rehabilitation Services (DVRS) to overrule or modify the impartial hearing officer's decision within certain time frames.

Interested persons may submit their comments orally or in writing to the Administrator, Division of Vocational Rehabilitation Services, 510 East 12th Street, Des Moines, Iowa 50319, telephone (515)281-6731 on or before January 3, 1989.

These amendments were also adopted and filed emergency and are published herein as **ARC 9493**. The content of that submission is incorporated here by reference.

This rule is intended to implement Iowa Code sections 259.1 and 259.3.

ARC 9511

EDUCATION DEPARTMENT[281]

Notice Terminated

Pursuant to the authority of Iowa Code section 256.7(5), the Iowa State Board of Education hereby terminates the Notice to adopt Chapter 102, "Procedures for Charging and Investigating Incidents of Abuse of Students by School Employees," Iowa Administrative Code.

Notice of Intended Action was published in the September 7, 1988, Iowa Administrative Bulletin as **ARC 9187**. A public hearing was held on September 27, 1988, and written and oral comments were accepted until October 28, 1988.

The proposed chapter created a uniform process for filing reports or allegations of abuse of students by school employees or agents, and created a preliminary investigation procedure for all schools and school districts to follow in investigating such reports and allegations.

As a result of verbal and written input received, substantial changes will be made to the rules. Rather than amend, the Department chose to terminate these rules and initiate new rules with the proposed changes.

ARC 9507

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)"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 633.63, subsection 3, the Department of Human Services proposes to adopt Chapter 23, "Corporate Guardians and Corporate Conservators," Iowa Administrative Code.

Iowa Code section 633.63, subsection 3, requires the Department to determine whether or not a private, nonprofit corporation is suitable to perform the duties of a guardian or conservator for persons whose assets subject to the conservatorship are less than $15,000. The rules set forth in this chapter establish the criteria on which the Department will base the determination and the requirements for application for approval. The Department may require the submission of information on a regular basis in order to maintain an accurate list of the availability of corporate guardian and conservator services and to periodically reaffirm the validity of the approval. Iowa Code chapter 633 contains provisions for monitoring guardianship services on behalf of individual wards. The requirements of this chapter are in addition to the requirements of Iowa Code chapter 633.

Consideration will be given to all written data, views, and arguments thereto, received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114 on or before January 4, 1989.

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

Des Moines - January 5, 1989 10 a.m.
Department of Human Services
Hoover State Office Building
First Floor Conference Room
Des Moines, Iowa 50319-0114

These rules are intended to implement Iowa Code section 633.63, subsection 3.

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

The following new chapter is proposed:

CHAPTER 23
CORPORATE GUARDIANS AND CORPORATE CONSERVATORS

PREAMBLE

Iowa Code section 633.63, subsection 3, requires the department to determine whether or not a private, nonprofit corporation is suitable to perform the duties of a guardian or conservator. The rules set forth in this chapter establish the criteria on which the department will base the determination and the requirements for application for approval. The department may require the submission of information on a regular basis in order to maintain an accurate list of the availability of corporate guardian and conservator services and to periodically reaffirm the validity of the approval. Iowa Code chapter 633 contains provisions for monitoring guardianship services on behalf of individual wards. The requirements of this chapter are in addition to the requirements of Iowa Code Chapter 633.

441—23.1(633) Definitions.

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

"Client" means a person accepted for services by the corporation but for whom the corporation is yet to be named the guardian or conservator.

"Conservator" means the person or corporation appointed by the court to have custody and control of the property of a ward under the provisions of Iowa Code chapter 633.

"Court" means the Iowa district court sitting in probate and includes any Iowa district judge.

"Department" means the Iowa department of human services.

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

"Guardian" means the person or corporation appointed by the court to have the custody of the person of the ward under the provisions of Iowa Code chapter 633.

"Least restrictive interventions" means interventions in the lives of people which are carried out with a minimum of limitation, intrusion, disruption, and departure from commonly accepted patterns of living and which are most appropriate to the abilities, needs and preferences of the person being served.

They are interventions which allow persons to participate to the fullest extent possible for each person in everyday life and to have control over the decisions that affect them. They are interventions that provide needed supports in such a way that they do not unduly interfere with personal liberty and a person's access to the normal events of life.

"Normalization" means a process of 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 principles of age-appropriate services and least restrictive interventions.

"Staff" refers to employees, consultants, contractors, or volunteers.

"Ward" means a person for whom the court has appointed a guardian or conservator.

441—23.2(633) Criteria for approval of corporate guardians and conservators.

23.2(1) The corporation shall have policies and procedures which provide for services to be carried out to see that a person's needs are met in accordance with the principles of normalization, including least restrictive interventions and age-appropriate services. Least restrictive interventions include the determination of the least restrictive environment for living arrangements and service provision in accordance with the abilities, needs and preferences of the ward. The corporation shall assess other less restrictive interventions which may be available to the person in lieu of the appointment of a guardian or conservator and use this information in the determination of the corporation's services.

23.2(2) The proposed guardian or conservator shall be organized as a private nonprofit corporation under Iowa Code chapter 504 or 504A.

23.2(3) The corporation serving as guardian or conservator shall not possess a proprietary or legal interest in an organization which provides direct services to the wards served by the corporation. Possession of a proprietary or legal interest shall be determined using the following criteria:

a. One organization, through contracts or other legal documents, has the authority to direct the other organization's activities, management, or policies.

b. One organization is the primary beneficiary of the other organization's activities. An organization will be considered to be the primary beneficiary if one or more of the following circumstances exist.

(1) The organization has solicited funds on the other organization's behalf with the other organization's approval and substantially all funds so solicited were contributed with intent of benefiting the other organization.

(2) The organization has transferred some of its resources to the other organization, substantially all of whose resources are held for the benefit of the organization making the transfer.

(3) The organization has assigned certain of its functions to the other organization which is operating primarily for the benefit of the organization assigning those functions.

23.2(4) At least 51 percent of the board members shall be persons who are not board members, employees, consultants, contractors, or trainees of organizations which provide services to wards of the corporation.

23.2(5) The corporation shall have sufficient staff with appropriate training and qualifications assigned to its guardianship or conservatorship program to adequately carry out the responsibilities of guardian or conservator.

a. The proposed guardian shall have staff who are qualified by either training or experience to provide services to the population group served by the corporation.

b. The proposed guardian shall have at least one staff person who meets the following qualifications: holds at least a bachelor's degree in the behavioral or social sciences, education, health care or human service administration and has at least one year of postdegree experience in the delivery, planning, coordination or administration of human services.

c. The proposed conservator shall have staff who are qualified by either training or experience to manage the finances of the wards of the corporation.

23.2(6) Each ward shall have one staff person assigned to carry out the responsibilities of guardian or conservator. The name of the staff person assigned to each ward shall be available upon request.

23.2(7) The corporation shall ensure that a staff person is readily accessible in person or by phone to the ward and to other persons concerned about the ward's well-being.

23.2(8) A corporation serving as guardian shall have periodic contact with the ward in person as necessary and no less often than once every three months, to ascertain the status of the ward, take necessary action to ensure that the ward is receiving appropriate services, has appropriate living arrangements, and is provided with the opportunity to exercise legal rights.

23.2(9) The corporation shall have a contract with the parent, ward, or other appropriate party which specifies the services to be provided to the ward and the fee for those services.

23.2(10) The proposed conservator shall accept as wards only those persons whose assets subject to the conservatorship are within the monetary limits established in Iowa Code section 633.63, subsection 3.

23.2(11) The corporation shall provide training to staff to assist them to carry out their assigned responsibilities. The training shall include, but need not be limited to, the following:

a. The consequences of guardianship and conservatorship to the person.

b. Legal alternatives to guardianship and conservatorship.

c. Guardianship and conservatorship statutes and court procedures.

d. The role and duties of the guardian and conservator.

e. Record keeping.

f. Administration and review of cases.

g. Reporting requirements.

h. Public benefits, social services, and prearranged funeral benefits.

i. Health care.

j. Working and communicating with clients.

k. Issues specific to the various client populations including unique issues relative to persons who are older or who have mental retardation, mental illness or developmental disabilities.

l. Case closing.

m. Property management.

n. The concepts of normalization, least restrictive interventions, and age-appropriate services.

23.2(12) The corporation shall make an annual report using Form 470-2485, Annual Report Corporate Guardianship and Conservatorship Program, to the division to reaffirm the validity of the approval. The division shall notify the corporation of the due date of the annual report.

23.2(13) The corporation shall communicate to the division any significant changes which impact the delivery of services to wards of the corporation. These changes shall be reported within 30 days of their occurrence.

23.2(14) The corporation shall comply with all applicable laws, rules and regulations concerning guardians and conservators, including Iowa Code sections 633.552 to 633.682.

441—23.3(633) Application for approval.

23.3(1) A corporation seeking approval by the division to serve as a corporate guardian or conservator shall submit an application for approval using Form 470-2484, Corporate Guardianship and Conservatorship Status Application.

23.3(2) Upon application, the proposed guardian or conservator shall submit the following information:

a. Articles of incorporation.

b. Bylaws.

c. A list of board members which includes names, addresses, and identification of those board members who are associated with providers which may serve wards of the corporation. Association includes, but need not be limited to, serving as members of the board, employees, consultants, or trainees.

d. The name, title, and qualifications of the person or persons appointed to meet the requirements of subrule 23.2(5), paragraphs "b" and "c."

e. A proposed budget showing projected income and expenditures and a narrative describing how the corporation will maintain financial solvency. If the corporation has been in existence for one or more years, the corporation shall submit a copy of the most recent audit or financial report showing the corporation's income, expenses, and balance sheet.

f. A resume of services which describes the services to be provided; admissions procedures; admissions criteria; staffing patterns; supervision of staff; guidelines to provide assurance against conflict of interest which includes, but need not be limited to, conflict between staff and wards; accounting practices; policies and procedures for identifying the cost of providing the service and establishing the fees to be charged to clients which shall include the provision that fees charged for the corporation's services shall not be paid from the personal allowance permitted by rules for the state supplementary assistance and Medicaid programs when the client is residing in a licensed residential care facility, intermediate care facility, or skilled nursing facility; description of grievance procedures for wards; other relevant policies and procedures of the corporation; and a copy of the contract between the corporation and the parent, ward, or other appropriate party.

g. Other information determined by the division to be necessary to assess compliance with these rules.

441—23.4(633) Approval decision.

23.4(1) The division shall issue a written decision on the application for approval within 45 days of receipt of a complete application.

23.4(2) The division may conduct a site visit to the corporation to verify any or all of the information submitted on the application, the annual report, or other reports submitted by the corporation.

441—23.5(633) Revocation of approval.

23.5(1) The division may revoke approval if the findings of the site visit, review of the annual or other reports submitted by the corporation, or review of other information submitted to the division indicate that the corporation does not meet the criteria for approval.

23.5(2) Within 30 days of a finding by the division that the corporation no longer meets the criteria of approval, the division shall submit written notice to the corporation of the finding.

23.5(3) The corporation shall submit a plan for corrective action in response to the finding within 45 days of receipt of the notice.

23.5(4) If no plan of corrective action is received or if the plan is not acceptable to the division, the division

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

shall submit written notice to the corporation and the courts in the corporation's service area stating that the corporation no longer is determined to be suitable to serve as a guardian or conservator.

441—23.6(633) Complaints.

23.6(1) If a person believes a corporation is not in compliance with the rules of this chapter, the person may file a complaint with the division stating the nature of the complaint.

23.6(2) Upon receipt of a complaint made in accordance with subrule 23.6(1), the division shall make a preliminary review of the complaint. Unless the division concludes that the complaint is intended to harass the provider, is without reasonable basis, or is not a matter of compliance with a standard set forth in this chapter, within 20 working days of receipt of the complaint, the division shall take action to initiate investigation of the conditions giving rise to the complaint. The provider shall be informed of the nature of the complaint and the findings of the investigation.

441—23.7(633) Appeals. A corporation dissatisfied with the division's decision on determination of suitability of the corporation to serve as guardian or conservator pursuant to rule 441—23.4(633) or 441—23.5(633) may request a fair hearing under the provisions of 441—Chapter 7. The request shall be submitted to the division in writing within 30 days of the corporation's receipt of notice pursuant to subrule 23.4(1) or 23.5(4).

These rules are intended to implement Iowa Code section 633.63, subsection 3.

ARC 9510

INSPECTIONS AND APPEALS DEPARTMENT[481]

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 10A.104(5), the Department of Inspections and Appeals gives Notice of Intended Action to amend Chapter 30, "Field Survey Administration," Iowa Administrative Code.

The proposed amendments define "boarder," "boarding house," and "transient guest." The definition of "hotel" is amended to include the word "transient."

These amendments are proposed in order to further explain whether an establishment which rents rooms or serves meals is considered a hotel or a food service establishment. A boarding house is neither.

Written comments will be considered by the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319, if they are received by January 3, 1989.

These amendments are intended to implement Iowa Code sections 10A.502(2), 170A.2(5), and 170B.2(4).

The following amendments are proposed:

ITEM 1. Amend rule **481—30.2(10A)** by adding the following definitions in alphabetical order.

"Boarder" means a person who rents a room, rooms or apartment for at least a week. A boarder is considered permanent and is not a transient guest.

"Boarding house" means a house in which lodging is rented and meals are served to permanent guests. A boarding house is not a food service establishment nor hotel unless it rents or caters to transient guests.

"Transient guest" means an overnight lodging guest who does not intend to stay for any permanent length of time. Any guest who rents a room for more than 31 days is not classified a transient guest.

Further amend rule **481—30.2(10A)** by amending the definition of "hotel" as follows:

"Hotel" means any building equipped, used, or advertised to the public as a place where sleeping accommodations are rented to temporary, *or transient,* guests.

ITEM 2. Amend rule 481—30.5 by adding "72GA,SF356" to the parenthetical implementation of the rule number as follows:

481—30.5(170,170A,170B,191A,*72GA,SF356*) Returned checks.

These rules are intended to implement Iowa Code sections 10A.502(2), 170A.2(5), and 170B.2(4).

ARC 9495

LAW ENFORCEMENT ACADEMY[501]

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 80B.11, the Iowa Law Enforcement Academy gives Notice of Intended Action to amend Chapter 3, "Certification of Law Enforcement Officers," Iowa Administrative Code, by requiring all law enforcement officers to be certified within one year of their hiring date and to require applicants for certification as a law enforcement officer by examination to apply within 120 days of their hiring date unless good cause is shown for an extension of this application time.

The Academy has determined that all law enforcement officers should be certified within one year of their hiring date regardless of whether certification is through training or by written examination.

Any interested person may make written comments or suggestions on these proposed amendments to rules 501—3.1(80B) and 3.9(80B) prior to January 3, 1989. Such written materials should be sent to the Director of the Iowa Law Enforcement Academy, P.O. Box 130, Camp Dodge, Johnston, Iowa 50131. Persons who wish to convey their views orally should contact the Iowa Law Enforcement Academy at (515)242-5357, or at the Iowa Law Enforcement Academy, Camp Dodge, Johnston, Iowa.

LAW ENFORCEMENT ACADEMY[501] *(cont'd)*

There will be a public hearing on these proposed amendments January 3, 1989, at 9:30 a.m. in the conference room at the Iowa Law Enforcement Academy, Camp Dodge, Johnston, Iowa, at which time persons may present their views orally or in writing.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

These rules are intended to implement Iowa Code section 80B.11.

The following amendments are proposed:

ITEM 1. Amend rule 501—3.1(80B) as follows:

501—3.1(80B) Certification through training required for all law enforcement officers. All law enforcement officers must be certified through the successful completion of training at an approved law enforcement training facility in order to remain eligible for employment. As a condition precedent to enrollment in a certifying training program, the Iowa law enforcement academy must be provided with verification by the enrollee's hiring agency that the minimum standards for Iowa law enforcement officers have been met as provided in rule 501—2.1(80B). ~~New officers~~ *Officers* employed after the effective date of this rule must be certified within one year of their employment. *(See rule 501—3.9(80B) for certification by testing requirements.)* Officers employed within the year immediately prior to the effective date of this rule must be certified within the year following the effective date of this rule. All other officers who have been employed more than one year prior to the effective date of this rule must be certified within three years of the rule's effective date.

This rule is intended to implement Iowa Code section 80B.11.

ITEM 2. Amend rule 501—3.9(80B) as follows:

501—3.9(80B) Certification through examination. Law enforcement officers hired prior to July 1, 1968, and who have remained in continuous service, who do not possess the necessary training for certification by application (501—3.8(80B), may upon application to the director and with the approval of the council take written and firearms competency tests. Successful completion of these tests will result in certification by the council. These tests will be prepared by the academy and will determine the officer's level of knowledge and skill in such important areas as criminal law and procedures, emergency medical care, patrol procedures, accident investigations, juvenile law, defensive tactics and mechanics of arrest and search.

In addition, officers who have successfully completed law enforcement certifying training in another state are eligible, upon application, to request certification in Iowa through this examination~~; successful completion of which will result in certification by the council~~. *Application for certification through examination shall be made within 120 days of the applicant's hiring date unless for "good cause" shown this time period is extended by the council. A failure to make a timely application for certification through examination may result in the applicant's being required to attend an academy certifying school.*

A failure to successfully complete this examination will result in ~~a decision by the director, subject to the approval of the council that~~ the unsuccessful ~~candidate~~ *candidate's will be being* required to attend *and satisfactorily complete* academy training covering those areas of deficiency within one year of ~~test~~ *the hiring* date. *Successful completion of these tests will result in certification by the council.*

In no case shall the one year certification required after hiring be extended by these rules.

This rule is intended to implement Iowa Code section 80B.11.

ARC 9502

PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS

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 135E.15, the Board of Examiners for Nursing Home Administrators gives Notice of Intended Action to amend Chapter 141, "Licensure of Nursing Home Administrators," Iowa Administrative Code.

The rule increases the national exam fee from $50 to $100 and the fee for the state exam from $50 to $75. This will be effective for all applicants beginning with the June 1989 examinations.

Any interested person may make written or oral comments on the proposed rule on or before January 3, 1989. Comments should be addressed to Mary Vavroch, Bureau Chief, Bureau of Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

This rule is intended to implement Iowa Code section 135E.15.

Amend subrule 141.5(1) to read as follows:

141.5(1) The basic application fee required for all applicants is $50. If the applicant has not successfully passed the examinations, an additional fee of ~~$50~~ *$100* is required for the national examination and an additional fee of ~~$50~~ *$75* is required for the state examination. *This will be effective for all applicants beginning with the June 1989 examination.*

ARC 9506

UTILITIES DIVISION[199]

Amended Notice of Intended Action

Pursuant to the authority of Iowa Code sections 476.1, 476.2, 476.8 and 17A.4, the Iowa State Utilities Board gives Notice that on November 21, 1988, the Board issued an Order in Docket No. RMU-88-8, In Re: Disconnection Rules after receiving written notice and a public oral presentation on the Notice of Intended Action published in the Iowa Administrative Bulletin on May 4, 1988, as **ARC 8687**.

The majority of the commenters were generally opposed to the proposed amendments largely because the commenters claimed that mistaken disconnections

rarely, if ever, occur. The commenting utilities stated they do not disconnect without a careful investigation because civil proceedings could be brought against a utility by an aggrieved customer. Commenters also asserted the criminal sanctions enumerated in Iowa Code section 714.1(7) adequately control the situation.

Some commenters argued that the proposed amendments would increase the liability of utilities because the utilities could be held liable for any damages occurring during the 12 days they knew about the hazardous condition but were unable to correct it due to the notice period. The commenters also contended the 12-day notice period interferes with the collection of evidence, because the notice would allow the tampering party time to remove the diversion. Some comments suggested that the 12-day notice period is too long and suggested an alternative notice period of two days or three days.

Some commenters argued that the Board should clarify that the 12-day notice requirement is applicable only to customers who have properly applied for and have been supplied service. Those commenters feel that absent this clarification, noncustomers will also be benefited by the rule. It was also argued that the proposed amendment hinders collection, because the customer has 12-free days of service which in all likelihood goes uncollected.

Finally, Iowa Electric Light and Power Company (Iowa Electric) proposed that the Board limit the term tampering in paragraph 20.4(15)"c" to provide, "For purposes of this rule, a broken or absent meter seal alone shall not constitute tampering." This definition addresses the concern that an accidental breakage or removal of the seal could result in disconnection of electric service.

The comments filed in this docket indicate the proposed rules go too far in an attempt to prevent an improper disconnection. The benefits of the safeguards against improper disconnection are outweighed by the potential problems which could result from the rules as proposed. However, the Board continues to believe that the rules should contain some protection against an improper disconnection. Therefore, the Board will withdraw the proposal to strike the words "without notice" from paragraphs 19.4(15)"c" and "d," and 20.4(15)"c" and "d," but will propose to limit the term tampering, as proposed by Iowa Electric. The Board also determines that a similar rule with regard to gas meters is warranted. Therefore, the Board will add language to paragraphs 19.4(15)"c" and 20.4(15)"c" stating that a broken or absent meter seal alone shall not constitute tampering.

In response to the comments made earlier in this docket, the Board will make substantive amendments to the text of the rules and will renotice the proposed rules in order to receive additional comment.

Pursuant to Iowa Code section 17A.4(1)"a" and "b," any interested person may file written comments not later than January 3, 1989, by filing an original and ten copies of such comments substantially complying with the form prescribed in subrule 2.2(2). All communications shall be directed to the Executive Secretary, Iowa State Utilities Board, Lucas State Office Building, Des Moines, Iowa 50319.

ITEM 1. Amend subrule **19.4(15)**, paragraph "c," as follows:

c. Without notice in the event of tampering with the equipment furnished and owned by the utility. *For the purposes of this subrule, a broken or absent meter seal alone shall not constitute tampering.*

ITEM 2. Amend subrule **20.4(15)**, paragraph "c," as follows:

c. Without notice in the event of tampering with the equipment furnished and owned by the utility. *For the purposes of this subrule, a broken or absent meter seal alone shall not constitute tampering.*

ARC 9518

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development emergency adopts and implements amendments to Chapter 23, "Community Development Block Grant Nonentitlement Program," Iowa Administrative Code.

These amendments were adopted by the Department of Economic Development Board on November 17, 1988.

The amendment to subrule 27.12(7) deletes subparagraph 27.12(7)"a"(2) and thereby eliminates the 50 percent local match requirement for projects submitted under the home ownership assistance portion of the Community Development Block Grant program.

This match requirement was originally deemed appropriate because it was consistent with match requirements in other parts of the CDBG program. However, as staff considered further how the program would operate and met with potential applicants, it became apparent that substantial local match for this kind of program will be extremely hard to provide and, in turn, make the program inoperable.

While it is proposed to drop the match as a threshold requirement, local match will remain as a rating factor. Therefore, there will be an incentive to provide as much local match as possible.

In compliance with Iowa Code section 17A.4(2), the Department finds that public notice and participation are unnecessary, impracticable and contrary to the public interest because the amendments implement an assistance program authorized by 1988 Iowa Acts, Senate File 2323, section 7.1, and any delay would withhold the availability of funds to Iowa communities because of the excessively restrictive nature of the rule.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of the rules should be waived and the rules should be made effective November 23, 1988, upon filing with the Administrative Rules Coordinator because the rules confer a benefit on the public by making assistance funds more readily available by eliminating certain local matching requirements.

These amendments are intended to implement 1988 Iowa Acts, Senate File 2323, section 7.1.

The following amendments are adopted:

ITEM 1. Amend subrule 23.12(7) as follows:

23.12(7) ~~Selection Criteria.~~ *Threshold criteria.*

~~a. Threshold criteria.~~ All applicants for the home ownership assistance program must ~~satisfy the following minimum requirements to be eligible for funding:~~ *ensure that:*

~~(1)~~ One hundred percent of home ownership assistance program funds ~~must~~ benefit low- and very low-income persons;

~~(2) Applicants must contribute 50 percent of the total grant request.~~

~~b. Reserved.~~

ITEM 2. Amend subrule **23.12(8)**, paragraph "a," as follows:

a. Local financing participation ~~exceeding the minimum required match~~;

[Filed emergency 11/23/88, effective 11/23/88]
[Published 12/14/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/14/88.

ARC 9514

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106 and 1988 Iowa Acts, Senate File 2309, the Iowa Department of Economic Development hereby rescinds 261—Chapter 27 and emergency adopts and implements a new Chapter 27, "Targeted Small Business Financial Assistance Program," Iowa Administrative Code.

The purpose of the Targeted Small Business Financial Assistance Program is to assist in the creation of women- and minority-owned small businesses within the state by providing loans or grants up to $25,000 per project and loan guarantees up to $40,000 per project. Applications are accepted on an ongoing basis and awards are made based on project viability and fund availability.

The new rules will consolidate two previously existing programs: (1) the Targeted Small Business Loan and Equity Grant Program and (2) the Targeted Small Business Loan Guarantee Program. The new Chapter 27 implements the transfer of administrative responsibility for the loan guarantee program from the Iowa Finance Authority to the Iowa Department of Economic Development.

In compliance with Iowa Code section 17A.4(2), the Department finds that public notice and participation are unnecessary, impracticable and contrary to the public interest because the rules implement an assistance program authorized by 1988 Iowa Acts, Senate File 2309, and any delay would withhold the availability of funds to Iowa businesses.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of the rules, 35 days after publication, should be waived and the rules should be made effective November 23, 1988, upon filing with the Administrative Rules Coordinator because the rules confer a benefit on the public by making assistance funds immediately available to eligible businesses.

These rules are intended to implement 1988 Iowa Acts, Senate File 2309.

Rescind Chapter 27 and adopt in lieu thereof the following new chapter:

CHAPTER 27

TARGETED SMALL BUSINESS FINANCIAL ASSISTANCE PROGRAM

261—27.1(72GA,SF2309) Targeted small business finance program. The purpose of the targeted small business finance program is to assist in the creation and expansion of women- and minority-owned small business within the state.

261—27.2(72GA, SF 2309) Definitions. As used in connection with the targeted small business finance program, the following terms have the meanings indicated:

"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.

"Department" or "IDED" means Iowa department of economic development.

"Dominant in its field of operation" means having more than 20 full-time equivalent positions and more than $3 million in annual gross revenues.

"Eligible project sponsor" means a targeted small business that has been certified as such by the Iowa department of inspections and appeals.

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

1. An employment position requiring an average workweek of 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:

Average Number of Weekly Hours	Category
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)

"ICDL/TSBFAP" means the Iowa community development loan/targeted small business financial assistance program.

"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 20 employees or an annual gross income of less than $3 million computed as the average of the three 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 this rule, which small business is 51 percent or more owned, operated, and actively managed by one or more women or minority persons. As used in this definition, "minority person" means an individual who is a black, Hispanic, Asian or Pacific Islander, American Indian or Alaskan native.

261—27.3(72GA,SF 2309) Eligibility requirements.

27.3(1) Residence. An applicant must be a resident of Iowa to be eligible to apply for assistance.

27.3(2) Targeted small business. An applicant may only apply on behalf of a business which meets the targeted small business criteria. Only a business certified as a "targeted small business" by the department of inspections and appeals may receive funds under this program.

27.3(3) Who may apply. Only persons who are owners, in whole or in part, of a targeted small business are eligible to apply. This restriction does not prevent such individuals from receiving help in preparing an application from a city, county, areawide planning organization, community college, satellite center, or other similar agencies.

261—27.4(72GA,SF 2309) Loans, grants and equity substitution program.

27.4(1) Application procedure. Application materials are available from the IDED division of finance. A business plan must accompany the application. It must address marketing, financing, operations, management, organization, and personnel.

27.4(2) Submittal. Complete applications shall be submitted to: Targeted Small Business Finance Program, Division of Finance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

27.4(3) Review. Applications will initially be reviewed by the IDED staff. Staff will verify the applicant's eligibility under rule 27.3 (72GA,SF 2309). Staff may request additional information from the applicant for purposes of such verification, or to assist in review and analysis of the application. A review committee will review each application and recommend to the director of IDED that applications be granted or denied funding. The committee's recommendation and director's decision will be based on the likelihood of business success, the business's need for assistance, amount of other funds involved in the proposal, the number of certified targeted small businesses in the same field in Iowa, and the probability of displacement of existing jobs within Iowa. The amount or term of the award may differ from that requested by the applicant. In no case may an award exceed $25,000, nor in the case of a loan may the interest rate charged exceed 5 percent per annum. Awards will generally be in the form of loans. However, grants may be awarded if the department and committee determine that a grant is necessary to secure additional financing.

261—27.5(72GA,SF 2309) Loan guarantee program.

27.5(1) Program description. This program is intended to allow a 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 department of economic development under this program.

After the decision to extend credit has been made by the participating lender, the department 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.

27.5(2) Application procedure. Eligible project sponsors for targeted small business loan guarantees shall apply directly to participating lenders using the application form available from the Iowa department of economic development. The IDED may consider any application that has been certified by a participating lender.

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 certification 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 department 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.

27.5(3) Loan criteria.

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

(1) 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 expenses for the three-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 record keeping, personnel and financial management;

5. Plans for marketing.

(2) 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, and the Iowa 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.

(3) 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 27.5(3)"b."

(4) 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.

b. Guarantee amount and term. No guarantee shall exceed the lesser of 75 percent or $40,000 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 years. The term may be extended for an additional 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.

27.5(4) Small business assistance program. The department 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.

27.5(5) 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 finance program.

27.5(6) Loan eligibility and purposes. Purposes for which a targeted small business loan guarantee may be issued by the department 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 department shall not issue a loan guarantee to facilitate refinancing of an existing loan project. The department shall not issue a loan guarantee to facilitate financing of a project which would consist of relocation of an existing business.

27.5(7) 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:

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

b. It has more than $3 million in gross revenues as computed for the preceding fiscal year or has the average of the three preceding fiscal years.

27.5(8) Lender responsibilities. Participating lenders shall take affirmative action to encourage certified targeted small businesses to apply for loans which would be guaranteed under the targeted small business finance 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.

27.5(9) 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 department:

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

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

c. Accelerate the maturity of the note;

d. Sue upon any loan instrument;

e. 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.

27.5(10) Events of default. After a loan is in default for a period of 60 days, the lender shall, within 10 days,

notify the IDED of the default and recommend course of action.

27.5(11) 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 department 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 department to provide for enforcement. Upon collection of the amount guaranteed, any excess collected shall be applied first to principal and then to interest and be paid to the lender or to the department as their respective interests may appear.

27.5(12) 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.

27.5(13) 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 department jointly or severally may at any time recover from any course whatsoever or have the right to recover on any guaranteed loan, shall repay and secure the interest of the lender and the department in the same proportion as such interest bears respectively to a guaranteed loan, secured by security or collateral pledged for the guaranteed loan, will be subordinated to the guaranteed loan.

27.5(14) Reserve account. The department 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 department 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. Each time a loan guarantee is approved by the department, the amount of value of the loan guarantee will be transferred from the ICDL/TSBFAP to the loan reserve account. The department may transfer moneys between the reserve and the ICDL/TSBFAP account. The reserve account shall at all times be actuarially sound.

27.5(15) Waiver. The department may 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.

261—27.6(72 GA, SF 2309) Award agreement. Upon approval of an award, the IDED staff will prepare an agreement between IDED and the business which at a minimum will include the conditions of the award, the responsibilities of both parties, and potential actions in instances of noncompliance.

261—27.7(72GA,SF2309) Monitoring and reporting.

27.7(1) Monitoring. The IDED reserves the right to monitor the recipient's records to ensure compliance with the terms of the award.

27.7(2) Reporting. Assisted businesses will be required to report to the IDED on a regular basis and in a format requested by the department.

These rules are intended to implement 1988 Iowa Acts, Senate File 2309, section 9.

[Filed emergency 11/23/88, effective 11/23/88]
[Published 12/14/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/14/88.

ARC 9493

EDUCATION DEPARTMENT[281]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 259.3, the Iowa Department of Education hereby emergency adopts and implements amendments to Chapter 56, "Vocational Rehabilitation Division," Iowa Administrative Code.

The amendments reflect changes brought about by Federal Regulation (42 CFR 361) published May 13, 1988, to implement Public Law 99-506, the Rehabilitation Act Amendments of 1986. The rule calls for an impartial hearing officer, sets time limits, and allows the administrator of the Division of Vocational Rehabilitation Services (DVRS) to overrule or modify the impartial hearing officer's decision within certain time frames.

In compliance with Iowa Code section 17A.4(2), the Department finds that public notice and participation are unnecessary since these revisions are required by the 1988 amendments to the Code of Federal Regulations, Part 361.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments, 35 days after publication, should be waived and the rule be made effective on December 1, 1988.

This rule is also published herein under Notice of Intended Action as **ARC 9494**.

This rule is intended to implement Iowa Code sections 259.1 and 259.3.

The following amendments are adopted:

Amend rule 281—56.14(259) as follows:

281—56.14(259) Hearings on applicants' *and clients'* appeals. Disabled persons may appeal from the decision of any counselor to ~~a~~ *the* ~~district case board~~ (supervisor ~~and two other counselors~~), *or, in instances where the supervisor has had substantial prior involvement in the case, to the assistant chief. The supervisor or assistant chief has ten working days from receipt of the appeal to decide the issue and notify the client in writing. If the decision is not in accord with the applicant/client's wishes, they shall have ten days from the date of the letter to indicate a desire to appeal further.* Appeals from the decision of a ~~district case board~~ *supervisor or assistant chief* shall be heard by ~~the state case board (director and two supervisors)~~, *an impartial hearing officer.* ~~or in instances~~

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

~~where the district case board cannot properly function the case may be heard originally by the state case board. In appealing to the state case board the client is required to set forth the client's contentions in writing and submit them to the administrator at least ten days prior to the date of the hearing.~~ *The impartial hearing officer shall have 45 days from the date of the original appeal to hold a hearing, unless the time is extended by the showing of good cause on the part of one party or mutual agreement of both parties.*

The impartial hearing officer shall make a decision based on the provisions of the approved state plan and the Act and shall provide a full written report of the findings and grounds for the decision within 30 days of the completion of the hearing to: 1) the applicant or client; 2) if appropriate, the applicant's or client's parent, guardian or other representative; 3) the counselor for the case file; and 4) the administrator of DVRS. The impartial hearing officer's decision is considered final and binding unless the DVRS administrator provides notice to the client/applicant within 20 days of the issuance of the decision of intent to review the decision. The DVRS administrator shall, within 30 days of indicating intent to review the decision, make a final decision and provide a full report in writing of the decision and of the findings and grounds for the decision to the applicant or client.

~~The individual may be accorded an appeal from the state case board to the state board for vocational education if the administrator and the executive officer of the board agree that the problem merits further view.~~ Notification of the right to appeal is verbal *and written at each step of the appeal process* ~~in the first instance; in the second instance the written decision of the district case board will include notification of the right to appeal to the state case board~~.

This rule is intended to implement Iowa Code sections 259.1 and 259.3.

[Filed emergency 11/17/88, effective 12/1/88]
[Published 12/14/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/14/88.

ARC 9508

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

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"; Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care"; and Chapter 80, "Procedure and Method of Payment," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these rules on November 14, 1988. Notices of Intended Action regarding these rules were published in the Iowa Administrative Bulletin on July 13, 1988, and September 21, 1988, as **ARC 8964** and **ARC 9270**, respectively.

This amendment adds three candidate services to the list of services for which Medicaid reimbursement will be made as mandated by the General Assembly. Candidate services include day rehabilitation, day treatment, partial hospitalization and case management. However, day rehabilitation services are not being added at this time as approval from the Health Care Financing Administration has not yet been received.

A new provider group is established for the provision of case management services. Day treatment services are added to the services which may be provided by community mental health centers and hospital outpatient mental health programs. Partial hospitalization services may be provided by hospital outpatient mental health programs.

Case management services under these rules are available only to Medicaid-eligible persons with mental retardation, developmental disabilities, or chronic mental illness.

By incorporating 441—Chapter 24, these rules provide that only the Department, a county or consortium of counties, or an agency or provider under subcontract to the Department or county or consortium of counties may provide case management services as mandated by the General Assembly.

The 1988 Iowa Acts, House File 2447, section 14, provides that a county or counties may contract to be the case management provider at any time within 90 days of the final publication of the standards for case management in the Iowa Administrative Bulletin. The 1988 Iowa Acts, Senate File 2330, section 7, provides that counties wishing to change the provider of case management services shall provide written notice to the Department of a proposed change on or before August 15 and of an approved change on or before October 15 in the fiscal year which precedes the fiscal year in which the change will take effect.

The Department of Human Services finds these rules confer a benefit on Medicaid recipients by adding day treatment, partial hospitalization, and case management to the list of services provided by Medicaid. Therefore, these rules are filed pursuant to Iowa Code section 17A.5(2)"b"(2).

Rule 441—77.30(249A); subrule 78.28(7); rule 441—78.34(249A); subrule 79.1(2), day rehabilitation provider category; and subrule 80.2(2), paragraph "ee," from the Notice of Intended Action relating to day rehabilitation services are not being adopted at this time pending federal approval.

Rule 441—77.29(249A) was revised to clarify who can qualify to be a case management provider under Medicaid.

Subrule 78.16(6), paragraph "a," subparagraph (3), was revised by inserting the word "or" between the words "contractual" and "consultant" for clarification.

These rules are intended to implement Iowa Code section 249A.4 and 1988 Iowa Acts, House File 2447, section 14, and Senate File 2330, section 7.

After consideration of the Oversight Committee's report, the Department determined to add day treatment and partial hospitalization to the plan beginning December 1, 1988. These services are currently available from a variety of providers.

The date for adding case management to the plan was delayed for one month, until January 1, 1989, to permit additional start-up time for both the county planning process and service delivery system. The effect of the

delay may make more funds available for service during the remaining months of the fiscal year.

Subrules 78.16(6) (Item 2), 78.28(8) and 78.28(9) (Item 3), 78.31(4), paragraph "d," subparagraph (7), and subparagraph (10), first paragraph (Item 4), and 79.1(5), paragraph "t," (Item 6), became effective December 1, 1988.

Rules 441—77.29(249A) (Item 1), 441—78.33(249A) (Item 5), subrule 79.1(1), paragraph "d," and 79.1(2), case management provider category (Item 6), and subrule 80.2(2), paragraph "dd," (Item 7), shall become effective January 1, 1989.

The following amendments are adopted:

ITEM 1. Amend 441—Chapter 77 by adding the following new rule:

441—77.29(249A) Case management provider organizations. Case management provider organizations are eligible to participate in the Medicaid program provided that they meet the standards in 441—Chapter 24 and they are the department of human services, a county or consortium of counties, or an agency or provider under subcontract to the department or a county or consortium of counties.

ITEM 2. Amend rule 441—78.16(249A) by adding the following new subrule:

78.16(6) Payment to a community mental health center will be approved for day treatment services if the center is certified by the department for these services and if approval is obtained from the fiscal agent prior to initiation of day treatment services. (Cross-reference 78.28(9)

a. Community mental health centers providing day treatment services must submit an application to the department's fiscal agent for certification before payment will be made. The fiscal agent will review the application against the requirements for providing day treatment services and notify the community mental health center whether certification has been approved. Application will consist of a written narrative providing the following information:

(1) Documented need for day treatment including studies, needs assessments, and consultations with other health care professionals.

(2) Goals and objectives of the day treatment program.

(3) Organization and staffing including how the day treatment program fits with the rest of the community mental health center, the number of staff, staff credentials, and the staff's relationship to the program, e.g., employee, contractual, or consultant.

(4) Policies and procedures including admission criteria, patient assessment, treatment plan, discharge plan, and postdischarge services, and the scope of services provided.

(5) Any accreditations or other types of approvals from national or state organizations.

(6) The physical facility and any equipment to be utilized.

b. Day treatment services shall be structured, long-term services designed to assist in restoring, maintaining or increasing levels of functioning, minimizing regression, and preventing hospitalization.

(1) Service components include training in independent functioning skills necessary for self-care, emotional stability and psychosocial interactions and training in medication management.

(2) Services are structured with an emphasis on program variation according to individual need.

(3) Services are provided for a period of three to five hours per day, three or four times per week.

ITEM 3. Amend rule 441—78.28(249A) by adding the following new subrules:

78.28(8) Mental health services prescribed by a physician or by a certified health service provider in psychology which are subject to prior approval are as follows:

a. Day treatment services provided by hospitals as a structured outpatient program must be submitted for prior approval. (Cross-reference 78.31(4)"d"(10)

b. Partial hospitalization services provided on an outpatient basis by psychiatric hospitals and acute care psychiatric units require prior approval. (Cross-reference 78.31(4)"d"(10)

78.28(9) Day treatment services provided by community mental health centers are subject to prior approval. Form 470-0829, Request for Prior Authorization, shall be submitted to the fiscal agent for approval prior to initiation of day treatment services. When the sixteenth session of day treatment services has been reached, Form 470-0829, summarizing the results of treatment thus far and outlining plans for further treatment, shall be forwarded to the fiscal agent's psychiatric consultant. (Cross-reference 78.16(6)

ITEM 4. Amend subrule 78.31(4) as follows:

Amend subrule **78.31(4)**, paragraph "d," subparagraph (7), as follows:

(7) Covered services. Services covered for the treatment of psychiatric conditions are:

1. Individual and group therapy with physicians, psychologists, social workers, counselors, or psychiatric nurses.

2. Occupational therapy services if the services require the skills of a qualified occupational therapist and must be performed by or under the supervision of a licensed occupational therapist or by an occupational therapy assistant.

3. Drugs and biologicals furnished to outpatients for therapeutic purposes only if they are of the type which cannot be self-administered.

4. Activity therapies which are individualized and essential for the treatment of the patient's condition. The treatment plan must clearly justify the need for each particular therapy utilized and explain how it fits into the patient's treatment.

5. Family counseling services are covered only if the primary purpose of the counseling is the treatment of the patient's condition.

~~Partial hospitalization, which is a general term that encompasses a variety of outpatient psychiatric programs, each of which can vary in their functions, the populations that they serve, their treatment goals and the services they provide. Depending on their functions they may also be called day hospital or day treatment facilities.~~

6. Partial hospitalization and day treatment services to reduce or control a person's psychiatric or psychological symptoms so as to prevent relapse or hospitalization, improve or maintain the person's level of functioning and minimize regression.

Partial hospitalization services means an active treatment program that provides intensive and structured

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

support that assists persons during periods of acute psychiatric or psychological distress or during transition periods, generally following acute inpatient hospitalization episodes.

Service components may include individual and group therapy, reality orientation, stress management and medication management.

Services are provided for a period of four to eight hours per day.

Day treatment services means structured, long-term services designed to assist in restoring, maintaining or increasing levels of functioning, minimizing regression and preventing hospitalization.

Service components include training in independent functioning skills necessary for self-care, emotional stability and psychosocial interactions, and training in medication management.

Services are structured with an emphasis on program variation according to individual need.

Services are provided for a period of three to five hours per day, three or four times per week.

Amend subrule **78.31(4)**, paragraph "d," subparagraph (10), first paragraph, as follows:

(10) Prior authorization for day treatment or partial hospitalization. Form 470-0829, Request for Prior Authorization, shall be submitted to the fiscal agent for approval prior to initiation of day treatment or partial hospitalization. *(Cross-reference 78.28(8)*

ITEM 5. Amend 441—Chapter 78 by adding the following new rule:

441—78.33(249A) Case management services. Payment will be approved for case management services to recipients with a primary diagnosis of mental retardation, developmental disabilities, or chronic mental illness as defined in 441—22.1(225C).

Payment on a monthly payment per enrollee basis will be approved for the case management functions required in 441—Chapter 24.

ITEM 6. Amend rule 441—79.1(249A) as follows:

Amend subrule **79.1(1)** by adding the following new paragraph:

d. Monthly fee for service. Providers are reimbursed on the basis of a payment for a month's provision of service for each client enrolled in a case management program for any portion of the month based on reasonable and proper costs for service provision. The fee will be determined by the department with advice and consultation from the appropriate professional group and will reflect the amount of resources involved in services provision.

Amend subrule **79.1(2)** by adding the following provider category in alphabetical order:

Provider category	Basis of reimbursement	Upper limit
Case management providers	Monthly fee per enrollee	Fee schedule

Amend subrule **79.1(5)**, paragraph "t," as follows:

t. Determination of payment amount for outpatient hospitalization. For outpatient hospital services as described in 78.31(1), paragraphs "g" to "l," *except for partial hospitalization and day treatment services*, the maximum allowable fee will be a daily unit rate calculated by applying the statewide ratio of cost to charges computed according to Medicare principles to the 75th percentile rate for that particular outpatient service as of September 1, 1987. The maximum fee will be adjusted annually through use of an index.

The fees for partial hospitalization and day treatment services will be an hourly unit rate with a per session cap based on recommendations from a reimbursement study conducted by the Center for Health Policy Studies.

ITEM 7. Amend subrule **80.2(2)** by adding the following new paragraph:

dd. Case management providers shall submit claims on Form 470-2486, Claim for Non-Technical Medical Care.

[Filed emergency after Notice 11/23/88, effective 12/1/88 and 1/1/89]
[Published 12/14/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/14/88.

ARC 9488

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," and Chapter 81, "Intermediate Care Facilities," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these rules on November 14, 1988. Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin on October 5, 1988, as **ARC 9298**.

The Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203) Subtitle C, Nursing Home Reform, contains provisions which mandate the prescreening of all persons who have mental illness or mental retardation who are requesting admission to a nursing home facility. The prescreening process must be in place by January 1, 1989. Persons with mental illness and mental retardation must be prescreened according to federally prescribed standards and can be admitted to an intermediate care facility (ICF) or skilled nursing facility (SNF) only if their physical and mental condition requires the level of services provided by a nursing facility and if they are furnished active treatment for their mental illness or mental retardation, if the prescreening indicates the need for active treatment.

In Iowa preadmission screening is currently done on all new admissions to ensure the medical need for the services provided by the ICF or SNF and an annual review is done thereafter. Persons with mental illness and mental retardation who are already residents of an ICF or SNF will have their active treatment needs determined at the time of the annual review.

The Department of Human Services finds these rules confer a benefit on persons with mental illness and mental retardation by ensuring that their active treatment needs will be met. Therefore, these rules are filed pursuant to Iowa Code section 17A.5(2)"b"(2).

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

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

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

These rules shall become effective January 1, 1989.

The following amendments are adopted:

ITEM 1. Amend rule 441—78.12(249A), first paragraph, as follows:

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. *Payment will be made for persons with mental illness or mental retardation only if it is determined that their active treatment needs will be or are being met.* Medical necessity of initial admissions and continued stay is determined by the Iowa foundation for medical care. *Final approval for initial admissions and continued stay of persons with mental illness and mental retardation is determined by the department of human services, division of mental health, mental retardation and developmental disabilities.*

ITEM 2. Amend rule 441—81.3(249A) as follows:

441—81.3(249A) Initial approval for intermediate care facility care. Payment will be made for intermediate care facility care only upon certification of the need for the level of care by a licensed physician of medicine or osteopathy and approval by the Iowa foundation for medical care.

Payment will be made for persons with mental illness or mental retardation only if it is determined that their active treatment needs will be or are being met.

Final approval for initial admissions and continued stay of persons with mental illness and mental retardation is determined by the department of human services, division of mental health, mental retardation and developmental disabilities.

This rule is intended to implement Iowa Code sections 249A.2(6) and 249A.3(2)"a."

[Filed emergency after Notice 11/16/88, effective 1/1/89]
[Published 12/14/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/14/88.

ARC 9513

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 80.9 and section 321J.4 as amended by 1988 Iowa Acts, House File 2412, the Iowa Department of Public Safety emergency adopts an amendment to subrule 7.8(5) relative to ignition interlock devices to test body fluids for alcohol or drug content, Iowa Administrative Code.

Subrule 7.8(5) is similar to the language published under Notice of Intended Action in the July 27, 1988, Iowa Administrative Bulletin as **ARC 9005** and emergency adopted effective July 1, 1988. This provision has been amended in response to comments from the public.

A requirement that ignition interlock devices be recalibrated every 30 days after installation has been changed to a requirement for recalibration every 60 days after installation. This change will conform with maintenance requirements established by manufacturers of ignition interlock devices, and will substantially facilitate the use of ignition interlock devices as provided for by Iowa law.

A public hearing was held in Des Moines, Iowa, on August 17, 1988. While no comments were received at the hearing, comments were received from a manufacturer of ignition interlock devices regarding the period before an installed device requires recalibration. A modification of the Notice of Intended Action reflects these comments.

The Department finds, pursuant to Iowa Code section 17A.4(2), public notice and participation would be contrary to the public interest. The current rule will require individuals who have had ignition interlock devices installed to have them calibrated every month. This will cause these individuals to incur unnecessary expense since manufacturers specify that ignition interlock devices require calibration only once every 60 days.

The Department finds that, pursuant to Iowa Code section 17A.5(2)"b"(2), the normal effective date of these rules, 35 days after publication, should be waived and the amendment be made effective on December 1, 1988, to confer a benefit on the public by allowing for speedy compliance with the Department's legislative mandate and by facilitating immediate implementation of the provisions of 1988 Iowa Acts, House File 2412, which deal with ignition interlock devices.

These rules are intended to implement Iowa Code section 321J.4 as amended by 1988 Iowa Acts, House File 2412.

The following amendment is adopted:

Amend subrule 7.8(5), introductory paragraph, as follows:

7.8(5) An ignition interlock device utilized under these rules shall be calibrated at least once ~~per month~~ *every 60 days* using either a wet alcohol standard or a Nalco standard (minimum 5 cubic foot volume) at the site of installation by the dealer or agent who installed the ignition interlock device. The calibration record shall be maintained by the installer and the record shall include:

[Filed emergency 11/23/88, effective 12/1/88]
[Published 12/14/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/14/88.

ARC 9492

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), and upon the recommendation of the Governor's Task Force on Uniform Rules of Agency Procedure, the Department of Education adopts amendments to Chapter 4, "Agency Procedure for Rule Making," Iowa Administrative Code.

New rules 4.6 and 4.7 are to be inserted to define the procedures for requesting a regulatory flexibility analysis, economic impact statement, or fiscal note from the Department.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 5, 1988, as **ARC 9321**.

Interested persons were allowed to comment on these proposed rules. No written comments were received by the Department. There are no changes from the Notice.

The State Board adopted these rules on November 16, 1988.

These rules are intended to implement Iowa Code section 22.11.

These rules will become effective January 18, 1989.

The following amendments are adopted:

ITEM 1. Adopt as rule 281—4.6(256) with amendment the agency procedure for rule making segment in X.6 of the Uniform Administrative Rules which is printed in the front of Volume I of the Iowa Administrative Code as follows:

281—4.6(256) Regulatory flexibility analysis.

4.6(3) Mailing list. In lieu of the words "(designate office)", insert "Office of the Director, Iowa Department of Education, Grimes Building, Des Moines, Iowa 50319-0146".

ITEM 2. Adopt as rule **281—4.7(256)** the agency procedure for rule making segment in X.7 "Economic Impact Statement and Fiscal Note" of the Uniform Administrative Rules by reference.

[Filed 11/17/88, effective 1/18/89]
[Published 12/14/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/14/88.

ARC 9503

JOB SERVICE DIVISION[345]

Adopted and Filed

Pursuant to the authority of Iowa Code section 96.11, the Director of the Department of Employment Services hereby adopts amendments to Chapter 3, "Employer's Contribution and Charges"; Chapter 4, "Claims and Benefits"; and Chapter 5, "Benefit Payment Control," Iowa Administrative Code.

These rules are identical to those published under Notice of Intended Action in the October 19, 1988, Iowa Administrative Bulletin as **ARC 9364**.

Subrule 3.53(1), paragraph "b," is amended to allow an employer to appeal the employer's contribution rate if the employer is anticipating that the payments of benefits to an individual which are charged to employer will be reversed thus affecting one of the elements of experience upon which the contribution rate is based. This subrule also requires the division to issue a refund to the employer of any overpayment of contributions resulting from the recomputation of the employer's contribution rate due to the reversal.

Rule 4.12 is rescinded in accordance with 1987 Iowa Acts, chapter 222, sections 3, 8 and 9, which means that an individual does not have to wait one week to receive unemployment benefits on all new claims for unemployment benefits filed following the calendar week ending on January 2, 1988.

Rule 4.18 is amended as it deals with claimant earnings that must be rounded to the nearest dollar when reporting earnings and prior to computing underpayments/overpayments.

Subrule 5.7(6), paragraph "g," is amended as the tolerance for establishing an overpayment has been raised from $18 to $25, because the cost of processing an overpayment (which does not include the cost of recovery) should not exceed the $33.98 cost of setting up the overpayment.

These rules were adopted by the Director of the Department of Employment Services on November 23, 1988.

These rules will become effective January 18, 1989.

These rules are intended to implement Iowa Code sections 96.3(7); 96.5(5); 96.7(3)"e," as amended by 1987 Iowa Acts, chapter 222, section 4; 96.14(5); 96.19(9)"b"; and 1987 Iowa Acts, chapter 222, sections 3, 8 and 9.

ITEM 1. Amend subrule **3.53(1)**, paragraph "b," as follows:

b. The employer may appeal on the grounds that benefits charged against the employer's account may be reversed by a decision to be issued on a pending claim or charge-back appeal. The employer's rate will not be recomputed. However, the rate will not become final and the appeal may be reopened by the employer, in writing upon receipt of a decision reversing the allowance of benefits or relieving the employer of charges provided that the request to reopen the appeal is submitted within 30 days of the date of the next rate notice following the date of the decision. The charges will be removed from the computation of the original rate and a corrected rate notice will be issued. A refund of any overpayment of contributions and interest paid *by the employer* as a result of the recomputation of the rate will be issued, subject to the three-year statute of limitations set out in Iowa Code section 96.14(5). ~~The employer may designate within the letter reopening the appeal that the overpayment is to be left in the account as a voluntary contribution to reduce future rates in lieu of the refund.~~

ITEM 2. Rescind rule **4.12(96)** in its entirety.

ITEM 3. Amend rule 4.18(96) as follows:

345—4.18(96) Wage-earnings limitations. ~~A claimant~~ *An individual* who is partially unemployed may earn weekly~~, at odd jobs,~~ a sum equal to the ~~claimant's~~ *individual's* weekly benefit amount plus fifteen dollars ($15) before being disqualified for excessive earnings. If such ~~claimant~~ *individual* earns ~~at odd jobs~~ less than the ~~claimant's~~ *individual's* weekly benefit amount plus fifteen dollars ($15), the formula for wage deduction shall be a sum equal to the ~~claimant's~~ *individual's* weekly benefit amount less that part of the wages, payable to

the ~~claimant~~ *individual* with respect to that week *and rounded to the nearest dollar*, in excess of one-fourth of the ~~claimant's~~ *individual's* weekly benefit amount.

ITEM 4. Amend subrule **5.7(6)**, paragraph "g," as follows:

g. Overpayments of ~~eighteen dollars ($18)~~ *twenty-five dollars ($25)* or less will not be set up against future benefits because the administrative cost would exceed the overpayment.

[Filed 11/23/88, effective 1/18/89]
[Published 12/14/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/14/88.

ARC 9496

LAW ENFORCEMENT ACADEMY[501]

Adopted and Filed

Pursuant to the authority of Iowa Code section 80B.11, the Iowa Law Enforcement Academy amends Chapter 1, "Organization and Operation," and adopts Chapter 8, "Mandatory In-Service Training Requirements," Iowa Administrative Code.

This new chapter is proposed to upgrade professionalism in law enforcement.

Notice of Intended Action was published in the September 7, 1988, Iowa Administrative Bulletin as **ARC 9158**. Comments were solicited and a public hearing was held September 27, 1988.

Based upon the public comments received, changes were made to clarify the intent of the rule. Such changes include: a definition of the words "initial certification," an exemption from handgun firearms certification for officers who do not carry firearms in their employment, and certain other minor grammatical changes to clarify the intent of the rules.

These rules will become effective January 18, 1989.

These rules are intended to implement Iowa Code section 80B.11.

ITEM 1. Amend rule **501—1.1(80B)** by adding in alphabetical sequence the following definitions:

"Initial certification" means the law enforcement certification granted to a law enforcement officer by the Iowa law enforcement academy council pursuant to 501—3.1(80B), 3.8(80B), or 3.9(80B), Iowa Administrative Code.

"Regular law enforcement officer" means those full-time or part-time officers who are subject to the Iowa law enforcement academy hiring, training, and certification requirements.

ITEM 2. The following new chapter is adopted:

CHAPTER 8
MANDATORY IN-SERVICE TRAINING REQUIREMENTS

501—8.1(80B) Minimum in-service training requirements. All regular law enforcement officers shall meet the following mandatory minimum in-service training requirements.

8.1(1) Firearms training. A regular law enforcement officer must qualify with all duty handguns annually on a course of fire approved by the Iowa law enforcement academy and must successfully fire a minimum score as established by the Iowa law enforcement academy. This rule applies to only those law enforcement officers who are authorized to carry handguns by their employing agency.

8.1(2) CPR training. A regular law enforcement officer shall maintain cardiopulmonary resuscitation certification as required by the American Heart Association, the American Red Cross, or another group recognized by the Iowa law enforcement academy.

8.1(3) General training. In addition to the requirements of subrules 8.1(1) and 8.1(2), a regular law enforcement officer must receive a minimum of 12 hours per year, or 36 hours every three years, of law enforcement related in-service training. Whether training is law enforcement related shall be determined by the employing agency administrator.

501—8.2(80B) Instructors.

8.2(1) A peace officer instructor who instructs in a law enforcement related training area, as determined by the law enforcement agency administrator, may receive hour-for-hour credit towards the in-service training requirement for the subject taught, plus the corresponding hours for preparation of the subject, not to exceed the credit obtained for the actual number of hours taught. An instructor in a 12-month period may receive credit for up to 12 hours of instruction for each subject taught.

8.2(2) A peace officer instructor may receive in-service training credit for the same subject taught only once every three years.

8.2(3) In-service training programs, specialized classes, or other courses of instruction that are not Iowa law enforcement academy instructor certifying schools, may be developed and instructed by any individual deemed qualified by the law enforcement agency administrator.

501—8.3(80B) Agency responsibilities regarding in-service training.

8.3(1) It is the responsibility of the law enforcement agency administrator to ensure that in-service training records are regularly kept and maintained. The law enforcement administrator shall also see that these records are made available for inspection upon request by the Iowa law enforcement academy or its designee.

8.3(2) In-service training records shall include the following data:

a. The subject matter of the training.

b. The instructor of the training.

c. The individual who took the training.

d. The number of credit hours received from the training.

e. The location where the training took place.

f. The scores, if any, achieved by the officer to show proficiency in or understanding of the subject matter.

8.3(3) It shall be the responsibility of the law enforcement agency administrators to ensure that all regular law enforcement officers under their direction receive the minimum hours of in-service training required by these rules.

501—8.4(80B) In-service training requirements for former regular law enforcement officers who return to law enforcement.

8.4(1) Any individual who leaves and then returns to an Iowa law enforcement officer position must receive,

within one year of their hiring date, in-service training as follows:

Period Outside of Iowa Law Enforcement	In-Service Training Required
6 months to 12 months	12 hours
more than 12 months to 24 months	24 hours
more than 24 months to 36 months	36 hours
more than 36 months	60 hours

8.4(2) A regular law enforcement officer must possess, or obtain within the first year of employment, CPR certification and firearms qualification as designated by the Iowa law enforcement academy, in addition to the other in-service training requirements of these rules.

8.4(3) With the approval of the law enforcement agency administrator, college credits earned during the period of required training which relate directly to law enforcement may be used to satisfy the in-service training requirement. Credit will be given on the basis of ten hours of in-service training credit for each acceptable college credit earned.

8.4(4) For currently certified officers the required three-year in-service training period will begin on the anniversary date of receipt of the initial certification which follows the effective date of the rule.

8.4(5) For officers who are not certified on the effective date of this rule, and for officers hired after the effective date of this rule, the required in-service training period will begin on the first anniversary date of their initial certification.

These rules are intended to implement Iowa Code section 80B.11.

[Filed 11/17/88, effective 1/18/89]
[Published 12/14/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/14/88.

ARC 9500

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.94, the Iowa Board of Pharmacy Examiners adopts an amendment to Chapter 2, "Licensure," Iowa Administrative Code.

The amendment was approved at the October 11, 1988, meeting of the Iowa Board of Pharmacy Examiners and will become effective January 18, 1989.

The amendment changes the time by which applications for licensure examination must be submitted from 10 days to 15 days. The 10-day period does not provide sufficient time in which to process applications and to order examination materials. The 15-day period is in keeping with the language in Iowa Code section 147.29.

Notice of Intended Action was published in the August 24, 1988, Iowa Administrative Bulletin as **ARC 9138**. The adopted rule is identical to that published under Notice.

This rule is intended to implement Iowa Code supplement section 155A.8.

Amend rule 657—2.1(147) as follows:

657—2.1(147) Licensure examination dates. The board of pharmacy examiners shall fix the dates for the examination both in Des Moines and Iowa City and applications must be presented to the board at least ~~ten~~ *15* days before the dates set for the examination.

[Filed 11/17/88, effective 1/18/89]
[Published 12/14/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/14/88.

ARC 9498

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code supplement section 155A.6, the Iowa Board of Pharmacy Examiners hereby adopts an amendment to Chapter 4, "Minimum Standards for Evaluating Practical Experience," Iowa Administrative Code.

The amendment was approved at the October 11, 1988, meeting of the Iowa Board of Pharmacy Examiners and will become effective January 18, 1989.

The amendment changes the requirements for internship by limiting the number of hours which can be obtained in practice sites other than general, hospital, or limited use pharmacies. The amendment requires that a minimum of 250 hours be obtained in those traditional practice sites and allows a maximum of 250 hours in the nontraditional sites.

Notice of Intended Action was published in the August 24, 1988, Iowa Administrative Bulletin as **ARC 9139**. The adopted rule is identical to the rule published under Notice with the exception of the deletion of the word "such" at the beginning of the second sentence.

This rule is intended to implement Iowa Code supplement section 155A.6.

Amend rule 657—4.3(155A) as follows:

657—4.3(155A) 1500-hour requirements. Internship shall consist of a minimum of 1500 hours, 1000 hours of which may be a college-based clinical program approved or accepted by the board. ~~Such programs~~ *Programs* shall be structured to provide experience in community, institutional, and clinical pharmacy practices. The remaining 500 hours shall be acquired in a licensed pharmacy or other board-approved location. These 500 hours can only be obtained after internship registration, at a rate of no more than 48 hours per week. *No more than 250 hours shall be earned in sites where the goal and objectives of internship in rule 657—4.2(155A) do not apply.* Internship credit toward the stipulated 500 hours will not be allowed if it is acquired concurrent with academic training. "Concurrent time" means internship experience acquired while the person is a full-time student carrying, in a given school term, at least 75 percent of the average number of credit hours per term needed to graduate and receive an entry level degree in pharmacy. Credit towards the 500 hours will be granted for experience gained during recognized

holiday periods, such as spring break and Christmas break. The competencies in subrule 4.2(2) shall not apply to college-based clinical programs.

[Filed 11/17/88, effective 1/18/89]
[Published 12/14/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/14/88.

ARC 9499

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code supplement section 155A.13, the Iowa Board of Pharmacy Examiners hereby amends Chapter 6, "General Pharmacy Licenses," and Chapter 8, "Minimum Standards for the Practice of Pharmacy," Iowa Administrative Code.

These amendments were approved at the October 11, 1988, meeting of the Iowa Board of Pharmacy Examiners and will become effective January 18, 1989.

Language in rule 6.9(155A,204) is transferred to Chapter 8 as rule 8.2(155A,204). The transfer is made to ensure understanding that the requirements for prescription information and transfer apply to all pharmacies licensed by the Board, not just general pharmacies.

This rule is intended to implement Iowa Code supplement section 155A.34.

Rule 6.11(155A) is rescinded and similar language is adopted as new rule 8.17(155A). The movement of this language from Chapter 6 to Chapter 8 is made in order to ensure understanding that the requirements when a pharmacist is temporarily absent from a pharmacy will apply to all pharmacies, not just general pharmacies.

This rule is intended to implement Iowa Code supplement section 155A.13.

Notice of Intended Action was published in the August 24, 1988, Iowa Administrative Bulletin as **ARC 9136**. These rules are identical to those published under Notice.

ITEM 1. Amend subrule **6.8(3)** by striking the reference to "10.13(15)" and inserting "10.13(13)".

ITEM 2. Renumber **657—6.9(155A,204)** as **657—8.2(155A,204)** and correct the reference in renumbered **8.2(3)**"e" from 6.9(3)"b" to 8.2(3)"b."

ITEM 3. Rescind rule **657—6.11(155A)**.

ITEM 4. Amend 657—Chapter 8 by adding the following new rule:

657—8.17(155A) Pharmacist temporary absence. In the case of the temporary absence of the pharmacist, hospital pharmacies excepted, the pharmacy must display a card or sign, in letters not less than 1¾ inches high, which reads "PHARMACIST TEMPORARILY ABSENT. NO PRESCRIPTIONS WILL BE FILLED UNTIL THE PHARMACIST RETURNS."

This rule is intended to implement Iowa Code supplement section 155A.13.

[Filed 11/17/88, effective 1/18/89]
[Published 12/14/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/14/88.

ARC 9497

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code supplement section 155A.13, the Iowa Board of Pharmacy Examiners hereby amends Chapter 8, "Minimum Standards for the Practice of Pharmacy," Iowa Administrative Code, by deleting rule 8.8(155A) and creating a new Chapter 16, "Nuclear Pharmacy," Iowa Administrative Code.

The amendments were approved at the October 11, 1988, meeting of the Iowa Board of Pharmacy Examiners and will become effective January 18, 1989.

The language in rule 8.8(155A) will transfer without change to the new Chapter 16.

Notice of Intended Action was published in the August 24, 1988, Iowa Administrative Bulletin as **ARC 9135**. The adopted chapter is identical to that published under Notice.

These rules are intended to implement Iowa Code supplement section 155A.13.

Rescind rule **657—8.8(155A)** and adopt the following chapter:

CHAPTER 16
NUCLEAR PHARMACY

657—16.1(155A) Purpose and scope. It is unlawful to receive, possess or transfer radioactive drugs, except in accordance with the provisions of 1987 Iowa Code supplement chapter 155A. It is also unlawful for any person to provide radiopharmaceutical services unless the person is a pharmacist or a person acting under the direct supervision of a pharmacist acting in accordance with the provisions of 1987 Iowa Code supplement chapter 155A and the board of pharmacy examiners rules, and rules of the environmental protection commission with the exception of a medical practitioner for administration to patients as provided in Iowa Code chapter 148. No person may receive, acquire, possess, use, transfer or dispose of any radioactive material except in accordance with the conditions set forth by the environmental protection commission pursuant to the provisions of Iowa Code chapter 455B. The requirements of these nuclear pharmacy rules are in addition to and not in substitution for other applicable provisions of rules of the board of pharmacy examiners and the environmental protection commission or the public health department.

657—16.2(155A) Definitions.

16.2(1) A "nuclear pharmacy" is a pharmacy providing radiopharmaceutical services.

16.2(2) "Radiopharmaceutical service" shall mean, but shall not be limited to, the compounding, dispensing, labeling and delivery of radiopharmaceuticals; the participation in radiopharmaceutical selection and radiopharmaceutical utilization reviews; the proper and safe storage and distribution of radiopharmaceuticals; the maintenance of radiopharmaceutical quality assurance; the responsibility for advising, where necessary or where regulated, of therapeutic values, hazards and use of radiopharmaceuticals; and the offering or performing of those acts, services, operations or transactions necessary in the conduct, operation, management and control of a nuclear pharmacy.

16.2(3) "Radiopharmaceutical quality assurance" means, but is not limited to, the performance of appropriate chemical, biological and physical tests on potential radiopharmaceuticals and the interpretation of the resulting data to determine their suitability for use in humans and animals, including internal test assessment authentication of product history and the keeping of proper records.

16.2(4) "Internal test assessment" means, but is not limited to, conducting those tests of a quality assurance necessary to ensure the integrity of the test.

16.2(5) "Authentication of product history" means, but is not limited to, identifying the purchasing source, the ultimate fate, and any intermediate handling of any component of a radiopharmaceutical.

657—16.3(155A) General requirements for pharmacies providing radiopharmaceutical services.

16.3(1) The application for a license to operate a pharmacy providing radiopharmaceutical services shall only be issued to a qualified nuclear pharmacist. All personnel performing tasks in the preparation and distribution of radioactive drugs shall be under the direct personal supervision of a nuclear pharmacist. A nuclear pharmacist is responsible for all operations of the licensed area and shall be in personal attendance at all times that the pharmacy is open for business.

16.3(2) Nuclear pharmacies shall have adequate space, commensurate with the scope of services required and provided, meeting minimal space requirements established for all pharmacies in the state. The nuclear pharmacy area shall be separate from the pharmacy areas for nonradioactive drugs and shall be secured from unauthorized personnel. All pharmacies handling radiopharmaceuticals shall provide a radioactive storage and product decay area, occupying at least 25 square feet of space, separate from and exclusive of the hot laboratory, compounding, dispensing, quality assurance and office area. A nuclear pharmacy handling radioactive drugs exclusively may be exempted from the general space requirements for pharmacies by obtaining a waiver from the board of pharmacy examiners. Detailed floor plans shall be submitted to the board of pharmacy examiners and the public health department before approval of the license.

16.3(3) Nuclear pharmacies shall only dispense radiopharmaceuticals which comply with acceptable professional standards of radiopharmaceutical quality assurance.

16.3(4) Nuclear pharmacies shall maintain records of acquisition and disposition of all radioactive drugs in accordance with the board of pharmacy examiners and the environmental protection commission.

16.3(5) Nuclear pharmacies shall comply with all applicable laws and regulations of federal and state agencies, including those laws and regulations governing nonradioactive drugs.

16.3(6) Radioactive drugs are to be dispensed only upon a prescription order from a licensed medical practitioner authorized to possess, use and administer radiopharmaceuticals.

A nuclear pharmacy may also furnish radiopharmaceuticals for office use only to these practitioners for individual patient use.

16.3(7) In addition to any labeling requirements of the board of pharmacy examiners for nonradioactive drugs, the immediate outer container of a radioactive drug to be dispensed shall also be labeled with:

a. The standard radiation symbol;

b. The words "Caution— Radioactive Material";

c. The radionuclide;

d. The chemical form;

e. The amount of radioactive material contained, in millicuries or microcuries;

f. If a liquid, the volume in cubic centimeters;

g. The requested calibration time for the amount of radioactivity contained.

16.3(8) The immediate container shall be labeled with:

a. The standard radiation symbol;

b. The words "Caution — Radioactive Material";

c. The name, address and telephone number of the pharmacy; and

d. The prescription number.

16.3(9) The amount of radioactivity shall be determined by radiometric methods for each individual preparation immediately prior to dispensing.

16.3(10) Nuclear pharmacies may redistribute NDA-approved radioactive drugs if the pharmacy does not process the radioactive drugs in any manner or violate the product packaging.

657—16.4(155A) General requirements for nuclear pharmacists to obtain a nuclear pharmacy license. A qualified nuclear pharmacist shall:

1. Meet minimal standards of training for medical uses of radioactive material;

2. Be a currently licensed pharmacist in the state;

3. Have received a minimum of 90 contact hours of didactic instruction in nuclear pharmacy from an accredited college of pharmacy;

4. Attain a minimum of 160 hours of clinical nuclear pharmacy training under the supervision of a qualified nuclear pharmacist in a nuclear pharmacy providing nuclear pharmacy services, or in a structured clinical nuclear pharmacy training program in an accredited college of pharmacy;

5. Submit an affidavit of experience and training to the board of pharmacy examiners.

657—16.5(155A) Library. Each nuclear pharmacy shall have access to the following reference books. All books must be current editions or revisions.

1. United States Pharmacopoeia, with supplements;

2. National Formulary, with supplements;

3. State laws and regulations relating to pharmacy;

4. State rules or federal regulations governing the use of applicable radioactive materials;

5. United States Public Health Service, Radiological Health Handbook.

657—16.6(155A) Minimum equipment requirements.

1. Laminar flow hood;

2. Dose calibrator;

3. Refrigerator;

4. Class A prescription balance or balance of greater sensitivity;

5. Single channel scintillation counter;

6. Microscope;

7. Autoclave, or access to one;

8. Oven capable of 250° C. for 45 minutes, or access to one;

9. Portable radiation survey meter capable of detecting 0.005 microcuries of the radionuclides in question;

10. Other equipment necessary for radiopharmaceutical services provided as required by the board of pharmacy examiners.

These rules are intended to implement Iowa Code supplement section 155A.13.

[Filed 11/17/88, effective 1/18/89]
[Published 12/14/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/14/88.

ARC 9491

PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF BARBER EXAMINERS

Adopted and Filed

Pursuant to the authority of Iowa Code sections 158.15 and 258A.2, the Board of Barber Examiners hereby amends Chapter 20, "Barber Examiners," Iowa Administrative Code.

One amendment changes fees for new barbershop licenses and renewal of barbershop licenses. These fees were directed by the General Assembly in 1988 Iowa Acts, House File 2444, section 9, which became effective July 1, 1988. These amendments also clarify continuing education requirements for the current biennium.

Notice of Intended Action was published in the Iowa Administrative Bulletin, August 24, 1988, as **ARC 9098**. The adopted rules are identical to the Notice, except for two editorial corrections.

These rules are intended to implement 1988 Iowa Acts, House File 2444, section 9, and Iowa Code sections 147.11 and 258A.2.

These rules will be effective January 18, 1989.

ITEM 1. Amend subrule **20.101(1)** by adding the following unnumbered paragraph:

Beginning January 1, 1988, each person licensed to practice barbering in this state shall complete during each continuing education biennial period a minimum of six hours of continuing education approved by the board. Compliance with the requirement of continuing education is a prerequisite for license renewal in each subsequent biennial license renewal period beginning July 1 of each even-numbered year.

ITEM 2. Amend subrule **20.109(2)**, paragraph "b," as follows:

b. Completion of a total number of hours of accredited continuing education computed by multiplying six by the number of years a certificate of exemption shall have been in effect for ~~such~~ *the* applicant *until January 1, 1988, and then compute the remaining number of continuing education hours by multiplying three by the remaining years a certificate of exemption shall have been in effect for the applicant*; or

ITEM 3. Amend subrule **20.110(2)**, paragraph "d," by adding the following new subparagraph:

(5) Additional continuing education figured after January 1, 1988, will be computed by multiplying by three the number of years the license had lapsed past January 1, 1988.

ITEM 4. Amend subrules 20.214(8) and 20.214(9) as follows:

20.214(8) License for new barbershop is ~~$50~~ *$30*.

20.214(9) Renewal of barbershop license is ~~$25~~ *$30*. Penalty for late renewal is $10, in addition to renewal fee.

[Filed 11/17/88, effective 1/18/89]
[Published 12/14/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/14/88.

ARC 9490

PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF EXAMINERS FOR HEARING AID DEALERS

Adopted and Filed

Pursuant to the authority of Iowa Code section 258A.2, the Board of Examiners for Licensing and Regulation of Hearing Aid Dealers amends Chapter 120, "Hearing Aid Dealers," Iowa Administrative Code.

The amendments remove the requirement for payment of all past-due renewal fees and lower the number of continuing education hours required to reinstate a license.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 7, 1988, as **ARC 9159**. The adopted rule is identical to the Notice.

This rule shall become effective January 18, 1989.

This rule is intended to implement Iowa Code sections 147.80, 154A.15 and 258A.2.

Amend subrule 120.5(4) as follows:

120.5(4) A person who has been previously licensed but does not have a current license as a hearing aid dealer shall, prior to engaging in the practice of a hearing aid dealer in the state of Iowa, satisfy the following requirements to reinstate ~~his or her~~ *the* license as a hearing aid dealer:

a. Submit written application for reinstatement on a form provided by the board with payment of ~~all past due~~ *the current* renewal fees; and

b. ~~Either complete continuing education computed on the basis of multiplying sixteen times the number of years that continuing education had not been obtained, or successfully~~ *Successfully* complete the licensing examination conducted within one year immediately prior to the submission of the application for reinstatement; and

c. Payment of the examination fee if the person elects to take the examination.

d. A holder of a current valid hearing aid dealer license in another state with which the state of Iowa has reciprocity need only submit a written application on a form provided by the board and pay the current license fee to reinstate the license as a hearing aid dealer.

[Filed 11/17/88, effective 1/18/89]
[Published 12/14/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/14/88.

ARC 9489

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 135.11, 139.1, 139.2 and 139.35, the Iowa Department of Public Health hereby adopts amendments to Chapter 1, "Communicable Disease Control," and Chapter 3, "Blood Testing Laboratories," Iowa Administrative Code.

These amendments update the list of diseases and conditions that are reportable to the Iowa Department of Public Health by physicians, other health care practitioners, and clinical laboratories. The reportable diseases and conditions that are added include several that are environmentally or occupationally related.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 1, 1988, as **ARC 8805**.

The Iowa Department of Public Health held a public hearing on Tuesday, June 21, 1988, and, as a result of the comments received, the following items were revised for clarification purposes:

641—1.2
641—1.2(1)"a," "b" and "c"
641—1.2(2)
641—1.2(3)
641—1.3(1)"a" and "b"
641—1.4
641—1.4(2)
641—1.5(1)
641—1.5(3)
641—1.5(6)
641—1.5(9)
The title of Chapter 3
641—3.3
641—3.5

The following items were deleted:

"Severe farm-related traumatic injury" from 641—1.2(1)"c," and the definition of "Severe traumatic injury" from 641—1.2(3).

The following items were added:

Six new definitions to subrule 641—1.2(3) and a new subrule 641—1.4(3).

With the exception of the changes noted above, the adopted rules are identical to those published under Notice.

These rules are intended to implement Iowa Code sections 135.11(20), 135.11(21), 139.2, and 139.35.

These rules were reviewed and adopted by the Iowa State Board of Health on November 16, 1988, and shall become effective on January 18, 1989.

ITEM 1. Amend the title of **641—Chapter 1** as follows:

CHAPTER 1

~~COMMUNICABLE~~ *NOTIFICATION AND SURVEILLANCE OF REPORTABLE* DISEASES ~~CONTROL~~

ITEM 2. Amend rule 641—1.1(139) as follows:

641—1.1(139) Director of public health. The director of public health will be the principal officer of the state ~~for the implementation of measures~~ to *administer disease reporting and* control ~~communicable disease~~ *procedures.*

ITEM 3. Amend 641—1.2(139) as follows:

641—1.2(*135*,139) Reportable diseases. ~~The following~~ *Reportable* diseases *are those diseases* or conditions *listed in subrules 641—1.2(1) and 641—1.2(2).* ~~are~~ *Each case of a reportable disease is* required to be reported to the Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075 by the physician or other health practitioner attending any person ~~infected with such~~ *having a reportable* disease.

1.2(1) ~~Specific~~ *List of reportable* diseases *or conditions:*.

a. Specific infectious diseases:

Acquired Immune Deficiency Syndrome (AIDS)
Amebiasis
Anthrax
Botulism
Brucellosis
Campylobacter*iosis*
~~Cancer~~
~~Chancroid~~
Chickenpox
Chlamydia Trachomatis
Cholera
~~Diarrhea, epidemic, of newborn in nurseries~~
Diphtheria
Encephalitis
~~Gonorrhea~~
~~Glanders~~
~~Granuloma inguinale~~
Hepatitis, viral ~~(infectious or serum)~~
(A, B, Non A - Non B, unspecified)
Histoplasmosis
Human Immunodeficiency Virus (HIV) infection other than AIDS
Influenza
Legionnaire's disease
Leprosy
Leptospirosis
Lyme disease
~~Lymphogranuloma venereum~~
Malaria
Meningitis *(bacterial or viral)*
~~Mononucleosis, infectious~~
Mumps
Pertussis (whooping cough)
Plague
Poliomyelitis
Psittacosis
Rabies
~~Relapsing fever~~
Reye's Syndrome
Rheumatic fever
Rocky Mountain spotted fever
Rubella (congenital syndrome)
Rubella (German measles)
Rubeola (measles)
Salmonellosis
~~Schistosomiasis~~
Shigellosis
~~Smallpox~~
~~Staphylococcal food poisoning~~
~~Syphilis~~
Tetanus
Toxic Shock Syndrome
Trachoma
Trichinosis

PUBLIC HEALTH DEPARTMENT[641] *(cont'd)*

Tuberculosis
Tularemia
Typhoid fever
Typhus fever
Venereal disease
Chancroid
Gonorrhea
Granuloma inguinale
Lymphogranuloma venereum
Syphilis
Yellow fever
b. Specific noninfectious diseases:
Acute or chronic respiratory conditions due to fumes or vapors or dusts
Asbestosis
*Birth defect or genetic disease**
*Cancer**
Coal workers pneumoconiosis
Heavy metal poisoning
Hepatitis, toxic
Hypersensitivity pneumonitis (including farmers lung and toxic organic dust syndrome)
Methemoglobinemia
Pesticide poisoning (including pesticide-related contact dermatitis)
Silicosis
Silo fillers disease
* *NOTE: For these particular diseases, physicians and other health practitioners should not send a report to the department. The state health registry has been delegated the responsibility for collecting this data through hospital record abstraction.*
c. Specific occupationally related conditions:
Acute hearing loss and tinnitus
Asthma, bronchitis or respiratory hypersensitivity reactions
*Carpal tunnel and related neuropathy**
*Raynaud's phenomenon**
Severe skin disorder
* *NOTE: In the case of employers with more than 200 employees, cases of carpal tunnel syndrome and related neuropathy and Raynaud's phenomenon may be reported semiannually to the department in summary form.*

Separate semiannual summary reports shall be provided for each physical location where operations are conducted. Such summary reports shall include a separate count of cases of carpal tunnel syndrome and related neuropathy, and Raynaud's phenomenon, by sex and job category.

1.2(2) Other *reportable* diseases. *Physicians are encouraged to report* ~~Any~~ *any* other disease *or condition* which is unusual in incidence, occurs in unusual numbers ~~of~~ *or* circumstances, or appears to be of public health concern *(such as epidemic diarrhea of the newborn in nurseries or a food poisoning episode) including outbreaks of suspected environmental or occupational illness.*

1.2(3) Definitions. For the purpose of these rules, the following definitions shall apply:

"Acute hearing loss and tinnitus" means any sudden deafness, hearing loss or tinnitus due to exposure to noise in the work setting. (International Classification of Diseases, Ninth Edition, (ICD-9), codes 388.1-388.4, 389.0-389.2 and 389.8)

"Acute or chronic respiratory conditions due to fumes, vapors or dusts" means acute chemical bronchitis, any acute, subacute, or chronic respiratory condition due to inhalation of a chemical fume or vapor, or pneumoconioses not specifically listed elsewhere in these rules. (ICD-9 codes 503, 504, 505 and 506.0-506.4) Acute or chronic respiratory conditions due to fumes, vapors or dusts excludes those respiratory conditions related to tobacco smoke exposure.

"Carpal tunnel or related neuropathy" means carpal tunnel syndrome, other lesions of the median nerve, ulnar nerve or radial nerve, causalgia or other related neuropathy of the upper limb. (ICD-9 codes 354.0-354.9)

"Occupationally related asthma, bronchitis or respiratory hypersensitivity reaction" means any extrinsic asthma or acute chemical pneumonitis due to exposure to toxic agents in the workplace. (ICD-9 codes 493.0, 507.1 and 507.8)

"Poison control or poison information center" means any organization or program which has as one of its primary objectives the provision of toxicologic and pharmacologic information and referral services to the public and to health care providers (other than pharmacists) in response to inquiries about actual or potential poisonings.

"Raynaud's phenomenon" means ischemia of fingers, toes, ears or nose including "vibration white finger" caused by exposure to heat, cold, vibration or other physical agents in the work setting. (ICD-9 code 443.0)

"Severe skin disorder" means those dermatoses, burns, and other severe skin disorders which result in death or which require hospitalization or other multiple courses of medical therapy.

"Toxic agent" means any noxious substance in solid, liquid or gaseous form capable of producing illness in humans including, but not limited to, pesticides, heavy metals, organic and inorganic dusts and organic solvents. Airborne toxic agents may be in the form of dusts, fumes, vapors, mists, gases or smoke.

"Toxic hepatitis" means any acute or subacute necrosis of the liver or other unspecified chemical hepatitis caused by exposure to nonmedicinal toxic agents other than ethyl alcohol, including but not limited to, carbon tetrachloride, chloroform, tetrachloroethane, trichloroethylene, phosphorus, TNT, chloronapthalenes, methylenedianilines, ethylene dibromide and organic solvents. (ICD-9 codes 570 and 573.3)

ITEM 4. Amend rule 641—1.3(139) as follows:

641—1.3(*135,*139) Reporting.

1.3(1) Telephone~~, telegraph~~ or other electronic means.

a. Internationally quarantinable diseases. ~~Occurrence of a case of any~~ *Any* internationally quarantinable disease shall be reported immediately by telephone~~, telegraph~~ or other electronic means as soon after the diagnosis as ~~is~~ possible. Internationally quarantinable diseases are cholera, plague~~, relapsing fever (louse-borne), smallpox~~ and yellow fever.

b. Diseases ~~of high public health importance~~ *that carry serious consequences or spread rapidly.* ~~Occurrence of a case of typhoid fever or diphtheria will be reported~~ *Any common source epidemic or disease outbreak of unusual numbers or under unusual circumstances should be reported* to the department immediately by telephone~~, telegraph~~ or other electronic means ~~as soon after the diagnosis as possible~~.

~~c. Epidemic. Occurrence of an outbreak of unusual numbers or under unusual circumstances of a communicable disease, such as epidemic diarrhea of the newborn~~

~~in nurseries or a food poisoning episode, shall be reported immediately to the department by telephone, telegraph or other electronic means.~~

1.3(2) By mail or other means. Cases of other reportable diseases *and conditions* shall be reported to the department by mail at least weekly. If there is concern that delay might hinder the application of organized control measures to protect the public health, ~~incidence of communicable~~ *the* disease *or condition* should be reported by telephone.

ITEM 5. Amend rule 641—1.4(139) as follows:

641—1.4(139,*145*) ~~Forms~~ *Reporting forms.*

1.4(1) ~~Reports of communicable~~ *Cases of reportable* diseases *and conditions*, other than venereal diseases, ~~may~~ *shall* be submitted in ~~writing on any paper and in any format.~~ *a format specified by the department.*

1.4(2) Venereal diseases should be reported *to the department* on a special form which is provided to physicians and laboratories. Since these reports are confidential, they shall be transmitted in *sealed* envelopes or other secure fashion. Reports of venereal disease must include *patient* name, age, sex, marital status, occupation of the patient, name of disease, possible source of infection and ~~the~~ duration of the disease. In localities where there is a local, functioning health department, ~~the~~ *physicians are required by* law ~~requires the~~ *to transmit* reports *of venereal disease* ~~to be made~~ to the local health department. ~~Local health departments must forward the same information~~ *and* to the Iowa department of public health.

1.4(3) Occupational nurses may submit cases of occupationally related reportable diseases or conditions on report forms provided by the department, or may submit copies of either of the following forms:

a. Occupational Safety and Health Act Form No. 101, "Supplementary Record of Occupational Injuries and Illnesses," or

b. State of Iowa Form No. L-1WC-1, "Employers Work Injury Report, Employers First Report of Injury."

Copies of report forms listed in paragraph "a" or "b" will suffice only if the employer of the occupational nurse has already submitted the original reports to the Iowa industrial commissioner.

ITEM 6. Amend rule 641—1.5(139) as follows:

641—1.5(*135*,139,*140*) Who should report.

1.5(1) Physicians *or other health practitioners* are required by law to report all cases of reportable disease attended by them.

1.5(2) Hospitals *and other health care facilities* are encouraged to report cases of reportable disease ~~admitted~~.

1.5(3) School nurses are ~~encouraged~~ to report *suspected* cases of ~~communicable~~ *reportable* disease occurring among the children supervised.

1.5(4) School officials, through the principal or superintendent as appropriate, are encouraged to report when there is no school nurse.

1.5(5) Parents are encouraged to report, particularly when disease occurs in children not in school or when the disease might otherwise not be reported.

1.5(6) Laboratories are required to report test findings or results which give evidence of or are reactive for selected reportable diseases, as specified in rules 641—3.2(140, 596) and 3.3(135, 139).

1.5(7) Poison control and poison information centers are required to report inquiries about cases of reportable diseases received by them.

1.5(8) Medical examiners are required to report their investigatory finding of any death which was caused by or otherwise involved a reportable disease.

1.5(9) Occupational nurses are required to report and employers, unions, and employees are encouraged to report cases of reportable diseases, if occupationally-related.

ITEM 7. Amend the title of 641—Chapter 3 and add new rules as follows:

CHAPTER 3

~~BLOOD TESTING~~ *CLINICAL* LABORATORIES

641—3.3(135,139) Laboratory findings of occupational or environmental illness. Any person who is in charge of a public, private, or hospital clinical laboratory shall report to the Iowa department of public health as required by Iowa Code section 139.35, test findings which yield evidence of or are reactive for a reportable poisoning, or a reportable occupationally related respiratory illness from a toxic agent or a reportable illness from a toxic agent.

641—3.4(135,139) Clinical laboratory. A clinical laboratory is any laboratory performing analyses on specimens taken from the body of a person in order to assess that person's health status.

641—3.5(135,139) Reportable laboratory findings. For those reportable conditions described in rule 641—3.3(135,139), the following subrules describe threshold values at or above which clinical laboratories must report findings to the Iowa department of public health. For all reportable findings listed, laboratories shall specify the analytic method and quality control measures used, as well as the values found.

3.5(1) Heavy metal poisonings.

a. Lead poisonings. Blood lead values equal to or greater than 25 mcg/dL. Urine lead values equal to or greater than 80 mcg/L.

b. Mercury poisonings. Blood mercury values equal to or greater than 2.8 mcg/dL. Urine mercury values equal to or greater than 20 mcg/L.

c. Arsenic poisonings. Blood arsenic values equal to or greater than .07 mcg/mL. Urine arsenic values equal to or greater than 100 mcg/L. Twenty-four-hour urinary arsenic excretion values equal to or greater than .02 mg/day.

d. Cadmium poisonings. Blood cadmium values equal to or greater than 5 mcg/L. Urine cadmium values equal to or greater than 10 mcg/L.

3.5(2) Pesticide poisonings.

a. Organophosphate and carbamate cholinesterase inhibiting pesticides. In using a given analytic method to measure cholinesterase inhibition, measurement techniques often vary among laboratories. For this reason, when a depressed cholinesterase value is found, in addition to reporting the items specified in rule 641—3.5(135,139), each laboratory shall provide to the Iowa department of public health evidence of the rational bases upon which the laboratory identified the reported value as depressed. For example, for nonautomated analytic methods, a laboratory may judge that a cholinesterase value is depressed on the basis of the value falling below two standard deviations from the mean value for tests

completed by that laboratory on the general unexposed population. For automated methods, such as automated spectrophotometry, for which there are built-in quality control procedures and appropriate literature for determining normality, the laboratory should judge a value as depressed on the basis of such appropriate literature.

In all instances, clinical laboratories shall report any test finding which shows a 25 percent depression in red blood cell, plasma or whole blood cholinesterase from preexposure levels.

b. Other pesticide poisonings. Any herbicide, organochlorine insecticide or metabolite thereof in a clinical specimen taken from a person with a history of overexposure to such pesticides within the forty-eight hours previous to collection of the specimen. If a laboratory has no information regarding the exposure history of a person, a report of a positive test finding for a herbicide, organochlorine insecticide or metabolite thereof is not required, but is encouraged to be reported if the levels found are consistent with overexposure.

c. Nitrate poisonings. Blood analyses showing greater than 5 percent of total hemoglobin present as methemoglobin.

3.5(3) Toxic hepatitis. In cases where a laboratory has been made aware of a prolonged or possible overexposure to carbon tetrachloride, tetrachloroethane, trichloroethylene, phosphorus, TNT, chloronapthalenes, methylenedianilines, cresol or ethylene dibromide and any abnormal liver tissue biopsy findings which would be attributable to such exposure. If a laboratory has no information on the exposure history of a person, but that person's liver biopsy findings are consistent with exposure to these chemicals, then a laboratory is encouraged, but not required, to report such findings.

3.5(4) Noninfectious respiratory illnesses. Any biopsy of lung tissue indicating prolonged exposure or overexposure to asbestos, silica, silicates, aluminum, graphite, bauxite, beryllium, cotton dust or other textile material, or coal dust.

These rules are intended to implement Iowa Code sections 135.11(20), 135.11(21), 139.1(3), 139.2 and 139.35.

[Filed 11/17/88, effective 1/18/89]
[Published 12/14/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/14/88.

ARC 9501

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135B.7, the Iowa Department of Public Health hereby amends and transfers 470—Chapter 51 to 641—Chapter 51, "Hospitals," Iowa Administrative Code.

The adopted rule establishes new standards for emergency rooms in hospitals.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 10, 1988, as **ARC 9076**. The Board of Health adopted this rule on November 16, 1988.

There is one change in the rule from the Notice of Intended Action. In response to a comment on the rule, the words "within the medical capabilities of the facility" were added to the first sentence in rule 51.28(135B).

The rule implements Iowa Code section 135B.7 and will be effective January 18, 1989.

ITEM 1. Rescind rule 470—51.28(135B) and insert the following in lieu thereof:

641—51.28(135B) Emergency services. All hospitals shall provide for emergency service which offers reasonable care within the medical capabilities of the facility in determining whether an emergency exists, renders care appropriate to the facility and at a minimum renders lifesaving first aid and makes appropriate referral to a facility that is capable of providing needed services.

51.28(1) The hospital has written policies and procedures specifying the scope and conduct of patient care to be provided in the emergency service.

a. The policies specify the mechanism for providing physician coverage at all times as defined by the medical staff bylaws.

b. The policies provide for a planned, formal training program required of all personnel providing patient care in the emergency service.

c. The policies require that a medical record be kept on every patient given treatment in the emergency service and establish the medical record documentation. The documentation should include at a minimum appropriate information regarding the medical screening provided, except where the person refuses, then notation of patient refusal; physician documentation of the presence or absence of an emergency medical condition or active labor; physician documentation of transfer or discharge, stating the basis for transfer or discharge; and where transfer occurs, identity of the facility of transfer, acceptance of the patient by the facility of transfer, and means of transfer of the patient.

d. The policies and procedures are reviewed and approved annually by the governing board.

51.28(2) Hospital policies and procedures shall be developed in accordance with the hospital's medical, technological, personnel and equipment capabilities.

ITEM 2. Transfer **470—Chapter 51** to **641—Chapter 51**.

[Filed 11/17/88, effective 1/18/89]
[Published 12/14/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/14/88.

ARC 9520

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Pursuant to the authority of Iowa Code chapter 80 and Iowa Code section 321J.4 as amended by 1988 Iowa Acts, House File 2412, the Iowa Department of Public Safety hereby adopts amendments to Chapter 7, "Devices and Methods to Test Body Fluids for Alcohol or Drug Content," Iowa Administrative Code.

These rules are similar to those published under Notice of Intended Action in the July 27, 1988, Iowa Adminis-

trative Bulletin as **ARC 9005** and emergency adopted effective July 1, 1988, under **ARC 9004** also published in the July 27, 1988, Iowa Administrative Bulletin and an emergency amendment to subrule 7.8(5) was effective December 1, 1988, and published herein as **ARC 9513**. These rules have been amended in response to comments from the public and from the Administrative Rules Review Committee.

Language describing testing procedures utilized by the Division of Criminal Investigation Criminalistics Laboratory in certifying devices for testing alcohol concentrations in body fluids has been modified to reflect current practice and to address concerns that the language originally proposed was overly broad.

A requirement that ignition interlock devices be recalibrated every 30 days after installation has been changed to a requirement for recalibration every 60 days after installation. This change in subrule 7.8(5) was necessary for conformance with maintenance requirements established by manufacturers of ignition interlock devices, and will substantially facilitate the use of ignition interlock devices as provided for by Iowa law.

A public hearing was held in Des Moines, Iowa, on August 17, 1988. While no comments were received at the hearing, comments were received from a manufacturer of ignition interlock devices regarding the period before an installed device requires recalibration, and from the Administrative Rules Committee at its meeting of August 16, 1988, regarding quality control procedures followed by the Division of Criminal Investigation Criminalistics Laboratory. Modifications following the Notice of Intended Action reflect these comments and minor editorial improvements in readability. The change from "one month" to "60 days" before recalibration of an ignition interlock device is required has been emergency adopted effective December 1, 1988 (**ARC 9513**) and is also incorporated herein.

These rules are intended to implement Iowa Code section 321J.4 as amended by 1988 Iowa Acts, House File 2412, and are effective January 18, 1989. Also effective January 18, 1989, the rules covering ignition interlock devices, emergency adopted under **ARC 9004**, published in the Iowa Administrative Bulletin July 27, 1988, and amended under **ARC 9513** published herein, are rescinded.

The following amendments are adopted:

ITEM 1. Amend subrule 7.5(1), introductory paragraph, as follows:

7.5(1) A peace officer desiring to perform preliminary screening tests of a person's breath shall use an Iowa department of public safety division of criminal investigation criminalistics laboratory approved device. Such devices are approved for accuracy and precision using a Nalco Standard or breath simulating device. The division of criminal investigation criminalistics laboratory ~~may~~ *shall* employ ~~whatever~~ *scientifically established* tests or methods ~~it deems~~ appropriate to a particular device in determining whether it meets an acceptable standard for accuracy, or it may accept test results from another laboratory at its discretion. ~~Such~~ *The* standards shall include the ~~fact~~ *requirement* that in all cases where the level is over 0.12 alcohol concentration, the device shall so indicate and in all cases where the level is under 0.08 alcohol concentration, the device shall so indicate. Devices must be of a type that can be calibrated on a monthly basis by officers in the field.

ITEM 2. Rescind rule 661—7.8(321J) and insert the following:

661—7.8(321J) Ignition interlock device.

7.8(1) An ignition interlock device, installed pursuant to court order or other provisions of law, must meet the following criteria:

a. The ignition interlock device must be designed and constructed to measure a person's breath alcohol concentration by utilizing a sample of the person's breath blown directly into the device.

b. The ignition interlock device must be designed and constructed so that the ignition system of the vehicle in which it is installed is disabled if the alcohol concentration of the person using the device exceeds the level permitted by subrule 7.8(4).

c. The ignition interlock device must meet the standard for accuracy in measuring alcohol concentration set for preliminary breath screening tests in subrule 7.5(1). The division of criminal investigation criminalistics laboratory shall employ scientifically established tests or methods appropriate to a particular device in determining whether it meets an acceptable standard for accuracy or it may accept test results from other laboratories at its discretion. The standard shall include a requirement that in all cases where the level is over the alcohol concentration specified in subrule 7.8(4) the device will deactivate the ignition system of the vehicle.

7.8(2) The division of criminal investigation criminalistics laboratory shall maintain a list of ignition interlock devices approved by the commissioner of public safety in a manner consistent with the provisions of subrule 7.5(1). Devices may include those established by the National Highway Traffic Safety Administration or its successor, as consistent with the provisions of subrule 7.2(1).

7.8(3) Ignition interlock devices utilized under these rules shall be installed by the manufacturer or by private sector providers in conformance with the directions of the manufacturer. An ignition interlock device shall be utilized in accordance with the prescribed procedures of the manufacturer. These procedures must include a minimum 15-minute waiting period between the last drink of an alcoholic beverage and time of blowing into the ignition interlock device. The ignition interlock device shall be installed in such a way that the ignition system of the vehicle will be deactivated if the person fails to meet the requirement with regard to an alcohol concentration as prescribed in subrule 7.8(4). Failure of the test means the person is above the prescribed allowable alcohol concentration. If the person fails an ignition interlock device test, the device shall allow retests subsequent to the initial test at intervals no shorter than 15 minutes.

7.8(4) A person shall fail an ignition interlock device test when the person's alcohol concentration is greater than 0.04.

7.8(5) An ignition interlock device utilized under these rules shall be calibrated at least once every 60 days using either a wet alcohol standard or a Nalco Standard (minimum 5 cubic foot volume) at the site of installation by the dealer or agent who installed the ignition interlock device. The calibration record shall be maintained by the installer and the record shall include:

a. The name of the person performing the calibration;

b. The date;

c. Value and type of standard used;

d. Unit type and identification number of the ignition interlock device checked;

e. Description of the vehicle in which the ignition interlock device is installed, including registration plate number and state, make, model, year, and color.

Documentation of calibration shall be kept with the vehicle at all times for inspection by a peace officer, the court, or the Iowa department of transportation.

7.8(6) Reserved.

This rule is intended to implement Iowa Code section 321J.4 as amended by 1988 Iowa Acts, House File 2412.

[Filed 11/28/88, effective 1/18/89]
[Published 12/14/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/14/88.

ARC 9512

REVENUE AND FINANCE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue and Finance hereby adopts amendments to Chapter 12, "Filing Returns, Payment of Tax, Penalty and Interest"; Chapter 15, "Determination of a Sale and Sale Price"; Chapter 16, "Taxable Sales"; Chapter 17, "Exempt Sales"; and Chapter 26, "Sales and Use Tax on Services," Iowa Administrative Code.

Notice of Intended Action was published in the September 21, 1988, Iowa Administrative Bulletin as **ARC 9283**.

These amendments are being made to clarify and make various minor corrections to the Department's rules.

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

These amendments will become effective January 18, 1989.

The following amendments are adopted:

ITEM 1. Amend subrule **12.10(3)**, paragraph "a," the last sentence, to read as follows:

When it is appropriate to impose this ~~seventy-five~~ *75* percent ~~(75%)~~ penalty, it will be in lieu of the penalty described in subrule 12.10(~~5~~*3*)"b."

ITEM 2. Amend subrule **15.3(4)**, paragraph "d," in the line which ends the example to read as follows:

$\frac{30000}{180000}$ or $\frac{A}{C}$ = Percentage of Electricity Purchase Qualifying for Exemption = 16.60%

ITEM 3. Amend subrule **15.3(4)**, paragraph "e," by adding after the last existing unnumbered paragraph of the subrule the following new unnumbered paragraph:

Ordinarily any method of determining the percentage of electricity used in processing will involve calculating both exempt and nonexempt usage. However, in certain instances it is acceptable to calculate only exempt or nonexempt usage in one column and to list separately the equipment or devices making the exempt or nonexempt use of the electricity separate. This practice can normally be followed where electrical usage does not fluctuate dramatically and where usage is either predominantly exempt or predominantly not exempt.

ITEM 4. Amend rule 701—16.3(422,423) to read as follows:

701—16.3(422,423) Tangible personal property used or consumed by the manufacturer thereof. When a person who is primarily engaged in the manufacture of building materials, supplies, or equipment for sale and not for the person's own use or consumption, considering the totality of the business, from time to time uses or consumes the building materials, supplies, or equipment for construction purposes, the person is deemed to be making retail sales to one's self and subject to tax on the basis of the fabricated cost of the items so used or consumed for construction purposes. *If building materials, supplies, or equipment are used by a manufacturer in the performance of a construction contract, a "sale" occurs only if the materials, supplies, or equipment are used in the performance of a construction contract in Iowa.* For purposes of this rule, the term "fabricated cost" means and includes the cost of all materials as well as the cost of labor, power, transportation to the plant, and other plant expenses but not installation on the job site. Associated General Contractors of Iowa v. State Tax Commission, 1963, 255 Iowa 673, 123 N.W.2d 922. Also see rule 19.4(422,423) relating to contractors *and rule 19.5(422) relating to materials, supplies, and equipment used in construction contracts within and outside of Iowa.*

This rule is intended to implement Iowa Code section 422.42(10) *as amended by 1987 Iowa Acts, chapter 214.*

ITEM 5. Amend rule 701—17.5(422,423), introductory paragraph, as follows:

701—17.5(422,423) Sales to the American Red Cross, Navy Relief Society and U.S.O. Receipts from the sale of tangible personal property *or from rendering, furnishing, or providing taxable services* to the American Red Cross, Navy Relief Society and U.S.O. shall be exempt from sales tax.

ITEM 6. Amend rule **701—26.24(422)** at the implementation clause to read as follows:

This rule is intended to implement Iowa Code section 422.43(9*11*).

[Filed 11/23/88, effective 1/18/89]
[Published 12/14/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/14/88.

ARC 9515

SCHOOL BUDGET REVIEW COMMITTEE[289]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 442.12 and 281.9, the School Budget Review Committee hereby transfers 740—Chapter 1, "Rules for School Budget Review Committee," to 289—Chapter 1, Iowa Administrative Code. Amendments are also adopted.

The Committee adopts rules 1.4, "Petitions for Rule Making"; 1.5, "Declaratory Rulings"; and 1.6, "Agency Procedure for Rule Making," of the Uniform Administrative Rules appearing in Volume I of the Iowa Administrative Code.

Also amended are the following:

1. Subrule 1.1(8) redefines adjusted enrollment to equal the larger enrollment of the third Friday in September

SCHOOL BUDGET REVIEW COMMITTEE[289] *(cont'd)*

for the base year or the third Friday in September for the budget year.

2. Subrules 1.1(9) and 1.1(10) amend the definition of "weighted" and "budget" enrollments, respectively.

3. Paragraph 1.3(1)"d" amends the monthly counts of allowable growth for students needing special education programs.

4. Specific gender references are also eliminated.

Interested persons were allowed to comment on the proposed rules. A public hearing was scheduled for June 21, 1988; however, no one appeared to comment on the proposed rules. No written comments were received by the Committee concerning the proposed rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 1, 1988, as **ARC 8801**.

These rules are identical to those published as Notice of Intended Action.

The School Budget Review Committee adopted these rules on September 26, 1988.

These rules will become effective January 18, 1989.

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

ITEM 1. Amend rule **740—1.1(442)** by deleting the subrule numbers, placing the definitions in alphabetical order, and further amending as follows:

Amend former subrule 1.1(3) as follows:

~~**1.1(3)**~~ Controlled budget. The controlled budget is the total computed by multiplying the district cost per pupil by the ~~total weighted~~ *budget* enrollment. [See *Iowa Code sub*sections 442.9(1)"a" and 442.4(3), respectively, ~~of the Code~~ for definitions of "district cost" and "~~weighted~~ *budget* enrollment".]

Amend former subrule 1.1(8) as follows:

~~**1.1(8)**~~ Adjusted enrollment. The adjusted enrollment is ~~actual enrollment as of the second Friday in January or September in the same calendar year, whichever is larger, plus any adjustments due to declining enrollments~~ *equal to the larger enrollment of the third Friday in September for the base year or the third Friday in September for the budget year.* ~~(A school district with an enrollment loss, will have added to its actual enrollment fifty percent of the first five percent of loss and twenty-five percent of the remainder of the loss.)~~

Amend former subrule 1.1(9) as follows:

~~**1.1(9)** Total weighted~~ *Weighted* enrollment. The ~~total~~ weighted enrollment is the ~~adjusted~~ *budget* enrollment plus the additional weighting assigned to children requiring special education as prescribed in *Iowa Code* section 281.9 ~~of the Code~~ *and the supplementary weighting for shared pupils, teachers and administrators pursuant to Iowa Code section 442.39.*

Further amend **740—1.1(442)** by adding the following new definition:

Budget enrollment. The budget enrollment is the sum of 20 percent of the basic enrollment for the school year beginning July 1, 1979, and 80 percent of the adjusted enrollment.

ITEM 2. Amend subrule **1.3(1)**, paragraph "d," as follows:

d. The committee, upon request, may make decisions which will provide additional allowable growth in cases where problems arise due to differences in the ~~January or September counts~~ *December of the base year count and December of the budget year count* of students needing special education programs.

ITEM 3. Rescind rule 740—1.4(442) and insert in lieu thereof the petitions for rule making segment of the Uniform Administrative Rules which is printed in Volume I of the Iowa Administrative Code, with the following amendments:

740—1.4(442) Petition for rule making. In lieu of the words "(designate office)", insert "the School Budget Review Committee, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146". In lieu of the words "(AGENCY NAME)", the heading of the petition should read:

BEFORE THE
SCHOOL BUDGET REVIEW COMMITTEE

1.4(3) Inquiries. In lieu of the words "(designate official by full title and address)", insert "Chairperson, School Budget Review Committee, Grimes State Office Building, Des Moines, Iowa 50319-0146".

Insert as rule 740—1.5(442) the declaratory rulings segment of the Uniform Administrative Rules which is printed in Volume I of the Iowa Administrative Code with the following amendments:

740—1.5(442) Petition for declaratory ruling. In lieu of the words "(designate office)", insert "the School Budget Review Committee, Grimes State Office Building, Des Moines, Iowa 50319-0146". In lieu of the words "(AGENCY NAME)", the heading of the petition should read:

BEFORE THE
SCHOOL BUDGET REVIEW COMMITTEE

1.5(3) Inquiries. In lieu of the words "(designate official by full title and address)", insert "Chairperson, School Budget Review Committee, Grimes State Office Building, Des Moines, Iowa 50319-0146".

Insert as rule 740—1.6(442) the agency procedure for rule making segment of the Uniform Administrative Rules which is printed in Volume I of the Iowa Administrative Code with the following amendments:

740—1.6(442) Agency procedure for rule making.

1.6(3) Public rule-making docket.

b. In lieu of the words "(commission, board, council, director)", insert "committee".

1.6(5) Public participation.

a. Written comments. In lieu of the words "(identify office and address)", insert "the School Budget Review Committee, Grimes State Office Building, Des Moines, Iowa 50319-0146".

1.6(10) Exemptions from public rule-making procedures. Delete paragraph "b" entitled "Categories exempt."

1.6(11) Concise statement of reasons.

a. General. In lieu of the words "(specify the office and address)", insert "the School Budget Review Committee, Grimes State Office Building, Des Moines, Iowa 50319-0146".

1.6(13) Agency rule-making record.

b. Contents.

(3) In lieu of the words "(agency head)", insert "chairperson".

ITEM 4. Transfer **740—Chapter 1** to **289—Chapter 1**.

[Filed 11/23/88, effective 1/18/89]
[Published 12/14/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/14/88.

ARC 9519

SOIL CONSERVATION DIVISION[27]

Adopted and Filed

Pursuant to the authority of Iowa Code section 467A.4(1), the Soil Conservation Division, on November 23, 1988, adopted rules for a new Chapter 21, "Water Quality Protection Projects — Water Protection Fund," Iowa Administrative Code.

Notice of Intended Action was published in Volume XI of the Iowa Administrative Bulletin on October 5, 1988, as **ARC 9299**.

These rules establish application procedures and project selection criteria for use by soil and water conservation districts and the division in developing and implementing water quality protection projects. 1988 Iowa Acts, House File 2381, establishes a fund for such purposes, and 1988 Iowa Acts, Senate File 2328, section 5, (Lottery Bill), allocates $500,000 of lottery proceeds to establish the fund.

One change was made prior to adoption in response to a comment. Subrule 21.40(1), paragraph "b," was modified so that criteria used for project evaluation reflect all water issues and not just nonpoint source quality.

These rules implement Iowa Code chapters 467A and 467F, and 1988 Iowa Acts, House File 2381, and Senate File 2328, section 5.

These rules will become effective January 18, 1989.

The following new chapter is adopted:

CHAPTER 21

WATER QUALITY PROTECTION PROJECTS — WATER PROTECTION FUND

PART 1

AUTHORITY AND SCOPE

21.1 to **21.9** Reserved.

27—21.10(467F) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation of the Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation committee in implementing water quality protection projects through the water protection fund created in Iowa Code chapter 467F pursuant to 1988 Iowa Acts, House File 2381. These projects will protect the state's groundwater and surface water from point and nonpoint sources of contamination, including but not limited to, agricultural drainage wells, sinkholes, sedimentation, and chemical pollutants. Water protection fund resources will provide administrative, operational, and personnel support for the projects, and funds for management and structural measures to address identified water quality problems.

27—21.11(467F) Rules or subrules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without invalid provision or application, and to this end the provisions of these rules or subrules are severable.

21.12 to **21.19** Reserved.

PART 2

APPLICATIONS

27—21.20(467F) Announcement, eligibility, development and submission of applications. Part 2 establishes procedures for announcement, eligibility, development and submission of applications for water quality projects supported through the water protection fund.

21.20(1) Announcement of application opportunities. The state soil conservation committee will announce to districts and other interested parties the opportunity to submit applications for projects. The announcement will state:

a. The application submission deadline.

b. The location to which applications will be submitted.

c. The number of copies of applications to be submitted.

21.20(2) Eligibility of applicants. All applications must be submitted by individual or multiple soil and water conservation districts.

a. Districts are encouraged to cooperate with and accept assistance in the development and preparation of applications, from other agencies and organizations.

b. Districts are encouraged to accept financial and nonfinancial participation in project implementation from other agencies and organizations.

21.21 to **21.29** Reserved.

PART 3

APPLICATION CONTENT

27—21.30(467F) Water quality protection project application content. Part 3 establishes the minimum content requirements of project applications.

21.30(1) Title, applicant and participants. Each application will identify:

a. Water quality protection project title.

b. Name of district or districts submitting the application.

c. Names of participating agencies and organizations.

d. Number of landowners within the project area.

21.30(2) Project location. Each application will identify:

a. Project location by description and map.

b. Project size.

c. Geographic setting.

21.30(3) Project description. Each application will identify:

a. Land use, land management, and land ownership within the project area and, if appropriate, the surrounding area.

b. Priority water resources to be protected.

c. Water quality problems within the project area.

d. Quantification of the sources of contamination.

27—21.31(467F) Project water quality improvement objectives. Each application will identify:

21.31(1) Water quality objectives of the project.

21.31(2) Measures to be taken to address each water quality problem identified within the project.

27—21.32(467F) Project costs. Each application will identify on an annual basis:

21.32(1) Project measure costs.

a. Estimated cost of each measure to be implemented.

b. Landowner contribution.

c. Financial incentive contribution of the water protection fund.

d. Financial or other contribution of project participants.

SOIL CONSERVATION DIVISION[27] *(cont'd)*

21.32(2) Project personnel needs.

a. Personnel contribution of the water protection fund.

b. Personnel contribution of project applicants and participants.

21.32(3) Project operating expenses.

a. Project expense contribution from the water protection fund.

b. Project expense contribution from applicants and participants.

21.32(4) Total project costs for each project year.

27—21.33(467F) Landowner interest. Each application will provide an assessment of landowner interest in participating in the project.

27—21.34(467F) Project maintenance. Each application will describe measures to be taken to ensure the long-term viability of the implemented project through maintenance agreements, easements, or other such measures.

27—21.35(467F) Time frame. Each application will provide a time frame for project implementation.

27—21.36(467F) Project evaluation. Each application will describe criteria that will be used to evaluate the success of the project. Evaluation criteria should state, at a minimum, projected landowner participation and water quality improvements.

21.37 to **21.39** Reserved.

PART 4

PROPOSAL REVIEW

27—21.40(467F) Proposal review. Part 4 establishes the process that the state soil conservation committee will follow in reviewing the applications submitted, and selecting which, if any, will be funded.

21.40(1) The state soil conservation committee will give consideration to the following criteria in evaluating the project proposals submitted:

a. The water resource to be protected.

b. The nature, extent and severity of water quality issues identified and targeted for correction.

c. The nature and variety of the proposed project measures.

d. The level of financial contribution requested for the project.

e. The cost-effectiveness of the proposed project measures.

f. Agency, organization and landowner participation.

g. The public benefits projected.

h. The likelihood of project success within the projected time frame.

21.40(2) Proposal presentation. The state soil conservation committee may, at its discretion, ask the project applicant to make a formal presentation concerning the application or provide additional information.

21.40(3) Review assistance. The state soil conservation committee may receive assistance in the evaluation of project applications from division staff or other agencies.

21.40(4) Negotiation. The state soil conservation committee may negotiate any part of the proposal with the applicant prior to project selection.

21.40(5) Project selection. Projects selected will be funded on an annual basis. Funding for additional years of the projects will be provided on the basis of satisfactory progress and available funds of the water protection fund.

21.40(6) Notification. The state soil conservation committee will inform each applicant of the final determination with respect to their application.

21.41 to **21.49** Reserved.

PART 5

BUDGET AND STAFF

27—21.50(467F) Budget and staff. Part 5 establishes procedures that the division will follow in providing budgets and staff for projects.

21.50(1) Budget. The division will establish an annual budget allocation for each selected project, to support:

a. Field office staff.

b. Project expenses.

c. Commissioner project expenses.

d. Financial incentives.

21.50(2) Staff. Appropriate to the project, the division will establish positions and allocate them to district field offices.

21.51 to **21.59** Reserved.

PART 6

REPORTING

27—21.60(467F) Project reporting. Part 6 establishes reporting requirements for projects.

21.60(1) Annual reports. Annual reports meeting the following criteria will be submitted to the division:

a. Annual report deadline to be established consistent with the initiation of the project.

b. The annual report will describe accomplishments during the reporting period, and compare them to the objectives of the application.

c. The annual report will itemize funds disbursed during the reporting period.

21.60(2) Reserved.

27—21.61(467F) Supplemental reports. Supplemental reports shall be submitted as required by the division.

27—21.62(467F) Content of project reports. All project reports will contain the following credit: "This project is supported in part or total by the department of agriculture and land stewardship, division of soil conservation, through funds of the water protection fund."

21.63 to **21.69** Reserved.

PART 7

ANNUAL PROJECT REVIEW

27—21.70(467F) Annual project review, continuation, amendment and termination. Part 7 describes procedures that the state soil conservation committee will follow to review annual progress for each project and to approve continuation, amend, or terminate them.

21.70(1) Annual review. The state soil conservation committee and district(s) will review each project annually. Upon completion of the annual review, the committee will inform the district(s) of their findings. Based on their findings, the committee will do one or more of the following:

a. Instruct the division to establish a budget for the next project year.

b. Renegotiate with the applicant district(s) the project objectives, procedures, budget or time schedule.

c. Terminate the project.

21.70(2) Reserved.

SOIL CONSERVATION DIVISION[27] *(cont'd)*

21.71 to **21.79** Reserved.

PART 8

PROJECT COMPLETION

27—21.80(467F) Project completion. Part 8 describes the procedures to be followed to close out projects upon completion or termination.

21.80(1) Required reports. Upon project completion or termination, the project district(s) will complete the following reports within 90 days:

a. Final project report that summarizes project accomplishments, comparing them to original project objectives.

b. Final financial status report on all water project fund expenditures and any participating agency and organization expenditures.

21.80(2) Reserved.

21.81 to **21.89** Reserved.

[Filed 11/23/88, effective 1/18/89]
[Published 12/14/88]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/14/88.

EFFECTIVE DATE DELAY

[Pursuant to §17A.4(5)]

AGENCY	RULE	EFFECTIVE DATE DELAYED
Environmental Protection Commission[567]	Chapter 39 [IAB 10/19/88, **ARC 9343**]	Effective date (11/23/88) delayed until adjournment of the 1989 Session of the General Assembly pursuant to Iowa Code section 17A.8(9) by the Administrative Rules Review Committee at its November 15th meeting.

SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL

THOMAS J. MILLER

September and October, 1988

COUNTIES

County Care Facilities. Iowa Code §§ 135C.24(1); 135C.24(5) (1987). A health care facility that is not administered by or under the control of the county is not a county care facility for purposes of § 135C.24. (McGuire to Vander Hart, Buchanan County Attorney, 9-6-88) #88-9-1(L)

AGRICULTURE

Family Farm Corporation. Iowa Code sections 172C.1(6), 172C.1(8), 172C.1(15), 172C.4 (1987); 1987 Iowa Acts, Chapter 146, section 1; House File 2283, 72nd G.A., 2nd Sess., section 1 (Iowa 1988). The terms "farming" as used in Iowa Code sections 172C.1(6) and 172C.1(8) does not require that the shareholders, directors, officers or employees of a family farm corporation physically engage in crop or livestock production on agricultural land which the corporation leases to a farm tenant. (Benton to Gustafson, 10-6-88) #88-10-1(L)

COUNTIES AND COUNTY OFFICERS

County Conservation Board. Iowa Code §§ 111A.1, 111A.4 (1987); Iowa Code Supp. § 111.85 (1987). A county conservation board may not authorize a private group to control entry into a county park or charge a park admission fee. A county conservation board may charge an admission fee for use of a developed facility such as a golf course, and may subdelegate management of such a facility by concession contract. (Smith to Stoebe, Humboldt County Attorney, 10-14-88) #88-10-2(L)

TAXATION

Distribution Of Money Received From Local Sales And Services Taxes To Unincorporated Areas Of A County Under Iowa Code ch. 422B (1987). Iowa Code §§ 422B.1(3)(a), 422B.1(4) and 422B.10. Chapter 422B does not allow the allocation of money from the local sales and services tax which is attributable to an unincorporated area exclusively to that area if it results in county property taxpayers from incorporated areas paying a higher county property tax rate than taxpayers living in the unincorporated areas. (Miller to Schnekloth, State Representative, 10-20-88) #88-10-3

STATUTES CONSTRUED

1987 IOWA CODE	OPINION
111.85	#88-10-2(L)
111A.1	#88-10-2(L)
111A.4	#88-10-2(L)
135C.24(1)	#88-9-1(L)
135C.24(5)	#88-9-1(L)
172C.1(6)	#88-10-1(L)
172C.1(8)	#88-10-1(L)
172C.1(15)	#88-10-1(L)
172C.4	#88-10-1(L)
422B.1(3)(a)	#88-10-3
422B.1(4)	#88-10-3
422B.10	#88-10-3

1987 IOWA ACTS	OPINION
ch. 146, § 1	#88-10-1(L)

72nd G.A., 2nd Sess.	OPINION
H.F. 2283, § 1	#88-10-1(L)

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWA

FILED NOVEMBER 23, 1988

NOTE: Copies of these opinions may be obtained from the Supreme Court Clerk, State Capitol Building, Des Moines, IA, 50319, for a fee of 40 cents per page.

No. 87-644. STATE v. HOVIND.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Black Hawk County, Robert E. Mahan, Judge. Decision of Court of Appeals vacated; District Court judgment reversed and remanded. Considered by McGiverin, C.J., and Harris, Lavorato, Neuman and Snell, JJ. Opinion by McGiverin, C.J. (11 pages $4.40)

Defendant Mark A. Hovind appeals from his convictions of burglary in the first degree and arson in the second degree. On May 10, 1985, fire destroyed the home of Judge Thomas Nelson in Dubuque. Arson was suspected, and suspicion focused on a man named Robert Frank. Defendant Hovind was later charged in an unrelated arson. Hovind then entered a plea bargain agreement by which he agreed to provide a full and truthful account of his knowledge concerning the Nelson arson. In return the State would make concessions on the unrelated arson charge and forego any prosecution against defendant based on information he provided about the Nelson fire. At all times, defendant denied that he was directly involved in the Nelson arson. Defendant related his knowledge of the Nelson arson over a number of interviews with law enforcement officers and gave a deposition in the State's case against Robert Frank. The authorities then acquired additional information that led them to believe defendant was directly involved in the Nelson arson. On November 6, 1986, investigators confronted defendant with certain inculpatory information and told him his plea bargain may be in jeopardy. In response, defendant made statements that corroborated some of this information. The State then filed the criminal charges against Hovind of which he was later convicted. The court of appeals in an equally divided vote affirmed by operation of law. OPINION HOLDS: I. Defendant contends his pretrial motion to dismiss the charges should have been sustained because the State violated the plea agreement in filing the Nelson arson charges against him. When a defendant fails to uphold his end of a plea bargain, the State has no obligation to provide defendant the anticipated benefits of that bargain. It is evident from a review of the record that the trial court had ample basis

(continued..

No. 87-644. STATE v. HOVIND (continued).
and evidence to conclude defendant did not honor his obligations under the plea bargain agreement and that the State was free to pursue a full prosecution against defendant for the Nelson offense. II. Defendant's second contention is that the trial court erred in denying his motion to suppress the statements he made to the police on November 6, 1986. Defendant contends the statements were privileged as plea bargain negotiations. Because the officers failed to inform defendant that the plea agreement was rescinded and instead only informed him that the agreement was "in jeopardy," we conclude defendant's expectation that he was speaking to the officers under a plea bargain was reasonable given the totality of the objective circumstances. The district court erred by denying defendant's motion to suppress these statements and later admitting them into evidence at trial.

No. 87-960. BECKER V. CENTRAL STATES HEALTH & LIFE CO.
Appeal from the Iowa District Court for Pocahontas County, Mark S. Cady, Judge. Reversed and remanded with directions. Considered by McGiverin, C.J., and Harris, Lavorato, Neuman, and Snell, JJ. Opinion by Lavorato, J. (12 pages $4.80)

Timothy Becker purchased a health insurance policy from the defendant. After Timothy sought medical treatment for an illness that ultimately claimed his life, the defendant denied coverage on the grounds that the illness was a pre-existing condition. Because of this denial, Timothy was forced to seek government assistance in the form of Medicaid. Timothy's mother, as guardian ad litem, sued Central States. Although the district court found that there was no preexisting condition it nevertheless denied relief, determining that the policy only paid for medical expenses for which the insured is legally obligated to pay in the absence of insurance. The court concluded that because Timothy's health care providers had accepted Medicaid payments in satisfaction of his medical expenses, no such liability existed and thus no damages resulted from the breach of the policy conditions. The plaintiff filed this appeal. OPINION HOLDS: We hold that under the policy, Central States was legally obligated to pay Timothy's medical expenses when he sought medical treatment. That obligation continued despite the use of Medicaid assistance to pay the health care providers. The Medicaid payments, to which none of the policy exclusions applied, were incorrectly made because of Central States' outstanding obligation to pay the medical expenses incurred by Timothy. On remand the district court shall determine the amount of medical expenses incurred for services and supplies covered under the policy.

No. 87-1692. IN RE THE MARRIAGE OF SJULIN.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Fremont County, Keith E. Burgett, Judge. Decision of court of appeals vacated; district court judgment affirmed. Considered by Larson, P.J., and Schultz, Carter, Snell and Andreasen, JJ. Opinion by Andreasen, J. Special concurrence by Carter, J. (11 pages $4.40)

The parties' 1982 dissolution decree awarded Elizabeth alimony for five years and provided that "the court retains jurisdiction to review this matter at the end of five years based on the respective financial conditions of the parties." At the end of five years Elizabeth filed an application asking that the alimony be continued at the same rate. The district court granted this request and ordered continuing alimony. However, the court of appeals reversed. Elizabeth has applied for further review. OPINION HOLDS: I. In spite of the language in the 1982 dissolution decree concerning retention of jurisdiction, the decree was final. The decree's alimony award can be modified only on a proper showing of a change of circumstances. II. Elizabeth has met her burden to prove a change of circumstances warranting an extension of the alimony award. SPECIAL CONCURRENCE ASSERTS: I concur in the result which the court reaches. I believe, however, that the language of the original decree was sufficient to permit the court to later review the alimony issue without requiring Elizabeth to show a substantial change of circumstances.

No. 88-1129. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT v. SHEPHERD.

On review of the report of the Grievance Commission. License revoked. Considered by Larson, P.J., Schultz, Carter, Snell and Andreasen, JJ. Opinion by Andreasen, J. (8 pages $3.20)

A fifteen-count complaint was filed against attorney Michael G. Shepherd. The Grievance Commission found Shepherd had violated numerous ethical and disciplinary rules and recommended revocation of his license to practice law. OPINION HOLDS: We find, as did the committee, that Shepherd neglected the legal matters entrusted to him, misrepresented the status of the cases to his clients, comingled and converted client funds, and failed to respond to clients' inquiries as well as inquiries from the ethics committee. Under these circumstances, it is imperative that we revoke Shepherd's license to practice law in this state. We also order the respondent fully comply with Iowa Supreme Court Rule 118.18. Rule 118.18 includes requirements for the notification of clients and opposing counsel; the return of papers, property, and unearned fees to the client; and the filing of proof of compliance with the rule.

No. 87-1490. STATE v. GLEASON.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge. Affirmed. Considered en banc. Per curiam. Dissent by Snell, J.

(11 pages $4.40)

This appeal by defendant, Steven Eugene Gleason, of his conviction of unlawful flight to avoid prosecution for the crime of second-degree theft raises two issues: (1) whether the State was required to prove, as an element of the offense, that a prosecution had commenced before Gleason fled Iowa, and (2) whether the trial court erred in its jury instructions on the elements of the offense and the definition of "prosecution." OPINION HOLDS: I. In our view, it is quite possible to avoid "the commencement . . . and continuance of a criminal proceeding" (to use the language of section 801.4(12)) before the filing of a criminal complaint. We conclude the reasonable interpretation of section 719.4(4) is that it does not require the State to prove a prosecution had commenced before the defendant fled Iowa. We conclude the trial court's jury instruction on the elements of the offense was correct. II. Although we are inclined to agree with Gleason's assertion the trial court submitted an incorrect definition of when a prosecution is initiated, such error was harmless in this case. As we have already stated, the jury did not need to find a prosecution had commenced in order to convict Gleason of unlawful flight. DISSENT ASSERTS: The majority reads the statute that the crime is committed when a person flees to avoid the commencement of a criminal proceeding. I believe the crime is committed when a person flees to avoid a prosecution which comes into existence only after the commencement of a criminal proceeding. In the case at bar, no criminal proceedings had been commenced against defendant when he left Iowa for Colorado. He could not therefore have violated the statute as a matter of law.

No. 87-1380. DOLAN v. ALLIED INSURANCE GROUP.

Appeal from the Iowa District Court for Dubuque County, Robert E. Mahan, Judge. Reversed and remanded. Considered en banc. Opinion by Snell, J. (14 pages $5.60)

An insurance carrier brings an interlocutory appeal from the denial of its motion for summary judgment regarding a first-party bad faith claim. OPINION HOLDS: I. We today recognize a cause of action in tort against an insurance carrier for bad faith conduct relating to a claim made by its insured. We now recognize first-party as well as third-party bad faith claims against an insurance carrier. II. However, in the present case we conclude the insured failed as a matter of law to show the absence of a reasonable basis for the insurance carrier's action. Therefore, the carrier's motion for summary judgment should have been granted. We reverse and remand this case to be dismissed.

NOS. 87-667, 88-513. McGEE v. DAMSTRA.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Monroe County, Richard J. Vogel, Judge; Certiorari to the Iowa District Court for Monroe County, James D. Jenkins, Judge. (On appeal) decision of court of appeals affirmed; district court judgment reversed; (on certiorari) decision of court of appeals vacated; writ sustained. Considered by McGiverin, C.J., and Carter, Lavorato, Snell, and Andreasen, JJ. Opinion by Carter, J. (14 pages $5.60)

These consolidated proceedings involve an appeal of a decree of specific performance entered against the defendant buyer in a land contract action, and an original certiorari action challenging an order finding the buyer in contempt under the decree. In 1981, John and Erma McGee entered into an installment land sale contract with Donald Damstra for the sale of sixty-five acres of farmland. The agreement was executed on the standard Iowa Bar Association Form 21.2, in which handwritten changes made to paragraph 10 excluded foreclosure as a remedy in case of buyer default. In 1986, after Damstra defaulted, the McGees filed a petition seeking specific performance in the contract. At issue is whether the changes in paragraph 10 also eliminated specific performance as a remedy available to the McGees. OPINION HOLDS: I. Extrinsic evidence was admissible to shed light on the overall understanding of the parties within the context of the transaction. II. Although we agree with the district court's conclusion that the McGees, more likely than not, had no firm understanding of the legal import of the disputed clause in the contract, the same is not true of Damstra. We are convinced from the evidence that it was his firm belief that he was not obligating himself for any unpaid sums under the agree- ment. Consequently, we conclude, as did the court of appeals, that under the circumstances the McGees should bear the burden of the misunderstanding. III. In the original certiorari action, which has been consolidated with this appeal, Damstra challenges a finding that he was in contempt for failure to make installment payments under the trial court's decree of specific performance. Because we find that Damstra, at all times relevant to the issue of willful violation, intended to obtain a lawful stay of the execution of the decree, we conclude that his disregard of its requirements was not sufficiently willful to sustain a finding of contempt.

NO. 87-1626. OFFICE OF CONSUMER ADVOCATE v. IOWA STATE COMMERCE COMMISSION.

Appeal from the Iowa District Court for Appanoose County, John C. Miller, Judge. Affirmed in part, reversed in part, and remanded. Considered by Harris, P.J., and Larson, Schultz, Lavorato, and Neuman, JJ. Opinion by Larson, J. (22 pages $8.80)

A utility company and the consumer advocate challenge the district court's judicial review of a rate-making order of the commerce commission (now known as the utilities board). OPINION HOLDS: I. In Davenport Water Co. v. Iowa State Commerce Commission, 190 N.W.2d 583 (Iowa 1971), this court stated and applied the general rule of exclusion of customer-contributed capital from a utility company's rate base. In this case, as in earlier ones, the board applied an exception to the Davenport Water rule. It included in the utility company's rate base the self-insurance fund the utility company maintains for payment of injury and damage claims. This policy choice by the board was not unreasonable. The board's decision also was supported by substantial evidence, was neither arbitrary nor capricious, and was not contrary to Iowa Code section 476.52 (1987) (if board determines utility company is operating with extraordinary efficiency or inefficiency, it may reward or punish accordingly). II. The utility company maintains a fund for uncollectible accounts, a bad debt reserve. The board assumed that because the consumer advocate had not cited any authority to the contrary, the uncollectibles fund would be included in the utility company's rate base, even if it was customer-contributed. We believe the board erred. The board should determine whether the fund was customer-contributed and, if so, whether sufficient evidence existed for it to make an exception to the general rule of exclusion under Davenport Water. III. In the lead-lag study portion of its rate base determination, the board fixed the utility company's lag time, the number of days from billing to collection, at 26.9 days. The board's decision was supported by substantial evidence and was neither arbitrary nor capricious. Recent legislation also supports the longer lag time. (Iowa Code sections 476.20(3) and 476.54 (1985) prohibit not only disconnection of certain customers from November 1 to April 1 but also imposition of late payment charges within twenty days after the billing date).

NO. 87-1294. HINNERS v. PEKIN INS. CO.
Appeal from the Iowa District Court for Carroll County, R.K. Richardson, Judge. Affirmed. Considered en banc. Opinion by Larson, J. Dissent by Schultz, J.
(9 pages $3.60)

Stephen Hinners was struck and severely injured in South Carolina by an uninsured vehicle. His wife, Lori Stark Hinners, was living with her parents in Iowa at the time of the accident. Her father had a policy of insurance with the defendant Pekin Insurance Company which provided uninsured motorist protection for "a person related [to the named insured] by blood . . . who is a resident of [the named insured's] household." Lori Hinners claimed a loss of her husband's consortium as a result of the accident and sought payment under the Pekin policy. Pekin moved for summary judgment, which was denied. We granted Pekin's application for interlocutory appeal. OPINION HOLDS: Despite the apparent lack of policy coverage, Lori contends she is entitled to recovery because of the impact of Iowa Code section 516A.1. It is clear that Lori is entitled to pursue a loss of consortium claim against the uninsured driver, and it is also clear that the damage resulted from the operation of an uninsured vehicle. We think it is clear that Lori qualifies as a "person insured," or a covered person. We agree that Lori Hinners was a covered person under the policy and that coverage for her damages sustained because of the bodily injury to her husband was required by Iowa Code section 516A.1 to be provided by the policy. Accordingly, we affirm the denial of summary judgment. DISSENT ASSERTS: I believe that the provision of Iowa Code section 516A.1 which provides protection to the insured to recover damages "because of bodily injury, sickness, or disease, including death," does not provide coverage for the insured's loss of consortium claim. A loss of consortium claim does not fall within the purview of the statute. It is not a bodily injury to the insured.

NO. 88-173. STATE v. KOBYLINSKI.
Appeal from the Iowa District Court for Polk County, Anthony M. Critelli, Judge. Sentence vacated; remanded for resentencing. Considered by Larson, P.J., and Schultz, Carter, Snell, and Andreasen, JJ. Per curiam.
(3 pages $1.20)

The defendant was convicted of the serious misdemeanor of being knowingly absent from a place he was supposed to be while in lawful custody, a violation of Iowa Code section 719.4(3). He was sentenced to incarceration for one year, to be served consecutively to the sentence he was already serving when this offense was committed. The defendant has appealed. OPINION HOLDS: The sentencing judge failed to exercise discretion in sentencing or to state adequate reasons for the sentence imposed because of an erroneous belief that a particular sentence was mandatory. Therefore this case must be remanded for resentencing.

NO. 87-1547. AALBERS v. IOWA DEPARTMENT OF JOB SERVICE.
Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge. Affirmed. Considered en banc. Opinion by Larson, J. (16 pages $6.40)

In August 1985, Local P-9 of the United Food and Commercial Workers Union (UFCW) went out on strike at the Austin, Minnesota, plant of George A. Hormel and Company. Soon afterwards, in an apparent attempt to put further pressure on Hormel, members of the Austin union picketed Hormel's Ottumwa, Iowa, plant. Several hundred members of the Ottumwa local, including these claimants, refused to cross the picket line. The management of the Ottumwa plant advised them that they were in violation of their collective bargaining agreement and warned them that continued refusal to work would result in their termination. Some returned, and those who did not were fired. Approximately 500 of the fired employees applied for unemployment compensation under Iowa Code chapter 96 (1985). A Job Service representative ruled against the claimants. Following appeal proceedings within Job Service, which resulted in denial of compensation, the claimants petitioned for judicial review. The district court ruled against the claimants, who appealed. OPINION HOLDS: I. When a dispute arises over a matter in which the primary and exclusive jurisdiction lies in the National Labor Relations Board, we must defer to that board. However, the Supreme Court has recognized an exception in state unemployment compensation cases. We reject the claimants' preemption argument and hold that the board and the district court had jurisdiction to determine the claimants' eligibility for unemployment compensation benefits. II. The employer, Hormel, contends these claimants are precluded from recovery of unemployment compensation because they were guilty of misconduct. We hold that the board's finding of misconduct by the claimants, based on their refusal to work in the face of overwhelming evidence that the strike was unauthorized, was supported by substantial evidence. III. Claimants contend that the district court exceeded its authority in considering and rejecting their "good-faith belief" argument, because no specific finding on it had been made by the appeal board. Although the claim was not characterized by the board as a "good-faith" defense, it is clear that that is what it was, and the defense was expressly rejected by the board. The subjective understanding and intent of the claimants are relevant on the question of misconduct, but they are not the end of the inquiry. The key question is what a reasonable person would have believed under the circumstances. We conclude that the board properly applied this test and that its conclusion was sustained by substantial evidence. We therefore affirm the denial of unemployment compensation benefits.

NO. 887-1348. CITY OF DES MOINES v. IOWA DISTRICT COURT. Certiorari to the Iowa District Court for Polk County, I. Joel Pasternak, District Associate Judge. Writ sustained in part; annulled in part. Considered by Larson, P.J., and Schultz, Carter, Snell, and Andreasen, JJ. Opinion by Carter, J. (11 pages $4.40)

The City of Des Moines has challenged, via certiorari, certain actions of the Iowa District Court for Polk County with respect to alleged violations of municipal parking ordinances. The court marked "dismissed" on the violator's copies and ordered the city to file the original copy of the ticket with the clerk of court. The city urged that the court had no jurisdiction to act in the absence of the filing of formal charges and that it was within the city's discretion as to whether that would be done. The city also challenged the court's authority to dismiss the charges without trial. After an unsuccessful effort to secure an adjudication of the dispute by a district judge, the city filed the sworn originals of the four tickets with the court. It then commenced this original certiorari action, challenging the steps taken by the court in directing it to file the documents. OPINION HOLDS: I. The city's jurisdictional argument is meritorious with respect to the notice-of-fine ticket. Under the notice-of-fine procedure contained in Iowa Code section 321.236(1)(a), the ticket provides no legal basis for invoking the jurisdiction of the Iowa District Court. Such jurisdiction can only be invoked by a later complaint filed with the court under Iowa Rule of Criminal Procedure 35. Consequently, the district court acted beyond its jurisdiction in purporting to adjudicate that alleged violation in favor of the violator. We find the situation is different, however, with respect to the court-appearance-date tickets. These citations are a legal process bearing the caption of the court and purporting to invoke the court's jurisdiction on the date specified in the citation. As a result, we believe the city, as complaining party, is obliged to file the necessary charging documents by the time of the specified appearance date. We further conclude that the prosecuting authority's failure to facilitate this process by filing a sworn copy of the citation as a complaint on or before the time the violator appears may be grounds, in the court's discretion, to make an adjudication barring any further prosecution of the charge. If the court elects to act in this manner, it is empowered to direct that the record of the court reflect the substance of the proceedings which have transpired. This may include requiring the prosecuting authority to file the complaint copy of the citation. II. Nothing in the present record suggests that an ex parte adjudication occurred in the present case. III. When a violator first appears in court in response to a traffic citation, the court should

(continued).

NO. 887-1348. CITY OF DES MOINES v. IOWA DISTRICT COURT (Continued).
ordinarily act only for purposes of accepting a plea, entering a lawful sentence on a plea of guilty, or scheduling a trial on a plea of not guilty. In the prior division of this opinion, we also recognized the right of a violator to request, in the court's discretion, an adjudication against the prosecuting authority at the time of initial appearance if the prosecuting authority balked at formally filing the charge. Absent similarly compelling reasons, alleged traffic violations which are challenged should not be disposed of absent a fact finding hearing.

NO. 87-1644. SCOTT v. CITY OF SIOUX CITY.
Appeal from the Iowa District Court for Woodbury County, Richard J. Vipond, Judge. Affirmed. Considered by Larson, P.J., and Schultz, Carter, Snell, and Andreasen, JJ. Opinion by Carter, J. (11 pages $4.40)

Plaintiffs commenced these proceedings for inverse condemnation of their property on July 31, 1987, alleging the city had taken their property without compensation by passing a zoning ordinance restricting commercial development. The city moved for summary judgment on the ground that the five-year statute of limitations codified at Iowa Code section 614.1(4) (1987) bars this action. The district court agreed with the city and granted its motion for summary judgment. The plaintiffs have appealed. OPINION HOLDS: I. In the context of a regulatory takings claim, we reject the contention that the constitutional magnitude of the claim prevents application of statutes of limitation. We also disagree with plaintiffs' contention that the applicable period of limitations is Iowa Code section 614.1(5) providing a ten-year period for actions "brought for the recovery of real property." In this case, the plaintiffs do not seek the return of title, but rather compensation from the government. We believe the most appropriate period of limitation for the type of injury sustained in the present case is the five-year period provided in Iowa Code section 614.1(4) II. This cause of action arises out of the enactment of a land use regulation, not a continuing nuisance or trespass. The regulation's impact on the development potential and market value of the property was immediate, and constituted a single injury. We hold that the statute of limitations as to this action began to run no later than March 29, 1977, the date on which plaintiffs filed their first action seeking recovery for inverse condemnation. We conclude the inverse condemnation claim asserted here is barred by the statute of limitations.

NO. 87-241. COOK v. STATE.

Appeal from the Iowa District Court for Polk County, Ray Fenton, Judge. Reversed and remanded. Considered en banc. Opinion by Schultz, J. Dissent by Neuman, J.

(21 pages $8.40)

The State appeals from the recovery made by Carl Cook under the Iowa Tort Claims Act. Cook suffered personal injuries as a result of an accident that occurred at the intersection of two state primary highways. The district court found that the State was negligent in failing to place "stop ahead" signs on both sides of the roadway and in placing such a sign on the right-hand side of the road too far from the intersection. The court apportioned 90 percent of the negligence to the State and 10 percent to the plaintiff. OPINION HOLDS: I. Cook claims the placement of the stop signs was unreasonable and constituted negligent conduct. This conduct does not fall within the exceptions to state tort liability of subsections 8 and 9 of Iowa Code section 25A.14. II. The plaintiff presented evidence about prior instances when the intersection's barrel-mounted stop sign had been displaced, apparently due to impact by drivers who failed to stop. This evidence was admissible, since the sole purpose of the offered testimony was to show that the alleged tort-feasor had notice of an allegedly dangerous condition. III. The State also claims that the deposition of one of plaintiff's experts was inadmissible because it was hearsay. The State maintains there was no showing made by the plaintiff that the witness was unavailable to testify in person. We believe that Iowa R. Civ. P. 144(c) was intended to create its own exception to the hearsay rule. All that is required under the rule is a showing that the witness is out of the state. Thus, we hold that the deposition was admissible under rule 144 without a determination of unavailability under rule 804. IV. The State contends that the plaintiff did not present substantial evidence of negligence by the State. We will not set aside plaintiff's judgment as a matter of law based on the failure of the plaintiff's proof of negligence and causation. V. The State also contends that the trial court erred by not assigning an appropriate percentage of fault to Cook. We conclude that we should apply the substantial evidence rule in appellate review of findings by a trier of facts concerning apportionment of fault. In this case, we hold that the trial court erred as a matter of law in failing to conclude that Cook was negligent for violating section 321.322. The trial court's failure to make specific findings of fact as to whether Cook was intoxicated or violated the other noted rules of the road passed a cloud of doubt on the court's allocation of fault. The trial court did not consider Cook's failure to stop at the stop sign in its determination

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No. 87-241. COOK v. STATE (continued).

of negligence and consequential allocation of fault. Because the matter of damages was bifurcated, the new trial will be restricted to the issue of liability, if any. DISSENT ASSERTS: Absent a showing that the trial court's judgment was manifestly erroneous or the product of passion or prejudice, it should not be disturbed.

No. 221/87-902. CONAWAY v. WEBSTER CITY PRODUCTS CO.
Appeal from the Iowa District Court for Hamilton County, Mark S. Cady, Judge. Reversed and remanded. Considered by McGiverin, C.J., and Schultz, Lavorato, Neuman, and Snell, JJ. Opinion by Lavorato, J.
(13 pages $5.20)

Merry Conaway and Darlene Plain were employed by Webster City Products Company (Company) under a collective-bargaining agreement between the Company and their union. Under the agreement employees may be discharged for "just cause." Conaway and Plain had filed claims for workers' compensation before being discharged. Each filed a petition alleging that her discharge violated the collective-bargaining agreement and public policy. In its ruling, the district court assumed from the dicta in our prior cases that we would recognize an action for termination of at-will employment in retaliation for the filing of workers' compensation claims. The court held the two actions were preempted by section 301 of the Labor Management Relations Act. It is from this ruling that the plaintiffs appeal. OPINIONS HOLDS: the plaintiffs' actions are recognizable state tort claims. They can be resolved without resorting to an interpretation of the collective-bargaining agreement, regardless of the discharge for just cause provision in the agreement. Thus, the actions are independent for section 301 preemption purposes and are therefore not section 301 claims requiring exhaustion of the grievance and arbitration procedures provided by the collective-bargaining agreement. Under this holding, the plaintiffs properly sued in state court without first going through these procedures. Because the district court concluded otherwise, we reverse and remand for further proceedings consistent with this opinion.

NO 87-1056. MOHR v. MIDAS REALTY CORPORATION

Appeal from the Iowa District Court for Webster County, Mark S. Cady, Judge. Affirmed. Considered by McGiverin, C.J., and Schultz, Lavorato, Neuman, and Snell, JJ. Opinion by Neuman, J. (8 pages $3.20)

This case concerns two adjoining lots located on a commercial "strip" along Highway 20 in Fort Dodge, Iowa. In 1983, Mohr's neighbors to the west, Midas, built a muffler shop on the front of their property. This new building, though fully complying with zoning restrictions and setback lines, blocks all view of Mohr's building to traffic approaching from the west on Highway 20. Mohr sued Midas for "unreasonable interference with Plaintiff's lawful use and enjoyment of his private property." The district court concluded that Iowa law furnishes no cause of action in nuisance for interference with view of property and dismissed Mohr's petition. Mohr appeals from that adverse judgment. OPINION HOLDS: Recognizing a landowner's right to enforce a nuisance claim for intentional interference with light, air, or view would be indistinguishable from granting an unrecorded interest adjunct to that landowner's property rights for the same purpose. For a variety of reasons, we think such an expansion of the law of nuisance would be unwise, at least in regard to the interference with view claimed here. Accordingly, we hold there can be no cause of action grounded in nuisance for blocking that view. Our ruling is necessarily limited to those nuisance claims based on interference with view, not air or light. The policies underlying departure from the majority rule for the sake of preserving access to solar energy are clearly missing in the case before us. We therefore affirm the trial court's summary dismissal of Mohr's petition.

No. 87-1717. ARMSTRONG V. KRAPP.

Appeal from the Iowa District Court for Kossuth County, James L. McDonald, Judge. Reversed and remanded. Considered by McGiverin, C.J., and Harris, Lavorato, Neuman, and Snell, JJ. Per Curiam. (2 pages $.80)

Plaintiffs appeal from a district court decision that a general release effectively releases unnamed or otherwise unidentified tortfeasors. OPINION HOLDS: The decisive issue in this case is whether a general release purporting to discharge certain named tortfeasors and all others who might be liable effectively releases unnamed or otherwise unidentified tortfeasors. We recently determined that Iowa Code section 668.7 requires a specific, rather than a general, designation of the tortfeasors to be released. AID Ins. Co. v. Davis County, 426 N.W.2d 631, 634 (Iowa 1988). Here, the defendants, Richard Krapp and Algona Community School District, were not specifically named in the release in question. Consequently, the district court erred in holding that the release covered them. Accordingly, we reverse and remand for further proceedings not inconsistent with this opinion.

NO. 87-1316. IN THE INTEREST OF D.P. AND H.P.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Woodbury County, Brian L. Michaelson, Juvenile Referee. Decision of court of appeals vacated; judgment of district court affirmed. Considered by Larson, P.J., and Schultz, Carter, Snell, and Andreasen, JJ. Opinion by Schultz, J. (15 pages $6.00)

The father of two children appeals from the termination of his parental rights. OPINION HOLDS: The State has established by clear and convincing evidence that the children cannot be returned to their father and still be protected from physical abuse or some other harm. The interests of the children demand that the father's parental rights be terminated.

NO. 87-1572. CHAPMAN v. CRAIG.

Appeal from the Iowa District Court for Madison County, J.W. Jordan, Judge. Affirmed. Considered by Larson, P.J., and Schultz, Carter, Snell, and Andreasen, JJ. Opinion by Schultz, J. Dissent by Larson, J. (8 pages $3.20)

A police officer was injured while arresting an intoxicated bar patron. He filed the present action under the dramshop act against the operators of two bars where the intoxicated patron had consumed alcohol. The district court granted a summary judgment to some of the defendants, and the plaintiff police officer has appealed. OPINION HOLDS: I. We decline to reconsider or abolish the recently adopted "fireman's rule", which denies recovery to a law enforcement officer in those cases where the action is grounded on the same conduct which created the need to call for the officer's assistance. II. The "fireman's rule" does not deny equal protection. The rule applies equally to all members of the class it creates, namely the class of law enforcement officers injured by the same conduct which initially created the need for the officers' presence in an official capacity. There is a rational basis, rooted in public policy, for the denial of recovery to members of this class. III. The defendants did not waive their rights under the "fireman's rule". An exception to the rule provides for waiver if the individual responsible for an officer's presence engaged in subsequent acts of negligence or misconduct once the officer was on the scene. There is no evidence of such a waiver by the defendants in the present case. DISSENT ASSERTS: I would abolish the "fireman's rule."

NO. 87-145. NACHAZEL v. MIRACO MFG.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Poweshiek County, Robert Bates, Judge. Decision of court of appeals vacated; district court affirmed on condition. Considered en banc. Opinion by Schultz, J. (18 pages $7.20)

The significant issue in this branch of warranty action is whether the buyer may recover consequential damages for interest on a purchase price loan and costs of installation of the defective product. Laddie and Linda Nachazel brought this action against Miraco Manufacturing for damages arising out of the purchase from defendant of hog farrowing houses and nurseries known as Mirahuts. The jury awarded damages for the breach of express warranty and strict liability. Defendant appealed, claiming that the trial court erred in submitting, as an element of consequential damages, the interest and installation expenses incurred in purchasing and erecting the buildings. The court of appeals held that the interest payments and the installation costs were made prior to the breach and were not caused by defendant's breach of contract. Plaintiffs sought further review on the issue of the deleted damages. OPINION HOLDS: I. The plaintiffs' theory of recovery was for damages for accepted goods under section 554.2714. This allows the buyer to keep the goods and recover for the difference in the value of the goods accepted and what they would have had if the goods were as warranted. Wasted expenses for interest can result when the buyer does not keep the defective goods. We believe that the wrongdoer should be responsible for such expense. But in cases where the buyer has accepted the goods and retained them, as here, our policy dictates a different result. We hold that interest and finance expenses incurred as a result of the purchase money loan are not caused by the breach. Such expense initially is incurred as a result of the buyer's decision to finance the purchase rather than pay cash. Interest on retained goods is not a wasted expense. II. The next question is whether installation expenses may be recoverable in whole or in part when the buyer has retained the property. We conclude the trial court erred in allowing the jury to consider the total cost of installation as a consequential damage. The court should have instructed the jury to decrease the installation costs to offset any remaining benefit to the plaintiffs resulting from the installation costs. III. We believe this is a proper case to give the plaintiffs an opportunity to file a remittitur. We believe that such amount should be arrived at by including the entire amount of the interest and one-half of the installation expense. If the plaintiffs file a remittitur agreeing to such a reduction in the amount of their judgment, this case shall stand affirmed. Otherwise, the case is reversed and remanded to the district court for a new trial solely on the issue of damages to be awarded.

No. 88-165. GUTHRIE COUNTY BOARD OF SUPERVISORS v. FREVERT-RAMSEY-KOBES, ARCHITECTS-ENGINEERS, INC.
Appeal from the Iowa District Court for Guthrie County, J.W. Jordan, Judge. Reversed. Considered by Larson, P.J., and Schultz, Carter, Snell, and Andreasen, JJ. Opinion by Schultz, J. (5 pages $2.00)

Defendant in a tort suit brings an interlocutory appeal from the trial court's ruling excluding the testimony of an expert witness. OPINION HOLDS: Iowa Code section 668.11, which states a time period for designation of expert witnesses, became effective on July 1, 1986, rather than on June 8, 1986, when publication had been completed. The statute does not apply to the present case, which was filed after June 8, 1986, but before July 1, 1986, Therefore the defendant had no duty to make an early disclosure of expert witnesses.

NO. 87-1481. HAWKINSON v. LOUISA COUNTY CIVIL SERVICE COMMISSION.
Appeal from the Iowa District Court for Louisa County, R. David Fahey, Judge. Reversed and remanded. Considered by McGiverin, C.J., and Carter, Lavorato, Neuman, and Snell, JJ. Opinion by Neuman, J. (9 pages $3.60)

A county deputy sheriff and a county civil service commission have each challenged the district court ruling that reversed the commission's termination of the deputy's employment but suspended him without pay for failure to report for one day's work and failure to maintain a county residence. OPINION HOLDS: I. Iowa Code section 341A.12 outlines the procedure to be followed in the removal, suspension, or demotion of a county deputy sheriff. That statute allows an appeal from the commission's decision to the district court. The statute provides: "The court shall proceed to hear and determine the appeal in a summary manner. Such hearing shall be confined to the determination of whether the order of removal, suspension, or demotion made by the commission was made in good faith and for cause. . . ." We have not previously been asked to consider the scope of appellate review afforded by section 341A.12. We hold that the statute calls for a review of the record made before the commission, not a trial de novo. Section 341A.12 does not vest the court with discretion to substitute its judgment for that of the commission or to equitably modify the sanction imposed. To the contrary, the court must uphold the commission's decision if it is reached in good faith and based on cause. In determining whether the commission's decision comports with this good faith and cause standard, the substantial evidence test will apply. II. In this record, substantial evidence supports the commission's decision.

No. 87-1698. BARKER v. IOWA DEPARTMENT OF TRANSPORTATION.
Appeal from the Iowa District Court for Dubuque County, Robert E. Mahan, Judge. Affirmed and remanded. Considered by McGiverin, C.J., and Harris, Lavorato, Neuman, and Snell, JJ. Opinion by Harris, J.

(6 pages $2.40)

The Department of Transportation revoked Barker's driver's license on the basis of chemical tests indicating a blood alcohol content of .108. In so doing, the department applied an administrative rule establishing a 5% margin of error for such chemical testing. The district court overturned the revocation, and the department has appealed. OPINION HOLDS: The department lacked authority to promulgate the rule concerning margin of error. The rule here goes further than enforcing or carrying out the laws. The rule establishes a standard or measure which would determine as a matter of law which alcohol content would be deemed sufficient for a violation, and which would not. There is no statutory authority giving the department this power, and the authority for such a power cannot be implied. Authority for the rule does not arise merely because the definition of margin of error is missing from the statute. Nor does it arise from the department's authority under the statute to approve chemical testing devices. II. Upon remand the district court shall award reasonable attorney's fees to Barker.

No. 86-1098. DESSEL v. DESSEL.
On review from the Iowa Court of Appeals. Appeal from the Iowa District Court of Fayette County, George Stigler, Judge. Decision of court of appeals vacated; district court judgment affirmed in part, reversed in part and remanded. Considered by McGiverin, C.J., and Harris, Carter, Lavorato, and Neuman, JJ. Opinion by Harris, J.

(9 pages $3.60)

James Dessel and George Dessel hired R.L. Donohue to draw up an agreement to dissolve their partnership. The agreement provided for the sale of James' share of the partnership, except for the accounts receivable, which were to be divided equally as they were collected. When James died Donohue was retained as attorney for the estate. A dispute arose between James' widow and George about the collection and division of the accounts receivable. On behalf of the estate Donohue sued George. George filed a third-party action against Donohue, claiming legal malpractice. The district court awarded George $28,365 for lost

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No. 86-1098. DESSEL v. DESSEL (continued).
commissions and $20,000 in punitive damages. The court of appeals reversed, holding Donohue was not the proximate cause of George's damages. OPINION HOLDS: I. There is no question concerning the existence of the attorney-client relationship. II. Because Donohue inserted a hold harmless clause into the dissolution agreement by mistake, and in violation of instructions, he was negligent. There is substantial evidence that Donohue's conduct was a conflict of interest in violation of the Code of Professional Responsibility. III. Donohue's negligence in inserting the hold harmless clause proximately caused George to pay for legal expenses to defend the estate's suit against him. Donohue's advice was clearly a substantial factor in George's surrender of the commission he had earned and his failure to collect additional commissions to which he was entitled. IV. It is not clear that the allowance for George's attorney fees was limited to the defense of the estate's claims against him. We agree that the allowance should be so limited and that a remand is appropriate to determine the correct fee. Upon remand judgment on the commissions claim should be entered in the total amount of $17,987. V. We agree with the court of appeals in disallowing the punitive damage claim.

No. 87-1420. GRINNELL MUTUAL REINSURANCE CO. V. VOELTZ.
Appeal from the Iowa District Court for Cedar County, John A. Nahra, Judge. Affirmed. Considered by McGiverin, C.J., and Harris, Lavorato, Neuman, and Snell, J. Opinion by Lavorato, J. (16 pages $6.40)

The determinative issue in this declaratory judgment proceeding is whether the baby-sitting activities of an insured under a homeowners policy were excluded by the "business pursuit" exclusion of the policy. The district court said they were not and required the insurer to defend and indemnify the insured against a suit for personal injuries suffered by an infant while in the care of the insured. OPINION HOLDS: I. This case was tried at law, so our review is on error. II. We have examined the record and conclude that substantial evidence exists to support the court's interpretation that the business pursuits exception was ambiguous. The average person would certainly not expect his or her baby-sitting activities to be excluded if the agent was made aware of these activities and made no further inquiries. We hold Grinnell Mutual to its manifested intent and conclude that there was an agreement in accordance with what the Voeltzes reasonably expected--coverage. Accordingly, we affirm the district court's judgment that there is coverage and that Grinnell Mutual has an obligation to defend and indemnify the Voeltzes against the pending lawsuit.

No. 87-1410. BLINDER, ROBINSON & CO. v. GOETTSCH.
Appeal from the Iowa District Court for Polk County, George W. Bergeson, Judge. Reversed and remanded. Considered by Larson, P.J., and Schultz, Carter, Snell, and Andreasen, JJ. Opinion by Andreasen, J. (16 pages $6.40)

This is an appeal by Blinder, Robinson & Co., Inc., Meyer Blinder, Larry Blinder and Harold Gordon (Blinder) from the order in an administrative hearing of the Insurance Division of the Department of Commerce which revoked the broker-dealer license of the company and censured the individuals. This case involves the enforcement of the registration requirements of Iowa's Blue Sky Law, Iowa Code chapter 502. The primary issues in this appeal are whether the state has complied with the statute of limitations in Iowa Code chapter 502.304(2)(1985) and whether the hearing officers should have recused themselves pursuant to Iowa Code section 17A.17(3)(1985). On October 1, 1982, the superintendent of securities filed a notice of hearing which instituted a proceeding to deny, suspend or revoke Blinder's registration pursuant to Iowa Code section 502.304 (1985). This notice alleged both the sale of nine unregistered securities and sales by five unregistered agents of Blinder in March of 1981. On January 24, 1985, the superintendent filed an amended notice of hearing alleging more than 160 registration violations by twenty-two agents during the period of 1979-1982. This matter was presented for hearing before Tony Schrader, a deputy insurance commissioner. Schrader was subject to the authority of Insurance Commissioner William Hager at the time the orders were filed. While engaged in private law practice, Hager had, in 1985, represented Blinder in connection with this contested administrative hearing. OPINION HOLDS: Based on the significant differences in the time periods covered as well as the different agents, securities, and sales involved in the 1985 notices as compared to the 1982 notice, the 1985 notices constitute new and original proceedings. II. the 1985 notices were untimely under Iowa Code section 502.304(2). That statute required the superintendent to act within thirty days of the renewal of Blinder's registration, if the proceeding was based on a fact known to the superintendent when the registration renewal became effective. A fact known to the superintendent is information that the superintendent has actual notice of, or, upon the exercise of reasonable diligence should have known. The limitations of section 502.304(2) do not take effect so long as the superintendent exercises reasonable diligence. Here, however, the record does not demonstrate the exercise of reasonable diligence. We reverse the district court order affirming the hearing

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No. 87-1410. BLINDER, ROBINSON & CO. v. GOETTSCH. (continued).

officer's findings. This matter is remanded for hearing on the charges contained in the October 1982 notice of hearing. III. Because of Insurance Commissioner Hager's direct participation in the hearing of this contested case, a hearing officer not subject to Commissioner Hager's authority should have been utilized.

No. 87-734. CITY OF MARION, IOWA, v. NATIONAL CASUALTY COMPANY.

Appeal from the Iowa District Court for Linn County, Harold J. Swailes, Judge. Reversed and remanded. Considered by McGiverin, C.J., and Carter, Lavorato, Snell, and Andreasen. Opinion by Snell, J. (11 pages $4.40)

The city of Marion purchased liability insurance from National Casualty Company for a period of December 15 1984, to December 15, 1985. The policy covered "claims first made during the period of this policy." During the policy period two Marion police officers filed a federal court lawsuit against the City of Marion arising out of a labor dispute which began in 1981. The city settled this lawsuit by agreeing to pay the officers $60,000. National Casualty refused to pay this settlement on the ground the two officers' claim had first been made prior to the period of the policy. The city sued National Casualty, and the district court directed National Casualty to pay the city. National Casualty has appealed. OPINION HOLDS: I. We believe the officers had made a claim against the city prior to the actual filing of their federal court complaint, and prior to the effective date of the National Casualty policy. We therefore reverse the district court and hold that National Casualty need not pay the city. II. The city failed to introduce sufficient evidence to prove any of its alternative theories.

IOWA ADMINISTRATIVE BULLETIN
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