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IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published in pamphlet form biweekly pursuant to Iowa Code Chapter 17A and 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].

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other "materials deemed fitting and proper by the Administrative Rules Review Committee," include summaries of Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [453.6]; Workers' Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)"a"]; and Agricultural Credit Corporation Maximum Loan Rates [535.12].

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

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

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

PHYLLIS BARRY, Administrative Code Editor — Phone: (515) 281-3355
DONNA WATERS, Administrative Code Assistant — (515) 281-8157

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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, 1989, to June 30, 1990	$185.85 plus $7.43 sales tax
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Single copies may be purchased for $6.20 plus $0.20 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
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Notice, Options for demand charge allocations, 19.10(3) **ARC 845A** 1951
Notice, Distribution of management efficiency report, 29.5 **ARC 855A** 1952
Filed Emergency, Demand charges allocations, 19.10(3) **ARC 846A** 1956
Filed, Take-or-pay adjustments, 19.10(5), 19.10(7) **ARC 844A** 1998

Schedule for Rule Making
1990

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. 5	Jan. 24	Feb. 13	Feb. 28	Mar. 21	Apr. 25	July 23
Jan. 19	Feb. 7	Feb. 27	Mar. 14	Apr. 4	May 9	Aug. 6
Feb. 2	Feb. 21	Mar. 13	Mar. 28	Apr. 18	May 23	Aug. 20
Feb. 16	Mar. 7	Mar. 27	Apr. 11	May 2	June 6	Sep. 3
Mar. 2	Mar. 21	Apr. 10	Apr. 25	May 16	June 20	Sep. 17
Mar. 16	Apr. 4	Apr. 24	May 9	May 30	July 4	Oct. 1
Mar. 30	Apr. 18	May 8	May 23	June 13	July 18	Oct. 15
Apr. 13	May 2	May 22	June 6	June 27	Aug. 1	Oct. 29
Apr. 27	May 16	June 5	June 20	July 11	Aug. 15	Nov. 12
May 11	May 30	June 19	July 4	July 25	Aug. 29	Nov. 26
May 25	June 13	July 3	July 18	Aug. 8	Sep. 12	Dec. 10
June 8	June 27	July 17	Aug. 1	Aug. 22	Sep. 26	Dec. 24
June 22	July 11	July 31	Aug. 15	Sep. 5	Oct. 10	Jan. 7 '91
July 6	July 25	Aug. 14	Aug. 29	Sep. 19	Oct. 24	Jan. 21 '91
July 20	Aug. 8	Aug. 28	Sep. 12	Oct. 3	Nov. 7	Feb. 4 '91
Aug. 3	Aug. 22	Sep. 11	Sep. 26	Oct. 17	Nov. 21	Feb. 18 '91
Aug. 17	Sep. 5	Sep. 25	Oct. 10	Oct. 31	Dec. 5	Mar. 4 '91
Aug. 31	Sep. 19	Oct. 9	Oct. 24	Nov. 14	Dec. 19	Mar. 18 '91
Sep. 14	Oct. 3	Oct. 23	Nov. 7	Nov. 28	Jan. 2 '91	Apr. 1 '91
Sep. 28	Oct. 17	Nov. 6	Nov. 21	Dec. 12	Jan. 16 '91	Apr. 15 '91
Oct. 12	Oct. 31	Nov. 20	Dec. 5	Dec. 26	Jan. 30 '91	Apr. 29 '91
Oct. 26	Nov. 14	Dec. 4	Dec. 19	Jan. 9 '91	Feb. 13 '91	May 13 '91
Nov. 9	Nov. 28	Dec. 18	Jan. 2 '91	Jan. 23 '91	Feb. 27 '91	May 27 '91
Nov. 23	Dec. 12	Jan. 1 '91	Jan. 16 '91	Feb. 6 '91	Mar. 13 '91	June 10 '91
Dec. 7	Dec. 26	Jan. 15 '91	Jan. 30 '91	Feb. 20 '91	Mar. 27 '91	June 24 '91
Dec. 21	Jan. 9 '91	Jan. 29 '91	Feb. 13 '91	Mar. 6 '91	Apr. 10 '91	July 8 '91

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.

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
23	**Friday, April 27, 1990**	**May 16, 1990**
24	**Friday, May 11, 1990**	**May 30, 1990**
25	**Friday, May 25, 1990**	**June 13, 1990**

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.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

The following rules, in addition to the agenda published in the April 18, 1990, Iowa Administrative Bulletin, will be reviewed by the Administrative Rules Review Committee at its special meeting Wednesday, May 9*, 1990, 10 a.m. and Thursday, May 10*, 1990, 9 a.m. in Committee Room 22, State Capitol. This meeting will be in lieu of the regular statutory date.

***Note: Meeting dates differ from those published in the 4/18/90 agenda.**

Bulletin

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Disease control at fairs and exhibits, 64.34(4), Filed **ARC 848A** 5/2/90
Weights and measures, 85.33, 85.48(10) to 85.48(14), Filed **ARC 849A** 5/2/90

CORRECTIONS DEPARTMENT[291]
Riverview release center — visiting, 28.2, Filed **ARC 865A** 5/2/90

EDUCATION DEPARTMENT[281]
Use of telecommunications for instruction by schools, ch 15, Filed **ARC 859A** 5/2/90
Education of pupils requiring special education, administrative law judge, amendments to ch 41, 41.33(1), 41.33(9), 41.35(3), Filed **ARC 860A** 5/2/90
School buses, 44.2(5)"g," Filed **ARC 861A** 5/2/90
Educational support programs for parents of at-risk children aged birth through three years, ch 67, Filed **ARC 863A** 5/2/90
Conservation education, ch 68, Filed **ARC 862A** 5/2/90

ELDER AFFAIRS DEPARTMENT[321]
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HEALTH DATA COMMISSION[411]
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HUMAN SERVICES DEPARTMENT[441]
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Application and investigation, 76.2(1), Notice **ARC 850A** 5/2/90
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Payment of dental services, coverage of hospice care, 78.4, 78.28(2), 78.36(4)"a," 79.1(14)"b," Filed **ARC 854A** 5/2/90
Other policies relating to providers of medical and remedial care, 79.1(5), Notice **ARC 851A** 5/2/90

INSPECTIONS AND APPEALS DEPARTMENT[481]
Hospice license standards, ch 53, Filed **ARC 840A** 5/2/90
Residential care facilities for the mentally retarded, 63.14(7), Notice **ARC 839A** 5/2/90

IOWA FINANCE AUTHORITY[524]
Title guaranty division, 9.1, 9.12 to 9.15, 9.17, 9.18, 9.20, 9.30, Filed **ARC 864A** 5/2/90

LAW ENFORCEMENT ACADEMY[501]
Certification of law enforcement officers, 1.1, 3.1, 3.8, 3.9, Notice **ARC 831A** 5/2/90
Reserve officer weapons certification, 1.1, ch 10, Filed **ARC 838A** 5/2/90

NATURAL RESOURCE COMMISSION[571]
NATURAL RESOURCES DEPARTMENT[561] "umbrella"
Snowmobile and all-terrain vehicle registration revenue cost-share program, ch 28, Filed **ARC 857A** 5/2/90
Turtles, 86.1(1), 86.1(5), Notice **ARC 858A** 5/2/90
Waterfowl and coot hunting seasons, 91.4(2)"k," Amended Notice **ARC 856A** 5/2/90

NURSING BOARD[655]
PUBLIC HEALTH DEPARTMENT[641] "umbrella"
Registered nurse certifying organizations/utilization and cost control review, ch 12, Filed **ARC 834A** 5/2/90

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]
Determination or adjustment of cost factor, 5.2, Filed Emergency also Notice **ARC 757A** Terminated **ARC 834A** 5/2/90

PROFESSIONAL LICENSURE DIVISION[645]
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PUBLIC SAFETY DEPARTMENT[661]
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TRANSPORTATION DEPARTMENT[761]
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TREASURER OF STATE[781]
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UTILITIES DIVISION[199]
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Options for demand charge allocations — purchased gas adjustment formula, 19.10(3), Notice **ARC 845A** 5/2/90
Demand charges allocations — purchased gas adjustment, 19.10(3), Filed Emergency **ARC 846A** 5/2/90
Take-or-pay adjustments, 19.10(5), 19.10(7), Filed **ARC 844A** 5/2/90
Distribution of management efficiency report, 29.5, Notice **ARC 855A** 5/2/90

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
CREDIT UNION DIVISION[189]		
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ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Community economic betterment program, amendments to ch 22 IAB 4/18/90 **ARC 825A**	Conference Room—2nd Floor 200 E. Grand Ave. Des Moines, Iowa	May 9, 1990 10 a.m.
ELDER AFFAIRS DEPARTMENT[321]		
Retired senior volunteer program, 14.1 to 14.5 IAB 5/2/90 **ARC 837A**	Conference Room 202 Jewett Bldg. 914 Grand Ave. Des Moines, Iowa	May 24, 1990 10 a.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Emission standards for contaminants, 23.2(3), 23.2(4) IAB 4/18/90 **ARC 816A**	Conference Room Municipal Utilities Bldg. 15 W. 3rd St. Atlantic, Iowa	May 22, 1990 10:30 a.m.
	Gold Room University of Iowa Oakdale Hall Oakdale, Iowa	May 23, 1990 11 a.m.
	Conference Room Fifth Floor West Wallace State Office Bldg. 900 East Grand Ave. Des Moines, Iowa	May 24, 1990 11 a.m.
Scope of title — definitions — forms — rules of practice; general requirements relating to solid waste disposal, amendments to chs 100 and 101 IAB 4/18/90 **ARC 819A**	Conference Room Fifth Floor West Wallace State Office Bldg. 900 East Grand Ave. Des Moines, Iowa	May 8, 1990 1 p.m.
Fees for disposal of solid waste at sanitary landfills, amendments to ch 109 IAB 4/18/90 **ARC 818A**	Gold Room University of Iowa Oakdale Hall Oakdale, Iowa	May 8, 1990 10 a.m.
	Municipal Utilities Board Room 15 W. 3rd St. Atlantic, Iowa	May 9, 1990 10 a.m.
	Conference Room Fifth Floor West Wallace State Office Bldg. Des Moines, Iowa	May 10, 1990 10 a.m.
HUMAN SERVICES DEPARTMENT[441]		
Medicaid — conditions of eligibility, amendments to ch 75 IAB 4/18/90 **ARC 810A**	District Office Conference Room — 6th Floor Iowa Bldg. 221 4th Ave. S.E. Cedar Rapids, Iowa	May 9, 1990 10 a.m.

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

	District Office Lower Level 417 E. Kanesville Blvd. Council Bluffs, Iowa	May 10, 1990 10 a.m.
	District Office Conference Room — 5th Floor 428 Western Davenport, Iowa	May 10, 1990 10 a.m.
	District Office City View Plaza Conference Room 100 1200 University Des Moines, Iowa	May 10, 1990 10 a.m.
	District Office Mohawk Square 22 North Georgia Ave. Mason City, Iowa	May 11, 1990 1 p.m.
	District Office Conference Room — 5th Floor 226 West Main Ottumwa, Iowa	May 9, 1990 10 a.m.
	District Office Suite 624 507 7th St. Sioux City, Iowa	May 10, 1990 1 p.m.
	District Office Mezzanine Conference Room 501 Sycamore St. Waterloo, Iowa	May 11, 1990 10 a.m.
Policies relating to providers of medical and remedial care, amendments to ch 79 IAB 5/2/90 **ARC 851A**	Des Moines District Office Conference Room 100 City View Plaza 1200 University Des Moines, Iowa	May 23, 1990 1 p.m.

INSPECTIONS AND APPEALS DEPARTMENT[481]

Administration, amusement concessions, social gambling, bingo, new chs 100 to 103; rescind chs 100 to 105 IAB 4/18/90 **ARC 829A**	Youth Development Foundation 4302 University Cedar Falls, Iowa	May 19, 1990 10 a.m.
	Hawkeye Downs 4400 6th St. S.W. Cedar Rapids, Iowa	May 12, 1990 9:30 a.m.
	Conference Room — 5th Floor Lucas State Office Bldg. E. 12th & Walnut St. Des Moines, Iowa	May 9, 1990 9 a.m.
	Boys Club 1299 Locust St. Dubuque, Iowa	May 21, 1990 6:30 p.m.
	Municipal Airport Conference Room R.R. 2 Fort Dodge, Iowa	May 15, 1990 9 a.m.
	North Iowa Fair Arena Mezzanine Hwy. 18 W. and Eisenhower Mason City, Iowa	May 14, 1990 2 p.m.
	Siouxland Senior Center 217 Pierce St. Sioux City, Iowa	May 15, 1990 3:30 p.m.

LAW ENFORCEMENT ACADEMY[501]		
Certification of law enforcement officers, 1.1, 3.1, 3.8 IAB 5/2/90 **ARC 831A**	Conference Room Law Enforcement Academy Camp Dodge Johnston, Iowa	May 22, 1990 9:30 a.m.
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Iowa Lotto, 10.2, 10.3, 10.6, 10.10 IAB 4/4/90 **ARC 771A** (See also **ARC 772A**)	Lottery Office 2015 Grand Ave. Des Moines, Iowa	May 10, 1990 9 a.m.
NATURAL RESOURCE COMMISSION[571]		
Turtles, 86.1(1), 86.1(5) IAB 5/2/90 **ARC 858A**	Conference Room Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	May 22, 1990 1 p.m.
Waterfowl and coot hunting seasons, 91.4(2) IAB 5/2/90 **ARC 856A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	May 30, 1990 10 a.m.
PERSONNEL DEPARTMENT[581]		
Definitions; coverage and exclusion; classification; pay; recruitment, application, and examination; grievances and appeals; equal employment opportunity and affirmative action; combined charitable campaign, amendments to chs 1 to 5, 12, 20, 25 IAB 4/18/90 **ARC 827A**	Director's Conference Room Grimes State Office Bldg. E. 14th and Grand Ave. Des Moines, Iowa	May 24, 1990 10 a.m.
REGENTS BOARD[681]		
Supplemental specific rules for each institution, 2.36(5) IAB 4/18/90 **ARC 813A**	Conference Room Old Historical Bldg. Des Moines, Iowa	May 8, 1990 10 a.m.
Policies, practices and procedures, 9.6, 9.7 IAB 5/2/90 **ARC 835A**	Conference Room Old Historical Bldg. East 12th and Grand Ave. Des Moines, Iowa	May 22, 1990 10 a.m.
TRANSPORTATION DEPARTMENT[761]		
Administrative rules and declaratory rulings, 10.2, 10.3 IAB 4/4/90 **ARC 775A**	Department of Transportation Complex 800 Lincoln Way Ames, Iowa	June 5, 1990
UTILITIES DIVISION[199]		
Options for demand charge allocations, 19.10(3) IAB 5/2/90 **ARC 845A** (See **ARC 846A** herein)	Hearing Room — 1st Floor Lucas State Office Bldg. Des Moines, Iowa	May 31, 1990 10 a.m.
Distribution of management efficiency report, 29.5 IAB 5/2/90 **ARC 855A**	Hearing Room — 1st Floor Lucas State Office Bldg. Des Moines, Iowa	May 30, 1990 10 a.m.
Reorganization, new ch 32 IAB 4/18/90 **ARC 822A**	Hearing Room — 1st Floor Lucas State Office Bldg. Des Moines, Iowa	May 21, 1990 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 autonomous agencies which were not included in the original reorganization legislation as "umbrella" 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]

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  - Engineering and Land Surveying Examining Board[193C]
  - Landscape Architectural Examining Board[193D]
  - Real Estate Commission[193E]
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- City Development Board[263]
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ELDER AFFAIRS DEPARTMENT[321]

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 249D.23(10), the Department of Elder Affairs hereby gives Notice of Intended Action to amend Chapter 14, "Retired Senior Volunteer Program (RSVP)," Iowa Administrative Code.

These amendments set out guidelines regarding the administration of RSVP funds for local programs.

Any interested person may make written comments or suggestions prior to May 24, 1990. Written comments should be directed to the Executive Director, Department of Elder Affairs, 236 Jewett Building, 914 Grand Avenue, Des Moines, Iowa 50319.

Oral or written comments may be submitted at a public hearing to be held at 10 a.m. on Thursday, May 24, 1990, in Conference Room 202, Jewett Building, 914 Grand Avenue, Des Moines, Iowa.

These rules are intended to implement Iowa Code section 249D.55.

The following amendments are proposed:

ITEM 1. Amend subrule 14.1(1) as follows:

14.1(1) Formula grant. Each RSVP program, which has a current memorandum of agreement to operate an RSVP program from the ~~federal~~ ACTION Office, is to be allocated an equal share of state funds appropriated for formula distribution.

ITEM 2. Rescind subrule 14.1(2) and insert in lieu thereof the following:

14.1(2) State-developed RSVP program grants. From state funds appropriated by the legislature, RSVP programs will be developed that are consistent with the goals of ACTION, RSVP and the department.

ITEM 3. Amend rule 321—14.2(249D) as follows:

321—14.2(249D) Application procedures. ~~Two different procedures will be followed for the formula and discretionary grant.~~ *Procedures specific to the grant types will be followed for the formula and state-developed grants.* Appropriate forms and applications for ~~both~~ *each grant type* are available from the Iowa department of elder affairs, address in subrule 2.1(2). Forms and applications will be mailed by the department to eligible applicants. ~~as soon as feasible after July 1.~~

ITEM 4. Amend subrule 14.2(1) to read as follows:

14.2(1) Formula grants. Each RSVP program shall submit to the department a budget outlining ~~how the RSVP~~ *the method by which the* program will expend the formula grant allotted to their program, *and other information requested by the department, on forms provided by the department.*

ITEM 5. Rescind subrule 14.2(2) and insert in lieu thereof the following:

14.2(2) State-developed grants. Grants will be awarded on a competitive basis by the department to a local organization or group to initiate a new RSVP program as identified in subrule 14.1(2).

ITEM 6. Rescind rule 321—14.3(249D) and insert in lieu thereof the following new rule:

321—14.3(249D) Grant criteria. To respond to funding priorities, as funds are made available, the department and the ACTION director will coordinate in establishing criteria for the award of state-developed funds. As a minimum, the criteria will contain the following:

1. Goals and objectives of the program;
2. The qualifications of the applicant to manage funds;
3. Letters of local support verifying coordination and cooperation and need for volunteers;
4. Total program budget;
5. Evidence of ability to submit timely and accurate reports;
6. Description and timeline of planned activities;
7. Agreement to develop for the program an advisory council whose membership includes minority members, RSVP volunteers, and representatives from the public and private sectors;
8. Description of the applicant organization, including staffing pattern; and
9. Documentation of the applicant's ability to provide the required local match.

ITEM 7. Amend 321—Chapter 14 by adding the following new rule:

321—14.4(249D) Application process.

14.4(1) Applications submitted will be reviewed by the department and ACTION for completeness, appropriateness and merit of project using the criteria in subrule 14.3(1).

14.4(2) Procedures to request applications and award funds:

a. The department shall issue through AAAs a request for proposals containing program criteria and application forms for the appropriate fiscal year as soon as feasible after July 1.

b. The applicant shall submit the completed application to the department according to the timeline identified in the request for proposals.

c. Review of the application(s) shall be made by a committee composed of a representative of ACTION, the department of elder affairs, RSVP and the Iowa association of area agencies on aging.

d. Applicants selected for funding shall be notified by the department.

e. A notice of grant award will be issued to the approved applicant(s) in a contract for the appropriate fiscal year, July 1 to June 30.

321—14.5(249D) Administration of grants. The department shall prepare contractual agreements for the formula and state-developed grants.

14.5(1) This agreement shall be executed by the director or designee of the department and the duly authorized official of the local RSVP program.

14.5(2) The contract shall include dates for requisition of reimbursable expenses, procedures for the submission of program reports and financial reports.

14.5(3) Reporting. All grant recipients shall submit a quarterly requisition for funds and financial reports

ELDER AFFAIRS DEPARTMENT[321] *(cont'd)*

to the department, on forms provided by the department, in accordance with their contract requirements.

a. Quarterly progress reports shall be made to the department based on the goals and objectives of the project plan as outlined in the state-developed grant contracts.

b. Grant funds not expended by the project by June 30 shall revert to the department.

ARC 850A

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 249A.4, the Department of Human Services proposes to amend Chapter 76, "Application and Investigation," appearing in the Iowa Administrative Code.

This amendment waives the face-to-face interview requirement in certain circumstances when processing ADC-related Medicaid applications.

Currently, Aid to Dependent Children (ADC) policy requiring a face-to-face interview before approving an application is followed when determining eligibility for ADC-related Medicaid coverage groups. The Department has determined that a face-to-face interview is impractical and the interview may be waived in the following situations:

1. When a service worker or juvenile court officer is completing an application for Medicaid on behalf of a child in a foster care placement and the parent or caretaker of the child is noncooperative. In this situation, it is not essential for the income maintenance worker to have a face-to-face contact with a department social worker or juvenile court officer in order to obtain additional information to determine Medicaid eligibility.

2. When, due to the distance between a child's county of residence and the child's institutional setting, it is difficult for the parent or representative of the child to attend the face-to-face interview. A telephone interview may be held in lieu of a face-to-face interview in order to process the application.

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 May 23, 1990.

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

The following amendment is proposed:

Amend subrule 76.2(1) as follows:

76.2(1) In processing applications for Medicaid which are related to the aid to dependent children (ADC) program, interviews shall be held in accordance with ADC policy found in subrule 40.4(2). *However, the face-to-face interview requirement may be waived in the following situations:*

a. When the application for assistance has been completed by an employee of the department or a juvenile court officer on behalf of a child in a foster care or subsidized adoption placement and the parent(s) or caretaker of the child is unwilling to cooperate in the eligibility process.

b. When the application for assistance has been made on behalf of a child in a psychiatric institution for children (PMIC) in a county other than a county in which the parent(s) or caretaker resides and the distance is such that the parent(s) or caretaker cannot reasonably be expected to commute to attend the face-to-face interview. A telephone interview shall be conducted in lieu of a face-to-face interview in this situation.

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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 249A.4, the Department of Human Services proposes to amend Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," appearing in the Iowa Administrative Code.

The Department of Human Services implemented the Diagnosis Related Groups Prospective Payment System (DRG/PPS) on October 1, 1987. According to rules that were adopted at that time, the DRG/PPS system is to be rebased and recalibrated once every three years. These rules implement that rebasing and recalibration.

Additionally, the Department is now taking action to change various portions of those rules. The following changes are being proposed:

1. Some of the definitions are clarified and reworded and new definitions are added. There are many conflicting uses of terminology as well as inconsistent wording in the current definitions.

2. The words "case-mix adjusted" are added to the definition of statewide average cost per discharge and statewide average capital cost per discharge to reflect the modification of each hospital's cost in relation to the hospital's case mix. The addition of case-mix adjustment is made with the intent of normalizing the effect of a high or low case mix on a hospital's reimbursement level. DRGs are based on the theory that case mix is equal to one. In actuality, this is not so. This adjustment forces the case mix to a relative weight of one.

3. Claim dates associated with recalibration and cost reporting dates associated with rebasing are changed to reflect the use of more recent data to more accurately reflect the current situation.

4. The formula used to calculate the indirect medical education component was changed to the original Medicare formula so that the use of an extraneous factor could be eliminated.

5. The timing of payment for both long stay and cost outliers was changed from a retrospective payment to a prospectively paid reimbursement. Payment for outliers will now be made at the time the claim is originally filed. The current method of paying for outliers is a retrospective review of all requests for payment. This process is poorly organized and often results in lengthy delays in payment and excessive administrative time and costs. This rule will not change the way the Department calculates claims, but will change the way claims are paid. Payment shall be made at the rate of 85 percent of the total calculated reimbursement for long stay and cost outliers. (History has shown that normally approximately 15 percent of outlier claims are denied.) Any hospital may request a review of an outlier payment by submitting the medical record to the Professional Review Organization (PRO) within 365 days. The PRO shall review a sample of 25 percent of all outlier claims and any claims for which the outlier payment is in excess of $20,000.

6. The method used to calculate out-of-state hospitals' reimbursement is changed to reflect recent court rulings. Each out-of-state hospital will have the option of submitting a cost report and associated documentation to Unisys, the Department's fiscal agent, for purposes of receiving a reimbursement level based on the level an in-state hospital would receive in Iowa. This documentation must be presented within 30 days from the day of discharge.

7. There will be three distinct levels of neonatal care, as opposed to the two in the current rules. The difference between a level III and a level II neonatal care unit is very significant. The greater costs associated with the level III care need to be reflected in the payment. There are only two hospitals in Iowa that currently have level III units, the University of Iowa and Iowa Methodist Hospital.

8. These changes increase the add-on rate being paid for disproportionate share from 1 percent for every standard deviation off the mean to 2.50 percent for every standard deviation off the mean.

Changes to the program were made with the intent of improving service or claims processing with hospitals. These changes to the program have been reviewed by internal Departmental staff, supervisory and management personnel at the fiscal agent, Unisys, and members of the Title XIX DRG Task Force (including representatives from the Iowa Hospital Association).

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 May 23, 1990.

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

Des Moines - May 23, 1990 1 p.m.
Des Moines District Office
City View Plaza, Conference Room 100
1200 University
Des Moines, Iowa 50314

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

The following amendments are proposed:

Amend subrule **79.1(5)** as follows:

Amend paragraph "a," definitions of "Average daily rate," "Base year cost report," "Blended base amount," "Medical education costs," "Disproportionate share payment," "Inlier," "Medicaid-certified unit," "Peer review organization (PRO)," "Rate schedule," and "Rebasing," as follows:

"Average daily rate" shall mean the hospital's ~~DRG payment~~ *final payment rate* divided by the statewide average length of stay for a DRG.

"Base year cost report" shall mean the hospital's cost report with fiscal-year-end on or after ~~January 1, 1985~~ *January 1, 1988*, and prior to ~~January 1, 1986~~ *January 1, 1989*. Cost reports shall be reviewed using Medicare's cost reporting regulations for cost reporting periods ending on or after ~~January 1, 1985~~ *January 1, 1988*, and prior to ~~January 1, 1986~~ *January 1, 1989*.

"Blended base amount" shall mean the ~~blended average adjusted cost~~ *case-mix adjusted, hospital-specific operating cost* per discharge *associated with treating Medicaid patients, plus the statewide average case-mix adjusted operating cost per Medicaid discharge, divided by two.* ~~The~~ *This* base amount is the value to which add-on payments for inflation, capital costs, *direct* medical education costs, and costs associated with a disproportionate share of poor patients, *and indirect medical education* are added *to form a final payment rate.* ~~The base amount is the sum of the average adjusted cost per discharge for a Medicaid patient in a specific hospital, and the statewide average adjusted cost per Medicaid discharge, divided by two.~~

"~~Medical~~ *Direct medical* education costs" shall mean an add-on to the blended base amount which shall compensate for costs associated with direct medical education. Costs associated with direct medical education are determined from *the* hospital base year cost reports, and are *case-mix adjusted and* adjusted to reflect inflation.

"Disproportionate share payment" shall mean an add-on to the blended base amount which shall compensate for treatment of a disproportionate share of poor patients. ~~Hospitals qualify for disproportionate share payment when their ratio of gross billings for Medicaid, bad debt, and charity care divided by total billings is 20 percent or greater.~~

"Inlier" shall mean ~~cases which have an extremely short length of stay when compared to other discharges classified in the same DRG~~ *those cases where the length of stay or cost of treatment falls within the actual calculated length of stay criteria, or the cost of treating a patient is within the cost boundaries of a DRG payment.*

"Medicaid-certified unit" shall mean a hospital based substance abuse, psychiatric or physical rehabilitation unit that *is certified by the Iowa department of inspections and appeals* on or after October 1, 1987, ~~meets Medicare's criteria for excluded units as defined in Medicare regulations for cost reporting periods ending on or after January 1, 1985, and before January 1, 1986~~ *or is an exempt unit under the Medicare prospective payment system.*

"Peer review organization (PRO)" shall mean ~~persons who perform~~ *the organization that performs* medical peer review of Medicaid claims, including review of validity of hospital diagnosis and procedure coding information; completeness, adequacy and quality of care; appropriateness of admission, discharge and transfer; and appropriateness of prospective payment outlier ~~and inlier~~ cases.

"Rate *table listing* ~~schedule~~" shall mean a schedule of ~~hospital~~ *rate* payments for each ~~DRG~~ *provider*. The rate ~~schedule~~ *table listing* is defined as ~~the product of the blended base amount plus add-ons multiplied by each DRG weight~~ *the output that shows the final payment rate by hospital before being multiplied by the appropriate DRG weight.*

"Rebasing" shall mean the redetermination of the *blended* base amount *or other applicable components of the final payment rate* from more recent Medicaid cost report data.

Further amend subrule **79.1(5)**, paragraph "a," by rescinding the definition of "Outlier" and adding the following new definitions in alphabetical order:

"Case-mix adjusted" shall mean the division of the hospital-specific base amount or other applicable components of the final payment rate by the hospital-specific case-mix index.

"Cost outlier" shall mean cases which have an extraordinarily high cost as established in 79.1(5)"f," so as to be eligible for additional payments above and beyond the initial DRG payment.

"Final payment rate" shall mean the aggregate sum of the five components (the blended base amount, capital costs, direct medical education, disproportionate share and indirect medical education) that, when added together, form the final dollar value used to calculate each provider's reimbursement amount when multiplying by the DRG weight. These dollar values are displayed on the rate table listing.

"Indirect medical education" shall mean costs that are not directly associated with running a medical education program, but that are incurred by the facility because of that program. Types of these costs would be costs of maintaining a more extensive library to serve educational needs.

"Long stay outlier" shall mean cases which have an associated length of stay that is greater than the calculated length of stay parameters as defined within the length of stay calculations for that DRG. Payment is as established in 79.1(5)"f."

"Short stay day outlier" shall mean cases which have an associated length of stay that is less than the calculated length of stay parameters as defined within the length of stay calculations. Payment rates are established in 79.1(5)"f."

Amend subrule **79.1(5)**, paragraph "b," introductory paragraph and subparagraph (2), as follows:

b. Determination of *final* payment *rate* amount. The ~~final~~ hospital DRG *final* payment amount reflects ~~budget limitations and~~ *the sum of* inflation adjustments to the blended base amount plus add-ons for capital costs, medical education costs, ~~and~~ disproportionate share payment, *and indirect medical education.* This blended base amount plus add-ons is multiplied by the set of Iowa-specific DRG weights to establish a rate schedule for each hospital. Federal DRG definitions are adopted except as provided below:

(2) Neonatal intensive care units. ~~Two~~ *Three* sets of weights are developed for DRGs concerning treatment of neonates. One set of weights is developed from charges associated with treating neonates in a designated ~~level II or~~ level III neonatal intensive care unit for some portion of their hospitalization. *The second set of weights is developed from charges associated with treating neonates in a designated level II neonatal intensive care unit for some portion of their hospitalization.* The ~~other~~ *third* set of weights reflects charges associated with neonates not treated in a designated level II or level III setting. Hospitals are reimbursed using the weight that reflects the setting for neonate treatment.

Amend subrule **79.1(5)**, paragraphs "c," "d," "e," and "f," as follows:

c. Calculation of Iowa-specific weights *and case-mix index. Using all applicable claims for the period October 1, 1987, through September 30, 1989, the recalibrating will use all normal inlier claims, discard short stay outliers, discard transfers, and use only the estimated charge for the inlier portion of long stay outliers for weighting calculations. These are referred to as trimmed claims.*

(1) Iowa-specific weights are calculated from Medicaid charge data on ~~discharges~~ *admission and discharge dates* occurring from ~~July 1984 to May 1987~~ *October 1, 1987, to September 30, 1989.* One weight is determined for each DRG with noted exceptions. Weights are determined through the following calculations:

~~1. Determine the Medicaid statewide total charges for each case classified in the same DRG.~~

~~2~~ *1.* Determine the statewide geometric mean charge for all cases classified in each DRG.

~~3~~ *2.* Compute the statewide ~~weighted average~~ *aggregate geometric mean* charge for each DRG by multiplying the statewide geometric mean charge for each DRG by the total number of cases classified in ~~the~~ *that* DRG.

~~4~~ *3.* Sum the ~~total weighted charge~~ *statewide aggregate geometric mean charges* for all DRGs and divide by the total number of cases for all DRGs to determine the weighted average charge for all DRGs.

~~5~~ *4.* Divide the statewide geometric mean charge for each DRG by the weighted average charge for all DRGs *to derive the Iowa-specific weight for each DRG.*

(2) The hospital-specific case-mix index is computed by taking each hospital's trimmed claims from the period April 1, 1988, through March 31, 1989, summing the assigned DRG weights associated with those claims and dividing by the total number of Medicaid claims associated with that specific hospital for that period.

d. Calculation of *blended* base amount. The DRG *blended* base amount reflects a 50/50 blend of statewide and hospital-specific base amounts.

(1) Calculation of statewide average *case-mix* adjusted cost per discharge. The statewide average cost per discharge is calculated by subtracting from *the statewide* total Medicaid inpatient expenditures the total ~~expected~~ *calculated* payments based on hospitals' base year cost reports for capital costs, medical education costs, and ~~an estimate~~ *calculation* of *actual* payments that will be made for additional transfers, outliers, physical rehabilitation services, and disproportionate share payments. The remaining amount is *case-mix adjusted,* adjusted to reflect inflation, and divided by the statewide total number of Medicaid discharges less an ~~estimate for the~~ *actual* number of transfers *and short stay outliers.*

(2) Calculation of hospital-specific *case-mix* ~~average~~ adjusted *average* cost per discharge. The hospital-specific *case-mix* ~~average~~ adjusted *average* cost per discharge ~~for Medicaid inpatients~~ is calculated by subtracting from the lesser of total *Medicaid* costs, or ~~reimbursable~~ *covered reasonable* charges as determined by the hospital's base year cost report, the ~~expected~~ *actual* payments for capital costs, *direct* medical education costs, ~~and an estimate of~~ *actual* payments that will be made for transfers, outliers, physical rehabilitation services, and disproportionate share payments. The remaining amount is *case-*

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

mix adjusted, adjusted to reflect inflation, and divided by the total number of Medicaid discharges for that hospital *during the applicable base year,* less an ~~estimate for~~ *actual* number of transfers *and short-stay outliers.*

(3) Calculation of the blended statewide and hospital-specific base amount. The hospital-specific *case-mix adjusted* average cost per discharge is ~~divided by the hospital-specific case-mix index. This case-mix index is calculated by dividing the hospital's weighted sum of all DRG weights by the total number of Medicaid patients in that hospital. Then, the hospital-specific case-mix adjusted average cost per discharge is~~ added to the *case-mix adjusted* statewide average cost per discharge and divided by two to arrive at a 50/50 blended base amount.

e. Add-ons to the base amount. ~~Three~~ *Four* payments are added on to the blended base amount.

(1) Capital costs. Capital costs are *included in the rate table listing and* added to the blended base amount prior to setting the *final payment* rate schedule. This add-on reflects a 50/50 blend of the ~~average~~ statewide *average case-mix and inflation-adjusted* capital cost per discharge and the case-mix *and inflation* adjusted hospital-specific base year capital cost per discharge attributed to Medicaid patients. Capital ~~cost payment is~~ *costs are* determined from the base year cost report ~~and is increased to reflect inflation~~. The 50/50 blend is calculated by adding the case-mix *and inflation* adjusted hospital-specific per discharge capital cost to the statewide average *case-mix and inflation-adjusted* per discharge capital costs and dividing by two.

(2) ~~Medical~~ *Direct medical* education costs. ~~Medical~~ *Direct medical* education costs are ~~added to~~ *included in the rate table listing if applicable to the provider, and added to* the blended base amount *plus other add-ons* prior to setting the *final payment* rate ~~schedule~~. The amount added on reflects Medicaid's average cost per discharge for hospital-specific direct medical education adjusted for case-mix. This add-on is determined from the base year cost report and is adjusted to reflect inflation.

(3) Disproportionate share adjustment. Compensation for a disproportionate share of indigent patients is *included in the rate table listing if applicable to the provider and* added to the blended base ~~cost per discharge~~ *amount* plus add-ons *prior to setting the final payment rate.* Hospitals qualify for disproportionate share payments based on information contained in the hospital's available ~~1985~~ *1988* ~~audited financial statement~~ *submitted Medicaid cost report,* and other supporting schedules. The disproportionate share add-on is determined when the hospital's low-income utilization rate, *as* defined ~~as~~ *by* the ratio of gross billings for all Medicaid, bad debt, and charity care patients to total billings for all patients, is 25 percent or greater. Gross billings do not include cash subsidies received by the hospital for inpatient hospital services. Hospitals also qualify for disproportionate *share* payment when the hospital's inpatient Medicaid utilization rate, defined as the number of *total* Medicaid and state indigent patient care program inpatient days divided by the number of total inpatient days, exceeds one standard deviation of the statewide average Medicaid utilization rate. Children's hospitals, defined as hospitals with inpatients predominantly under 18 years of age, receive twice the percentage of inpatient hospital days attributable to Medicaid patients.

Hospitals qualify for disproportionate share payment when the hospitals meet the low-income utilization or Medicaid inpatient utilization guidelines defined above and the hospital has at least two obstetricians who have staff privileges at the hospital and who have agreed to provide obstetric services to persons who are entitled to Medicaid for obstetric services. In the case of a hospital located in a rural area as defined in Section 1886 of the Social Security Act, the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

The disproportionate share payment add-on is established as a minimum payment of ~~1.00~~ *2.50* percent of the hospital's blended base cost per discharge plus add-ons. The scale increases ~~1.00~~ *2.50* percent for each standard deviation above the mean Medicaid utilization rate for hospitals receiving Medicaid payments in the state.

Hospitals that qualify for disproportionate share payments under both the low-income utilization and the Medicaid utilization guidelines shall qualify for disproportionate share payment under the Medicaid utilization payment scale.

Hospitals that qualify for disproportionate share payments under the low-income utilization guidelines and do not qualify under the Medicaid utilization guidelines shall be paid the minimum payment as established ~~in~~ *under* the Medicaid utilization payment scale.

Out-of-state hospitals serving Iowa Medicaid patients qualify for disproportionate share payment based on ~~the definition established by~~ their state's Medicaid ~~agency for~~ *agency's* calculation of the Medicaid inpatient utilization rate. Payment is through the Iowa Medicaid utilization payment scale based on the number of standard deviations greater than the hospital's own state average Medicaid utilization rate.

(4) Indirect medical education costs. Recognition for indirect medical education costs incurred by hospitals is made through an add-on to the *blended* base *rate* cost per discharge. Hospitals qualify for indirect medical education payment when they receive a direct medical education add-on from Iowa Medicaid and qualify for indirect medical education ~~payment~~ from Medicare. Add-on payment for discharges shall be determined by multiplying the hospital's ~~Medicare~~ *Medicaid* indirect medical education factor by the sum of 50 percent of the statewide average base cost and 50 percent of the statewide average capital cost ~~and multiplying the resulting product by 1.65~~. The ~~Medicare~~ *Medicaid* indirect medical education factor is determined from the following equation:

$$\text{~~1.89 x~~}\left(\text{~~1~~} + \text{~~interns and residents~~}\Big/\text{~~beds~~}\right)^{\text{~~.405~~}} - \text{~~1~~}$$

$$\frac{(\textit{residents} + \textit{interns}) \times 1.159}{(\textit{beds})}$$

The number of interns, residents and beds is based on information contained in the hospital's Medicare cost report. ~~The indirect medical education factor~~ *which* will be updated when rebasing and recalibration are performed.

f. Outlier *payment* ~~and inlier~~ policy. Additional payment is made for approved cases meeting or

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

exceeding Medicaid criteria for day and cost outliers for each DRG.

(1) ~~Day~~ *Long stay* outliers. ~~Day~~ *Long stay* outliers are incurred when a patient's length of stay exceeds the upper day limit which is 23 days of care ~~and~~ *or* two standard deviations above the average statewide length of stay for a given DRG. ~~Additional payment~~ *Reimbursement* for ~~day~~ *long stay* outliers is *calculated at* 60 percent of the average daily rate for the given DRG for each approved day of stay beyond the upper day limit. *Payment for long stay outliers shall be made at the time the claim is originally filed for DRG payment. Payment for the outlier claim shall be made at the rate of 85 percent of the total calculated reimbursement for long stay outliers. The PRO shall review a random sample of 25 percent of all outlier claims, as well as all claims for which outlier payment is in excess of $20,000. The PRO shall be responsible for notifying each hospital that has been selected for either review. Those hospitals must then submit all supporting data from the medical record to the PRO within 60 days of receipt of the outlier review notification, or outlier payment will be recouped and forfeited. In addition, any hospital may request a review for outlier payment by submitting the medical record to the PRO within 365 days. If the medical record is not submitted within 365 days, the provider loses the right to appeal or contest the payment.*

(2) ~~Day inliers~~ *Short stay outliers.* ~~Day inliers~~ *Short stay outliers* are incurred when a patient's length of stay is greater than two standard deviations below the average statewide length of stay for a given DRG, *rounded to the next highest whole number of days.* Payment for ~~inliers~~ *short stay outliers* will be 200 percent of the average daily rate~~, up to the full DRG payment,~~ for each day the patient qualifies *up to the full DRG payment.* ~~Inliers~~ *Short stay outlier* claims will be subject to PRO review and payment denied for inappropriate admissions.

(3) Cost outliers. Cases qualify as cost outliers when costs *of service in a given case* exceed the ~~upper cost limit for each DRG~~ *the cost threshold.* ~~The upper cost limit~~ *This cost threshold* is determined ~~when costs are~~ *to be the greater of* two times the statewide average DRG payment *for that case* ~~and greater than~~ *or* the hospital's individual DRG payment *for that case plus* ~~by at least~~ $16,000. Costs are calculated using hospital-specific cost to charge ratios determined in the base year cost reports. Additional payment for cost outliers is 80 percent of the ~~difference~~ *excess* between the hospital's cost for the discharge and the ~~upper~~ cost ~~limit~~ *threshold* established to define cost outliers. *Payment for cost outliers shall be made at the time the claim is originally filed for DRG payment. Cost outlier payment shall be made at the rate of 85 percent of the total calculated outlier payment for that DRG using the above rules. The PRO shall review a random 25 percent sample of all outlier claims as well as all claims for which the outlier payment is in excess of $20,000. The PRO shall be responsible for notifying each hospital that has been selected for the random review or those which have claims in excess of $20,000. Those hospitals must then submit all supporting data to the PRO within 60 days of the receipt of outlier review notification, or outlier payment will be forfeited and recouped. In addition, any hospital may request a review for outlier payment by submitting documentation to the PRO within 365 days of receipt of the outlier payment. If requests are not filed within 365 days, the provider loses the right to appeal or contest that payment.*

(4) Day and cost outliers. Cases qualifying as both day and cost outliers are given additional payment as cost outliers only.

Amend subrule **79.1(5)**, paragraph "i," subparagraph (1), as follows:

(1) Per diem calculation. The base rate shall be the medical assistance per diem rate as determined by the individual hospital's cost report for the hospital's ~~1985~~ *1988* fiscal year as adjusted by Medicare except that no recognition will be given to the professional component of *the* hospital-based physicians.

The annual index will be calculated by the department based on the average percentage change in a standard category of hospital expenses to which forecasted increases will be applied.

Amend subrule **79.1(5)**, paragraphs "j," "l," "m," "n," and "s," as follows:

j. Services covered by DRG payments. Medicaid adopts the Medicare definition of inpatient hospital services covered by the DRG prospective payment system. As a result, combined billing for physician services is eliminated. Services provided by certified nurse anesthetists (CRNAs) employed by a physician are covered by the physician reimbursement. Payment for *the* services ~~provided by~~ *of* CRNAs employed by the hospital are included in the hospital's reimbursement.

The cost for hospital-based ambulance transportation that results in inpatient admission and hospital-based ambulance services performed while the beneficiary is an inpatient, in addition to all other inpatient services, is covered by the DRG payment.

l. Eligibility and payment. When a client is eligible for Medicaid for less than or equal to the average length of stay for that DRG, then payment equals 100 percent of the hospital's average daily rate times the number of eligible hospital stay days. When a Medicaid client is eligible for greater than the average length of stay but less than the entire stay, then payment is treated as if the client were eligible for the entire length of stay.

~~Outlier~~ *Long stay outlier* days are determined as the number of Medicaid eligible days beyond the outlier limits. Date of patient admission is the first date of service. ~~Outlier~~ *Long stay outlier* costs are accrued only during eligible days.

m. Payment to out-of-state hospitals. Payment *made* to out-of-state hospitals providing care to beneficiaries of Iowa's Medicaid program is equal to *either* the Iowa statewide *average blended* base amount plus the statewide average capital cost add-on, multiplied by the DRG weight, *or blended base and capital rates calculated by using the hospital's submitted cost report. For those hospitals which wish to submit a cost report using data for Iowa Medicaid patients only, that provider will receive a blended base rate using hospital-specific Iowa only Medicaid data and the Iowa statewide average cost per discharge amount. Capital costs will be reimbursed at either the statewide average percentage rate in place at the time of discharge, or the capital rate computed by using submitted cost report data. Hospitals that qualify for disproportionate share payment based on the definition established by their state's Medicaid agency for the calculation of the Medicaid inpatient utilization rate will be eligible to receive disproportionate share payments. If a hospital qualifies for the direct medical education or*

indirect medical education component within its home state, it shall qualify for this add-on component for reimbursement purposes in Iowa. Hospitals which wish to submit the HCFA 2552 (or HCFA accepted substitute) cost report, must do so within 30 days from the date of patient discharge, to the state of Iowa's fiscal agent. ~~Psychiatric units in out-of-state hospitals may receive Medicaid-certified unit status when the unit qualifies as a DRG-exempt unit under Medicare's DRG payment system.~~

n. Inappropriate services. Medicaid adopts most Medicare PRO regulations to control increased admissions or reduced services. Exceptions to the Medicare review practice are that the PRO reviews Medicaid ~~inliers~~ *short stay outliers* and all Medicaid patients readmitted within seven days. Payment can be denied if either admissions or discharges are performed without medical justification as determined by the PRO. To safeguard against these and other inappropriate practices, the department through the PRO will monitor admission practices and quality of care. If an abuse of the prospective payment system is identified, payments for abusive practices may be reduced or denied. In reducing or denying payment, Medicaid adopts the Medicare PRO regulations.

s. Cost report adjustments. Hospitals with ~~1985~~ *1988* cost reports adjusted by Medicare through the cost settlement process on or after ~~October 1, 1987~~ *July 1, 1990*, may appeal the hospital-specific base amount and add-ons used in calculating the Medicaid payment to the department.

ARC 839A

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 sections 10A.104(5), 135C.14 and 135C.36, the Department of Inspections and Appeals gives Notice of Intended Action to amend Chapter 63, "Residential Care Facilities for the Mentally Retarded," Iowa Administrative Code.

It has recently come to the Department's attention that its rule concerning contracts between residents and the facility is in need of amendment. Currently, the rule does not reflect the practice of the Department of Human Services regarding payment and holding of a bed in the absence of a resident from the facility.

The proposed subrule clarifies the language in the subrule and more accurately reflects current practice of the Department of Human Services.

Consideration will be given to all written comments received by the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083, if received by May 22, 1990.

This rule is intended to implement Iowa Code section 135C.14(8)"c."

Rescind subrule 63.14(7) and insert in lieu thereof the following:

63.14(7) State the terms of agreement concerning the holding and charging for a bed when a resident is hospitalized or leaves the facility temporarily for recreational or therapeutic reasons. The terms shall contain a provision that the bed will be held at the request of the resident or the resident's legal representative.

a. The facility shall ask the resident or legal representative if they want the bed held. This request shall be made before the resident leaves or within 48 hours after the resident leaves. The inquiry and the response shall be documented. (II)

b. The facility shall reserve the bed when requested for as long as the resident can ensure payment in accordance with the contract. (II)

ARC 831A

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 1, "Organization and Administration," and Chapter 3, "Certification of Law Enforcement Officers," Iowa Administrative Code.

Rule 501—1.1(80B) is amended by adding a definition of "Law enforcement experience." Rule 501—3.1(80B) is amended and 501—3.8(80B) and 3.9(80B) are rescinded and replaced by a new 501—3.8(80B), which establishes different standards for certification by examination. These new standards eliminate certification by application and require law enforcement officers who have been certified in other states to pass certain examinations based upon previous law enforcement experience to attain Iowa law enforcement officer certification without having to attend an academy certifying school.

Any interested person may make written comments or suggestions on these proposed rules prior to May 22, 1990. 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.

There will be a public hearing on these changes May 22, 1990, at 9:30 a.m. in the conference room at the Iowa Law Enforcement Academy, Camp Dodge, Johnston, Iowa 50131, 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 rules.

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

The following amendments are proposed:

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

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

"Law enforcement experience" means experience gained by a law enforcement officer whose primary job function is the enforcement of criminal laws and the prevention and detection of crime.

ITEM 2. 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). Officers employed after the effective date of this rule must be certified within one year of their employment. (See rule 501—3.9 *8*(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 3. Rescind rules **501—3.8(80B)** and **501—3.9(80B)** and insert in lieu thereof the following:

501—3.8(80B) Certification through examination. Law enforcement officers who have been certified in another state may, upon application to the director with council approval, take a competency test or tests to gain Iowa law enforcement officer certification. Successful completion of the required test or tests will result in certification by the council. The test or tests will be prepared and administered by the academy or its designee, and the passing score will be determined by the academy. The required test or tests will be based upon the officer's prior law enforcement training and experience as follows:

3.8(1) Five or more years of law enforcement experience. Officers with more than five years of full-time law enforcement experience will be required to pass a test or tests which will primarily measure the officer's knowledge of Iowa laws. The test or tests will include, but need not be limited to, such topics as criminal law, motor vehicle law, juvenile law, law of arrest, law of search and seizure, and law regarding the use of force.

3.8(2) Less than five years of law enforcement experience. Officers with less than five years of full-time law enforcement experience will be required to pass a comprehensive test or tests which will focus on all phases of law enforcement. The test or tests will include, but need not be limited to, such topics as criminal law, juvenile law, motor vehicle law, law of arrest, law of search and seizure, law regarding the use of force, confessions and admissions, crime prevention, community relations, minority relations, crime scene investigation, vehicle stops, and rules of evidence.

3.8(3) Tabulating previous law enforcement experience. In tabulating whether an officer has met the law enforcement experience requirement, no credit will be given for experience received from the officer's current employment.

3.8(4) Criteria to be eligible to certify through examination. The following will be prerequisites for certification through examination:

a. Successful completion of a minimum 160-hour certifying basic law enforcement training school in another state, which certification has not been withdrawn by the certifying state.

b. Firing a verified score of 80 percent or greater with the officer's service handgun since the individual's appointment as an Iowa law enforcement officer, and which course of fire was prescribed by the academy and administered by the Iowa law enforcement academy or its designee.

c. Possession of a current crash injury management card, first responder, or another appropriate certification recognized by the Iowa law enforcement academy.

3.8(5) Application and testing periods. Application for certification through examination shall be made within 120 days of the applicant's hiring date, unless a determination is made by the academy council that this time period should be extended for "good cause." Failure to make timely application for certification through examination may result in the applicant's being required to attend an academy certifying school.

3.8(6) Retesting requirements. Failure to successfully complete this examination will require retesting within 60 days in the areas failed. If any area is failed a second time, it will be necessary for the individual to attend and satisfactorily complete training at the academy covering those areas of deficiency. Successful completion of the training will result in law enforcement officer certification by the academy council.

3.8(7) One year's absence from law enforcement shall require training. An officer who has not served as a regular law enforcement officer during the 12-month period preceding the officer's hiring date will be required to attend a certifying school.

ARC 858A

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 107.24 and 109B.1, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 86, "Turtles," Iowa Administrative Code.

The proposed amendment removes alligator snapping turtles from the permissive catch.

Any interested person may make written suggestions or comments on these proposed rules prior to May 23, 1990. Such written materials should be directed to Marion Conover, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034, FAX (515)281-8895. Persons who wish to convey

their views orally should contact the Bureau of Fisheries at (515)281-5208 or at the fisheries office on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on May 22, 1990, at 1 p.m. in the conference room on the fourth floor of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

This rule is intended to implement Iowa Code sections 109.38, 109.39, 109B.1 and 109B.11.

Amend rule 86.1(71GA,Ch1141), introductory paragraph and subrule 86.1(1), as follows:

571—86.1(~~71GA,Ch1141~~ *109,109B*) Taking. Turtles may be taken from the waters of the state subject to the following regulations.

86.1(1) Permissive catch. It shall be lawful to take *common* snapping turtles, softshells, and painted turtles. *Possession of alligator snapping turtles is not permitted.* Map turtles may only be taken from the Mississippi River and connected backwaters.

Further amend rule 86.1(71GA,Ch1141) by adding a new subrule and amending the implementation clause as follows:

86.1(5) *Exclusions. Chapter 109B does not apply to turtles taken and imported from outside the state. For purposes of this rule "state" does include the boundary waters.*

This rule is intended to implement Iowa Code sections 109.38, ~~and~~ 109.39, ~~and 1986 Iowa Acts, chapter 1141~~ *109B.1 and 109B.11.*

ARC 856A

NATURAL RESOURCE COMMISSION[571]

Amended Notice of Intended Action

Pursuant to the authority of Iowa Code section 107.24, the Natural Resource Commission hereby amends the Notice of Intended Action to amend Chapter 91, "Waterfowl and Coot Hunting Seasons," [91.4(2)], published in the Iowa Administrative Bulletin on March 7, 1990, as **ARC 726A**.

Proposed paragraph 91.4(2)"k," pertaining to the boundary of an area closed to the hunting of Canada geese, has been altered to exclude from the ban on hunting that portion of the Mississippi River south of the Green Island Levee.

Any interested person may make written suggestions or comments on this proposed amendment prior to May 30, 1990. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319; FAX (515)281-8895. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-6156 or at the wildlife offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on May 30, 1990, at 10 a.m. in the auditorium of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

This rule is intended to implement Iowa Code sections 109.38, 109.39 and 109.48.

The following amendment is proposed.

Amend subrule **91.4(2)** by adding the following new paragraph:

k. Area eleven. Starting at the junction of the navigation channel of the Mississippi River and the mouth of the Maquoketa River in Jackson County, proceeding southwesterly along the high-water line on the west side of the Maquoketa River to U.S. Highway 52, south along U.S. Highway 52 to the intersection with county road Z-40, south on county road Z-40 to the junction with U.S. Highway 64, east on U.S. Highway 64 to the Sioux Line Railroad at Sabula, north and west along the Sioux Line Railroad to the east edge of section 27, township 85N, range 6 east, north to the intersection of sections 27 and 22, west along the common boundary of sections 27 and 22 and sections 28 and 21, township 85N, range 6 east, to the Green Island levee, northeast along a line following the Green Island levee to the center of the navigational channel of the Mississippi River, north along the center of the navigational channel to the point of beginning.

ARC 835A

REGENTS BOARD [681]

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 262.9, the State Board of Regents hereby gives Notice of Intended Action to amend Chapter 9, "Policies, Practices and Procedures," Iowa Administrative Code.

The proposed new rule, 9.6(262), states the requirements of Iowa Code Supplement section 262.9(18) which provides for notification of students 30 days prior to action by the Board of Regents when tuition, fees, or charges are to be increased. The rule provides notification and approval procedures when the proposal to increase tuition, fees, or charges is additionally increased or a new fee is proposed.

The proposed new rule, 9.7(262), provides for distribution of the board of regents docket material to student leaders, the statewide student organization, and selected legislators.

Any interested person may make written comments on these proposed rules prior to May 22, 1990. Such written materials should be directed to R. Wayne Richey, Executive Director, Iowa State Board of Regents, Old Historical Building, Des Moines, Iowa 50319. An opportunity for oral presentations will be provided at 10 a.m., May 22, 1990, in the Board of Regents Conference Room, Old Historical Building, East 12th and Grand Avenue, Des Moines, Iowa.

These rules are intended to implement Iowa Code chapter 262.

REGENTS BOARD[681] *(cont'd)*

Amend 681—Chapter 9 by adding the following new rules:

681—9.6(262) Notification to students on increases in tuition, fees, or charges.

9.6(1) Not less than 30 days prior to action by the board on any proposal to increase tuition, fees, or charges at one or more of the institutions of higher education under its control, the board of regents shall send written notification of the amount of the proposed increase and a copy of the docket memorandum relating to the proposed increase to the elected president of the government of the student body at the affected institutions. The materials shall be sent to the person identified by each institution as the student government president and mailed to the student government office listed in each university directory.

The final decision on the increase in tuition for a fiscal year shall be made no later than the regular meeting held in November of the preceding fiscal year. The regular meeting held in November will be held in Ames, Cedar Falls, or Iowa City and will not be held during the period in which classes have been suspended for Thanksgiving vacation.

9.6(2) If a proposal to increase tuition, fees, or charges at one of the universities is increased over the previous month, or a new fee or charge is proposed, student leaders shall be sent copies of the docket materials and an additional 30 days' notice to students will be scheduled prior to board action on that portion of the proposal.

This rule is intended to implement Iowa Code chapter 262 and Iowa Code Supplement section 262.9(18).

681—9.7(262) Distribution of docket information.

9.7(1) The statewide student organization representing the student government of each regent university shall be provided a copy of the docket of the board of regents on Friday preceding each meeting of the board of regents. Further, a copy of the docket shall be mailed on the Friday preceding the meeting to the elected president of the government of the student body at each university at the student government office listed in each university directory.

9.7(2) Legislators from the communities in which regent institutions are located, the majority and minority leadership in both houses, and legislators in the community where the board of regents meeting is to be held shall be provided a copy of the board's agenda five days in advance of the meeting.

This rule is intended to implement Iowa Code chapter 262.

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 453.6, the Committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Banking Robert R. Rigler, and Auditor of State Richard D. Johnson have established the following rates of interest for public obligations and special assessments. The usury rate for December is 10.25%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants ____Minimum 7.5%
64A.4 Special Assessments ____Maximum 12.0%

RECOMMENDED for 74A.3 and 74A.7: A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective November 29, 1989, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7 - 31 days.....Minimum 7.40%
32 - 89 days.....Minimum 7.40%
90 - 179 days.....Minimum 7.40%
180 - 364 days.....Minimum 7.20%
One year.....Minimum 7.20%
Two years .....Minimum 8.00%

These are minimum rates only. The one year and less are six-tenths of a percent below average rates. Public body treasurers and their deputies may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 453.6, the Committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Banking Robert R. Rigler, and Auditor of State Richard D. Johnson have established the following rates of interest for public obligations and special assessments. The usury rate for January is 9.75%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants ____Minimum 7.5%
64A.4 Special Assessments ____Maximum 12.0%

TREASURER OF STATE — PUBLIC FUNDS *(cont'd)*

RECOMMENDED for 74A.3 and 74A.7: A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective December 29, 1989, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7 - 31 days	Minimum 7.40%
32 - 89 days	Minimum 7.40%
90 - 179 days	Minimum 7.30%
180 - 364 days	Minimum 7.10%
One year	Minimum 7.00%
Two years	Minimum 7.80%

These are minimum rates only. The one year and less are six-tenths of a percent below average rates. Public body treasurers and their deputies may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 453.6, the Committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Banking Robert R. Rigler, and Auditor of State Richard D. Johnson have established the following rates of interest for public obligations and special assessments. The usury rate for February is 9.75%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Minimum 7.5%
64A.4 Special Assessments	Maximum 12.0%

RECOMMENDED for 74A.3 and 74A.7: A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective January 31, 1990, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7 - 31 days	Minimum 7.10%
32 - 89 days	Minimum 7.30%
90 - 179 days	Minimum 7.20%
180 - 364 days	Minimum 7.20%
One year	Minimum 7.20%
Two years	Minimum 7.95%

These are minimum rates only. The one year and less are six-tenths of a percent below average rates. Public body treasurers and their deputies may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 453.6, the Committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Banking Robert R. Rigler, and Auditor of State Richard D. Johnson have established the following rates of interest for public obligations and special assessments. The usury rate for March is 10.25%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Minimum 7.5%
64A.4 Special Assessments	Maximum 12.0%

RECOMMENDED for 74A.3 and 74A.7: A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest

TREASURER OF STATE — PUBLIC FUNDS *(cont'd)*

rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective March 2, 1990, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7 - 31 days	Minimum 7.20%
32 - 89 days	Minimum 7.30%
90 - 179 days	Minimum 7.30%
180 - 364 days	Minimum 7.30%
One year	Minimum 7.40%
Two years	Minimum 8.00%

These are minimum rates only. The one year and less are six-tenths of a percent below average rates. Public body treasurers and their deputies may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 453.6, the Committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Banking Robert R. Rigler, and Auditor of State Richard D. Johnson have established the following rates of interest for public obligations and special assessments. The usury rate for April is 10.50%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Minimum 7.5%
64A.4 Special Assessments	Maximum 12.0%

RECOMMENDED for 74A.3 and 74A.7: A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective March 31, 1990, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7 - 31 days	Minimum 7.20%
32 - 89 days	Minimum 7.30%
90 - 179 days	Minimum 7.30%
180 - 364 days	Minimum 7.40%
One year	Minimum 7.40%
Two years	Minimum 8.00%

These are minimum rates only. The one year and less are six-tenths of a percent below average rates. Public body treasurers and their deputies may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

ARC 845A

UTILITIES DIVISION [199]

Notice of Intended Action

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

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

The Iowa State Utilities Board (Board) hereby gives notice that on April 13, 1990, the Board issued an order in Docket No. RMU-90-19, In Re: Options for Demand Charge Allocations, "Order Commencing Rule Making," pursuant to the authority of Iowa Code sections 476.2 and 17A.4 to consider the adoption of an amendment to subrule 19.10(3). The purpose of the amendment is to present proposed options for changes to the purchased gas adjustment formula in Iowa Administrative Code 199—19.10(3) to address a recent rate design change by a major pipeline supplier. Other pipelines are also likely to make this change.

On February 1, 1990, Northern Natural Gas Company (Northern) implemented a change from a two-part demand rate (D-1 and D-2) to a one-part demand rate which eliminated the D-2 component. On March 19, 1990, the Federal Energy Regulatory Commission accepted the change, effective February 1, 1990. In March 1990, the Iowa gas distribution companies received bills from Northern which included the one-part demand charge. At that time, the local distribution companies sought to collect the unified charge from their customers through the purchased gas adjustment. The purchased gas

adjustment, however, is configured to allocate D-1 and D-2 charges among customer classes but does not allocate the unified charge among customer classes. Therefore, the change from a two-part demand to a one-part demand shifts the D-2 charges to the D-1 component and to customers assigned D-1 responsibility. In most cases, interruptible and transportation customers, who were previously allocated a portion of the D-2 costs, are not allocated any of the one-part demand charge under the purchased gas adjustment rules.

On April 13, 1990, the Utilities Board emergency adopted and implemented a rule in In Re: Demand Charge Allocations, Docket No. RMU-90-18, intended to allocate the one-part demand charge in the same manner D-1 and D-2 charges were allocated prior to the change in Northern's rate design. The rule was adopted without notice and public participation to temporarily maintain the status quo pending completion of the Board's action in this rule making as **ARC 846A** herein.

This rule making will provide a full opportunity for comment on various proposed options for allocating the unified demand. Option 1 allocates the demand charges based on the percentage allocated in the month before the change became effective and is the method adopted in the emergency rule making. Option 2 allocates the demand charges in the amount allocated in the month before the change became effective. For example, in January 1990, D-2 charges billed were $30 and D-1 charges billed were $70. In February, supplier rates changed so that demand charges were $90 and D-2 charges were $0. The utility will include $30 in place of $N \times R_n$ in the formula for customer classes where no demand charge is assigned (i.e., where $D \times R_d$ equals zero). Option 3 allocates the demand charges uniformly over all units sold. For example, in January 1990, D-2 charges billed were $30 and D-1 charges billed were $70. In February, supplier rates changed so that demand charges were $90 and D-2 charges were $0. The utility will include an amount equal to the entitlement component of the per unit PGA in the month prior to the pipeline's rate design change for customer classes where no demand charge is assigned (i.e., where $D \times R_d$ equals zero). The formula can then be simplified to become $PGA = R_c + E - K + x.xxxx$. Option 4 would apply a demand charge to interruptible customers on the basis of percentage of peak day hours in which service was available. For example, assume during a PGA year there were four peak days. Service to the IT-2 class was interrupted for a total of six hours and was available for the remaining 90 hours of the peak days. The total demand charge multiplied by 93.8 percent (90/96) is spread to all sales volumes, because service was available to all customers during 93.8 percent of the peak day hours. The remaining 6.2 percent of the demand charge is spread only to firm classes or groups. The Board also invites comments on a fifth option, leaving the formula in the rule unchanged so that all demand charges are allocated to the sales customers.

Pursuant to the authority of Iowa Code section 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendment. The statement must be filed on or before May 22, 1990, by filing an original and ten copies in a form substantially complying with subrule 2.2(2). All communications shall clearly indicate the author's name and the docket number in which the comment is submitted. All communications shall be directed to the Executive Secretary, Iowa State Utilities Board, Lucas State Office Building, Des Moines, Iowa 50319.

An oral presentation is scheduled for May 31, 1990, at 10 a.m. in the First Floor Hearing Room, Lucas State Office Building, Des Moines, Iowa, for the purpose of receiving oral comments.

Amend subrule **19.10(3)** by adding the following:

Option 1:

If a supplier's entitlement charge is zero, the same percentage of current demand charges shall be allocated to each customer class or grouping as was allocated in the last month in which entitlement rates were not zero.

Option 2:

For customer classes or groupings where the volume of demand charges ("D") assigned to the class or group is zero and the entitlement rate ("R_n") actually billed for a month is zero, an amount shall be included in the numerator of the PGA fraction for that class or group equal to the amount included in the last month in which entitlement rates were not zero.

Option 3:

For customer classes or groupings where the volume of demand charges ("D") assigned to the class or group is zero and the entitlement rate ("R_n") actually billed for a month is zero, a demand charge per Mcf on system supply volumes shall be added to the PGA fraction for that class or group.

Option 4:

For interruptible customer classes or groups, the amount of demand cost assigned shall be reduced by the percentage of peak day hours in which service is not available to members of the group or class.

ARC 855A

UTILITIES DIVISION[199]

Notice of Intended Action

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

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

The Iowa State Utilities Board hereby gives notice that on April 10, 1990, the Board issued an order in Docket No. RMU-90-11, In Re: Distribution of Management Efficiency Report, "Order Commencing Rule Making," pursuant to Iowa Code sections 476.1, 476.2, 476.8, and 17A.4, to consider an amendment to 199—29.5, Iowa Administrative Code.

This amendment states that each year one copy of the annual report of management efficiency shall be sent by the Board to the chief executive officer of each company evaluated. Each chief executive officer shall be responsible for distributing the report to the board of directors of the utility.

UTILITIES DIVISION[199] *(cont'd)*

Under Iowa Code section 17A.4(1)"a" and "b," all interested persons may file written comments on the proposed amendment no later than May 22, 1990, by filing an original and ten copies of the comments substantially complying with the form prescribed in 199—2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa State Utilities Board, Lucas State Office Building, Des Moines, Iowa 50319.

An oral presentation is scheduled in this docket for 10 a.m. on May 30, 1990, in the Utilities Board's First Floor Hearing Room, Lucas State Office Building, Des Moines, Iowa. Pursuant to Iowa Administrative Code 199—3.7, all interested persons may participate in this oral presentation.

Amend rule 29.5(476) as follows:

199—29.5(476) Annual reports of management efficiency. The board will annually publish data reflecting the different measures of utilities' operations listed in rule 29.3(476). ~~These~~ *This* data will not be used to rank the utilities. Since management efficiency can only be evaluated by the consideration of a wide variety of factors which may be unrelated, any ranking of utilities would be meaningless and misleading. The data will be collected from annual reports filed under 199—Chapter 23 and from other reports which the board may require. The data, when admitted as evidence of record, may be used in the context of a rate case, together with rate-case-specific information, to evaluate management efficiency. *One copy* ~~Copies~~ of the report *shall* ~~will~~ be distributed to *the chief executive officer (CEO) of each company evaluated* ~~members of the boards of directors of all companies evaluated~~. *The CEO shall distribute copies of the report to the board of directors.*

These rules are intended to implement Iowa Code Supplement section 476.52 ~~and 1986 Iowa Acts, Senate File 2175, section 707~~.

NOTICE — USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

October 1, 1987 — October 31, 1987	10.75%
November 1, 1987 — November 30, 1987	11.50%
December 1, 1987 — December 31, 1987	11.50%
January 1, 1988 — January 31, 1988	10.75%
February 1, 1988 — February 29, 1988	11.00%
March 1, 1988 — March 31, 1988	10.75%
April 1, 1988 — April 30, 1988	10.25%
May 1, 1988 — May 31, 1988	10.25%
June 1, 1988 — June 30, 1988	10.75%
July 1, 1988 — July 31, 1988	11.00%
August 1, 1988 — August 31, 1988	11.00%
September 1, 1988 — September 30, 1988	11.00%
October 1, 1988 — October 31, 1988	11.25%
November 1, 1988 — November 30, 1988	11.00%
December 1, 1988 — December 31, 1988	10.75%
January 1, 1989 — January 31, 1989	11.00%
February 1, 1989 — February 28, 1989	10.75%
March 1, 1989 — March 31, 1989	11.00%
April 1, 1989 — April 30, 1989	11.25%
May 1, 1989 — May 31, 1989	11.25%
June 1, 1989 — June 30, 1989	11.25%
July 1, 1989 — July 31, 1989	10.75%
August 1, 1989 — August 31, 1989	10.25%
September 1, 1989 — September 30, 1989	10.00%
October 1, 1989 — October 31, 1989	10.00%
November 1, 1989 — November 30, 1989	10.25%
December 1, 1989 — December 31, 1989	10.00%
January 1, 1990 — January 31, 1990	9.75%
February 1, 1990 — February 28, 1990	9.75%
March 1, 1990 — March 31, 1990	10.25%
April 1, 1990 — April 30, 1990	10.50%
May 1, 1990 — May 31, 1990	10.50%

ARC 843A

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code Supplement section 424.1, the Underground Storage Tank Board hereby amends Chapter 5, "Determination or Adjustment of Cost Factor," Iowa Administrative Code.

This rule making will rescind rule 5.2(424) and terminate Notice of Intended Action as published in the March 21, 1990, Iowa Administrative Bulletin.

This rule will correct the environmental protection charge on diminution of petroleum in underground storage tanks from $8.50 to $.0085 per gallon in order to bring annual revenues up to the statutory maximum of $12 million as set out in Iowa Code Supplement section 424.3(6). This rule will also change the effective date from March 21, 1990, to July 1, 1990.

In compliance with Iowa Code section 17A.4(2), the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board finds that public notice and comment are unnecessary and impracticable because the law allows for a charge which is calculated to generate twelve million dollars in annual revenue.

The Iowa Comprehensive Petroleum Underground Storage Tank Fund Board also finds, pursuant to Iowa Code section 17A.5(2)"b"(2),that the normal effective date of this action should be waived and the rule should become effective on April 13, 1990, as it confers a benefit on the public by ensuring that the Underground Storage Tank program is adequately funded.

This rule is intended to implement Iowa Code Supplement sections 424.3(6) and 455G.3.

The following rule is adopted:

Rescind rule 591—5.2(424) and insert the following in lieu thereof:

591—5.2(424) Cost factor. The board establishes the cost factor on each gallon of petroleum diminution to be $.0085 commencing July 1, 1990.

[Filed emergency 4/13/90, effective 4/13/90]
[Published 5/2/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/2/90.

ARC 833A

RACING AND GAMING DIVISION[491]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 99D.7, the State Racing and Gaming Commission emergency adopts and implements an amendment to Chapter 8, "Mutuel Departments," Iowa Administrative Code.

The Commission adopted this amendment on March 8, 1990. Notice of Intended Action to provide for public comment until April 24, 1990, was published April 4, 1990, as **ARC 785A**.

In compliance with Iowa Code section 17A.4(2), the Commission finds that public notice and participation are contrary to the public interest in that the normal waiting period for rule making will prevent implementation of these changes during the current racing season.

The Commission also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this rule, 35 days after publication, should be waived and the rule be made effective immediately upon filing with the Administrative Rules Coordinator. This immediate implementation confers a benefit upon the public by ensuring the Commission's ability to achieve the regulatory results expected by the public and the state of Iowa.

This rule is intended to implement Iowa Code chapter 99D.

Amend subrule **8.2(4)** by adding a new paragraph "n" as follows:

n. Pic-nine. A betting transaction in which you select the (x) place finisher of nine races designated by the association during one racing card. For purposes of these rules, "(x) place" shall be defined as the designated place of finish approved by the commission upon request by the association. Such designated place of finish must remain unchanged until the program immediately following the distribution of the entire net pic-nine pool added to the cumulative pic-nine pool carried over from previous programs and commission approval has been received.

(1) The pic-nine pool is not a parlay and has no connection with or relation to any other pari-mutuel pool conducted by the association, nor to any win, place or show pool shown on the totalizator, nor to the rules governing the distribution of other pools.

(2) The pic-nine pool consists of amounts contributed for a selection for (x) place finish only in each of nine consecutive races designated by the association. Each person purchasing a pic-nine ticket shall designate the (x) place finisher in each of the nine races comprising the pic-nine.

(3) Those runners constituting an entry of coupled runners or those runners coupled to constitute the mutuel field in a race comprising the pic-nine shall race as a single wagering interest for the purpose of the pic-nine pool calculations and payoffs to the public. However, if any part of either an entry or the field racing as a single wagering interest is a starter in a race, the entry or the field selection shall remain as the designated selection to finish in (x) place in that race for the pic-nine calculation and payoff and the selection shall not be deemed a scratch.

(4) Except as provided in 8.2(4)"n"(7) and 8.2(4)"n"(8), the pic-nine pool shall be calculated as follows: One hundred percent of the net amount in the pic-nine pool subject to distribution shall be distributed among the holders of properly issued pic-nine tickets which correctly designate the official (x) place finisher in each of the nine races comprising the pic-nine.

In the event there is no pic-nine ticket properly issued which correctly designated the official (x) place finisher in each of the nine races comprising the pic-nine, 50 percent of the net amount wagered on the pic-nine pool for that program shall be distributed among the holders of pic-nine tickets which correctly designate the most official (x) place finishers of the nine races comprising the pic-nine. The remaining 50 percent of the net amount

wagered on the pic-nine pool for that program shall not be distributed but shall be retained by the association as distributable amounts and shall be carried over and included in the pic-nine pool for the next succeeding racing program as an additional net amount to be distributed.

Should no pic-nine ticket which correctly designates the official (x) place finisher in each of the nine races comprising the pic-nine be properly issued on the last program of the association's race meeting, then the entire distributable pic-nine pool and all moneys accumulated therein shall be distributed to the holders of pic-nine tickets correctly designating the most (x) place selections of the pic-nine for that program.

In the event there is no pic-nine ticket properly issued correctly designating any official (x) place finisher, the pic-nine for that program shall be canceled in its entirety and the total amount wagered on the pic-nine pool for that program shall be refunded to purchasers of all pic-nine tickets upon presentation and surrender of those pic-nine tickets. Any retained distributable amounts carried over from any prior cumulative pic-nine pool pursuant to this subrule shall be carried over to the next succeeding racing program at that meeting or, if applicable, to the first day's pic-nine program of the next race meeting should this instance occur on the final program of the association's race meeting.

For purposes of the pic-nine pool, the distributable amount to be distributed to the holders of properly issued pic-nine tickets which correctly designate the official (x) place finisher in each of the nine races comprising the pic-nine shall be the greater of the amount calculated pursuant to this subrule or an amount to be guaranteed at the association's option. The association must disclose the amount of any guaranteed pic-nine payoff to the Iowa racing and gaming commission in all advertising mentioning the pic-nine and at the designated location for official notices at the association's facility.

(5) In the event a pic-nine pari-mutuel ticket designates a selection in any one or more of the nine races comprising the pic-nine and that selection is scratched, excused or determined by the stewards to be a nonstarter in that race, the first place finisher, as evidenced by the amounts wagered in the win pool at the time of the start of that race, will be substituted for the nonstarting selection for all purposes, including pic-nine pool calculation and payoffs. In cases where there is more than one first place finisher in that race, the lower number runner/betting interest shall be selected and substituted.

(6) In the event of a dead heat for (x) place finish between two or more runners representing different betting interests in any pic-nine race, all runners in the dead heat for (x) place shall be considered as (x) place finishers in the race for the purpose of calculating the pic-nine pool.

(7) Should three or more of the nine races comprising the pic-nine races on the program have seven or fewer betting interests, or should any of the nine races comprising the pic-nine races on the program have six or fewer betting interests, the distribution of the entire net amount wagered on the pic-nine pool that program shall be distributed among the holders of pic-nine tickets which correctly designate the most official (x) place selections in all of the pic-nine races comprising the pic-nine on that program. Any retained distributable amounts carried over from any prior pic-nine cumulative pool pursuant to 8.2(4)"n"(4) shall be carried over to the next succeeding racing program of that meeting. However, if this instance should occur on the final program of that association's race meeting, holders of pic-nine tickets which correctly designate the most official (x) place finishers in all of the pic-nine races shall share equally the entire net pic-nine pool from that program plus any cumulative pic-nine pool carried over from previous programs.

Should two or fewer of the nine races comprising the pic-nine races on the program be canceled for any reason or are declared as "no race" by the stewards, the distribution of the entire net amount wagered on the pic-nine pool that program shall be distributed among the holders of pic-nine tickets which correctly designate the most official (x) place selections in all of the remaining pic-nine races comprising the pic-nine on that program. Any retained distributable amounts carried over from any prior pic-nine cumulative pool pursuant to 8.2(4)"n"(4) shall be carried over to the next succeeding racing program of that meeting. However, if this instance should occur on the final program of that association's race meeting, holders of pic-nine tickets which correctly designate the most official (x) place finishers in all of the remaining pic-nine races shall share equally the entire net pic-nine pool from that program plus any cumulative pic-nine pool carried over from previous programs.

In the event the stewards cancel or declare as "no race" three or more of the nine races comprising the pic-nine, the pic-nine shall be canceled in its entirety and the pic-nine pool on that program shall be refunded to purchasers of all pic-nine tickets upon presentation and surrender of those pic-nine tickets, and any retained distributable amounts carried over from any prior cumulative pic-nine pool pursuant to 8.2(4)"n"(4) shall be carried over to the next succeeding racing program at that meeting or, if applicable, to the first day's pic-nine program of the next race meeting should this instance occur on the final program of the association's race meeting.

In the event that any race comprising the pic-nine races on any program is marred by jams, spills or other circumstances while the race is being run and fewer than four runners finish the race, the stewards shall declare the race a "no race" for purposes of the pic-nine pool.

(8) In the event that on the final program of the association's race meeting any retained distributable amount carried over from prior cumulative pic-nine pools is carried over to the first program of the next race meeting, the entire net pic-nine pool from that program plus any cumulative pic-nine pool carried over from previous programs shall be distributed to the holders of pic-nine tickets correctly designating the most official (x) place selections of the nine races comprising the pic-nine for that program. Provided, however, if on the first program of the next race meeting, the stewards cancel or declare as "no race" three or more of the nine races comprising the pic-nine or in the event there is no pic-nine ticket properly issued correctly designating any official (x) place finisher and the pic-nine pool carried over from previous program shall continue to be carried over to the next program of that race meeting at which the pic-nine is not canceled and the entire net pic-nine pool from that program plus the cumulative pic-nine pool carried over from previous programs shall be distributed to the holders of the pic-nine tickets correctly designating the most official (x) place selections of the nine races comprising the pic-nine for that program.

(9) No pic-nine ticket for the pic-nine pool shall be sold, exchanged, or canceled after the time of the closing of wagering in the first of the nine races comprising the pic-nine, except for refunds on pic-nine tickets as required by this rule, and no person shall disclose the number of pic-nine tickets sold in the pic-nine pool or the number or amount of tickets selecting (x) place finishers of pic-nine races until the stewards have determined the last pic-nine race comprising the pic-nine on each program to be official.

[Filed emergency 4/6/90, effective 4/6/90]
[Published 5/2/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/2/90.

ARC 846A

UTILITIES DIVISION[199]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 17A.3 and 476.2, the Iowa State Utilities Board (Board) emergency adopted and implemented a change to its purchased gas adjustment rule in Iowa Administrative Code 199—19.10(3) in Docket No. RMU-90-18, In Re: Demand Charges Allocations.

The amendment was adopted on April 12, 1990, and became effective upon filing with the Administrative Rules Coordinator on April 13, 1990.

On February 1, 1990, Northern Natural Gas Company (Northern) implemented a change from a two-part demand rate (D-1 and D2) to a one-part demand rate which eliminated the D-2 component. On March 19, 1990, the Federal Energy Regulatory Commission accepted the change, effective February 1, 1990. In March 1990, the Iowa gas distribution companies received bills from Northern which included the one-part demand charge. At that time, the local distribution companies sought to collect the unified charge from their customers through the purchased gas adjustment. The purchased gas adjustment, however, is configured to allocate D-1 and D-2 charges among customer classes but does not allocate the unified charge among customer classes. Therefore, the change from a two-part demand to a one-part demand shifts D-2 charges to the D-1 component and to customers assigned D-1 responsibility. In most cases, interruptible and transportation customers who were previously allocated a portion of the D-2 costs, are not allocated any of the one-part demand charge under the purchased gas adjustment rules.

This emergency rule making is intended to allocate the one-part demand charge in the same manner D-1 and D-2 charges were allocated prior to the change in Northern's rate design. For example, if in January 1990, D-2 charges billed were $30 and D-1 charges billed were $70, and in February, supplier rates changed so that one-part demand charges were $90, pursuant to the rule, for a class that was assigned 20 percent of the utility's D-2 volumes in January, the utility will include $5.40 (30% x $90 x 20%) in place of $N \times R_n$ in the formula. Next, it will adjust the total demand charge by subtracting this amount ($90 - $5.40 = $84.60) and divide this by demand volume "S" to find the demand rate "R_d" to apply to other classes.

The amendment is adopted without notice and public participation to temporarily maintain the status quo pending completion of the Board's action in another rule making, Docket No. RMU-90-19, Options for Demand Allocations as **ARC 845A** herein. Docket No. RMU-90-19 will provide full opportunity for comment on various proposed options for allocating the unified demand and the rules adopted in Docket No. RMU-90-19 will supersede these emergency rules. The emergency amendment is a temporary measure to ensure that the price signals sent to Iowa customers regarding responsibility for the demand costs are in accordance with Board policy. The Board finds that notice and public participation would be impracticable since immediate action is necessary to ensure proper allocation of the one-part demand charge in monthly billings.

The Board also finds this amendment will confer a benefit since it will preserve the status quo and effect price signals the Board has previously determined to be just and reasonable.

The Board will adopt the amendment without notice and public participation pursuant to Iowa Code section 17A.4(2).

The adopted amendment became effective upon filing with the Administrative Rules Coordinator, [April 13, 1990], pursuant to Iowa Code section 17A.5(2)"b"(2).

Amend subrule **19.10(3)** by adding the following:

If a supplier's entitlement charge is zero, the same percentage of current demand charges shall be allocated to each customer class or grouping as was allocated in the last month in which entitlement rates were not zero.

[Filed emergency 4/13/90, effective 4/13/90]
[Published 5/2/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/2/90.

ARC 848A

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed

Pursuant to the authority of Iowa Code section 163.1, the Iowa Department of Agriculture and Land Stewardship hereby amends Chapter 64, "Infectious and Contagious Diseases," segment entitled "Disease Control at Fairs and Exhibits," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 21, 1990, as **ARC 703A**. The Department received no written or oral comments during the comment period.

These amendments will become effective June 6, 1990.

This rule is intended to implement Iowa Code chapter 163.

Amend subrule 64.34(4) as follows:

64.34(4) Horses and mules. Native Iowa horses and mules can be exhibited when accompanied by an individual ~~health~~ certificate *of veterinary inspection* listing a description of the individual animals.

All equine, *six months of age or older,* originating from outside the state shall be accompanied by an official ~~health~~ certificate *of veterinary inspection* listing a description of the individual animals; and indicating that each animal in the shipment has had a negative official equine infectious anemia test within ~~six~~ *12* months of importation. The testing laboratory and date of test must appear on the ~~health~~ certificate.

[Filed 4/13/90, effective 6/6/90]
[Published 5/2/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/2/90.

ARC 849A

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 159.5(11) and 214A.2, the Iowa Department of Agriculture and Land Stewardship adopts amendments to Chapter 85, "Weights and Measures," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 13, 1989, as **ARC 508A** and subrule 85.48(11) was adopted and filed emergency as **ARC 509A**. A public hearing was held on the proposed amendments on January 2, 1990.

The amendments provide for standards for ethanol pursuant to Iowa Code Supplement chapter 214A. The amendments also revise the manner of labeling of a pump dispensing motor vehicle fuel containing an oxygenate octane enhancer and establish a registration requirement for a person selling or holding for sale motor vehicle fuels.

Subrule 85.48(11) was adopted by emergency filing in **ARC 509A** as an interim subrule pending this rulemaking action. Subrule 85.48(11) adopted in this filing is very similar to that in the emergency filing.

The changes to the proposed amendments reflect some of the comment made at the hearing. The changes from the Notice are as follows:

1. Rule 21—85.33(214A,208A) - Adopts A.S.T.M. standards in effect on January 1, 1990, as opposed to the noticed rule which provided for standards in effect on January 1, 1989.
2. Subrule 85.48(10) - Permits using "ethanol blend" label.
3. Subrule 85.48(11) - Permits using "MTBE blend" label.
4. Subrule 85.48(13) - Removes the requirement in the noticed subrule that the certificate must be verified by a chemist.
5. Noticed subrule 85.48(14) has been omitted due to public comment.

These amendments will become effective June 6, 1990, and at that time the emergency adopted subrule 85.48(11) will be rescinded and replaced by the subrule adopted in this filing.

ITEM 1. Amend rule 21—85.33(214A,208A) as follows:

21—85.33(214A, 208A) Motor vehicle fuel and antifreeze tests and standards. In the interest of uniformity, the tests and standards for motor *vehicle* fuel, *oxygenate octane enhancers, raffinate natural gasoline* and motor vehicle antifreeze shall be those established by the American Society for Testing and Materials (A.S.T.M.) in effect on January 1, ~~1985~~ *1990, except that the standards for E-Grade denatured fuel ethanol shall be the American Petroleum Institute's (API) specification, in use at the Iowa terminals.*

ITEM 2. Amend rule 21—85.48(214A,215) by rescinding subrule 85.48(10) and 85.48(11) and inserting the following new subrules.

85.48(10) All motor vehicle fuel kept, offered or exposed for sale or sold at retail containing over 1 percent ethanol shall be identified as "Contains ETHANOL" or "ethanol blend" in black lettering no less than 1/2" in height, 1/8" in stroke, to be placed 30" to 40" above driveway level on the front of the pumps. Additional wording or statements may be allowed upon submission to and approval by the department. Approval shall be based upon factual information or scientific data provided by the applicant and a determination that the wording is not misleading to consumers.

85.48(11) All motor vehicle fuel kept, offered or exposed for sale at retail containing over 1 percent methyl tertiary butyl ether shall be identified as "contains MTBE" or "MTBE blend" in black lettering no less than 1/2" in height, 1/8" in stroke, with directly below "METHYL TERTIARY BUTYL ETHER" in black lettering no less than 20-point type size to be placed 30" to 40" above driveway level on the front of the pumps.

Additional wording or statements may be allowed upon submission to and approval by the department. Approval shall be based upon factual information or scientific data provided by the applicant and a determination that the wording is not misleading to consumers.

85.48(12) Any wholesale dealer, retail dealer, pipeline, refinery, barge or bulk plant in this state that sells or holds for sale natural gasoline raffinate below the minimum 87 octane (R+M)/2 requirement of Iowa Code section 214A.2 that is intended or is to be blended with an oxygenate octane enhancer or higher gasoline components shall register with the department.

85.48(13) All retail shipments of blended natural gasoline/raffinate must be accompanied by a certificate showing the true standards and tests of such blended motor fuel that was obtained by the methods referred to in Iowa Code section 214A.2. The certificate must accompany the shipping document or bill of lading before such blended fuel can be received or unloaded.

Further amend rule 21—85.48(214,215) by renumbering existing subrule 85.48(12) as **85.48(14)**.

[Filed 4/13/90, effective 6/6/90]
[Published 5/2/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/2/90.

ARC 865A

CORRECTIONS DEPARTMENT[291]

Adopted and Filed

Pursuant to the authority of Iowa Code section 246.108, the Department of Corrections hereby adopts amendments to Chapter 28, "Riverview Release Center," Iowa Administrative Code, regarding visitation at the Correctional Release Center.

There is one change from the Noticed rule in that the evening visiting hours will begin at 6 p.m. rather than at 5:30 p.m. This additional change is again a result of overcrowding which has caused the evening meal time to be extended. Visitation takes place in the dining area.

The Notice of Intended Action was published in the November 29, 1989, Iowa Administrative Bulletin as **ARC 458A**.

This rule was adopted by the Corrections Board at the regular meeting of the Board on March 30, 1990.

These amendments will become effective on June 7, 1990.

This rule is intended to implement Iowa Code section 246.512.

Amend rule 291—28.2(218) as follows:

291—28.2(~~218~~*246*) Visiting.

28.2(1) Visiting hours ~~shall be~~ *are* ~~established by the superintendent, but minimum hours are from 10:00~~ *8:15* a.m. to ~~4:00 p.m.~~ *11:15 a.m. or 12:45 p.m. to 3:45 p.m.* on Saturdays, Sundays, and holidays and from ~~5:00~~ *6:00* p.m. to ~~10:00~~ *9:30* p.m. Monday through Friday. ~~For visiting purposes, the week begins on Sunday. An approved visitor may visit twice per week, once on a weekday and once on the weekend.~~ *Visiting hours are scheduled to avoid conflicts with inmate work programs/assignments.*

28.2(2) An approved visitor may visit ~~twice~~ *three times* per week. ~~Visits shall be limited to one during the period Monday through Friday and one during the period Saturday through Sunday.~~

a. ~~Inmates ineligible for furloughs due to the laws of Iowa may have visits one additional time on weekends.~~ *Inmates are permitted to have a maximum of five visitors at any given time without advance written permission from the security manager.*

b. ~~Extended visiting privileges may be granted at the discretion of the correctional supervisor on duty or the institutional duty officer.~~ *Inmates on dormitory confinement are permitted two two-hour visits per week during normal visiting hours.*

c. Visiting hours for ~~residents~~ *inmates* in administrative/disciplinary segregation are from 10 a.m. to 3 p.m. Monday through Friday. Visits shall be scheduled in advance by the visitor. Visitors shall be immediate family only, and visits shall be limited to one hour.

d. Inmates participating in intensive substance abuse programming are permitted visits in conjunction with scheduled support group treatment activities. These visits shall be scheduled with the unit director.

28.2(3) Upon arrival, ~~a visitor~~ *all visitors* shall report to the control *center* ~~office and sign the register~~. *All visitors must be prepared to show proof of identification. In the event that maximum visiting capacity has been reached, new arrivals will receive at least a ten-minute visit. The institution will accommodate visitors who have traveled more than 50 miles or have not visited during the last seven days.*

28.2(4) ~~Liquids brought on institutional grounds by visitors shall be inspected and approved by the ranking correctional staff member on duty.~~ *Outside visits are permitted April 15 through October 15, weather permitting. Only commercially prepared food for picnics may be brought during outside visits. Food items for picnics must be presented to the control center for inspection. Only enough food for each person in the visiting party and the inmate will be allowed. Any unconsumed food items must be properly disposed of or taken off the grounds by the visitor. Food items will not be allowed in the buildings and must be consumed at the picnic tables only.*

28.2(5) ~~Visitors shall give articles to inmates during visits only after presenting the article to the officer in the control office and receiving the officer's permission.~~ *If a visitor desires to take an item or article to an inmate, the item or article must be presented, when arriving, to the control center for inspection. Approved items or articles must be entered into the inmate's inventory record.*

28.2(6) Visitors ~~shall be allowed in~~ *will have access only to* designated visiting areas ~~only~~ *of the institution.*

28.2(7) Visits between attorney and inmate shall be permitted during normal business hours or visiting hours. Such visits during nonbusiness hours shall be by appointment as authorized by the superintendent or designee.

28.2(8) ~~Visitor~~ *Visitors* ~~and inmate shall~~ *must* report to the ~~officer in the~~ control ~~office when the visitor is leaving~~ *center at the end of the visit prior to leaving the institution.*

[Filed 4/13/90, effective 6/7/90]
[Published 5/2/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/2/90.

ARC 859A

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 256.7(9), the Department of Education hereby adopts Chapter 15, "Use of Telecommunications for Instruction by Schools," Iowa Administrative Code.

Iowa Code subsection 256.7(9) provides for the adoption of rules under chapter 17A for the use of telecommuni-

cations as an instructional tool for students enrolled in kindergarten through grade 12 and served by local school districts, accredited or approved nonpublic schools, area education agencies, merged area schools, institutions under the governance of the state board of regents, and independent colleges and universities in elementary and secondary school classes and courses.

These rules define exclusive and nonexclusive instruction in relation to instruction delivered via telecommunications, define a live interactive system of telecommunications, identify courses eligible for delivery via telecommunications, specify the availability of appropriately licensed and endorsed teachers and their preparation for delivering instruction via telecommunications, and outline the responsibilities of the local school district or nonpublic school employing telecommunications for the delivery of instruction.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 10, 1990, as **ARC 572A**.

Interested persons were allowed to comment on these proposed rules. A public hearing was scheduled for January 30, 1990; however, no comment was received. There are no changes from the Notice.

The State Board of Education adopted these rules on April 13, 1990.

These rules will become effective on June 6, 1990.

These rules are intended to implement Iowa Code subsection 256.7(9).

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 15] is being omitted. These rules are identical to those published under Notice as **ARC 572A**, IAB 1/10/90.

[Filed 4/13/90, effective 6/6/90]
[Published 5/2/90]

[For replacement pages for IAC, see IAC Supplement, 5/2/90.]

ARC 860A

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.11, 256.7(5) and 281.3, the Iowa Department of Education hereby adopts amendments to Chapter 41, "Education of Pupils Requiring Special Education," Iowa Administrative Code.

The amendments resolve federal compliance issues, align references to current Code language, and clarify rules pertaining to special education appeal procedures.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 7, 1990, as **ARC 624A**.

Interested persons were allowed to comment on the proposed rule changes. A public hearing was held on February 27, 1990. No comments were received and no one appeared at the public hearing. The Notice was expanded to include "hearing officer" in Item 1.

The State Board adopted these rules on April 13, 1990.

These rules will become effective on June 6, 1990.

These rules are intended to implement Iowa Code sections 17A.11 and 281.6.

The following amendments are adopted.

ITEM 1. Substitute the term "administrative law judge" for the terms "presiding officer" and "hearing officer" wherever they appear in **281—Chapter 41**.

ITEM 2. Amend subrule 41.33(1) as follows:

41.33(1) Initiating a hearing. An eligible pupil, the parent or guardian or the school district in which the pupil resides may initiate a hearing on any decision relating to the identification, evaluation or educational placement of a pupil or the provision of a free appropriate public education to a pupil. *In the event that the issues raised by the eligible pupil or the parent or guardian of a pupil relate to identification or placement, the appropriate area education agency serving the child shall be deemed to be an appellee whether or not specifically named by the pupil, parent, or guardian.* When parents refuse consent for initial evaluation or initial provision of special education, the public agency including the school district or the director, may initiate a hearing to determine if the pupil may be evaluated or initially provided special education without parental consent.

ITEM 3. Rescind subrule 41.33(9) and insert the following in lieu thereof:

41.33(9) Dismissal. A request for dismissal may be made to the administrative law judge at any time by the party initiating the appeal. A request or motion for dismissal made by the appellee (a party against whom an appeal was taken) shall be granted upon a determination by the administrative law judge that any of the following circumstances apply:

a. The issue(s) raised does not establish jurisdiction in that the appellant failed to allege, and it cannot be reasonably inferred given a broad reading of the affidavit of appeal, a decision related to identification, evaluation, placement, or the provision of a free appropriate public education;

b. The issue(s) raised is moot;

c. The student is no longer a resident of the school district or area education agency against whom the appeal was filed;

d. The relief sought by the appellant is beyond the scope and authority of the administrative law judge to provide;

e. Circumstances are such that no case or controversy exists between the parties.

An appeal may be dismissed administratively by the department when an appeal has been in continued status for more than one school year. Prior to an administrative dismissal, the department shall notify the appellant at the last known address and give the appellant an opportunity to give good cause as to why an extended continuance should be granted. An administrative dismissal issued by the department shall be without prejudice to the appellant.

ITEM 4. Amend subrule **41.35(3)**, by adding the following paragraph at the end thereof:

An evidentiary hearing shall be held unless both parties agree to a hearing based upon the stipulated

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

record or a mixed evidentiary and stipulated record hearing.

[Filed 4/13/90, effective 6/6/90]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/2/90.

ARC 861A

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the Iowa Department of Education hereby adopts the following amendments to Chapter 44, "School Buses," Iowa Administrative Code.

The amendment to subrule 44.2(5), paragraph "g," deleting subparagraph (1) is in response to the impact of the rule's reference to 26,500 pounds gross vehicle weight rating (GVWR) as a criterion for mandating an air braking system on some models of school bus chassis. Because of changes in the design and manufacture of school bus bodies and chassis, gross vehicle weight rating is no longer an appropriate criterion to use in determining whether a vehicle is manufactured with or without an air brake system.

In an apparent chassis industry attempt to reduce vehicle componentry options and inventories, including axles with various gross vehicle weight rating (GVWR) capability, some manufacturers are providing the same capacity rated axles on common model school buses as they would for trucks typically carrying heavier payloads. Even though the passenger load potential for the school bus chassis models affected by the rule has not increased, the increased load rating capability of the chassis being provided (exceeding 26,500 pounds GVWR) now requires the installation of an air braking system on these chassis, where before the standard hydraulic brake system was adequate.

Written response was asked for and received, by the Department of Education, from the three major school bus chassis manufacturers relative to the safety implications of these amendments. Assurances were provided that either braking system, hydraulic or air, meets or exceeds federal braking system performance requirements, including stopping distance.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 7, 1990, as **ARC 634A**, and the amendments were adopted and filed emergency as **ARC 633A**.

The Iowa Department of Education held a public hearing on February 27, 1990, at 1 p.m. in the State Board Room of the Grimes State Office Building, Des Moines, Iowa 50319-0146. No written comments were received and no one appeared at the public hearing.

On January 11, 1990, the State Board of Education met and reviewed these amendments. There was no revision or amendment to the Notice of Intended Action.

These amendments were adopted January 11, 1990, and will become effective June 6, 1990, at which time the adopted and filed emergency amendments will be rescinded.

These rules are intended to implement Iowa Code section 285.8.

Subrule **44.2(5)**, paragraph "g," is amended as follows:

g. An air brake system is required on every chassis meeting one or more of the following criteria:

~~(1) Gross vehicle weight rating (GVWR) greater than 26,500 pounds.~~

~~(2)~~ *(1)* Wheel base equal to or greater than 274 inches.

~~(3)~~ *(2)* Finished vehicle capacity rating greater than 66 passengers.

[Filed 4/13/90, effective 6/6/90]
[Published 5/2/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/2/90.

ARC 863A

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code Supplement section 279.51(5), the Iowa Department of Education hereby adopts Chapter 67, "Educational Support Programs for Parents of At-Risk Children Aged Birth Through Three Years," Iowa Administrative Code.

These rules set forth procedures under which state funds shall be granted to school districts, area education agencies or other agencies which administer quality educational support services to parents of at-risk children aged birth through three years.

In rules 281—67.2(279) to 281—67.5(279), definitions and eligibility criteria are outlined to clarify legislative intent. Rules 281—67.6(279) to 281—67.18(279) outline the grants process to be utilized for distribution of funds under Iowa Code Supplement section 279.51.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 7, 1990, as **ARC 737A**, and the rules were simultaneously adopted and filed emergency as **ARC 738A**.

The Iowa Department of Education held a public hearing on March 29, 1990, at 1 p.m. in the North Conference Room of the Grimes State Office Building, Des Moines, Iowa 50319-0146. No written comments were received and there are no changes from the Notice.

These rules were adopted on April 13, 1990, and will become effective June 6, 1990, at which time the emergency rules will be rescinded.

These rules are intended to implement Iowa Code Supplement section 279.51(2)"b"(2).

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [281—Ch 67] is being omitted. These rules are identical to those published under Notice as **ARC 737A**, IAB 3/7/90.

[Filed 4/13/90, effective 6/6/90]
[Published 5/2/90]

[For replacement pages for IAC, see IAC Supplement, 5/2/90.]

ARC 862A

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7, the Iowa Department of Education hereby adopts Chapter 68, "Conservation Education," Iowa Administrative Code.

Iowa Code Supplement section 256.34 provides, in part, that appropriations for $350,000 annually to the Department of Natural Resources for transfer to the Department of Education are to be used, as approved by the Conservation Education Program Board, "to revise and produce conservation education materials and to specify stipends to Iowa educators who participate in innovative conservation education programs approved by the board. The board shall allocate the funds provided for under section 455A.19, subsection 1, for the educational materials and stipends."

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 7, 1990, as **ARC 625A**, and the rules were adopted and filed emergency as **ARC 626A**.

The Iowa Department of Education held a public hearing on February 28, 1990, at 9 a.m. in the State Board Room of the Grimes State Office Building, Des Moines, Iowa 50319-0146. No pertinent comments were received, and there are no changes from the Notice.

These rules were adopted on April 13, 1990, and will become effective June 6, 1990, at which time the emergency rules will be rescinded.

These rules are intended to implement Iowa Code Supplement sections 256.34 and 455A.19.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 68] is being omitted. These rules are identical to those published under Notice as **ARC 625A** and Filed Emergency as **ARC 626A**, IAB 2/7/90.

[Filed 4/13/90, effective 6/6/90]
[Published 5/2/90]

[For replacement pages for IAC, see IAC Supplement, 5/2/90.]

ARC 841A

HEALTH DATA COMMISSION[411]

Adopted and Filed

Pursuant to the authority of Iowa Code section 17A.3, the Health Data Commission hereby adopts amendments to Chapter 5, "Uniform Hospital Billing Form," and Chapter 6, "Submission of Data," Iowa Administrative Code.

The adopted amendments require hospitals to directly submit data and specify specific Diagnosis Related Groups (DRGs) to be reported.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 715A** on March 7, 1990.

A public hearing was held on March 27, 1990. Public comments received focused on the time period for data submission and sanction provisions. In response to public comment the Commission extended the reporting time frame from 45 days to 90 days and removed the sanction language.

These amendments will become effective on June 6, 1990.

These rules are intended to implement Iowa Code sections 145.1 to 145.3.

The following amendments are adopted.

ITEM 1. Amend rule 411—5.5(145) as follows:

411—5.5(145) Hospital reporting of severity codes ~~on uniform hospital billing form~~. Hospitals with licensed/registered acute care bed counts of 100 beds or more as reported on the Iowa department of public health reporting form from the 1988 Annual Survey of Hospitals shall submit data defined in ~~subrule~~ *subrules* 6.3(6) ~~on uniform hospital billing forms~~ *and 6.3(2) to the health data commission's address as stated in rule 6.7(145).* The bed counts shall be determined as reported on the Iowa department of public health reporting form from the 1988 Annual Survey of Hospitals or by application to and approval from the Certificate of Need Program by May 10,1990, for a reduction in licensed/approved acute beds below 100 beds if the staffed bed counts listed on the 1988 Annual Survey of Hospitals was less than 100 beds.

Any hospital not submitting licensed/registered acute care bed information on the Iowa department of public health reporting form from the 1988 Annual Survey of Hospitals shall submit the data defined in ~~subrule~~ *subrules* 6.3(6) ~~on uniform hospital billing forms~~ *and 6.3(2) to the health data commission's address as stated in rule 6.7(145).*

ITEM 2. Amend subrule 6.3(6) as follows:

6.3(6) On or after July 1, 1990, the following data ~~from the uniform hospital billing form (UB-82 HCFA-1450)~~ shall be submitted by ~~the primary third-party payer upon payment of a claim~~ *hospitals as defined by rule 5.5(145) directly to the commission at the address as stated in rule 6.7(145) for the following DRGs* on a per-discharge basis in addition to that information required in subrule 6.3(2): *1, 14, 15, 25, 60, 70, 79, 82, 87, 88, 89, 90, 91, 96, 97, 98, 104, 106, 107, 110, 112, 113, 121, 122, 123, 124, 125, 127, 130, 138, 139, 140, 141, 143, 148, 154, 162, 174, 180, 182, 183, 184, 197, 198, 209, 210, 215, 239, 243, 294, 296, 297, 320, 324, 336, 337, 359, 371, 386, 389, 390, 395, 410, 415, 416, 429.*

a. Patient severity code as defined in rule 411—5.1(145), paragraph"1," ~~from the uniform hospital billing form~~ as generated by the severity coding methodology;

b. Second patient severity code as defined in rule 411—5.1(145), paragraph"2," ~~from the uniform hospital billing form~~ as generated by the severity coding methodology.

ITEM 3. Add the following new subrule:

6.3(7) Hospital data submittal. Hospitals required to submit information to the state health data commission pursuant to rule 5.5(145) shall submit the data in the form required by the health data commission within 90 days of the end of each calendar quarter.

[Filed 4/13/90, effective 6/6/90]
[Published 5/2/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/2/90.

ARC 852A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 239.18, the Department of Human Services hereby amends Chapter 40, "Application for Aid," Chapter 41, "Granting Assistance," Chapter 65, "Administration," Chapter 75, "Conditions of Eligibility," Chapter 92, "Cash Bonus Program," and Chapter 93, "PROMISE JOBS Program," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these rules April 11, 1990. Notices of Intended Action regarding these rules were published in the Iowa Administrative Bulletin on February 21, 1990, as **ARC 692A**, and on March 7, 1990, as **ARC 729A** and **ARC 731A**.

These amendments:

1. Implement changes in the PROMISE JOBS program.
2. Exempt census income as income and provide Medicaid coverage for a group of children.
3. Change the policy on transfer of resources for the community spouse.

The Department of Human Services implemented the PROMISE JOBS program effective July 1, 1989. Subsequently, the Department made additional changes to the program effective March 1, 1990, acting on changes approved by the Welfare Reform Council and on clarifications contained in the final federal regulations implementing the JOBS program.

The Department is now taking action to implement additional clarifications and requirements contained in the final federal regulations, and is also implementing additional changes in program services as approved by the Welfare Reform Council. These changes have been reviewed with field staff and will result in improved services and easier administration to program participants.

The changes in the program which are required by final federal regulations are as follows:

1. Subrule 41.4(8) is revised to extend the sanction conciliation processes to voluntary PROMISE JOBS participants who have failed, without good cause, to participate in the program. The current rules contain conciliation procedures for mandatory participants who may be subject to sanction or loss of ADC benefits. Voluntary participants, although not subject to financial sanction, may be sanctioned by loss of priority PROMISE JOBS services. This change ensures that voluntary participants have the same ability to resolve a sanction, prior to implementation, as mandatory participants.
2. Subrule 93.10(1) is revised to specify that payment for PROMISE JOBS child care shall not exceed the 75th percentile cost of comparable types of child care in the community. The rule does stipulate that if state funding is made available, that actual payments will continue to be made at the going rate in the community. However, PROMISE JOBS funds will be used only for that portion of payments which does not exceed the 75th percentile.
3. The final federal regulations clarified that children on ADC cases who are currently in school and are exempt from the program can volunteer for program services. As volunteers, these children would normally be entitled to expense allowance payments for costs related to school attendance. However, the regulations prohibit payment of expenses for transportation unless there is need. Accordingly, 93.10(6)"d" is added to specify that expense allowances cannot be paid when the expense is already being met by a nonreimbursable source or when transportation is provided by the school district or the school district has deemed transportation unnecessary due to the proximity of the child's home to the school.
4. Rule 441—93.51(249C) is completely rewritten to incorporate the full federal requirements related to the recovery of PROMISE JOBS overpayments from either clients or providers. Under current rules, recovery can only be made from participants and can only be obtained through voluntary repayment or refund or by offsetting current overpayments against future months' expense allowances.

The final federal regulations require the states to treat JOBS overpayments in the same manner as ADC overpayments, except that recovery cannot be made by involuntary reduction of the assistance grant. Accordingly, rule 441—93.51(249C) has been expanded to establish full recovery procedures.

Briefly summarized, the following procedures shall be followed when it has been determined that a client or a provider has received an overpayment:

1. The client or provider will be issued a Notice of Overpayment—PROMISE JOBS Expense Allowances, Form 470-2666, to notify the client or provider of the amount, reason, and dates received of any overpayment. The client or provider then has 30 days to appeal the existence or the amount of the overpayment. Appeals filed concerning PROMISE JOBS overpayments shall be handled in the same manner as appeals of ADC overpayments.
2. When the participant is still involved in PROMISE JOBS, recovery shall be initiated by offsetting the current month overpayment against future months' benefits, but only if the offsetting will not jeopardize the client's continued progress toward the employment goal. Similar offsetting from a provider will be limited to future expenses for the same client and will be initiated only if the action will not jeopardize the continued receipt of services by that client from the provider.
3. When recovery through offsetting is not possible, either because the client is no longer a participant or because offsetting would jeopardize the client's training goal, the case shall be referred to the Department of Inspections and Appeals (DIA) for additional recovery actions. Federal regulations dictate that other than the prohibition against involuntary grant reduction, any other procedures used to recover ADC overpayments shall be used to recover JOBS overpayments. The revised rule also stipulates that DIA shall take no action that would jeopardize the client's continued participation in the PROMISE JOBS program.
4. The revised rule also specifies that the client has the ability to appeal the method or amount of offsetting when a timely notice is issued to initiate recovery through offsetting or to change the amount of the offset.
5. Rule 441—93.51(249C) also stipulates that PROMISE JOBS overpayments and recoveries shall be recorded and tracked on the Overpayment/Recovery System in the same manner as ADC overpayments.

The major changes recommended by the Welfare Reform Council are as follows:

1. Current rules contain different transportation allowances depending upon the component in which the client is participating. These revisions will require that

all participants will receive a standard transportation allowance based on a daily rate of $4 a day times the participant's anticipated monthly days of participation.

In addition, the revised rules stipulate that in those instances when a voluntary participant is a disabled person with special transportation needs, that payment of transportation allowances may be supplemented up to actual costs.

2. Rules related to the Employability Plan have been revised to stipulate that the plan shall contain specific information about the services to be provided for a client who will be participating in vocational classroom training.

3. Current rules provide that PROMISE JOBS expenses can be issued for a client whose ADC grant has been suspended only when the client is participating in classroom training. This rule has been expanded to allow payment for any PROMISE JOBS participant who chooses to participate during the one-month period of ADC suspension.

4. Current rules allow persons who become employed 86 or more hours a month to have their participation in the program waived. In addition, current rules require periods of suspension following completion of various components. The rules have been revised to shorten the 60-day suspension period following classroom training to 30 days. In addition, the rules have been further revised to clarify that clients may choose to be referred for immediate PROMISE JOBS services during suspension periods.

5. The rules have clarified that in those instances where clients are remote from job club, that PROMISE JOBS staff are authorized to substitute other employment-oriented activities in lieu of job club.

6. The Application for Classroom Training, Form 470-2570, is being eliminated. The information from it will be incorporated into the Employability Plan. The client will still be required to apply verbally for classroom training at least three weeks prior to the start of course-work.

7. Current rules limit approvable training to training facilities which are licensed or registered with the state or which have been accredited by an appropriate accrediting agency. Although the current rule was intended to protect clients and the Department from unscrupulous training providers, it has prevented the Department from being able to take advantage of valid training programs offered by community action program agencies, churches, and other training providers. Accordingly, the rules have been revised to allow PROMISE JOBS workers to authorize training from other sources provided the worker is satisfied that the training program being offered is appropriate, valid, and will result in the participant's achieving the employment goal.

8. Current rules require a client to maintain a minimum "C" cumulative grade point. This requirement has resulted in some participants being terminated from training unnecessarily, because the current rule does not allow for worker discretion. Accordingly, rules have been revised to use the grade point average required by the training facility. In addition, if the participant's grade point drops beneath that required by the facility, the PROMISE JOBS worker can continue the client in the training program under probation, provided that the school allows the participant to continue to attend and documents that the participant will be able to bring up the grade point average and complete the training program successfully.

9. Current rules require that participants attend classroom training on a full-time basis. These rules have proven to be unnecessarily restrictive in that they have resulted in participants being terminated from classroom training services when the participant was forced to drop to less than full-time status due to a difficult course, family emergency, or other circumstance. These rules have been revised to allow greater worker flexibility and to prevent unnecessary plan terminations. Clients are still expected to attend school on a full-time basis. However, the PROMISE JOBS worker is allowed to continue the training plan if the client drops to less than full-time status for an occasional term, provided the client will still be able to complete the program during training program time limits.

10. Current rules allow participants up to 40 months to complete any type of vocational classroom training. These rules have been revised to establish a 30-month limit for those individuals in short-term training courses or who are working toward a two-year degree. The 40-month limit continues in place for participants working toward a three- or four-year degree program. An additional change to the rules specifies that the 30- or 40-month limits shall be based on fiscal rather than calendar months. This change will prevent a client from losing an entire month due to participation for only a few days in that month. In those instances where a participant changes from a two-year program to a three- or four-year program, any months used under the previous 30-month limit shall be counted against the new 40-month limit.

11. Current rules are not clear as to whether expense allowances can be issued for standard school supplies. These rules have been revised to clarify the current interpretation that such supplies are an allowable expense. In addition, the rules specify that a $10 standard allowance can be issued for basic supplies without requiring specific verification. However, a client whose expenses exceed $10 must provide verification of the actual expenses. Issuance of a standard supply expense is intended to simplify the program, meet client needs, yet not increase administrative costs through unnecessary verification.

12. Current rules state that a client who has received training in a particular vocational area can receive training in a new area if the client has been unable to obtain employment for one year. In order to maximize funding and provide opportunities to as many clients as possible, the rules have been expanded to specify that these persons shall be considered for training in a new vocational area only when a minimum of five years has elapsed since training was completed for the original vocational goal. However, the five-year period can be waived when labor market statistics show that employment is not available in the field in which the original training was received, or that the client has been unable to find employment in that field despite a good faith effort within two years of completing the training program. The new limitation, in effect, only prohibits additional training services to those participants who did not make a valid effort to find employment in their vocational area. In addition, the rules specify that persons who dropped out of training before completion are only entitled to any months remaining in their original 30- or 40-month training periods.

13. In some instances, participants pursuing a four-year degree have been required to complete a practicum outside of the home community. Current rules are revised to specify that a $10 per diem allowance for living expenses shall be issued if the practicum location is more than three hours in travel time from the home community and there are no other earnings or educational assistance available to the client to meet these costs.

14. Currently, PROMISE JOBS expense allowances are paid to the provider only for child care services. All other expenses are paid to the client and the client is required to pay the provider. As a result, there have been some instances of misuse, as well as delays in provider payment. Accordingly, in order to ensure proper use of funding, to eliminate unnecessary delays, and to ensure continued service from training facilities for PROMISE JOBS participants, educational expenses for tuition, fees, books and supplies which are provided by the facility, shall be paid directly to the facility. If needed and determined appropriate, the PROMISE JOBS worker still has the ability to make these payments directly to the client.

15. Current rules specify that the training plan must be terminated when it becomes apparent that a participant will not be able to complete the training program within training plan time limits. This has resulted in participants being terminated from training when the participant would have been able to complete training a few months after expiration of the time limit. The rules have now been revised to specify that the PROMISE JOBS worker may continue to provide services and pay expenses up to the 30- or 40-month limit, when the client will exceed the 30- or 40-month limit but will be able to complete the training program within six months of the expiration of the time limit.

16. Currently the ADC-UP community work experience program is at the bottom of the flow of PROMISE JOBS services. This has unintentionally resulted in hardship to county entities providing UP-CWEP services since it has greatly reduced the available participants for that component. The rules have been revised to move CWEP up in the flow of services to a position equal with other components. Regular ADC recipients will be placed in the work experience component. However, all ADC-UP recipients who need work experience training shall now be placed in CWEP. This change ensures that CWEP will be used as a training-oriented service and will also ensure that county agencies receive sufficient participants to continue to operate their CWEP programs. An additional change requires CWEP participants to make an active search for employment in the same manner as WEP participants.

17. Current rules are very specific about the flow of PROMISE JOBS services and require rereferral to job club after completion of any classroom training or work experience component. These rules have proven to be restrictive in that they prohibit JTPA staff from being able to place a client in multiple supportive components. For example, in some instances, it would be valuable if the worker had the ability to place a participant at a work experience site as a means of career exploration. If the work experience site was successful, the JTPA worker should have the ability to place the participant immediately into classroom training instead of having to refer the client back to job club. Similarly, in some instances it would be valuable if the JTPA worker had the ability to place a client at a work experience site following classroom training so that the client could gain further work experience to increase the client's opportunities of obtaining employment.

Accordingly, program rules are revised to give the JTPA PROMISE JOBS worker the ability to place the client in up to three consecutive components before referring the client back to DES for job club. Because of the importance of high school completion, English as a second language, and adult basic education, these components are not counted toward the three-component limit. The Department wants the JTPA worker to have the ability to take a client who has just completed a GED and channel that client immediately into additional employment goal activities.

18. Finally, in order to ensure that participants are not lost between components, or are not put indefinitely on waiting lists for components, the rules have been revised to specify that participants referred to JTPA must be placed in a component within 90 days of referral or be scheduled for an activity that has a definite beginning date later than the end of the 90 days. When a client has had no activity established within a 90-day period, JTPA and DES PROMISE JOBS staff shall meet to determine further activities for the participant.

19. In addition, current rules are revised to maintain eligibility for payment of child care costs to a member of the ADC eligible group participating in a Job Training Partnership Act (JTPA) training program who does not qualify for payment under either the PROMISE JOBS program or the ADC special needs classroom training program.

In the process of implementing federal regulations for March 1, 1990, rule changes, the Department learned that for a small group of recipients, there was a gap in child care coverage and the Department is in the process of challenging the federal government in order to provide continuing benefits to these families. Therefore, the March 1, 1990, rule changes were not implemented and this rule change reverts language to the language in effect prior to March 1, 1990, to bring the rule into compliance with actual practice.

These amendments exempt census income for the purpose of computing eligibility for the Aid to Dependent Children (ADC), Food Stamps, and Cash Bonus program and exempt ADC households from monthly reporting if the only reason the household would otherwise be subject to monthly reporting is census income. These amendments also provide Medicaid coverage for certain children whose income does not exceed 133 percent of the federal poverty level.

The Department of Human Services received an Action Transmittal from the United States Department of Health and Human Services and the Department of Agriculture allowing states to request a waiver to exclude as income any compensation received from the United States Department of Commerce resulting from employment in the 1990 Decennial Census.

The 1990 Decennial Census will be a short-term employment opportunity of from four to six weeks duration. The United States Department of Commerce has traditionally experienced a staff shortage during the census. Short-term employment can reduce or terminate Aid to Dependent Children (ADC) and Food Stamp benefits, making the acceptance of the employment an unattractive proposition for people who rely on ADC and Food Stamps for their support. In addition, short-term employment can create future ineligibility for the state's

Cash Bonus program which is limited to persons with no recent work history.

The Department decided to apply for the waiver to accomplish the following goals:

1. ADC and Food Stamp recipients will be more willing to accept census employment.

2. The Department of Commerce will have a larger pool of candidates for short-term employment.

3. ADC and Food Stamp recipients will gain work experience.

Therefore, these amendments exempt as income for ADC and food stamp purposes and for purposes of determining eligibility for the Cash Bonus Program any compensation received resulting from employment in the Census. Clarification is made that these provisions do not apply to ADC-related Medicaid only coverage groups.

The Omnibus Reconciliation Act of 1989, section 6401, mandates that states provide Medicaid coverage to children, up to the age of six, whose family income does not exceed 133 percent of the federal poverty level effective April 1, 1990. Currently states have the option of providing coverage to certain children if the family income does not exceed 100 percent of the federal poverty level. Iowa picked up this option and currently provides Medicaid for children born after September 30, 1983, who have not attained the age of eight, whose family income does not exceed 100 percent of the federal poverty level. This amendment provides coverage for those children up to the age of six whose family income does not exceed 133 percent of the federal poverty level in compliance with the federal law. Iowa will continue to provide coverage to six- and seven-year-olds, born after September 30, 1983, whose family income does not exceed 100 percent of the federal poverty level. The state can't go above 100 percent of the federal poverty level for this group with federal financial participation.

The Omnibus Reconciliation Act of 1989, Public Law 101-239, corrected a technical problem with the policy that was established by the Medicare Catastrophic Coverage Act of 1988 which provided a penalty for transfer of resources by persons within 30 months of applying for Medicaid to pay for nursing facility or Home and Community Based services. Current rules provide that the transfer penalty applies only to transfers by the institutionalized spouse. The original law did not penalize the institutionalized spouse when the community spouse transferred assets, although this was not the intent of Congress. Therefore, this change provides that neither the institutionalized spouse nor the community spouse may transfer assets without penalty. The hardship provision is expanded to apply to transfer by the community spouse as well as the institutionalized spouse.

The amendments on census income and Medicaid coverage for children were previously adopted and filed emergency and published in the March 7, 1990, Iowa Administrative Bulletin as **ARC 730A**. Notice of Intended Action to solicit comment on that submission was published in the Iowa Administrative Bulletin on March 7, 1990, as **ARC 731A**.

The Department received additional information from the United States Department of Agriculture and the Department of Health and Human Services in March 1990, regarding the ADC and food stamp waivers. This information relayed policy to exclude compensation received through employment with the 1990 Decennial Census from resource consideration for the length of the Census project for food stamp purposes and to exempt ADC households from monthly reporting if the only reason the households would otherwise be subject to monthly reporting is census income. Therefore, these amendments were revised to add amendments to subrule 40.7(1), paragraph "a," subparagraphs (1) and (2), and rule 441—65.30(234) to reflect the federal directives. These changes are beneficial to the clients involved.

The amendments on transfer of resources were previously filed without Notice and published in the March 7, 1990, Iowa Administrative Bulletin as **ARC 734A**. Notice of Intended Action to solicit comment on that submission was published in the Iowa Administrative Bulletin on March 7, 1990, as **ARC 729A**. These amendments are identical to those published under Notice of Intended Action.

The amendments on PROMISE JOBS revisions were revised as follows:

Subrule 93.10(1), introductory paragraph, was rewritten in response to comments to clarify that payment is to be made to the child care provider unless the participant documents payment for child care with personal funds or payment to the client is deemed appropriate by the PROMISE JOBS worker and approved by the central office of the PROMISE JOBS provider agency.

Subrule 93.14(11), paragraph "b," subparagraph (6), was revised by deleting the word "months" to eliminate a redundancy.

Rule 441—93.39(249C) was rewritten for brevity.

Rule 441—93.51(249C), introductory paragraph, was revised to identify three categories of PROMISE JOBS expense allowances to be used for purposes of overpayment recovery. This change was made to accommodate recovery procedures to the JOBS funding sources. It was further revised to correct the distribution of the Overpayment/Recoupment System Adjustment Letter, Form AA-1283-0, in response to comments.

Subrules 93.51(1) and 93.51(5) were revised for brevity.

These rules are intended to implement Iowa Code sections 234.12, 239.2, 239.5, 249A.4, and chapter 249C.

These rules shall become effective July 1, 1990.

The following amendments are adopted:

ITEM 1. Amend subrule **40.7(1)**, paragraph "a," subparagraphs (1) and (2), as follows:

(1) The assistance unit contains any member with earned income, including earnings in kind, unless the income is disregarded under 41.7(2)"e" *or the income is compensation resulting from employment in the 1990 Decennial Census.*

(2) The assistance unit contains any member with a recent work history. A recent work history means the person received earned income during either one of the two ~~(2)~~ calendar months immediately preceding the budget month, unless the income was subject to the disregard in 41.7(2)"e" *or the income is compensation resulting from employment in the 1990 Decennial Census.*

ITEM 2. Amend subrule 41.4(8) as follows:

41.4(8) Failure to participate by an exempt volunteer. If an exempt participant fails to participate without good cause, as described in rule 441—93.33(249C), after having completed an employability plan as specified at rule 441—93.9(249C), the volunteer shall be deactivated from the PROMISE JOBS program. An exempt volunteer is not subject to financial sanction. However, a volunteer who is deactivated from the program for failure to participate after completing an employability plan shall

not be eligible for priority program services as long as other clients are waiting for service. An exempt volunteer who either withdraws or who fails to participate before completion of an employability plan shall resume exempt status without penalty.

The exempt volunteer who fails to participate after having completed an employability plan is entitled to a conciliation period to identify and remove or resolve barriers to participation and to eliminate the need for loss of priority service as a volunteer. The intent of the conciliation period is to identify the steps that the client and the department will take to ensure successful participation.

a. When the PROMISE JOBS worker determines that an exempt volunteer has failed to participate without good cause after having completed an employability plan, the PROMISE JOBS unit shall send notification to the income maintenance (IM) unit. This notification shall include documentation of the participant's failure and the PROMISE JOBS worker's determination that good cause did not exist. Local department staff shall review the material to determine if the nonfinancial sanction of loss of priority service is applicable. If the local office disagrees with the PROMISE JOBS unit, the local office shall contact the PROMISE JOBS unit to resolve the issue. If the local office agrees with the PROMISE JOBS unit, the local office shall initiate a 30-day conciliation period by issuing the Notice of Potential Sanction—Exempt Volunteers, Form 470-2667, to the client. During this 30-day period, the client can present additional information to the local office to establish good cause or to identify barriers to participation. However, if the finding is that good cause does not exist, the nonfinancial sanction of loss of priority service shall be imposed unless the client cooperates with PROMISE JOBS during the conciliation period. The conciliation period begins the day following the day the Notice of Potential Sanction—Exempt Volunteers is issued.

b. If the client presents additional information which supports a good cause claim or which indicates a barrier to participation, IM staff shall review the claim or barrier with the PROMISE JOBS unit, with IM staff having the final decision. If good cause is not established or barriers to participation cannot be removed, IM staff shall notify the PROMISE JOBS unit to apply the loss of priority services sanction.

c. If, during the conciliation period, the client circumstances meet good cause criteria but they prevent participation in the near future, the client will be terminated from current services without penalty and the IM worker will change the referral code to exempt.

ITEM 3. Amend subrule **41.7(7)** by adding the following new paragraph:

aa. Any compensation received from the United States Department of Commerce resulting from employment in the 1990 Decennial Census.

ITEM 4. Amend subrule **41.8(3)**, paragraph "d," as follows:

d. Job Training Partnership Act. The cost of child care incurred by a member of the eligible group while participating in a training program administered by the Job Training Partnership Act ~~when the eligible group member is exempt from and has not volunteered for PROMISE JOBS, as described at rule 441—41.4(239), and~~ *that* does not qualify for *child care payment under the PROMISE JOBS program and* the ADC special needs classroom training program shall be allowed. The amount allowed shall be the amount authorized by the Job Training Partnership Act worker.

ITEM 5. Amend rule 441—65.29(234) by adding the following new subrule:

65.29(3) Exclusion of income from 1990 census employment. Any compensation received from the United States Department of Commerce resulting from employment in the 1990 Decennial Census shall be excluded from income.

ITEM 6. Amend rule 441—65.30(234) as follows:

441—65.30(234) Resources.

65.30(1) Jointly held resources. When property is jointly held it shall be assumed that each person owns an equal share unless the intent of the persons holding the property can be otherwise established.

65.30(2) Exclusion from resource limits. Any compensation received from the United States Department of Commerce resulting from employment in the 1990 Decennial Census shall be excluded from resources for the duration of the census project.

ITEM 7. Amend subrule **75.1(28)**, paragraph "a," as follows:

a. Family income shall not exceed 185 percent of the federal poverty level for pregnant women when establishing initial eligibility under these provisions and for infants *(under one year of age)* when establishing initial and ongoing eligibility. Family income shall not exceed ~~100~~ *133* percent of the federal poverty level for children *who have attained one year of age but who have not attained six years of age. Family income shall not exceed 100 percent of the federal poverty level for children who have attained six years of age but who have not attained eight years of age.* Income to be considered in determining eligibility for pregnant women, infants and children shall be determined according to aid to families with dependent children (ADC) program methodologies. Family income is the income remaining after appropriate disregards and deductions have been applied in accordance with subrule 75.13(1).

ITEM 8. Amend subrule 75.13(1) as follows:

75.13(1) ~~Eligibility for~~ ADC-related Medicaid *only eligibility* shall be determined using the income criteria in effect for the ADC program as provided in 441—Chapter 41; ~~The~~ *except the* earned income disregards as provided in subrule 41.7(2)"c"(1) to 41.7(2)"c"(3) shall not be allowed unless the person with the earned income received or was deemed to have received ADC in at least one of the previous four months *and the disregard of compensation received from the United States Department of Commerce resulting from employment in the 1990 Decennial Census as provided in subrule 41.7(7)"aa" shall not apply.*

Eligibility for ADC-related Medicaid shall be determined using the resource criteria in effect for the ADC program as provided in 441—Chapter 41, unless otherwise provided in this chapter, except that the nonhomestead real property exemption as provided in subrule 41.6(6)"d" does not apply.

ITEM 9. Amend rule 441—75.15(249A) as follows:

Amend the introductory paragraph as follows:

441—75.15(249A) Disposal of resources for less than fair market value *on or* after July 1, 1989, or *on or* after October 1, 1989, between spouses.

Amend subrule 75.15(1), introductory paragraph and paragraphs "a," "e," and "f," as follows:

75.15(1) In determining Medicaid eligibility for persons described in 441—Chapters 75, 83, and 86, transfers of resources occurring *on or* after October 1, 1989, between spouses and *on or* after July 1, 1989, to others, will affect Medicaid eligibility *as provided in this rule.* Resources transferred *by an institutionalized person or an institutionalized person's spouse* during or after the 30-month period ~~immediately~~ before the date the person ~~became an institutionalized person~~ *entered the medical institution* (for persons eligible for Medicaid on that date), or (for persons not eligible on that date), the date application is made while a person is ~~an institutionalized person~~ *residing in a medical institution,* shall disqualify the *institutionalized* person for nursing facility services and for a level of care in a medical institution equivalent to that of nursing facility services and for home- and community-based waiver services with these exceptions:

a. The transfer of resources was ~~to the community spouse~~ *between spouses* or to another for the sole benefit of the ~~community~~ *institutionalized person's* spouse *on or* after October 1, 1989.

e. The transfer of resources was to the *institutionalized* person's blind or disabled child as defined under Section 1614 of the Social Security Act.

f. The ~~person~~ *transferor* makes a satisfactory showing that ~~the person~~ *the transferor* intended to dispose of the resource either at fair market value or for other valuable consideration, or that the resource was transferred exclusively for ~~a~~ *another* purpose other than to ~~qualify~~ *establish eligibility* for Medicaid.

Further amend subrule **75.15(1)** by rescinding and reserving paragraph "b."

Amend subrule **75.15(3)**, paragraph "a," and paragraph "b," introductory paragraph, as follows:

a. The person who transferred the resource *or the person's spouse* has exhausted all means including legal remedies and consultation with an attorney to recover the resource.

b. The person's remaining available resources *(after the attribution for the community spouse)* are less than the monthly statewide average cost of nursing facility services to a private pay resident. The value of all resources is counted except for:

ITEM 10. Amend rule 441—92.3(249C) by adding the following new subrule:

92.3(3) Earnings from work performed for the United States Department of Commerce during the 1990 Decennial Census are not considered earned income for the purposes of the cash bonus program.

ITEM 11. Amend subrule 93.2(3) as follows:

93.2(3) The JTPA program is responsible for providing orientation, assessment, postsecondary classroom training services, work experience services, and JTPA-funded employment and training services. In addition JTPA is authorized to refer PROMISE JOBS participants to ABE, ESL or high school completion activities. ~~In areas not served by DES~~ *For clients remote from job club,* JTPA is authorized to provide ~~job club or~~ other employment-oriented services, *excluding job club.*

ITEM 12. Amend subrule 93.4(3) as follows:

93.4(3) Applicants for ADC assistance may volunteer for and are eligible to receive job placement services prior to approval of the ADC application. Applicants who participate in the program shall receive a transportation allowance ~~of $80~~, as well as payment of child care, if required. The transportation allowance shall be paid at the start of participation. The income maintenance worker shall not refer an applicant to the program when it appears that the applicant will be ineligible for ADC.

ITEM 13. Amend rule 441—93.6(249C) as follows:

441—93.6(249C) Registrant assessment. Every registrant who is called up shall be assessed to determine employability potential and to determine services which may be needed to facilitate employment. Every registrant shall complete Form WI-2101, Self-Assessment, to provide a social and vocational profile and shall sign Form WI-3305, Your Rights and Responsibilities, acknowledging that a complete explanation of the PROMISE JOBS program has been provided. *Every registrant shall receive, at the time of assessment, an explanation of the other programs available through PROMISE, specifically the cash bonus, extended Medicaid, and transitional child care assistance programs.* Registrants are required to complete a current employment services registration, Form 62-2019, Application Card, *when requested by PROMISE JOBS staff.* Participants who are referred to the Job Training Partnership Act program after completing job club and a 30-day period of suspension or career exploration activities shall be reassessed by JTPA. Assessment shall be an ongoing process for the duration of a client's participation in the program.

ITEM 14. Amend rule 441—93.9(249C) as follows:

441—93.9(249C) Employability plan. Prior to active participation, a case plan shall be developed for each registrant using Form WI-3304, Employability Plan. The employability plan must be signed by the registrant, workers, and the project supervisors before the registrant can become an active participant. *For purposes of exemption from ADC-UP active job search requirements, participation in PROMISE JOBS is considered to occur when the registrant attends orientation and assessment.* The employability plan shall, to the maximum extent possible, reflect the goals of the registrant, subject to program rules, funding, and the potential market for the job skills currently possessed or to be developed. The employability plan shall also describe services to be provided, including child care and other supportive services, and the activities that will be undertaken by the participant to achieve the employment goal, *including vocational classroom training activities when appropriate.* Development of the employability plan is an ongoing process. The employability plan shall be revised when need is shown by the reassessment process.

ITEM 15. Amend rule 441—93.10(249C) as follows:

Amend the introductory paragraph as follows:

441—93.10(249C) Arranging for services. Staff is responsible for providing or arranging for employment-oriented services, as required, to facilitate the registrants' successful participation, including client assessment or case management, employment education, transportation, child care, referral for medical examination, and supportive services under the family development and self-sufficiency program described in 441—Chapter 165. PROMISE JOBS funds shall be used to pay costs of obtaining a birth certificate when the birth certificate is needed in order for the registrant

to complete the employment service registration process described in rule 441—93.6(249C). PROMISE JOBS funds may also be used to pay expenses for clients enrolled in JTPA-funded components when those expenses are allowable under these rules. *Clients shall submit Form PA-8121-5, Estimate of Cost, to initiate allowances or change the amount of payment.*

Amend subrule 93.10(1) as follows:

93.10(1) Payment for child care, if required for participation in PROMISE JOBS, shall be provided for ~~PROMISE JOBS~~ participants after service has been received. By July 1, 1991, participants shall be required to use licensed or registered child care facilities. ~~Rate of payment shall not exceed the going rate in the community.~~ Payment shall be made monthly unless the child care provider requires more frequent payment. *The* PROMISE JOBS *worker* ~~is authorized to provide child care~~ *shall make* payment ~~to the client or make payment~~ *directly* to the child care provider *unless circumstances indicate that payment should be issued to the participant. These circumstances include reimbursement for the participant who documents payment for child care with personal funds and other circumstances as deemed appropriate by the PROMISE JOBS worker and approved by the central office of the PROMISE JOBS provider agency.*

a. Rate of payment shall be based on the 75th percentile cost of comparable types of child care in the local area.

b. Local market rates shall be determined based on representative samples of child care costs for all political subdivisions or for alternate areas which represent reasonable child care markets based upon their geographic proximity or common characteristics. Local market rates shall be determined using the following considerations:

(1) Separate market rates shall be determined for center care, group family care, family day care, and in-home care.

(2) Local market rates shall differentiate among care for children with special needs, infants, toddlers, preschool and school-age children, where applicable.

(3) Local market rates shall differentiate between full-time and part-time care, if applicable.

(4) Local market rates shall consider reductions in the cost of care for additional children in the same family.

c. Where there are only one or two providers of a type of care in a local market area, the rate of payment may be set at the 100th percentile cost.

d. If state-only funding is made available, the rate of payment may exceed the 75th percentile of costs but shall not exceed the going rate in the community.

Add the following new subrules:

93.10(6) Participants may receive a transportation allowance for each PROMISE JOBS activity except orientation and assessment. This allowance shall be paid monthly at the start of each month of participation or when participation begins, whichever is earlier. This allowance shall be based on the normally scheduled days of participation per week for the PROMISE JOBS activity.

a. A monthly allowance shall be paid for each full calendar month of participation. Participants normally scheduled for an activity one day per week shall receive a monthly allowance of $17; participants scheduled for two days per week shall receive a monthly allowance of $34; participants scheduled for three days per week shall receive a monthly allowance of $52; participants scheduled for four days per week shall receive a monthly allowance of $69; and participants scheduled for five days per week shall receive a monthly allowance of $80.

b. When the duration of the activity is less than one calendar month, or when the normally scheduled days of the activity occur at the beginning or at the end of a month, the allowance for those months shall be prorated on a schedule which uses the number of weeks or partial weeks in the period which is less than a calendar month times the number of normally scheduled days of participation per week times $4.

		Normally Scheduled Days of Participation Per Week				
		1	2	3	4	5
Number of weeks or partial weeks in period less than a calendar month	1	$ 4	$ 8	$12	$16	$20
	2	$ 8	$16	$24	$32	$40
	3	$12	$24	$36	$48	$60
	4	$16	$32	$48	$64	$80

c. Persons who require, due to a mental or physical disability, a mode of transportation other than a vehicle they operate themselves shall be eligible for payment of a supplemental monthly transportation allowance when documented actual transportation costs are greater than transportation allowances provided under these rules and transportation is not available from a nonreimbursable source. Costs of transportation by a public or private agency shall be allowed for the actual costs. Costs of transportation provided by private automobile shall be allowed for the actual charge up to a maximum of the rate per mile payable to state employees for official travel in the state of Iowa times the number of round-trip miles from the client's home to the child care provider, if necessary, and to the PROMISE JOBS site or activity.

(1) Medical evidence of disability or incapacity may be obtained from either an independent physician or psychologist or the state rehabilitation agency in the same manner specified in 41.1(5)"c."

(2) The client's need for a mode of transportation other than a vehicle operated by the client due to disability or incapacity shall be verified by either an independent physician or psychologist or the state rehabilitation agency.

d. In those instances where a PROMISE JOBS participant is enrolled in high school, a transportation allowance shall not be allowed if transportation is available from a nonreimbursable source such as when transportation is provided by the school district, or the school district has deemed it unnecessary due to the proximity of the participant's home to the school. If child care needs make it impossible for the participant to use transportation provided by the school district, a transportation allowance shall be authorized.

93.10(7) Payment for expenses shall be made for a month of ADC suspension if the client chooses to participate during that month in a PROMISE JOBS component to which the client has been previously assigned.

93.10(8) Payment for transportation shall be considered an overpayment subject to recovery in accordance with rule 441—93.51(249C) when the participant fails to attend the activity for 75 percent of the normally scheduled days of participation. In those instances where

the participant fails to attend 75 percent of the normally scheduled days, the amount to recover shall be the difference between the amount for the actual number of days attended and the amount for 75 percent of scheduled days.

ITEM 16. Amend rule 441—93.11(249C) as follows:

Amend the introductory paragraph as follows:

441—93.11(249C) Assignment to components. PROMISE JOBS components include job club, classroom training, work experience, and community work experience. ~~In addition, clients~~ *Clients* who ~~remain unemployed~~ *are unable to secure employment of at least 86 hours per month* after completing job club and a 30-day suspension period shall be referred to JTPA for reassessment and the determination of further PROMISE JOBS services. In addition, these clients may volunteer to participate in JTPA-funded services in order to meet participation requirements. Participants who refuse to participate in JTPA-funded services, other than on-the-job training, shall not be sanctioned. *Clients who obtain employment of 86 or more hours but less than 129 hours per month are not required to participate but may do so at their option.*

Amend subrules 93.11(1), 93.11(2), and 93.11(7) as follows:

93.11(1) Participants shall first be assigned to job club, *as described at rule 441—93.12(249C),* prior to participation in other service components unless it is determined that the participant should be referred to adult basic education, high school completion activities, or English as a second language classes; or is a parent under age 20 who has not completed high school or GED; or is enrolled in self-initiated classroom training at the time of job club call-up; or the start of a classroom training program would be delayed more than six months as a result of first being required to participate in ~~job club~~ *the one week of job-seeking skills training.* In addition, staff are authorized to waive the requirements for clients who have completed other job clubs within the past six months which have curriculum and participation requirements similar to the PROMISE JOBS program.

93.11(2) ~~In areas where job club is not available from DES or is not offered, by JTPA,~~ PROMISE JOBS participants *who are remote from job club* shall be provided the option of first engaging in self-directed job search activities before being assigned to other activities. Participants who opt for a self-directed job search shall be allowed 30 days to engage in this activity. During this time, participants shall not receive allowances for child care or transportation. This option does not apply to parents under age 20 who are required to participate in high school completion activities.

93.11(7) Participants assigned to postsecondary classroom training programs or JTPA on-the-job training who are unable to secure employment of at least 86 hours per month within ~~60 days~~ *the 30-day suspension period* after the training is completed shall be assigned to job club. *Participants may choose to be immediately referred to job club when training is completed. Participants who obtain employment of 86 or more hours but less than 129 hours per month may be referred to job club at their option.* Persons who drop out of training shall be immediately referred to other PROMISE JOBS activities.

Rescind subrule **93.11(12)**, renumber subrule 93.11(11) as subrule 93.11(12), and add the following new subrule 93.11(11):

93.11(11) Participants who are referred to DES after completing one or more components of classroom training or a work experience program or, for unemployed parents, a community work experience program shall not be eligible to have participation waived for job-seeking skills training and group job search.

Add the following new subrule:

93.11(14) Participants who complete any PROMISE JOBS component shall have a 30-day suspension period before referral to another PROMISE JOBS agency or placement in another component unless the suspension period is waived under these rules, or the client requests immediate referral to another PROMISE JOBS agency or placement in another component, or the client agrees to immediate placement in a component already indicated on the employability plan.

ITEM 17. Amend rule 441—93.12(249C) as follows:

Amend subrule **93.12(2)**, paragraph "a," as follows:

a. Participants assigned to job club shall receive a child care allowance, if required, and an allowance ~~of $80~~ to cover costs of transportation. This transportation allowance will be paid in full at the start of participation. Job club participants who are required to repeat job-seeking skills training because of absence with good cause as defined elsewhere in these rules shall receive an additional allowance of $4 per day for each training day the participant is required to repeat. This allowance is to compensate for funds expended from the participant's original allowance. Required child care payment shall be allowed.

Amend subrule 93.12(4) as follows:

93.12(4) PROMISE JOBS is authorized to substitute the standard job club with other specialized job club or job search activities which staff deem more appropriate to individual client need. ~~In rural areas~~ *For clients remote from job club,* staff are authorized to substitute other employment-oriented activities, such as information and referral *and individual job search.*

ITEM 18. Amend rule 441—93.13(249C) as follows:

441—93.13(249C) Thirty-day suspension. Clients who ~~remain unemployed~~ *are unable to secure employment of at least 86 hours per month* after completing the three-week employment search portion of job club shall have formal PROMISE JOBS services suspended for 30 days prior to referral to JTPA. ~~However, this suspension period shall be waived for clients who are to be referred for classroom training services if it would interfere with their ability to begin classes.~~ Clients placed in suspension shall be considered active job club participants. During the 30-day suspension, clients shall not receive allowances for transportation or child care. Staff shall encourage but not require clients who are in suspension to continue job search activities.

ITEM 19. Amend rule 441—93.14(249C) as follows:

Amend subrule 93.14(1) as follows:

93.14(1) Classroom training means any academic or vocational training course of study which enables a participant to complete high school, improve one's ability to read and speak English, or prepares the individual for a specific professional or vocational area of employment. A training plan must include occupational evaluation and assessment. ~~The plan shall be approved only for training facilities which are approved or registered with the state or accredited by an appropriate accrediting agency.~~

a. The plan shall be approved for training facilities which are approved or registered with the state or accredited by an appropriate accrediting agency.

b. In addition, PROMISE JOBS workers may approve training from community action program agencies, churches, or other agencies providing training, if in the worker's judgment, the training is adequate and leads to the completion of the goal outlined in the employability plan.

c. Training from a particular training facility, community action program agency, church or other agency shall be approved when the worker determines that the training provider possesses appropriate and up-to-date equipment, has qualified instructors, adequate facilities, a complete curriculum, acceptable grade point requirements, a good job-placement history and demonstrates expenses of training that are reasonable and comparable to the costs of similar programs.

Rescind subrule 93.14(3) and insert the following in lieu thereof:

93.14(3) Participants are expected to maintain a full-time workload and to complete training within the time frames specified for a given training program as established by the training facility. However, the client shall be allowed to maintain less than a full-time workload provided that the months required to complete the training plan would not exceed 30 months for two-year degree programs and other vocational programs or 40 months for three- or four-year degree programs. Months spent in ABE, GED, or ESL programs do not count toward this 30- or 40-month limit.

Rescind subrule 93.14(8) and renumber subrules 93.14(5), 93.14(6), 93.14(7), and 93.14(9) as 93.14(8), 93.14(9), 93.14(10), and 93.14(11), respectively.

Add the following new subrules:

93.14(5) Clients who have not completed a high school education may be required to do so before other vocational training courses may be arranged. GED or high school training courses and vocational training may run concurrently. Unless under the age of 18, clients may be approved to return to regular high school only when they can graduate within one year of their normal graduation date.

93.14(6) Prior to plan approval and as part of the client assessment process, staff may require that clients take nationally recognized vocational tests, including the general aptitude test battery, as well as provide grade transcripts from previous training.

93.14(7) Prior to plan approval for a client requesting GED, adult basic education, or English as a second language training, testing shall be conducted, when available, to determine a projected length of time for which the plan shall be approved. In regard to GED testing, transportation and child care expenses shall be allowed if required in order for the client to participate.

Amend renumbered subrules 93.14(8), 93.14(9), and 93.14(10) as follows:

93.14(8) Clients shall maintain ~~a~~ *the* minimum ~~"C"~~ cumulative grade point average ~~or the minimum grade point average~~ required by the training facility which the client attends~~, whichever is higher~~. *If at the end of any term, a client's cumulative grade point average drops to less than that required by the training facility, the client shall be placed on probation for the next term when the counselor or the lead instructor in the educational program verifies in writing that the student's capability to complete the program has been demonstrated through regular class participation, practical application of course content, or successful work in other courses so that there is an excellent likelihood the student will raise the grade point to the acceptable level in the next semester, that the student will be able to raise the grade point average to the acceptable level through successful completion of the remaining course work and tests, and that the student can still be expected to complete the program satisfactorily within the 30- or 40-month period required by subrule 93.14(3).* This rule does not apply to parents under the age of 18 who are attending high school completion programs.

93.14(9) Clients ~~shall maintain a minimum of 15 credit hours per semester or equivalent~~ *are expected to maintain a full-time workload as defined by the training facility* unless the department or designee has given ~~prior~~ approval to carry fewer hours in accordance with other requirements of these rules, for example, subrule 93.14(3).

93.14(10) In order to have a plan approved, clients have the following responsibilities:

a. Clients shall ~~complete Form 470-2570, Application for Classroom Training Services, and return it to~~ *notify JTPA* PROMISE JOBS staff~~:~~ *of a desire for classroom training* ~~The application must be received by PROMISE JOBS~~ at least three weeks prior to the start of course work but not sooner than 180 days prior to the start of course work. *When a participant who is working with DES PROMISE JOBS workers expresses a desire for classroom training, the three-week period begins with the date the DES PROMISE JOBS worker contacts the JTPA unit.* These time frames do not apply to persons in self-initiated training as described in rule 441—93.8(249C), or to persons who are required to participate in high school activities. When the course work is participation in the SEID project as described in 441—Chapter 48, clients are only required to apply for classroom training services prior to Workshop II of the SEID project to be eligible for full supportive services. Those who apply later would be considered self-initiated training participants. ~~This three-week application time frame shall not become effective until October 1, 1989; however, clients must still apply prior to the start of classes.~~

b. A client must provide all information required to ~~complete the Form WI 3301-0; PROMISE JOBS Classroom Training Plan~~ *approve an Employability Plan, Form WI-3304-0, for vocational classroom training.*

c. Prior to plan approval, and for each academic year of participation, clients shall apply for and accept all available educational financial awards for which they are eligible, including grants and scholarships, but excluding educational loans which require repayment. Training allowances will be authorized to permit enrollment and attendance prior to receipt of educational awards. Otherwise, training allowances shall be authorized only when all educational awards received by the client have been used or allocated, on a month-by-month basis, for allowable training costs in the following payment order: tuition, fees, books, *basic school supplies, specific* supplies (including tools) *related to obtaining credit for a course and required of all students in a course,* child care and transportation, and travel costs required for certification or testing. Use of educational awards to pay tuition shall be limited to the actual cost of tuition. Use of awards to pay fees, books, supplies and child care shall be limited to that amount that otherwise would be paid by the program. *Use of awards to pay for basic school supplies shall be limited*

to the standard $10 allowance described at subrule 93.15(1) or the actual cost, whichever is higher. Actual costs which are claimed in excess of the standard $10 deduction shall be verified by receipts. Use of awards to pay transportation or travel costs for certification or testing shall be limited to the amount normally paid by PROMISE JOBS, or, if the client uses public transportation, the actual cost of public transportation by bus, or, if the client travels by automobile, the actual miles traveled based on the current state employee mileage reimbursement rate, whichever is higher.

Amend renumbered subrule **93.14(11)**, paragraph "a," as follows:

a. Training plans shall include a specific goal, that is, high school completion, improved English skills, development of specific academic or vocational skills, completion of which shall not exceed a maximum of 24 months of participation to complete high school, GED, or adult basic education, a maximum of 12 months to complete English as a second language classes, *a maximum of 30 months to complete two-year programs leading to an associate degree or vocational programs which do not lead to a degree,* and a maximum of 40 months to complete ~~all other training programs~~ *three- or four-year programs leading to a baccalaureate degree.* Up to an additional 12 months of ESL training may be allowed when need is determined by PROMISE JOBS staff. If the client is under the age of 18, the 24-month maximum to complete high school activities does not apply. Month of participation is defined as a ~~calendar~~ *fiscal* month or part thereof starting with the month PROMISE JOBS classroom training services begin ~~and during which the client either receives PROMISE JOBS financial assistance or uses PROMISE JOBS required financial allowances~~. *A fiscal month shall generally have starting and ending dates falling within two calendar months but shall only count as one month of participation.* Months of participation need not be consecutive.

Further amend renumbered subrule **93.14(11)**, paragraph "b," subparagraph (5), as follows:

(5) Continuing advanced training in the same vocational area, providing this training combined with previously completed training under this program does not exceed *30 fiscal months for two-year programs leading to an associate of arts degree or vocational programs which do not lead to a degree or* 40 ~~calendar~~ *fiscal* months *for three- or four-year programs leading to a baccalaureate degree.* ~~Clients who complete PROMISE JOBS-funded training will be considered for training in a different vocational area only when a minimum of one year has elapsed since training was completed and labor market statistics document that employment is not available in the field in which original training was sponsored.~~

Further amend renumbered subrule **93.14(11)**, paragraph "b," by renumbering subparagraphs (6), (7), (8), (9), and (10) to (7), (8), (9), (10), and (11), respectively, and adding the following new subparagraph:

(6) Clients who complete a PROMISE JOBS-funded training program or who participate in PROMISE JOBS-funded training for 30 or 40 months without completing the training program shall be considered for a new 30- or 40-month period of training in a different vocational area only when a minimum of five years has elapsed since training was completed or the 30- or 40-month period ended, unless labor market statistics document that employment is not available in the field in which the original training was received or the client has been unable to find employment in that field, despite a good faith effort, within two years of completing the training program or within two years of the end of the 30- or 40-month period. Clients who drop out of a training program within the 30- or 40-month period and later reapply for classroom training shall be entitled only to any remaining months in the original 30- or 40-month period.

Further amend renumbered subrule **93.14(11)**, paragraph "c," subparagraph (8), as follows:

(8) The client was previously unable to maintain ~~a~~ *the* cumulative ~~C~~ grade point average *required by the training facility* in the same training for which application is now being made. This rule does not apply to parents under the age of 18 who are enrolled in high school completion activities.

ITEM 20. Amend rule 441—93.15(249C) as follows:

Amend the introductory paragraph as follows:

441—93.15(249C) Participation allowances. An allowance shall be made for expenses of training. This shall include tuition, fees including graduation, books, *basic school supplies, specific school supplies related to obtaining credit for a course and required of all students in a course,* GED testing and certificates, required uniforms and other fees required for completion of training, child care, transportation and travel costs required for certification or testing. In addition, allowances shall be made for enrollment, school testing or school application fees, ~~and~~ educational grant or scholarship application fees, *and certain practicum expenses as described in subrule 93.15(1), paragraph "d." PROMISE JOBS is authorized to provide payment for expenses allowable under these rules to the training facility for the educational expenses of tuition and fees and books and supplies which are provided by the facility and billed to the PROMISE JOBS participant. Payment may also be made to the client in those situations where this is determined to be appropriate by the PROMISE JOBS worker.*

Rescind subrule **93.15(1)**, paragraphs "c" and "d," and insert the following in lieu thereof:

c. A standard allowance of $10 per term or actual cost, whichever is higher, for basic school supplies shall be allowed for those participants who request it and who do not have sufficient educational financial awards to cover purchase of basic supplies or who must purchase basic school supplies before educational awards are received or are made available. A claim for actual costs higher than $10 must be verified by receipts.

d. A per diem allowance of $10 for living costs during a practicum shall be allowed when the practicum is required by the curriculum of the training facility, would require a round-trip commuting time of three hours or more per day, and is not available closer to the client's home. If practicum earnings or any nonreimbursable assistance is available to meet practicum living costs, no allowance shall be made.

Amend subrule **95.15(1)**, paragraph "e," as follows:

e. ~~In addition to the transportation allowances specified in paragraphs "c" and "d" above, allowances~~ *Allowances* may also be authorized to meet the costs of travel required for certification and testing, not to exceed the current state employee reimbursement rate for mileage, meals, and lodging.

Amend subrules 93.15(2) and 93.15(3) as follows:

93.15(2) ~~PROMISE JOBS training allowances for expenses other than child care are paid directly to the client. PROMISE JOBS is authorized to provide child care payment to the client or make payment to the child care provider.~~ Clients shall submit Form PA-8121-5, Estimate of Cost, to initiate allowances or change the amount of payment. Clients shall use PROMISE JOBS allowances which they receive to pay authorized expenses.

93.15(3) Clients shall furnish receipts for expenditures which they pay, except for transportation allowances *and items purchased with the $10 standard allowance for basic school supplies unless issued in accordance with subrule 93.15(1), paragraph "c,"* within ten days of receipt of allowances. Failure to provide receipts will preclude additional payments. *Receipts may be requested for allowances paid directly to the provider if the PROMISE JOBS worker determines it is appropriate.*

ITEM 21. Rescind and reserve subrule **93.19(7)**.

ITEM 22. Amend rule 441—93.20(249C) as follows:

Rescind and reserve subrule **93.20(4)**, paragraph "b."

Amend subrule **93.20(4)**, paragraph "c," as follows:

c. The client, ~~from the time training plan services begin~~ *after a school term of probation as described in subrule 93.14(8),* is unable to ~~maintain a minimum cumulative G grade point or~~ *achieve* the cumulative grade point average required by the training facility~~, whichever is higher~~. This rule does not apply to parents under the age of 18 who are enrolled in high school completion activities.

Renumber subrules **93.20(6)** and **93.20(7)** as **93.20(7)** and **93.20(8)**, respectively, and add the following new subrule:

93.20(6) When it becomes apparent that the participant cannot complete the training plan within the 30- or 40-month period, as described at subrule 93.14(3), the PROMISE JOBS worker shall determine whether termination of the training plan is appropriate.

a. When the client cannot complete the training plan within the 30- or 40-month period, the worker shall continue the plan, and pay expenses if appropriate, up to the limit of 30 or 40 months when the counselor or lead instructor in the educational program verifies in writing that the student's progress or achievement meets the grade-point requirement, and the student's interest and participation indicate there is likelihood of successful completion of the program, and the remaining course work could be completed within the additional six-month period of time. In addition, the student must be able to demonstrate access to financial resources which will enable completion of the program during the additional six months.

b. In addition, when it is determined that the participant can complete the training plan within six months after the expiration of the 30- or 40-month limit, the worker shall waive participation in other components after the end of the 30- or 40-month period as long as the participant is attending the training facility.

c. The PROMISE JOBS worker shall terminate the training plan at the point in time when it becomes obvious that the participant cannot complete the training plan within six months after expiration of the 30- or 40-month period.

Amend renumbered subrule 93.20(7) as follows:

93.20(7) ~~When~~ *Unless the participant will be subject to the conciliation process described at subrules 41.4(7) and 41.4(8), when* the PROMISE JOBS worker issues a Notice of Decision-Services, Form SS-1104-0, to terminate the training plan, the participant has 30 days from the date of the notice to discuss the situation with the PROMISE JOBS worker and attempt to resolve the issue causing termination. If the issue can be resolved, the PROMISE JOBS worker shall reinstate the training plan. This rule in no way affects the participant's ability to appeal the Notice of Decision-Services in accordance with rule 441—93.40(249C).

ITEM 23. Amend rule 441—93.21(249C) as follows:

Amend subrule 93.21(1), introductory sentence, as follows:

93.21(1) ~~Participants~~ *A participant who is not a qualifying parent on an ADC-UP case* shall be assigned to work experience work sites as follows:

Amend subrule **93.21(1)**, paragraphs "b" and "d," as follows:

b. Hours of required work experience participation shall be reduced by the number of hours employed. ~~If hours of employment equal 86 or more hours per month, work experience participation shall not be required.~~

d. Work experience assignments shall not exceed six months in duration. Participants who are assigned to work experience may be reassigned to another component to facilitate regular employment before completing six months when it is felt that sufficient work experience has been gained. Persons who complete six months of work experience participation shall be reassigned to other activities which will facilitate their entry into regular jobs, *as described in subrule 93.41(3).*

Rescind and reserve subrule **93.21(1)**, paragraphs "f" and "g."

Amend subrule 93.21(9) as follows:

93.21(9) Participants assigned to work experience shall receive a child care allowance, if required, and ~~an~~ *a transportation* allowance ~~of $69 per~~ *for each* month or part thereof ~~to cover costs of transportation~~ *as described at subrule 93.10(6).* ~~Participants who are assigned to work sites for two days per week shall receive a monthly allowance of $52; those assigned to work sites one day per week shall receive a monthly allowance of $34. This allowance is paid in full each month at the start and for each month of participation.~~

ITEM 24. Amend rule 441—93.23(249C) as follows:

441—93.23(249C) Participation required. All principal wage earners in unemployed parent cases shall be required to participate in UP-CWEP if they ~~remain unemployed~~ *are unable to secure employment of 86 or more hours per month* after participating in job club and other PROMISE JOBS activities *and it is determined that a work-experience activity is appropriate. Principal wage earners shall be placed in the UP-CWEP instead of the work experience program described at rule 441—93.21(249C).*

ITEM 25. Amend rule 441—93.25(249C) as follows:

Amend subrule 93.25(2) as follows:

93.25(2) The department shall determine maximum weekly hours of participation *in community work experience* by subtracting from the ADC grant amount

any special need allowances and nonexempt child support paid on the current month's obligation and dividing the remainder by the prevailing state or federal minimum wage, ~~(whichever is higher)~~. The balance obtained is then divided by 4.3 with the resulting number rounded down to the nearest whole number. *In addition to community work experience, participants shall also be required to engage in job-seeking activities one day per week unless they are also participating in classroom training activities.*

a. Job-seeking activities for community work experience participants shall include contacting a minimum of five employers per week unless fewer are specified by staff. A participant shall provide written documentation of employer contacts made. Documentation shall be provided within five working days after the last working day of the week during which the participant was required to make the employer contacts. Written documentation shall include the name and address of the employer, the date on which contact was made, and the outcome of the contact.

b. The participant shall provide written documentation of the job search to either the JTPA PROMISE JOBS office or to the county agency other than JTPA, depending on which agency is providing UP-CWEP placement services for that county. When a county agency other than JTPA is responsible for obtaining this documentation, the county agency shall forward the documentation to the JTPA PROMISE JOBS office.

Amend subrule 93.25(3) as follows:

93.25(3) The participant shall be issued a child care allowance, if required, and ~~an~~ *a transportation* allowance ~~of $25 per~~ *for each* month or part thereof as ~~compensation for transportation expenses incurred~~ *described at subrule 93.10(6).* ~~This allowance shall be paid monthly, at the start of each month of participation. In addition, each participant whose documented transportation expenses exceed $25 shall receive a supplemental monthly transportation allowance based on the transportation expenses of:~~

~~a. Actual cost of public transportation by bus or a per mile allowance based on the current rate paid to state employees for miles the participant drives between home and the work site and~~

~~b. Actual parking fees.~~

ITEM 26. Rescind and reserve subrule **93.27(1)**, paragraph "f," and amend paragraph "h," as follows:

h. Primary wage earners shall be assigned to work sites according to when Form PA-2374-5, UP-CWEP Referral, is received by the provider agency. The provider agency shall maintain a chronological list of referrals according to the date of referral. The names of persons referred on the same day shall be placed on the list in alphabetical order by last name. When an available work site is not suitable for the referral at the top of the list, the provider agency shall review other referrals in listed order until an appropriate referral is found. *In accordance with subrule 93.41(3), persons remaining on a waiting list more than 90 days must be considered for referral to other PROMISE JOBS services.*

ITEM 27. Amend rule 441—93.28(249C) as follows:

441—93.28(249C) UP-CWEP relationship with job search activities. While each program participant is actively and earnestly searching for work, ~~the participant shall not be considered to be participating in UP-CWEP and a~~ *the* provider agency shall bear no liability or responsibility to a program participant or for the participant's actions while engaged in the search for work.

ITEM 28. Amend rule 441—93.29(249C) as follows:

441—93.29(249C) Sanctions for volunteers. Volunteer clients who refuse to participate after completion of an employability plan shall be deactivated from the PROMISE JOBS program *after completion of the conciliation process described at subrule 41.4(8).* Volunteers are not subject to financial sanctions. Volunteer participants who fail to participate shall be placed on probation in the same manner as mandatory participants in accordance with rule 441—93.32(249C). A volunteer who is deactivated from the program for failure to participate shall not be eligible for priority program services as long as other clients are waiting for services.

ITEM 29. Amend subrule 93.33(4) as follows:

93.33(4) There may be instances where staff determine that a client's nonparticipation has resulted from circumstances not covered by these "good cause" rules, but which may constitute good cause since forced participation could negatively impact the client's achievement of self-sufficiency. When this occurs, the case shall be referred to the ~~chief~~ *administrator* of the ~~bureau~~ *division* of economic assistance for a determination as to whether good cause can be granted.

ITEM 30. Amend rule 441—93.39(249C) as follows:

441—93.39(249C) Notice of decision. PROMISE JOBS will send written notice to each client in accordance with 441—Chapter 7 when:

1. Services are approved, rejected, ~~or~~ renewed~~.~~,

~~2. Services are~~ changed~~.~~,

~~3. Services are~~ canceled~~.~~, *or*

~~4. Services are~~ terminated for failure to cooperate or participate.

2. An expense allowance is offset or the offset amount is changed due to action to recover an overpayment.

ITEM 31. Amend rule 441—93.41(249C) as follows:

Amend subrule **93.41(1)**, paragraph "b," as follows:

b. The participant is involved in an educational or training activity which, although it is not considered approvable training for PROMISE JOBS, can reasonably be expected to result in self-sufficiency. Examples include part-time training, ~~and~~ work toward a graduate degree, *and when participation in other components is waived in accordance with subrule 93.20(6).*

Amend subrule 93.41(3), introductory paragraph, as follows:

93.41(3) ~~Recycling.~~ *At the discretion of the JTPA PROMISE JOBS worker, a participant may enter and complete up to three components administered by JTPA before being referred again to DES for job club. No more than two of those three components shall be work experience program placements or, for unemployed parents, community work experience program placements. High school completion, English as a second language, GED, adult basic education plans, and on-the-job training are not considered as component placements for the purpose of this subrule.*

Rescind subrule **93.41(3)**, paragraphs "a" and "b," and insert the following in lieu thereof:

a. If an on-the-job training placement is available within 30 days of completing a component which would normally lead to referral to DES for job-seeking skills training and group job search, a referral shall not be made.

b. Participants referred to JTPA shall be placed in a JTPA-managed PROMISE JOBS activity within 90 days of their referral to JTPA or shall be scheduled for an activity which has a definite beginning date later than the end of the 90-day period. If the client has had no activity established within the 90-day period, the JTPA and DES PROMISE JOBS staff shall make a joint decision on what action is appropriate, such as, but not limited to, deactivation or referral to DES for job club.

Reletter subrule **93.41(3)**, paragraph "c," as paragraph "d," and add the following new paragraph:

c. When a client has participated in three job clubs without finding employment, the participant shall be deactivated at the end of the 30-day suspension period following completion of the third job club.

Amend subrule **93.41(3)**, relettered paragraph "d," as follows:

d. Staff is authorized to ~~return~~ *deactivate* participants ~~to inactive status~~ when they determine that additional PROMISE JOBS services are not required, are not available, or are not suitable to the needs of the individual.

ITEM 32. Rescind rule 441—93.51(249C) and insert the following in lieu thereof:

441—93.51(249C) Recovery of PROMISE JOBS expense allowances. When a participant or a provider receives an expense allowance greater than allowed under these rules or a duplicate payment, an overpayment is considered to have occurred and recovery is required. The PROMISE JOBS worker shall prepare Overpayment/Recoupment Information Input, Form PA-2228-0, to record the overpayment in the Overpayment/Recoupment System of the Iowa department of inspections and appeals (DIA). The outstanding balance of any overpayments which occurred prior to July 1, 1990, shall be treated in the same manner. An overpayment shall be recovered through repayment in part or in full, or through offsetting against future payments in the same category. Underpayments and overpayments may be offset against each other in correcting incorrect payments in the same category. There are three categories of PROMISE JOBS expense allowances, based on the source of federal funding. The first category is child care. The second category is transportation. The third category is all other supportive expense allowances. Repayments received by the PROMISE JOBS unit and recoveries made through offsetting shall be transmitted to the Department of Human Services, Cashier's Office, on the Overpayment/Recoupment System Adjustment Letter, Form AA-1283-0.

93.51(1) The PROMISE JOBS worker shall promptly notify the client or the provider of the amount or causes of the overpayment, the date the overpayment was received, and appeal rights using the Notice of Overpayment—PROMISE JOBS Expense Allowances, Form 470-2666. The client or provider has 30 days to appeal the Notice of Overpayment—PROMISE JOBS Expense Allowances. However, the existence and amount of the overpayment must be appealed within 30 days of the issuance of the Notice of Overpayment—PROMISE JOBS Expense Allowances. Submittal of Overpayment—Recoupment Information Input, Form PA-2228-0, or actual offsetting in the PROMISE JOBS office cannot begin until after the end of the 30-day appeal period which begins with the day following issuance of the Notice of Overpayment—PROMISE JOBS Expense Allowances.

93.51(2) When offsetting is to be used to recover the overpayment, the PROMISE JOBS worker shall issue a Notice of Decision-Services, Form SS-1104-0, after the end of the 30-day appeal period, informing the client or the provider of the amount to be offset. In those instances where the amount to be offset changes, a new Notice of Decision-Services shall be issued. The notice must be timely and the client or provider has the right to appeal the notice which initiates offsetting and any subsequent notice which changes the amount to be offset.

93.51(3) When a participant receives an overpayment and is unable or unwilling to make a refund, the PROMISE JOBS worker shall recover the overpayment by offsetting it against future months' expenses in the same category.

a. In those instances when the PROMISE JOBS worker is offsetting to recover a child care overpayment, sufficient current child care shall be paid to ensure the availability of child care to the participant.

b. In those instances when the PROMISE JOBS worker is offsetting to recover support services, sufficient current expenses shall be paid to enable continued participation in the activity.

c. When it becomes impossible to recover through offsetting, either because the participant is no longer participating in PROMISE JOBS or because any potential offsetting would jeopardize the participant's progress toward the employment goal, the PROMISE JOBS worker shall notify DIA so that recovery procedures can be initiated.

93.51(4) When a child care provider or support services provider receives an overpayment on behalf of a PROMISE JOBS participant and is unable or unwilling to make a refund, the PROMISE JOBS worker may recover the overpayment by offsetting it against future months' expenses for the same client.

a. The period of time available to complete the offsetting will be limited according to the amount of the overpayment. For amounts up to $500, three months is the maximum period; for amounts over $500 and up to $1,000, six months is the maximum period. Offsetting shall not be initiated for overpayments which do not meet these limits.

b. When it becomes impossible to recover through offsetting, because the client is no longer participating in PROMISE JOBS, or because the overpayment amount exceeds the limits described in paragraph "a" above or because the provider will deny service to the client if offsetting is initiated, the PROMISE JOBS worker shall notify the DIA so that repayment procedures can be initiated.

c. If the provider does not agree that an overpayment has occurred or will deny service to the client if offsetting is initiated, the PROMISE JOBS worker shall not initiate offsetting. The worker shall explain that DIA will contact the provider regarding recovery procedures and shall explain appeal rights as found in 441—Chapter 7.

93.51(5) When a client or a provider has been referred to DIA to initiate recovery, DIA shall use the same methods of recovery as are used for the ADC program, described at DIA rules 481—71.1(10A) to 71.9(10A), except that the ADC grant shall not be reduced to effect recovery without the client's written permission. With regard to provider overpayments, DIA is authorized to

take any reasonable action to effect recovery such as, but not limited to: informal agreements, civil action, or criminal prosecution. However, DIA shall not take any action which would jeopardize the participant's continued participation in the PROMISE JOBS program.

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ARC 853A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

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"; Chapter 80, "Procedure and Method of Payment"; and Chapter 83, "Medicaid Waiver Services"; appearing in the Iowa Administrative Code.

The Council on Human Services adopted these rules April 11, 1990. Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin on November 29, 1989, as **ARC 475A**.

The Seventy-third General Assembly, in 1989 Iowa Acts, chapter 318, section 3, subsection 4, directed the Department, in cooperation with the Iowa Department of Public Health and the Department of Elder Affairs, to seek federal approval of a home- and community-based waiver under Title XIX of the Social Security Act to provide cost-effective alternative services for elderly persons who meet criteria for placement in a medical institution. The waiver was submitted to the Health Care Financing Administration on September 28, 1989, with a requested effective date of April 1, 1990. Once granted, a waiver is in effect for three years and is renewable. Federal law limits the number of waiver clients to 200.

These amendments implement the Elderly Waiver Services program which is designed to provide cost-effective services to maintain persons aged 65 and older who would otherwise require care in an intermediate care facility or skilled nursing facility in their own homes or communities. Eligibility requirements and the application process for clients are set forth as well as services eligible for reimbursement and the standards and basis of reimbursement for those services.

This waiver limits services to elderly persons in Cerro Gordo, Decatur, Fayette, Keokuk, Linn, Ringgold, and Scott counties who would be eligible for Medicaid if they were in a medical institution and who are case managed by staff from a designated case management project for the elderly. These seven counties have been operating as demonstration projects for case managed service delivery systems for the elderly under the direction of the Long-Term Care Coordinating Unit (LTCCU). The LTCCU is composed of the Directors of the Departments of Elder Affairs, Human Services, Inspections and Appeals, and Public Health. Two additional members of the LTCCU are appointed by the Governor. The LTCCU is charged by the Legislature with responsibility for developing the mechanisms and procedures to implement a case managed system of long-term care service delivery based on the use of a comprehensive assessment tool and for improving coordination of service and access to needed service for the elderly citizens of Iowa.

Services which will be provided under the waiver are adult day services, emergency response system services, home health aide services, respite care services, nursing care services, and homemaker services. Case management services will not be provided at this time.

These rules were developed by a committee consisting of staff from the Departments of Elder Affairs, Human Services, and Public Health.

Subrule 77.33(1), paragraph "b," subparagraph (1), was revised to correct the name of the Joint Commission on Accreditation of Health Care Organizations.

Subrules 77.33(3) and 77.33(5) were reworded for clarity and consistency.

Subrule 77.33(6), paragraph "a," was revised to correct a rule reference.

Subrule 78.37(5) was revised to include enteral feedings.

Subrule 80.2(2) was revised to correct the paragraph number.

Subrule 83.22(1), paragraph "g," was revised to change the name of the bureau of medical services to the division of medical services.

Subrule 83.24(1), paragraph "b," was revised to remove deduction of the $30 personal needs allowance from the recipient's income in determining client participation because the waiver recipient is allowed the current supplemental security income standard.

Technical corrections were made in rules 441—83.26(249A), 441—83.27(249A), and subrule 83.28(1), paragraph "c."

These rules are intended to implement Iowa Code section 249A.4 and 1989 Iowa Acts, chapter 318, section 3, subsection 4.

These rules shall become effective August 1, 1990.

The following amendments are adopted:

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

441—77.33(249A) Elderly waiver service providers. The following waiver service providers shall be eligible to participate in the Medicaid program provided that they meet the standards set forth below:

77.33(1) Adult day care providers. Adult day care providers shall:

a. Meet standards set forth in department of elder affairs subrule 321—7.1(3).

b. Meet one of the following sets of standards individually or as an integral service provided by an organization:

(1) Joint Commission on Accreditation of Health Care Organizations.

(2) Commission on Accreditation of Rehabilitation Agencies.

(3) Standards set forth in rule 441—171.5(234).

77.33(2) Emergency response system providers. Emergency response system providers must meet the following standards:

a. The agency shall provide an electronic component to transmit a coded signal via digital equipment over telephone lines to a central monitoring station. The central monitoring station must operate receiving equipment and be fully staffed by trained attendants, 24 hours a day, seven days per week. The attendants must process emergency calls and ensure the timely notification of appropriate emergency resources to be dispatched to the person in need.

b. The agency, parent agency, institution or corporation shall have the necessary legal authority to operate in conformity with federal, state and local laws and regulations.

c. There shall be a governing authority which is responsible for establishing policy and ensuring effective control of services and finances. The governing authority shall employ or contract for an agency administrator to whom authority and responsibility for overall agency administration are delegated.

d. The agency or institution shall be in compliance with all legislation relating to prohibition of discriminatory practices.

e. There shall be written policies and procedures established to explain how the service operates, agency responsibilities, client responsibilities and cost information.

77.33(3) Home health aide providers. Home health aide providers shall be agencies which meet the standards set forth in department of public health rules 641—80.3(135), 641—80.4(135) and 641—80.5(135) or which are certified to participate in the Medicare program as home health agencies.

77.33(4) Homemaker providers. Homemaker providers shall be agencies which meet the standards and requirements set forth in department of public health rules 641—80.3(135), 641—80.4(135) and 641—80.5(135) or which are certified as a home health agency under Medicare.

77.33(5) Nursing care. Nursing care providers shall be agencies which are certified to participate in the Medicare program as home health agencies.

77.33(6) Respite care providers. The following providers may provide respite care:

a. Home health aide providers meeting the conditions of participation set forth in 77.33(3).

b. Intermediate care facilities and skilled nursing homes certified to participate in the Medicaid program.

ITEM 2. Amend 441—Chapter 78 by adding the following new rule:

441—78.37(249A) Elderly waiver services. Payment will be approved for the following services to clients eligible for the elderly waiver services as established in 441—Chapter 83. Services must be billed in whole units.

78.37(1) Adult day care services. Adult day care services provide an organized program of supportive care in a group environment to persons who need a degree of supervision and assistance on a regular or intermittent basis in a day care center. A unit of service is a full day (six or more hours) or a half day (three through five hours). Components of the service are set forth in rule 441—171.6(234) or as indicated in the Iowa department of elder affairs Annual Service and Fiscal Reporting Manual.

78.37(2) Emergency response system. The emergency response system allows a person experiencing a medical emergency at home to activate electronic components that transmit a coded signal via digital equipment over telephone lines to a central monitoring station. The necessary components of a system are:

a. An in-home medical communications transceiver.

b. A remote, portable activator.

c. A central monitoring station with backup systems staffed by trained attendants 24 hours per day, seven days per week.

d. Current data files at the central monitoring station containing preestablished response protocols and personal, medical, and emergency information for each client.

78.37(3) Home health aide services. Home health aide services are personal or direct care services provided to the client which are not payable under Medicaid as set forth in rule 441—78.9(249A). A unit of service is one hour. Components of the service include:

a. Observation and reporting of physical or emotional needs.

b. Helping a client with bath, shampoo, or oral hygiene.

c. Helping a client with toileting.

d. Helping a client in and out of bed and with ambulation.

e. Helping a client reestablish activities of daily living.

f. Assisting with oral medications ordinarily self-administered and ordered by a physician.

g. Performing incidental household services which are essential to the client's health care at home and are necessary to prevent or postpone institutionalization in order to complete a full unit of service.

78.37(4) Homemaker services. Homemaker services are those services provided when the client lives alone or when the person who usually performs these functions for the client is incapacitated or occupied providing direct care to the client. A unit of service is one hour. Components of the service include:

a. Essential shopping: shopping for basic need items such as food, clothing or personal care items, or drugs.

b. Limited housecleaning: maintenance cleaning such as vacuuming, dusting, scrubbing floors, defrosting refrigerators, cleaning stoves, and washing and mending clothes.

c. Accompaniment to medical or psychiatric services.

d. Meal preparation: planning and preparing balanced meals.

78.37(5) Nursing care services. Nursing care services are services provided by licensed agency nurses to clients in the home which are ordered by and included in the plan of treatment established by the physician. The services are reasonable and necessary to the treatment of an illness or injury and include: observation; evaluation; teaching; training; supervision; therapeutic exercise; bowel and bladder care; administration of medications; intravenous, hypodermoclysis, and enteral feedings; skin care; preparation of clinical and progress notes; coordination of services and informing the physician and other personnel of changes in the patient's condition and needs.

A unit of service is one visit. Nursing care service can pay for a maximum of eight nursing visits per month.

78.37(6) Respite care services. Respite care services are temporary care to a client to provide relief to the usual informal caregiver and provide all the care the usual caregiver would provide.

a. If the respite care is provided in the client's home, only the cost of care is reimbursed.

b. If the respite care is provided outside of the client's home, charges may include room and board.

c. A unit of service is either one 24-hour day for out-of-home respite care provided by a facility or one 4- to 8-hour day for in-home respite provided by a home health agency.

d. The maximum is 30 units of care in each 12-month period beginning with the first use of the service.

e. When respite care is provided, the provision of, or payment for, other duplicative services under the waiver is precluded.

ITEM 3. Amend subrule **79.1(2)** by adding the following provider category in alphabetical order:

Provider category	Basis of reimbursement	Upper limit
Elderly waiver service providers, including:		
1. Adult day care	Prospective reimbursement for P.O.S. providers. Fee schedule for others.	P.O.S. contract rate or $30 per full day or $25 per half day if no P.O.S. contract.
2. Emergency response system	Fee schedule	Initial one-time fee $35. Ongoing monthly fee $25.
3. Home health aides	Fee schedule	$15 per hour for aide
4. Homemakers	Fee schedule	$15 per hour
5. Nursing care	Fee schedule as determined by Medicare	$70 per visit
6. Respite care providers, including:		
(Home health aide agency-in home)	Fee schedule	$100 per day
(Institutional-hospital, skilled nursing care, intermediate care facility out of home)	Prospective reimbursement	Limit for level of care except hospitals shall receive SNF rate

ITEM 4. Amend subrule **80.2(2)** by adding the following new paragraph:

hh. Elderly waiver service providers shall submit claims for a calendar month or less of service on Form 470-2486, Claim for Targeted Medical Care, except for hospitals and skilled nursing facilities providing respite care, which shall submit their claims on Form UB-82-HCFA-1450.

ITEM 5. Amend **441—Chapter 83** as follows:

Reserve rules 441—83.11 to 441—83.20.

Add the following new rules:

DIVISION II
ELDERLY WAIVER SERVICES

441—83.21(249A) Definitions.

"Client participation" means the amount of the recipient income that the person must contribute to the cost of elderly waiver services exclusive of medical vendor payments before Medicaid will participate.

"Deeming" means the specified amount of spousal income and resources considered in determining eligibility for a spouse according to current supplemental security income guidelines.

"Interdisciplinary team" means a collection of persons with varied professional backgrounds who develop one plan of care to meet a client's need for services.

"Iowa foundation for medical care" means the entity designated by the federal government to be the peer review organization for the state of Iowa.

"Long-term care coordinating unit designated case management project for frail elderly" means the case management system which conducts interdisciplinary team meetings to develop and update care plans for persons aged 65 and older.

"Medical institution" means an intermediate care facility, or skilled nursing facility which has been approved as a Medicaid vendor.

"Project coordinator" means the person designated by the administrative entity to oversee the long-term care coordinating unit's designated case management project for the frail elderly.

"Third-party payments" means payments from an attorney, individual, institution, corporation, or public or private agency which is liable to pay part or all of the medical costs incurred as a result of injury, disease or disability by or on behalf of an applicant or a past or present recipient of medical assistance.

441—83.22(249A) Eligibility. To be eligible for elderly waiver services a person must meet certain eligibility criteria and be determined to need a service(s) allowable under the program.

83.22(1) Eligibility criteria. All of the following criteria must be met. The person must be:

a. Sixty-five years of age or older.

b. A resident of one of the following counties:

Cerro Gordo	Keokuk	Ringgold
Decatur	Linn	Scott
Fayette		

c. Eligible for Medicaid if in a medical institution.

d. Certified as being in need of care in an intermediate care facility, or skilled nursing facility. The Iowa foundation for medical care shall be responsible for approval of the certification of the level of care.

Elderly waiver services will not be provided when the person is an inpatient in a medical institution.

e. Determined to need services as described in subrule 83.22(2).

f. Under the case management of a member of the long-term care coordinating unit designated case management project for the frail elderly.

g. Within the first 200 names on a log to be maintained by the division of medical services. The elderly waiver is limited to 200 persons at any one time. The local office shall contact the division of medical services by the end of the second workday after the receipt of an Application for Medical Assistance or State Supplementary Assistance, Form PA-1107. On the third workday after the receipt of the application, persons will be entered on the log by the division of medical services according to the following:

(1) Persons shall be entered on the log on the basis of the date a completed Form PA-1107, Application for Medical Assistance or State Supplementary Assistance, is date stamped in the local office. In the event that more

than one application is received at one time, persons shall be entered on the log on the basis of the day of the month of their birthday, lowest number being first on the log. Any subsequent tie shall be decided by the month of birth, January being month one and the lowest number.

(2) Persons who do not fall within the top 200 names shall have their application rejected. These persons will be sent a notice that their applications were rejected because of the limit on eligibles but that their name will be maintained on the log. As slots become open, persons will be selected from the log to maintain 200 persons on the program based on their order on the log. These persons shall be asked to reapply to verify current eligibility information.

83.22(2) Need for services.

a. Applicants for elderly waiver services shall have an assessment of the need for service and the availability and appropriateness of service. The tool used to complete the assessment shall be the Long-Term Care Information System (LTCIS) or the KanSAS tool. The assessment shall be completed by the designated case management project for the frail elderly in the community or the local service worker. The Iowa foundation for medical care shall be responsible for determining the level of care based on the completed LTCIS or KanSAS Assessment tool and supporting documentation as needed.

b. The total monthly cost of elderly waiver services shall not exceed the cost of the recipient's level of care provided in a skilled nursing facility (SNF) or intermediate care facility (ICF). Individual service costs which make up the total monthly cost of elderly waiver services cannot exceed established limits.

Aggregate monthly costs are limited as follows:

SNF	ICF
$2,480	$852

83.22(3) Participants in the waiver shall be case managed by providers who meet all of the following standards:

a. Be a member of the long-term care coordinating unit designated case management project for the frail elderly.

b. Have a bachelor's degree in a human services field or be currently licensed as a registered nurse. Up to two years relevant experience may be substituted for two years of the educational requirement.

c. Have formal training in completion of the assessment tool.

d. Receive formal case management training as specified by the long-term care coordinating unit.

441—83.23(249A) Application.

83.23(1) Application for financial eligibility. Application for financial eligibility shall be made by completing the Application for Medical Assistance or State Supplementary Assistance, Form PA-1107-0. The application process as specified in rules 441—76.1(249A) to 441—76.6(249A) shall be followed. Persons who have been placed on the waiting list shall complete a new application at the time their names come up on the waiting list.

83.23(2) Application for services. Application for services shall be made by completing Form SS-1120-0, Application for Social Services.

83.23(3) Approval of application.

a. Applications for the elderly waiver program shall be processed in 30 days unless the worker can document difficulty in locating and arranging services or circumstances beyond the worker's control. In these cases a decision shall be made as soon as possible.

b. Decisions shall be mailed or given to the applicant on the date when both service and income maintenance eligibility determinations are completed.

c. An applicant must be given the choice between elderly waiver services and institutional care. The service worker shall have the client or guardian complete and sign Part C of Form 470-0660, Home and Community Based Service Report, indicating the client's choice of caregiver.

d. Waiver services provided prior to approval of eligibility for the waiver cannot be paid.

83.23(4) Effective date of eligibility.

a. Deeming of spousal income and resources ceases and eligibility shall be effective the month in which a person requires care in a medical institution according to subrules 75.5(1) to 75.5(3).

b. Eligibility for persons whose income exceeds supplemental security income guidelines shall not exist until the persons require care in a medical institution for a period of 30 consecutive days and shall be effective no earlier than the first day of the month in which the 30-day period begins.

c. Eligibility continues until the recipient has been in a medical institution for 30 consecutive days for other than respite care or fails to meet eligibility criteria listed in rule 441—83.22(249A). Recipients who are inpatients in a medical institution for 30 or more consecutive days for other than respite care shall be reviewed for eligibility for other Medicaid coverage groups and terminated from elderly waiver services if found eligible under another coverage group. The recipient will be notified of that decision through Form SS-1104-0, Notice of Decision. If the client returns home before the effective date of the notice of decision and the person's condition has not substantially changed, the denial may be rescinded and eligibility may continue.

441—83.24(249A) Client participation. Persons must contribute their predetermined client participation to the cost of elderly waiver services.

83.24(1) Computation of client participation. Client participation shall be computed by deducting the following from the client's total income:

a. A single or married recipient shall be allowed the current supplemental security income standard for a recipient in the recipient's own home or if the recipient only has dependent children under the age of 21 living at home, an allowance of the aid to dependent children (ADC) benefit for the number of children at home shall be allowed to bring the children's income up to that ADC benefit.

b. A married recipient who has a spouse or a spouse and a dependent living with the recipient shall have resources and the client participation determined by rules 441—75.5(249A) and 441—75.16(249A) except subrule 75.16(2), paragraph "a."

c. There shall be deducted from the person's available income, amounts for incurred expenses for the person's medical or remedial care which are not subject to payment by a third party, and necessary medical or remedial care which is recognized under state law, but not covered by Medicaid. Medicare and individual or family health insurance premiums, excluding premiums for indemnity or income policies, shall be deducted.

83.24(2) Limitation on payment. If the sum of the third-party payment and client participation equals or

exceeds the reimbursement established by the service worker, Medicaid will make no payments for elderly waiver service providers. However, Medicaid will make payments to other medical vendors.

441—83.25(249A) Redetermination. A complete redetermination of eligibility for elderly waiver services shall be done at least once every 12 months.

A redetermination of continuing eligibility factors shall be made when a change in circumstances occurs that affects eligibility in accordance with rule 441—83.22(249A). A redetermination shall contain the components listed in rule 441—83.27(249A).

441—83.26(249A) Allowable services. Services allowable under the elderly waiver are adult day care, emergency response system, homemaker, home health aide, nursing, and respite care, as set forth in rule 441—78.36(249A).

441—83.27(249A) Case plan. A case plan shall be prepared for elderly waiver clients in accordance with rule 441—130.7(234). In addition, the case plan shall include a written certification from the physician that the waiver services are appropriate and adequate to meet the needs of the client in a home environment, the frequency of the elderly waiver services, and the types of providers who will deliver them.

441—83.28(249A) Adverse service actions.

83.28(1) Denial. An application for services shall be denied when it is determined by the department that:

a. The client is not eligible for or in need of services.

b. Except for respite care, the elderly waiver services are not needed on a regular basis.

c. Service needs exceed the aggregate monthly costs established in 83.22(2)"b," or are not met by services provided.

d. Needed services are not available or received from qualifying providers.

e. There are 200 persons receiving services or ahead of the client on the log.

83.28(2) Termination. A particular service may be terminated when the department determines that:

a. The provisions of subrule 130.5(2), paragraph "a," "b," "c," "d," "g," or "h" apply.

b. The costs of the elderly waiver services for the person exceed the aggregate monthly costs established in 83.22(2)"b."

c. The client receives care in a hospital, skilled nursing facility, or intermediate care facility, for 30 days in any one stay for purposes other than respite care.

d. The client receives elderly waiver services and the physical or mental condition of the client requires more care than can be provided in the client's own home as determined by the service worker.

e. Service providers are not available.

83.28(3) Reduction of services shall apply as in subrule 130.5(3), paragraphs "a" and "b."

441—83.29(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234). The applicant or recipient is entitled to have a review of the level of care determination by the Iowa foundation for medical care by sending a letter requesting a review to the foundation. If dissatisfied with that decision, the applicant or recipient may file an appeal with the department.

441—83.30(249A) Enhanced services. When a household has one person receiving service in accordance with rules set forth in 441—Chapter 24 and another receiving elderly waiver services, the persons providing case management shall cooperate to make the best plan for both clients. When a person is eligible for services as set forth in 441—Chapter 24 and eligible for services under the elderly waiver, the person's primary diagnosis will determine which services shall be used.

These rules are intended to implement Iowa Code section 249A.4 and 1989 Iowa Acts, chapter 318, section 3, subsection 4.

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ARC 854A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," and Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these rules April 11, 1990. Notices of Intended Action regarding these rules were published in the Iowa Administrative Bulletin on February 21, 1990, as **ARC 671A** and on March 7, 1990, as **ARC 714A**.

These amendments revise the Department's policies regarding payment of dental services as follows:

1. Payment will be provided to dentists for medical and surgical services furnished by a dentist to the extent these services may be performed under state law by a doctor of medicine or by a doctor of dental surgery or dental medicine. This is a mandated legislative change that will allow dentists to receive payment for performing procedures which are covered if those procedures would be covered if performed by a physician.

2. Pit and fissure sealants are payable for placement on first and second permanent molars for children between the ages of 5 and 15. Currently these sealants are restricted to children between the ages of 5 and 8 for first permanent molars and ages 11 to 15 for second permanent molars. Limiting pit and fissure sealants for first and second permanent molars to the ages in the current rule resulted in some children having to wait to get the sealants for second molars because they had these teeth before age 11 and others not getting sealants on their first molars.

3. Complete mouth radiographs are not payable for children under age six. The Title XIX Dental Committee made this recommendation based on recent public health information that complete mouth radiographs are not necessary for children under age six and may pose a health risk.

4. Crowns do not require prior approval and only two crowns per patient are payable in a 12-month period. The previous rule required that prior approval be given for crowns to prevent full mouth restoration. Prior approval was not preventing the full mouth restorations and it was the recommendation of the fiscal agent's dental services staff and the Title XIX Dental Committee that two crowns would be payable in a 12-month period.

5. Approval will be given for cast post and core, steel post and composite or amalgam in addition to a crown when a tooth is functional and the integrity of the tooth would be jeopardized by no post support. Previously, there were no criteria for approval of posts. The criteria in this rule were provided by the Title XIX Dental Committee.

6. Payment of restoration services is more clearly defined. These changes include:

One, two, or more restorations on one surface of a tooth shall be paid as a one-surface restoration, i.e., mesial occlusal pit and distal occlusal pit of a maxillary molar or mesial and distal occlusal pits of a lower bicuspid.

Occlusal lingual groove of a maxillary molar that extends from the distal occlusal pit and down the distolingual groove will be paid as a two-surface restoration. This restoration and a mesial occlusal pit restoration on the same tooth will be paid as one, two-surface restoration.

Class III restorations will be payable as a one-surface restoration.

A two-surface anterior composite restoration will be payable as a one-surface restoration if it involved the lingual surface.

Tooth preparation, temporary restorations, cement bases, pulp capping, impressions, local anesthesia and inhaled anesthesia are included in the restorative fee and may not be billed separately.

Pin retention will be paid on a per-tooth basis and in addition to the final restoration.

An amalgam restoration is not payable following a sedative filling in the same tooth unless the sedative filling was placed more than 30 days previously.

Payment for restorative services is not clearly defined in current rules. The proposed rules are based on a recommendation by the Title XIX Dental Committee and information from the University of Iowa Dental College.

7. Periodontal treatments will be reimbursed by service rather than type of periodontal case. The periodontal types and treatments in the current rules are outdated. Coverage by service reflects the way services are being delivered and billed today according to the Dental Committee and the fiscal agent's dental review staff. Some dentists were refusing to provide periodontal services because coverage was outdated.

8. Root canal treatment no longer requires prior approval. There is no reason to continue prior approval on this service as almost all root canals were being approved.

9. Surgical endodontic treatment is more clearly defined as well as the requirements to receive prior approval for these procedures. The Title XIX Dental Committee provided the language to more clearly specify the approval requirements.

10. Immediate, complete and partial dentures replacing anterior teeth will no longer require prior approval. Immediate, complete, and partial dentures replacing anterior teeth were almost always being approved and there was no reason to continue prior approval on this service.

11. Dentures will be payable once in a five-year period except when the dentures are broken beyond repair, lost or stolen. There is no provision in the current rules for the payment of dentures in less than five years if they are broken, lost or stolen, and this has created a hardship for some recipients.

12. Prior approval requests for partial dentures replacing posterior teeth will be approved if the patient has less than eight posterior teeth in occlusion. The Dental Committee felt the Department should allow for more teeth in occlusion because with only four teeth, patients could have large gaps.

13. Relining of dentures is payable once in a 12-month period per appliance in both the office and laboratory. The Dental Committee recommended that the Department allow for two relinings in a year because sometimes it takes both a laboratory and an office relining to get the dentures to fit.

14. No exception is made for more than two repairs to a denture in a 12-month period. Typically, patients do not require more than two repairs to a denture in a 12-month period and the exception in the current rules was not necessary.

15. Further clarification of the criteria and conditions necessary for orthodontic services to be covered is provided. Medicaid will pay for orthodontic services only when a patient has the most handicapping malocclusion. Additional information was provided in the rule so that recipients and providers have a better understanding of when orthodontic services are covered.

16. Further clarification of when space management services are payable is provided.

17. Tooth guidance services are payable if treatment does not exceed $125. The payable amount was increased from $75 based on recommendations from the fiscal agent's dental review staff and the Dental Committee.

18. Payment for office calls for emergencies, injuries or abnormal conditions is more clearly defined.

The Omnibus Reconciliation Act of 1989 changed two sections of the Social Security Act dealing with the coverage of hospice care. These amendments also implement those required changes.

1. The hospice must obtain certification that the individual is terminally ill. Under previous rules this certification had to be obtained in writing no later than two days after hospice care is initiated. These amendments allow for a verbal certification no later than two days after hospice care is initiated, followed by written certification no later than eight days after hospice care is initiated.

2. Under previous rules, an adjustment to hospice reimbursement was made when a hospice recipient entered an intermediate care facility or residential care facility or when a recipient residing in an intermediate care facility or skilled nursing facility elected the hospice benefit. This adjustment was a room and board rate equal to the rate at which the facility is paid for reserved bed days (75 percent of the facility's allowable audited costs, not to exceed the maximum reimbursement rate). The Omnibus Reconciliation Act of 1989 requires that the adjustment be a room and board rate equal to at least 95 percent of the facility's Medicaid reimbursement rate. These amendments provide that the adjustment be at the rate the facility is paid for reserved bed days or 95 percent of the facility's Medicaid reimbursement rate, whichever is greater.

The amendments regarding hospice were previously filed emergency and published in the March 7, 1990,

Iowa Administrative Bulletin as **ARC 712A** and **ARC 713A**. Notice of Intended Action to solicit comment on those submissions was published in the Iowa Administrative Bulletin on March 7, 1990, as **ARC 714A**.

The amendments regarding hospice are identical to those published under Notice of Intended Action.

The following revisions were made to the Notice of Intended Action regarding dental services based upon further review by the Title XIX Dental Committee.

1. Subrule 78.4(2), paragraph "c," was revised to provide that a complete mouth radiograph survey is available only once in a five-year, rather than a three-year period, consistent with new Department of Public Health criteria.

2. Subrule 78.4(3), paragraph "d," was revised to add the term "per patient" for clarification.

3. Subrule 78.4(4), introductory paragraph, was revised to clarify that payment "may" be made, rather than "shall" be made, based upon prior approval.

4. Subrule 78.48, paragraph "a," last paragraph, and subrule 78.28(2), paragraph "f," last paragraph, were revised to allow for additional units of orthodontic treatment if medically necessary.

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

These rules shall become effective July 1, 1990.

The following amendments are adopted:

ITEM 1. Rescind rule 441—78.4(249A) and insert the following in lieu thereof:

441—78.4(249A) Dentists. Payment will be made for medical and surgical services furnished by a dentist to the extent these services may be performed under state law either by doctors of medicine, osteopathy, dental surgery or dental medicine and would be covered if furnished by doctors of medicine or osteopathy. Payment will also be made for the following dental procedures:

78.4(1) Preventive services. Payment shall be made for the following preventive services:

a. Oral prophylaxis, including necessary scaling and polishing, is payable only once in a six-month period except for persons who, because of physical or mental disability, need more frequent care. Prior approval is required in all cases where the oral prophylaxis is to be performed more frequently than every six months. (Cross-reference 78.28(2)"a")

b. Topical application of fluoride is payable once in a six-month period and only when preceded by an oral prophylaxis. (This does not include the use of fluoride prophylaxis paste as fluoride treatment.)

c. Pit and fissure sealants are payable for placement on first and second permanent molars only. Reimbursement for sealants is restricted to work performed on children aged 5 through 15 for first and second permanent molars. Payment will be approved for only one application per tooth in a child's lifetime.

78.4(2) Diagnostic services. Payment shall be made for the following diagnostic services:

a. An initial oral examination is payable once per patient per dentist.

b. A periodic oral examination is payable once in a six-month period.

c. A complete mouth radiograph survey consisting of a minimum of 14 periapical films and bitewing films is a payable service once in a five-year period, except when medically necessary to evaluate development, and to detect anomalies, injuries and diseases. Complete mouth radiograph surveys are not payable under the age of six. A panographic-type radiography with bitewings is considered the same as a complete mouth radiograph survey.

d. Supplemental bitewing films are payable only once in a 12-month period.

e. Single periapical films are payable when necessary.

f. Intraoral radiograph, occlusal.

g. Extraoral radiograph.

h. Posteroanterior and lateral skull and facial bone radiograph, survey film.

i. Temporomandibular joint radiograph.

j. Cephalometric film.

k. Diagnostic casts are payable only for orthodontic cases or when requested by the fiscal agent's dental consultant.

78.4(3) Restorative services. Payment shall be made for the following restorative services:

a. Treatment of dental caries is payable in those areas which require immediate attention. Restoration of incipient or nonactive carious lesions are not payable. Carious activity may be considered incipient when there is no penetration of the dento-enamel junction as demonstrated in diagnostic radiographs.

b. Amalgam alloy, silicate, acrylic or composite resin-type filling materials are payable benefits of the program.

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

d. Two crowns utilizing nonprecious materials are payable per patient in a 12-month period. Two gold crowns are payable in a 12-month period when patients are allergic to all other restoration material.

e. Cast post and core, steel post and composite or amalgam in addition to a crown require prior approval. Approval will be given when a tooth is functional and the integrity of the tooth would be jeopardized by no post support. (Cross-reference 78.28(2)"b")

f. Payment as indicated will be made for the following restorative procedures:

(1) Amalgam or acrylic buildups are considered part of the preparation for the completed restoration.

(2) One, two, or more restorations on one surface of a tooth shall be paid as a one-surface restoration, i.e., mesial occlusal pit and distal occlusal pit of a maxillary molar or mesial and distal occlusal pits of a lower bicuspid.

(3) Occlusal lingual groove of a maxillary molar that extends from the distal occlusal pit and down the distolingual groove will be paid as a two-surface restoration. This restoration and a mesial occlusal pit restoration on the same tooth will be paid as one, two-surface restoration.

(4) Class III restorations will be payable as a one-surface restoration.

(5) A two-surface anterior composite restoration will be payable as a one-surface restoration if it involved the lingual surface.

(6) Tooth preparation, temporary restorations, cement bases, pulp capping, impressions, local anesthesia and inhaled anesthesia are included in the restorative fee and may not be billed separately.

(7) Pin retention will be paid on a per-tooth basis and in addition to the final restoration.

(8) More than four surfaces on an amalgam restoration will be reimbursed as a "four-surface" amalgam.

(9) An amalgam restoration is not payable following a sedative filling in the same tooth unless the sedative filling was placed more than 30 days previously.

78.4(4) Periodontal services. Payment may be made for the following periodontal services:

a. Periodontal scaling performed in the presence of gingival inflammation (gross debridement).

b. Periodontal scaling and root planing is payable once in a 24-month period and when prior approval has been received. A request for approval must be accompanied by a plan for treatment, a completed copy of a periodontic probe chart which exhibits pocket depths, history and radiograph(s). Payment for periodontal scaling and root planing will be approved when interproximal and subgingival calculus is evident in X rays or when justified and documented that curettage, scaling or root planing is required in addition to routine prophylaxis. (Cross-reference 78.28(2)"c"(1)

c. Periodontal surgical procedures which include gingivoplasty, osseous surgery, osseous allograft, pedicle soft tissue graft, and free soft tissue graft are payable services when prior approval has been received. A request for approval must be accompanied by a plan for treatment, a completed copy of a periodontal probe chart which exhibits pocket depths, history and radiograph(s). Payment for these surgical procedures will be approved after periodontal scaling and root planing has been provided, a reevaluation examination has been completed, and the patient has demonstrated reasonable oral hygiene, unless the patient is unable to demonstrate reasonable oral hygiene because of physical or mental disability or in cases which demonstrate gingival hyperplasia resulting from drug therapy. (Cross-reference 78.28(2)"c"(2)

d. Periodontal maintenance therapy which includes oral prophylaxis, oral examinations, measurement of pocket depths and limited root planing and scaling is a payable service when prior approval has been received. A request for approval must be accompanied by a plan for treatment, a completed copy of a periodontal probe chart which exhibits pocket depths, history and radiograph(s). Payment for periodontal maintenance therapy will be approved when periodontal scaling and root planing and periodontal surgical procedures have been provided. Periodontal maintenance therapy will be approved for three visits at three-month intervals following treatment for moderate to advanced cases. Periodontal maintenance therapy may then be approved once per six-month interval if the patient's condition is getting worse or, if not maintained, conditions would deteriorate. (Cross-reference 78.28(2)"c"(3)

e. Payment as indicated will be made for the following periodontal services:

(1) Periodontal scaling and root planing, gingivoplasty, osseous surgery will be paid per quadrant.

(2) Gingivoplasty will be paid per tooth.

(3) Osseous allograft will be paid as a single site if one site is involved, or if more than one site is involved, payment will be made for multiple sites.

78.4(5) Endodontic services. Payment shall be made for the following endodontic services:

a. Root canal treatments on permanent anterior and posterior teeth when extensive posttreatment restorative procedures are not necessary and when missing teeth do not jeopardize the integrity or function of the dental arches.

b. Vital pulpotomies. Cement bases, pulp capping, and insulating liners are considered part of the restoration and may not be billed separately.

c. Surgical endodontic treatment is payable when prior approval has been received. Payment for an apicoectomy, performed as a separate surgical procedure; an apicoectomy, performed in conjunction with endodontic procedure; an apical curettage; a root resection; or excision of hyperplastic tissue will be approved when nonsurgical treatment has been attempted and a reasonable time has elapsed after which failure has been demonstrated. Surgical endodontic procedures may be indicated when:

(1) Conventional root canal treatment cannot be successfully completed because canals cannot be negotiated, debrided or obturated due to calcifications, blockages, broken instruments, severe curvatures, open-ended canals, and dilacerated roots.

(2) Correction of problems resulting from conventional treatment including gross underfilling, perforations, and canal blockages with restorative materials. (Cross-reference 78.28(2)"d")

78.4(6) Oral surgery — medically necessary. Payment shall be made for medically necessary oral surgery services furnished by dentists to the extent that these services may be performed under state law either by doctors of medicine, osteopathy, dental surgery or dental medicine and would be covered if furnished by doctors of medicine or osteopathy, as defined in rule 441—78.1(249A). These services will be reimbursed in a manner consistent with the physician's reimbursement policy. The following surgical procedures are also payable when performed by a dentist:

a. Extractions, both surgical and nonsurgical.

b. Impaction (soft tissue impaction, upper or lower) that requires an incision of overlying soft tissue and the removal of the tooth.

c. Impaction (partial bony impaction, upper or lower) that requires incision of overlying soft tissue, elevation of a flap, removal of bone and removal of the tooth.

d. Impaction (complete bony impaction, upper or lower) that requires incision of overlying soft tissue, elevation of a flap, removal of bone and section of the tooth for removal.

e. Root recovery (surgical removal of residual root).

f. Oral antral fistula closure (or antral root recovery).

g. Surgical exposure of impacted or unerupted tooth for orthodontic reasons, including ligation when indicated.

h. Surgical exposure of impacted or unerupted tooth to aid eruption.

i. General anesthesia and intravenous sedation are payable services when the extensiveness of the procedure indicates it or there is a concomitant disease or impairment which warrants its use.

j. Routine postoperative care is considered part of the fee for surgical procedures and may not be billed separately.

k. Payment may be made for postoperative care where need is shown to be beyond normal follow-up care or for postoperative care where the original service was performed by another dentist.

78.4(7) Prosthetic services. Payment will be made for the following prosthetic services:

a. Immediate dentures and first-time complete dentures including six months' postdelivery care are payable when the dentures are provided to establish masticatory function. An immediate denture or a first-

time complete denture is payable only once following the removal of teeth it replaces. Complete dentures are payable only once in a five-year period except when the dentures are broken beyond repair, lost or stolen.

b. Partial dentures replacing anterior teeth, including six months' postdelivery care. Partial dentures replacing anterior teeth are payable only once in a five-year period unless the dentures are broken beyond repair, lost or stolen and are required to prevent significant dental problems.

c. Partial dentures replacing posterior teeth when prior approval has been received. Prior approval requests will be approved when the patient has less than eight posterior teeth in occlusion; or when the patient's missing teeth could cause shifting or supra eruption of the remaining dentition; or the patient has a full denture in one arch, and a partial denture replacing posterior teeth is required in the opposing arch in order to balance occlusion; or a partial denture replacing anterior teeth is being approved, and posterior teeth can be replaced with little additional cost. Partial dentures replacing posterior teeth are payable only once in a five-year period unless the dentures are broken beyond repair, lost or stolen and are required to prevent significant dental problems. (Cross-reference 78.28(2)"e"(1)

d. Fixed bridgework (including acid etch bridgework) for missing anterior teeth when prior approval has been received. Fixed bridgework for missing anterior teeth shall be approved for recipients whose medical condition precludes the use of removable prostheses. (Cross-reference 78.28(2)"e"(2)

e. Obturator for surgically excised palatal tissue or deficient velopharyngeal function of cleft palate patients.

f. Chairside relines are payable only once per appliance every 12 months.

g. Laboratory processed relines are payable only once per appliance every 12 months.

h. Tissue conditioning is a payable service twice per appliance in a 12-month period.

i. Two repairs per appliance in a 12-month period are payable.

78.4(8) Orthodontic procedures. Payment may be made for the following orthodontic procedures:

a. When prior approval has been given for orthodontic services to treat the most handicapping malocclusions in a manner consistent with "Handicapping Malocclusion Assessment to Establish Treatment Priority," by J.A. Salzmann, D.D.S., American Journal of Orthodontics, October 1968.

A handicapping malocclusion is a condition that constitutes a hazard to the maintenance of oral health and interferes with the well-being of the patient by causing impaired mastication, dysfunction of the temporomandibular articulation, susceptibility to periodontal disease, susceptibility to dental caries, and impaired speech due to malpositions of the teeth. Treatment of handicapping malocclusions will only be approved for the severe and the most handicapping. Assessment of the most handicapping malocclusion is determined by the magnitude of the following variables: degree of malalignment, missing teeth, angle classification, overjet and overbite, openbite, and crossbite.

A request to perform an orthodontic procedure must be accompanied by an interpreted cephalometric radiograph and study models trimmed so that the models simulate centric occlusion of the patient. A written plan of treatment must accompany the diagnostic aids. Posttreatment records must be furnished upon request of the fiscal agent.

Approval may be made for eight units of a three-month active treatment period. Additional units may be approved by the fiscal agent's orthodontic consultant if found to be medically necessary. (Cross-reference 78.28(2)"f")

b. Space management services shall be payable when there is too little dental ridge to accommodate either the number or the size of teeth and if not corrected significant dental disease will result.

c. Tooth guidance for a limited number of teeth or interceptive orthodontics is a payable service when the total cost of treatment does not exceed $125. Pretreatment records are not required.

78.4(9) Treatment in a hospital. Payment will be approved for dental treatment rendered a hospitalized patient only when the mental, physical, or emotional condition of the patient prevents the dentist from providing necessary care in the office.

78.4(10) Treatment in a nursing facility. Payment will be approved for dental treatment provided in a nursing facility. When more than one patient is examined during the same nursing home visit, payment will be made by the Medicaid program for only one visit to the nursing home.

78.4(11) Office visit. Payment will be approved for an office visit for care of injuries or abnormal conditions of the teeth or supporting structure when treatment procedures or exams are not billed for that visit.

78.4(12) Office calls after hours. Payment will be approved for office calls after office hours in emergency situations. The office call will be paid in addition to treatment procedures.

78.4(13) Drugs. Payment will be made for drugs dispensed by a dentist only if there is no licensed retail pharmacy in the community where the dentist's office is located. If eligible to dispense drugs, the dentist should request a copy of the Prescribed Drugs Manual from the fiscal agent. Payment will not be made for writing prescriptions.

ITEM 2. Rescind subrule 78.28(2) and insert the following in lieu thereof:

78.28(2) Dental services which require prior approval are as follows:

a. Oral prophylaxis, including necessary scaling and polishing, is payable only once in a six-month period except for persons who because of physical or mental disability need more frequent care. Prior authorization is required in all cases where the oral prophylaxis is to be performed more frequently than every six months. (Cross-reference 78.4(1)"a")

b. Cast post and core, steel post and composite or amalgam in addition to a crown will be approved when a tooth is functional and the integrity of the tooth would be jeopardized by no post support. (Cross-reference 78.4(3)"e")

c. The following periodontal services:

(1) Payment for periodontal scaling and root planing will be approved when interproximal and subgingival calculus is evident in X rays or when justified and documented that curettage, scaling or root planing is required in addition to routine prophylaxis. (Cross-reference 78.4(4)"b")

(2) Payment for periodontal surgical procedures will be approved after periodontal scaling and root planing

has been provided, a reevaluation examination has been completed, and the patient has demonstrated reasonable oral hygiene, unless the patient is unable to demonstrate reasonable oral hygiene because of physical or mental disability or in cases which demonstrate gingival hyperplasia resulting from drug therapy. (Cross-reference 78.4(4)"c")

(3) Payment for periodontal maintenance therapy will be approved when periodontal scaling and root planing and periodontal surgical procedures have been provided. Periodontal maintenance therapy will be approved for three visits at three-month intervals following treatment for moderate to advanced cases. Periodontal maintenance therapy may then be approved once per six-month interval if the patient's condition is getting worse or, if not maintained, conditions would deteriorate. (Cross-reference 78.4(4)"d")

d. Surgical endodontic treatment which includes an apicoectomy, performed as a separate surgical procedure; an apicoectomy, performed in conjunction with endodontic procedure; an apical curettage; a root resection; or excision of hyperplastic tissue will be approved when nonsurgical treatment has been attempted and a reasonable time has elapsed after which failure has been demonstrated. Surgical endodontic procedures may be indicated when:

(1) Conventional root canal treatment cannot be successfully completed because canals cannot be negotiated, debrided or obturated due to calcifications, blockages, broken instruments, severe curvatures, open-ended canals, and dilacerated roots.

(2) Correction of problems resulting from conventional treatment including gross underfilling, perforations, and canal blockages with restorative materials. (Cross-reference 78.4(5)"c")

e. The following prosthetic services:

(1) Partial dentures replacing posterior teeth will be approved when the patient has less than eight posterior teeth in occlusion; or when the patient's missing teeth could cause shifting or supra eruption of the remaining dentition; or the patient has a full denture in one arch, and a partial denture replacing posterior teeth is required in the opposing arch in order to balance occlusion; or a partial denture replacing anterior teeth is being approved, and posterior teeth can be replaced with little additional cost. Partial dentures replacing posterior teeth are payable only once in a five-year period unless the dentures are broken beyond repair, lost or stolen and are required to prevent significant dental problems. (Cross-reference 78.4(7)"d")

(2) Fixed bridgework (including acid etch bridgework) for missing anterior teeth will be approved for recipients whose medical condition precludes the use of removable prostheses. (Cross-reference 78.4(7)"e")

f. Orthodontic services will be approved when it is determined that a patient has the most handicapping malocclusion. This determination is made in a manner consistent with the "Handicapping Malocclusion Assessment to Establish Treatment Priority," by J. A. Salzmann, D.D.S., American Journal of Orthodontics, October 1968.

A handicapping malocclusion is a condition that constitutes a hazard to the maintenance of oral health and interferes with the well-being of the patient by causing impaired mastication, dysfunction of the temporomandibular articulation, susceptibility to periodontal disease, susceptibility to dental caries, and impaired speech due to malpositions of the teeth. Treatment of handicapping malocclusions will be approved only for the severe and the most handicapping. Assessment of the most handicapping malocclusion is determined by the magnitude of the following variables: degree of malalignment, missing teeth, angle classification, overjet and overbite, openbite, and crossbite.

A request to perform an orthodontic procedure must be accompanied by an interpreted cephalometric radiograph and study models trimmed so that the models simulate centric occlusion of the patient. A written plan of treatment must accompany the diagnostic aids. Posttreatment records must be furnished upon request of the fiscal agent.

Approval may be made for eight units of a three-month active treatment period. Additional units may be approved by the fiscal agent's orthodontic consultant if found to be medically necessary. (Cross-reference 78.4(8)"a")

ITEM 3. Rescind subrule **78.36(4)**, paragraph "a," and insert the following in lieu thereof:

a. Physician certification process. The hospice must obtain certification that an individual is terminally ill in accordance with the following procedures:

(1) The hospice may obtain verbal orders to initiate hospice service from the medical director of the hospice or the physician member of the hospice interdisciplinary group and by the individual's attending physician (if the individual has an attending physician). The verbal order shall be noted in the patient's record. The verbal order must be given within two days of the start of care and be followed up in writing no later than eight calendar days after hospice care is initiated. The certification must include the statement that the individual's medical prognosis is that the individual's life expectancy is six months or less.

(2) When verbal orders are not secured, the hospice must obtain, no later than two calendar days after hospice care is initiated, written certification signed by the medical director of the hospice or the physician member of the hospice interdisciplinary group and by the individual's attending physician (if the individual has an attending physician). The certification must include the statement that the individual's medical prognosis is that the individual's life expectancy is six months or less.

(3) When the individual remains in the care of the hospice at the end of six months, another certification is required. The procedures and time frames in subparagraphs (1) and (2) above are to be followed.

ITEM 4. Amend subrule **79.1(14)**, paragraph "b," as follows:

b. Adjustment to hospice rates. An adjustment to hospice reimbursement is made when a recipient residing in an intermediate care facility or a skilled nursing facility elects the hospice benefit. The adjustment will be a room and board rate that is equal to the rate at which the facility is paid for reserved bed days *or 95 percent of the facility's Medicaid reimbursement rate, whichever is greater.* Room and board services include the performance of personal care services, including assistance in activities of daily living, socializing activities, administration of medication, maintaining the cleanliness of a resident's room and supervising and assisting in the use of durable medical equipment and prescribed therapies.

For hospice recipients entering an intermediate care facility or skilled nursing facility the adjustment will be effective the date of entry. For persons in intermediate care facilities and skilled nursing facilities prior to hospice election, the adjustment rate shall be effective the date of election.

For individuals who have client participation amounts attributable to their cost of care, the adjustment to the hospice will be reduced by the amount of client participation as determined by the department. The hospice will be responsible for collecting the client participation amount due the hospice.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/2/90.

ARC 840A

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135.96, the Department of Inspections and Appeals hereby adopts a new Chapter 53, "Hospice License Standards," Iowa Administrative Code.

The adopted rules set standards for licensing Hospice programs as required by the Legislature. Hospice licenses are voluntary. However, a license will not be issued until all standards in this chapter are met.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 27, 1989, as **ARC 530A**. A public hearing was held on January 16, 1990, with one person in attendance.

Written comments were received expressing overall acceptance of the rules, but suggested a reduction in the proposed biennial license fee. The Department and the Board of Health, however, concurred that the proposed license fee would remain unchanged.

The following revisions were made to the Notice of Intended Action:

1. In subrule 53.4(1), paragraph "h," the words "to govern" were changed to "relating to" for clarification.
2. A new subrule 53.9(3) was added relating to persons eligible to administer medications.
3. Discharge summary was added to the list of items included in the record in subrule 53.20(2).

In addition, several nonsubstantive modifications in style and format were made at the request of the Administrative Rules Review Committee.

The Board of Health approved adoption of these rules on March 14, 1990.

These rules will become effective June 6, 1990.

These rules are intended to implement Iowa Code sections 135.90 to 135.96.

The following new chapter is adopted:

CHAPTER 53

HOSPICE LICENSE STANDARDS

481—53.1(135) Definitions. The use of the word "shall" indicates mandatory standards. The definitions set out in Iowa Code section 135.90 shall be considered to be incorporated verbatim in the rules. As used in this chapter:

"Bereavement service" is support offered during the bereavement period to the family and friends of someone who has died.

"Care setting" means the place in which care is being given, for example, patient's home, a hospital, a care facility or another place of residence.

"Family" means the immediate kin of the patient, including a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, child, or stepchild. Additional relatives or individuals with significant personal ties to the hospice patient may be included in the hospice patient's family.

"Home care provider" means a care agency that contracts with the hospice to provide services in the home of the hospice patient. The providers may include, but are not limited to, home health aides, homemakers, nurses, occupational therapists or physical therapists.

"Primary caregiver" means the person with major responsibility for providing care to a hospice patient.

"Protocols" are defined as written sets of directions to be followed in performing procedures. These may be routine or may describe specific actions staff must follow when particular events occur.

"Psychosocial needs" involve a person's mental and emotional life related to behavior to other people.

"Social services" are services provided by someone who has a bachelor's or higher degree in social work.

"Spiritual counselor" may be clergy, a hospice employee, a volunteer or someone chosen by the patient.

"Utilization review" means a program to assess the kind of care delivered and to identify needs which may not have been met.

481—53.2(135) License. Application for an initial or renewal license may be obtained from the Department of Inspections and Appeals, Division of Health Facilities, Lucas State Office Building, Des Moines, Iowa 50319.

53.2(1) Prior to the issuance of a license each hospice must meet all the requirements set forth in this chapter.

53.2(2) The applicant shall submit a nonrefundable biennial license fee of $500. If a license lapses for failure to make timely application for renewal, an additional 25 percent is required.

53.2(3) Each hospice seeking licensure is surveyed before the initial license is issued and biennially before a license is renewed.

53.2(4) Home care provider and inpatient facilities used by the hospice shall be inspected by the department to determine whether hospice regulations are met.

53.2(5) Hospices certified as Medicare providers by the department or accredited by the Joint Commission on the Accreditation of Health Organizations will be licensed without inspection.

53.2(6) The department may not prohibit any entity from establishing or maintaining a hospice without a license.

53.2(7) The department may deny, suspend or revoke a license if the department finds that a hospice does not comply with these rules.

53.2(8) A license is issued only for the premises, person, hospital or facility named on the application. The license may not be transferred or assigned to another person or entity.

53.2(9) A license expires two years after the date issued unless it is suspended or revoked before that date.

This rule is intended to implement Iowa Code sections 135.91 to 135.94.

481—53.3(135) Patient rights. Each hospice program shall have written policies and procedures that support, enhance and protect the human, civil, constitutional and statutory rights of all patients.

53.3(1) Patient rights include, but are not limited to, the right to:

a. Be treated with dignity and respect;

b. Be informed of the type of care and the services provided by the hospice program;

c. Information regarding diagnosis and prognosis and any change in either;

d. Review and participate in their plan of care; and

e. Privacy.

53.3(2) A copy of these rights shall be provided to all individuals admitted to a hospice.

This rule is intended to implement Iowa Code section 135.95(3).

481—53.4(135) Governing body. The hospice shall have a local governing body which consists of people who represent the geographic area for which the hospice intends to provide service.

53.4(1) The governing body shall:

a. Develop a written mission statement, goals and objectives for the hospice and meet with sufficient regularity to ensure accomplishment of those goals and objectives;

b. Develop, amend and implement bylaws;

c. Assume responsibility for the total operation of the hospice;

d. Appoint an administrator whose qualifications and duties are defined in writing and who has authority to manage the business affairs and to direct all programs of the hospice;

e. Develop the budget and monitor the fiscal affairs of the hospice;

f. Provide for medical direction by a licensed physician;

g. Provide appropriate, qualified personnel in sufficient quantity to ensure availability of hospice services listed below, 24 hours a day, seven days a week;

h. Develop and implement written policies and procedures relating to:

(1) Admission and discharge criteria,

(2) Response to referrals,

(3) Medical direction,

(4) Physician services,

(5) Nursing services,

(6) Nutritional services,

(7) Pharmacy services,

(8) Social services,

(9) Volunteer services,

(10) Spiritual services,

(11) Patient and family education,

(12) Bereavement services,

(13) Staff response to death at home and in institutions,

(14) Coordination and communication between all agencies serving the patient and family,

(15) Communication with community agencies, and

(16) Community education efforts;

i. Develop and implement written personnel policies; and

j. Develop and implement a written plan for review of the services delivered.

53.4(2) The governing body shall ensure that someone is responsible to:

a. Organize and direct the ongoing functions of the hospice program;

b. Meet the requirements of the written job descriptions;

c. Maintain liaison with the governing body and staff to ensure administrative control and professional supervision over all patient and family services furnished;

d. Provide orientation and in-service training for all staff, which covers the physical, emotional, spiritual and social needs of hospice patients and their families during the final stages of illness, at death and during grief;

e. Plan, organize, implement, guide and evaluate the program;

f. Formulate and conduct a review of policies and procedures, including quality assurance; and

g. Ensure that all required reports and records are completed, submitted and maintained. This includes personnel, administrative and clinical records.

This rule is intended to implement Iowa Code section 135.95.

481—53.5(135) Quality assurance and utilization review. The hospice must have a written procedure for individual assessment of care provided, a process for identifying problems and a system to report findings and recommendations for improving the quality of care delivered to the governing body.

53.5(1) At least quarterly, the medical director, patient coordinator and social worker used by the hospice program shall review a minimum of a 10 percent sample of combined active and inactive clinical records of care delivered to hospice patients and families. A written summary shall be prepared for each individual assessment, commenting on the amount and kind of care delivered and including statements addressing any unmet needs.

53.5(2) At least quarterly, all summaries of individual assessments shall be reviewed by the people responsible for coordinating quality assurance. A written report will be prepared addressing any identified problems with care, treatment services, availability of services and methods of care delivery.

53.5(3) The quality assurance reports shall be made available to the hospice administrator and governing body. The reports shall be reviewed by the governing body at least annually, and the review recorded in the governing body's meeting minutes.

This rule is intended to implement Iowa Code section 135.95(8).

481—53.6(135) Attending physician services. The patient or family shall designate an attending physician who is responsible for managing necessary medical care. The attending physician shall:

1. Have an active Iowa license to practice medicine pursuant to Iowa Code chapter 148, 150 or 150A;

2. Certify in conjunction with the medical director that each person requesting admittance is eligible as required by Iowa Code section 135.90(3) for hospice care;

3. Be responsible for the medical component of the plan of care;

4. Participate in developing and revising the plan of care;

5. Arrange for continuity of the medical management in the attending physician's absence; and

6. Monitor the condition of the patient and family by direct contact, or communication with the interdisciplinary team (IDT) and others.

This rule is intended to implement Iowa Code section 135.95(4).

481—53.7(135) Medical director. Each hospice shall have a medical director who is a physician licensed to practice medicine pursuant to Iowa Code chapter 148, 150 or 150A. The medical director shall:

1. Be a member of the interdisciplinary team;
2. Monitor the quality of care provided;
3. Assist in providing assurance of the quality of care provided to the patient and family;
4. Maintain liaison with the attending physician;
5. Review clinical material from the patient's attending physician to certify the prognosis as anticipated by that physician;
6. Participate in providing direction for the medical component of care;
7. Participate in resolving conflicts regarding care to be provided;
8. Name a qualified physician to be available in the medical director's absence; and
9. Participate in the development and review of patient and family care policies, procedures and protocols.

This rule is intended to implement Iowa Code section 135.95(1).

481—53.8(135) Interdisciplinary team (IDT). The IDT shall establish a plan of care for each patient and family based on assessments performed by team members.

53.8(1) The interdisciplinary team shall include the:

a. Patient;
b. Hospice patient's family;
c. Attending physician;
d. Medical director;
e. Patient care coordinator;
f. Staff nurse;
g. Social worker;
h. Coordinator of volunteer service; and may include
i. A spiritual counselor and others deemed appropriate by the hospice.

53.8(2) Prior to or on the day of admission, the attending physician and at least one IDT team member shall develop an initial plan based on a preliminary assessment of the patient and family needs.

53.8(3) Within seven calendar days of admission the interdisciplinary team shall assess the needs of the patient and family. A care plan shall be based on these findings.

53.8(4) Within seven calendar days of admission the interdisciplinary team shall meet to develop a comprehensive written plan of care. The plan of care shall:

a. Identify the primary caregiver or an alternate arrangement for care;
b. List the needs of the patient and family;
c. List any intervention planned to meet the needs of the patient and family and the results expected from each intervention;
d. Indicate which team member(s) is responsible for each intervention;
e. Indicate the anticipated frequency of each intervention; and
f. Indicate the prognosis and expected disease process.

53.8(5) The IDT shall monitor and revise the plan of care on a regular basis. The team shall meet weekly and exchange information regarding the needs of the patient and family. Changes in the care plan shall be made when the needs of the patient or family change or when interventions do not result in the expected or intended response.

This rule is intended to implement Iowa Code section 135.95(5).

481—53.9(135) Nursing services. Nursing services shall be planned and provided or supervised by a registered nurse who has a current Iowa license to practice nursing. The service shall be available 24 hours a day, seven days a week.

53.9(1) A registered nurse shall assess patient and family nursing needs and develop a nursing plan of care to meet these needs.

53.9(2) The nursing service staff shall:

a. Participate in IDT meetings to develop and amend the plan of care;
b. Provide nursing service in accordance with the overall plan of care developed by the IDT;
c. Consult with the patient and family regarding how to meet nursing and nursing related needs of the patient;
d. Document nursing care given and observations made regarding patient, family reactions and status;
e. Consult with other care providers and the family to enhance continuity of care;
f. Develop and implement nursing service objectives, policies and procedures;
g. Develop job descriptions for all nursing personnel;
h. Establish staff schedules to meet patient and family needs and ensure 24-hour service;
i. Develop and implement orientation and training programs;
j. Develop and implement performance evaluation for the nursing staff;
k. Assign duties to nurses consistent with their education and experience; and
l. Facilitate periodic meetings of the professional nursing staff to evaluate the nursing care provided by hospice personnel.

53.9(3) Persons who are employed by, volunteer with or work under contract to a licensed hospice organization may administer medications only if they are also a licensed nurse, a licensed physician or a certified medication aide.

This rule is intended to implement Iowa Code section 135.95(2).

53.10 Reserved.

481—53.11(135) Coordinator of patient care. A registered nurse, social worker or health care administrator shall be designated to coordinate implementation of the plan of care for each patient.

The coordinator of patient care shall at least:

1. Coordinate all aspects of patient care to ensure continuity, including care by all service disciplines in all care settings;
2. Facilitate exchange of information among all personnel who provide services to ensure complementary efforts and support for objectives outlined in the plan of care;
3. Facilitate communication between caregivers, patient and family;
4. Maintain a roster of patients;
5. Maintain a schedule for IDT review of care plans; and
6. Chair IDT conferences.

This rule is intended to implement Iowa Code section 135.95(2).

481—53.12(135) Social services. Social services shall be planned and provided or supervised by a person who has at least a bachelor's degree in social work from a school approved by the council on social work education. The social worker shall at least:

1. Consider the emotions and social support system of the patient and family;
2. Assess the ability of the family and the patient to function socially and to deal with their emotions;
3. Identify patient and family social service needs;
4. Participate on the IDT to develop and amend the plan of care;
5. Provide services in accordance with the plans of care developed by the IDT;
6. Document services provided and observations made regarding patient and family response and status; and
7. Cooperate and communicate with other providers and the family to enhance the continuity of care.

This rule is intended to implement Iowa Code section 135.95(2).

481—53.13(135) Counseling services. Counseling is the process of helping people adjust to the grief of illness, dying and loss. Counseling shall be provided in accordance with the plan of care. When the interdisciplinary team identifies the need for additional counseling services, a team member shall be designated to make an appropriate referral. No referrals may be made without the agreement of the patient and the family.

This rule is intended to implement Iowa Code section 135.95(2).

481—53.14(135) Volunteer services. Each hospice shall provide volunteer services to meet patient and family needs. A coordinator of volunteer services shall be designated to implement written policies and procedures.

53.14(1) Each volunteer shall have at least 14 hours of education provided by the hospice before being assigned to a patient and family. The following topics shall be included in the educational program:

a. Hospice concept and philosophy;
b. Symptom control;
c. Infection control;
d. Home care skills;
e. Safety measures and transfer techniques;
f. Stress management;
g. Communication needs;
h. Psychosocial needs;
i. Spiritual needs;
j. Death, dying and grief; and
k. Funerals and alternative rituals.

53.14(2) The hospice shall offer at least two hours of in-service training each quarter.

This rule is intended to implement Iowa Code section 135.95(2).

481—53.15(135) Spiritual counseling. Spiritual counseling shall be available to all patients and their families.

53.15(1) Spiritual counseling shall:

a. Be based on the beliefs and values of the patient and family; and
b. Be provided in accordance with the interdisciplinary plan of care.

53.15(2) If spiritual counseling is provided through a working relationship with clergy or other spiritual counselors in the community, there shall be ongoing communication between that counselor and the interdisciplinary care team.

53.15(3) There shall be written and implemented policies and procedures regarding spiritual counseling.

This rule is intended to implement Iowa Code section 135.95(2).

481—53.16(135) Optional services. Optional services are services provided by the hospice which are not required. Examples are home health aide, therapy and respite. The following apply to the provision of all optional services provided by a hospice:

53.16(1) All service providers shall be oriented to the hospice concept and philosophy.

53.16(2) All services shall be provided in accordance with the interdisciplinary plan of care.

53.16(3) Written and implemented policies and procedures shall:

a. Identify service providers;
b. Identify the person who will supervise the provision of services;
c. Require documentation of services provided and patient and family response; and
d. Describe a mechanism for evaluating quality of care provided.

This rule is intended to implement Iowa Code section 135.90(7).

481—53.17(135) Contracted services. A hospice may contract with other health care providers for the provision of all services.

53.17(1) Contracts shall be written and clearly delineate the authority and responsibility of each party to the contract.

53.17(2) The hospice shall maintain responsibility for coordinating and administering the hospice program.

53.17(3) Contracting for a service does not absolve the hospice of legal responsibility for provision of that service.

53.17(4) The hospice shall inform the patient whether the hospice is paying for the contracted services.

This rule is intended to implement Iowa Code section 135.95(2).

481—53.18(135) Short-term hospital services. Each hospice shall have a written agreement with a local or area hospital which promotes continuation of the hospice plan of care and training for hospital staff who care for hospice patients.

This rule is intended to implement Iowa Code section 135.95(2).

481—53.19(135) Bereavement services. Bereavement services shall be available to each family after the death of a patient and shall be provided in accordance with family needs.

53.19(1) Bereavement services shall include:

a. Exchange of information between people who provide bereavement services and team members who provided care before death;
b. Consideration of the family's situation, including risk factors, used to develop a plan for services;
c. Identification of types of help or intervention to be available and provided;
d. Contact with the family after the death as required by their needs as documented in the plan of care; and
e. A process to assess family reactions and hospice referrals for intervention deemed appropriate by the IDT.

53.19(2) There shall be written and implemented policies and procedures governing the delivery of bereavement services.

This rule is intended to implement Iowa Code section 135.95(6).

481—53.20(135) Records. In accordance with accepted principles of medical record practice, each hospice shall maintain a centralized complete record on every individual receiving services. This record shall be preserved for at least three years following termination of services.

53.20(1) Each entry shall be dated and signed, including the name and title of the person who makes the entry.

53.20(2) The record shall include documentation of all services provided, whether furnished by the hospice or by contractual agreement. Each record shall include, but not be limited to:

a. Patient identification and demographic data;
b. Initial and subsequent assessments;
c. The plan of care;
d. Medical history;
e. Documentation of all services provided;
f. Consent and authorization forms;
g. Physicians' orders;
h. Medication records;
i. Discharge summary; and
j. Discharge and transfer records.

53.20(3) The hospice shall have written and implemented policies to safeguard destruction or unauthorized use of patient records. Written procedures shall govern use and removal of records, conditions for release of information and identification by title of the person who may release records.

These rules are intended to implement Iowa Code sections 135.90 to 135.95.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/2/90.

ARC 864A

IOWA FINANCE AUTHORITY[524]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 220.5 and 220.91, the Iowa Finance Authority hereby adopts amendments to Chapter 9, "Title Guaranty Division," Iowa Administrative Code.

The Iowa Finance Authority's adoption reflects changes in the law on Title Guaranty and changes in the Title Guaranty program implemented by the Title Guaranty Division.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 13, 1989, as **ARC 511A**. A public hearing was held January 2, 1990, in Des Moines to solicit comments on the proposed amendment. No comments were received.

These rules are identical to the Notice.

These amended rules were adopted April 13, 1990, and will become effective on June 6, 1990.

These rules are intended to implement Iowa Code section 220.91.

Amend 524—Chapter 9 as follows:

524—9.1(220) Location. The title guaranty division ("division") of the Iowa finance authority ("authority") is located at the offices of the Iowa Finance Authority, ~~Suite 550, Liberty Building, 6th and Grand Avenue,~~ *200 E. Grand Avenue, Suite 222,* Des Moines, Iowa 50309, telephone ~~515/281-4058,~~ *515/242-5128.*

524—9.12(220) General. The title guaranty division of the Iowa finance authority has established a program for offering mortgage lenders and the general public low cost protection against loss or damage caused by defective titles to Iowa real property. The title guarantees offered by the division will facilitate mortgage lender participation in the secondary market and add to the integrity of the land-title transfer system in the state. Title guaranty owners and lenders certificates will be available through participating attorneys throughout the state who shall act as limited agents for the division for the sole purpose of issuing title guaranty certificates subject to the rules of the division and applicable law. Any participating attorney rendering a title opinion shall be authorized to issue a title guaranty certificate subject to the rules of the division. The division shall require participating abstracters to update the abstract to any real property for which a guaranty is desired, in accord with division standards. Upon request by a mortgagor or participating lender, the participating attorney will issue a title guaranty commitment and the final guaranty certificate after reviewing an abstract prepared by a participating abstracter. ~~Participating mortgage lenders shall inform borrowers of the availability of the title guaranty and the cost associated with the purchase of a title guaranty.~~

524—9.13(220) Participation requirements for attorneys. Any attorney licensed to practice law in the state of Iowa shall be eligible to participate in the title guaranty program upon execution and acceptance by the division of a participation agreement in the form prescribed by the division. The participation agreement will require that the participating attorney:

1. Maintain attorney's liability insurance with limits of not less than one hundred thousand dollars ($100,000) per claim and not less than three hundred thousand dollars ($300,000) total annual limit, and disclose to the division the name, address, and phone number of the liability carrier and the amount of the insurance maintained.

2. Examine real estate titles for the purpose of accurately reporting the state of the title involved in accordance with the Iowa Land Title Examination Standards of the Iowa State Bar Association, where applicable, or other applicable law.

3. Pay an initial participation fee of twenty-five dollars ($25). ~~for the year beginning January 1, 1987, and pay an annual renewal fee of ten dollars ($10) for each year thereafter. Participation fees are due no later than January 30 of each calendar year.~~

4. Abide by the rules of the division and applicable law.

524—9.14(220) Participation requirements for abstracters. Any abstracter or abstracting concern shall be eligible to participate in the title guaranty program upon execution and acceptance of a participation agreement in a form prescribed by the division. The participation agreement shall require the participating abstracter or abstracting concern to:

1. Prepare abstracts in accord with the most current Iowa Land Title Association Uniform Abstracting Standards, where applicable.

2. Own or lease, and maintain and use in the preparation of abstracts as up-to-date abstract title plant including tract indices for real estate for each county in which abstracts are prepared for titles to real property guaranteed by the division. Each of the tract indices shall be designated to encompass a geographical area of not more than one (1) block in the case of platted real estate, nor more than one (1) section in the case of unplatted real estate. The tract indices shall include a reference to all of the instruments affecting real estate recorded in the office of the county recorder, and the tract indices shall commence not less than forty (40) years prior to the effective date of the abstracter's participation in the title guaranty program. Provided however, participating attorneys ~~or persons under their supervision or control~~ providing abstract services ~~on or before~~ *continuously from* November 12, 1986, *to the date of application either personally or through persons under their supervision and control* shall be exempt from the requirements of this paragraph.

3. Maintain abstracter's liability insurance in an amount not less than fifty thousand dollars ($50,000) total annual limit, and disclose to the division the name of the liability carrier and the amount of insurance maintained.

4. Pay an initial participation fee of twenty-five dollars ($25). ~~for the year beginning January 1, 1987, and pay an annual renewal fee of ten dollars ($10) for each year thereafter. Participation fees are due no later than January 30 of each calendar year.~~

5. Retain either a carbon copy or a mechanical reproduction of each certificate continuation and new abstract of title prepared after December 31, 1986, for which a title guaranty is issued.

6. Abide by the rules of the division and applicable law.

524—9.15(220) Participation requirements for lenders. Any mortgage lender as defined in Iowa Code section 220.1(14) that is authorized to make mortgage loans on Iowa real estate shall be eligible to participate in the title guaranty program. ~~upon execution and acceptance by the division of a participation agreement in the form prescribed by the division. The participation agreement shall require the participating lender to:~~

~~1. Pay an initial participation fee of $25.~~

~~2. Abide by the rules of the division and applicable law.~~

~~This rule is intended to implement Iowa Code section 220.91.~~

524—9.17(220) Application for waiver of participation requirements. It is the intention of the division to make title guaranties available statewide. Therefore, in order to achieve the widest possible geographic coverage, the division will allow any abstracter *or* attorney ~~or lender~~ the opportunity to apply for a waiver of the participation requirements set out in rules 9.13(220) *and* 9.14(220)~~, and 9.15(220)~~. Any application for waiver of participating requirements should be directed to the board of the division and should succinctly state which participation requirements are requested to be waived. The request should contain adequate supporting information and argument so that the board may make an informed decision on the request. It is the intention of the board to waive participation requirements only when it is determined that they result in a hardship to the requesting abstracter *or* attorney~~, or lender,~~ and the waiver clearly is in the public interest or is absolutely necessary to ensure availability of title guaranties throughout the state.

524—9.18(220) Rates. The division shall fix the rate for the owner's guaranty, the lender's guaranty, and the various endorsements that will be offered by the division. The division shall make a published rate schedule available to mortgage lenders. ~~If an owner guaranty is purchased, the mortgagee may purchase a lender guaranty for a flat fee of fifteen dollars ($15).~~

524—9.20(220) Disclosure information. Rescinded, effective 6/6/90.

524—9.30(17A,220) Petition for receipt of additional evidence. If, prior to the issuance of the final decision, any party feels that the submission of additional evidence is necessary, the party shall request an opportunity to present additional evidence by mailing a request to the chair of the division's board by ordinary mail, c/o the Division's Office at ~~550 Liberty Building~~ *Suite 222, 200 E. Grand Avenue*, Des Moines, Iowa 50309. The party shall, in addition, notify all opposing parties by certified mail, return receipt requested, including in such notice to the opposing parties all information submitted to the chair.

The chair shall review the requests and either reject the request or establish an additional hearing no sooner than seven (7) calendar days from the chair's decision. The chair shall notify the parties of a decision to adopt additional evidence by certified mail, return receipt requested. Notice of a decision to reject additional evidence may be by ordinary mail.

Rules 9.22(17A,220) to 9.30(17A,220) are intended to implement Iowa Code sections 17A.10 to 17A.18.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/2/90.

ARC 838A

LAW ENFORCEMENT ACADEMY[501]

Adopted and Filed

Pursuant to the authority of Iowa Code section 80B.11, the Iowa Law Enforcement Academy hereby amends Chapter 1, "Organization and Administration," and adopts a new Chapter 10, "Reserve Officer Weapons Certification," Iowa Administrative Code.

These changes establish weapons training requirements for reserve peace officers in the state of Iowa.

Notice of Intended Action was published as **ARC 669A** in the Iowa Administrative Bulletin on February 21, 1990. Public comments were solicited and a public hearing was scheduled for March 13, 1990, but no comments or suggestions were received by the Academy concerning the proposed rules. However, subrule 10.1(2) was rewritten for clarification, and subrule 10.2(3) was renumbered as a new rule 501—10.3(80D).

These rules define the word "weapon" and establish weapons training requirements for all Iowa Reserve Peace Officers who carry weapons as part of their employment.

These rules shall become effective June 6, 1990.

These rules are intended to implement Iowa Code sections 80B.11 and 80D.7.

The following amendments are adopted:

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

"Weapon" shall mean any firearm, striking instrument or chemical agent authorized for use as a weapon by the hiring authority.

ITEM 2. The following new chapter is adopted:

CHAPTER 10

RESERVE OFFICER
WEAPONS CERTIFICATION

501—10.1(80D) Weapons certification.

10.1(1) Reserve officers must receive council certification in the use of weapons the hiring authority expects and authorizes them to carry. Weapons training is not required with any weapons the reserve officers are not authorized to carry.

10.1(2) Individuals who have been certified through training by the Iowa law enforcement academy as regular officers may be certified to carry weapons as reserve officers without repeating the required reserve officer's weapons training under the following conditions:

a. The academy certification through training was acquired through a school in which firearms training was required; and

(1) The individual is serving as a regular officer for another department at the time of appointment as a reserve officer, or

(2) The individual has served as a regular officer within the two years immediately preceding appointment as a reserve officer.

b. Verification must also be provided to the council that the officer has fired a qualifying score of 80 percent or higher on a tactical revolver course approved by the academy within the past 12 months. This verification must be provided by an academy trained and certified firearms instructor.

10.1(3) Application for weapons certification.

a. Application for weapons certification must be made in writing to the council on forms provided by the academy.

b. Verification must be received by the council that a fingerprint check has been made with the division of criminal investigation of the Iowa department of public safety and that the applicant has no record of a felony conviction or conviction of a crime involving moral turpitude.

c. Council certification will be granted only where weapons proficiency is documented.

501—10.2(80D) Instructors for required weapons training.

10.2(1) Firearms training must be provided by an academy certified firearms instructor before a reserve officer can be certified to carry a firearm.

10.2(2) Striking instruments or chemical weapons training may be given by any qualified instructor as determined by the hiring authority.

501—10.3(80D) Reserve officers and regular officers weapons training requirements identical. Reserve officer weapons training requirements are the same as those required of regular law enforcement officers during their basic training.

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ARC 857A

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code section 321G.2, the Natural Resource Commission rescinds Chapter 28, "Snowmobile Registration Revenue Cost-Share Program," and inserts in lieu thereof Chapter 28, "Snowmobile and All-Terrain Vehicle Registration Revenue Cost-Share Program," Iowa Administrative Code.

This chapter describes the policy, procedures and methods to be followed by the Department of Natural Resources, local political subdivisions and incorporated private organizations in the method of selecting projects as a part of the Snowmobile Registration Revenue Allocation Program and the All-Terrain Vehicle Registration Revenue Allocation Program.

Notice of Intended Action was published in the January 24, 1990, Iowa Administrative Bulletin as **ARC 604A**. No verbal comments were received at the public hearing held March 7, 1990. Written suggestions were received which included the following changes:

1. Throughout the chapter, the term "will" was changed to "shall" or "may."

2. In 28.4(6)"b," the date by which sponsors must apply for reimbursement of approved expenditures in excess of the 50 percent prepayment previously provided or to provide reimbursement of any overpayment was changed from July 1 to September 15.

3. Rule 28.6(321G) was rewritten for clarity and other nonsubstantive grammatical changes were made.

These rules are intended to implement Iowa Code chapter 321G.

These rules will become effective June 6, 1990.

Rescind 571—Chapter 28 and insert the following in lieu thereof:

CHAPTER 28

SNOWMOBILE AND ALL-TERRAIN
VEHICLE REGISTRATION
REVENUE COST-SHARE PROGRAM

571—28.1(321G) Purpose and intent. This program provides funds from snowmobile and all-terrain vehicle registrations to local political subdivisions and incorporated private organizations for the development, maintenance, and acquisition of land for snowmobile trails and all-terrain vehicle areas and trails, and appurtenant facilities on lands which may be in other than state ownership. This chapter is to clarify

procedures used in implementing agreements under Iowa Code chapter 28E between the department of natural resources, hereinafter referred to as the department, and other public agencies and incorporated private organizations, hereinafter referred to as sponsors. All trails and facilities established with the use of revenues under this program shall be open to use by the general public.

571—28.2(321G) Distribution of funds. The annual local share of state snowmobile and all-terrain vehicle registration funds shall be distributed in accordance with rules 28.3(321G) and 28.4(321G) and upon execution of agreements under Iowa Code chapter 28E.

571—28.3(321G) Administration of snowmobile fund allocation to sponsors.

28.3(1) Application. Applications for cost-share moneys shall be made on application forms available from the department. The application must be completed and signed by the chairperson or chief executive officer of the applying sponsor. The application must be accompanied by a copy of the minutes of the meeting at which the request was approved.

28.3(2) Application deadline. Applications for snowmobile fund moneys must be received by the department and postmarked no later than 12 midnight, July 1 of each year. Applications received after that date shall be returned to the submitting sponsor and shall not be considered for cost-share moneys for that year. Application forms shall be provided upon request from the department.

28.3(3) Review and selection committee. The review and selection committee shall be comprised of the following:

a. Administrator of the parks, recreation and preserves division or designee,

b. Chief of the planning bureau or designee,

c. Chief of the budget and grants bureau or designee,

d. Two representatives appointed by the chairperson of the Iowa state snowmobile association.

28.3(4) Project selection. The snowmobile cost-share committee shall meet July 20, or the closest working day, at the department's central office. Those projects that have been received by the deadline shall be reviewed and prioritized. Primary considerations for establishing priority shall include:

a. Average snowfall,

b. Addition to existing program or new program,

c. Miles of trail,

d. Trail diversity,

e. For sponsors already participating, previous performance in grant program,

f. Number of registered snowmobiles in project area,

g. Average number of days with snow cover exceeding one inch,

h. Sponsor's share of project cost.

28.3(5) Director's review. The director shall review committee selections and may reject any application selected by the committee for funding. Appeals of the director's decision may be made to the natural resource commission.

28.3(6) Items included in snowmobile fund program.

a. Grooming equipment. A minimum of 50 miles of groomable snowmobile trail is necessary for approval of a groomer and associated equipment for that trail system. Once approved, the state shall acquire groomers and drags using the standard state purchasing procedure. The local sponsor shall reimburse the local side of the state snowmobile fund 10 percent of the purchase price or appraised value of an original groomer. After approval of the review committee and upon trade-in to the department of a used groomer by a local sponsor for replacement purposes, the trade-in value shall be applied to the new groomer and the snowmobile fund shall pay the balance. Upon documented nonfeasance, sale, or trade-in of a used groomer with no replacement, the snowmobile fund shall refund to the local sponsor the percentage of the trade-in value which they originally invested in the groomer. It shall be the local sponsor's responsibility to acquire groomer liability insurance, license the machine, and provide for daily operation and maintenance.

b. Groomer operation and maintenance. The snowmobile fund may pay for comprehensive liability insurance including groomer liability, trail liability, and agency or club liability excluding the cost of insurance for special events, and liability insurance on snowmobiles owned by the sponsor and used in the program up to a total combined cost of $600 per county. The snowmobile fund may finance gasoline and oil, parts replacement and repair bills for groomers. Complete documentation must accompany reimbursement requests including explanation of problems and cause for repair. Sponsors shall provide documentation as required by the department to substantiate all expenditures. Maintenance and repair labor wages and groomer operation wages may be funded at a rate up to $5.50 per hour. Thaw-out and shop time for repair and service of groomers may be reimbursed at a maximum rate of $10 per day. Complete records must be kept by the sponsor on daily groomer logs provided by the department. In programs where a sponsor subcontracts the operation and maintenance of the program, a copy of that contract must be provided to the department. The fund shall provide a 50 percent start-up payment to the sponsor by November 1 based upon average expenditures in the program for the previous five-year period or that portion of the period in which they have been involved. For new programs, the start-up payment shall be based upon similar-sized systems in the immediate locality. Sponsors must apply by May 1 for reimbursement of approved expenditures in excess of the 50 percent prepayment previously provided. If those funds provided under the prepayment are not completely expended, the balance on hand shall be reimbursed to the local side of the snowmobile fund by May 1 accompanied by documentation as required by the department for all expenditures incurred.

c. Snowmobile trail signs. Signs shall be provided to the sponsor by the department. Only those signs approved for use on funded trails shall be used by the sponsor. Trail sign applications shall be provided upon request by the department with a request deadline of July 1. Posts for signs and installation costs shall be provided by the sponsor.

d. Trail development. The snowmobile fund money shall be apportioned as follows:

(1) Preseason trail preparation involving salary at a rate up to $5.50 per hour up to a maximum of $500 for gate placement, fence opening construction, bridge construction, brush clearing, rock removal, leveling and filling.

(2) Actual material cost of fence openings up to $50 per opening.

(3) Actual material cost of gates up to $80 per gate.

(4) Actual material cost of temporary bridges and ditch crossings up to $300 per bridge.

(5) Actual material cost of permanent bridges up to the amount approved by the review and selection committee including placement if on publicly owned property or private property under lease or easement for ten or more years.

(6) Cost of multiuse easements.

(7) Actual cost of unusual items and equipment that supplement a trail such as fence stiles, windbreak shelters, fire rings, warming huts.

(8) Cost of land acquisitions with multipurpose benefits including snowmobiling. The snowmobile fund may make direct payments to the landowner. Reimbursement or prepayment of land acquisitions are allowed including the cost of appraisals, abstracts and surveys. Appraisals must be approved by the department. The fund may pay or reimburse the sale price or the appraised value, whichever is less. Contracts for these services must be approved by the department.

(9) Actual cost of ambulance sleds up to a total state share of $1,250.

(10) High-band radio equipment, portable telephones or cellular telephones up to a total state share of $675 per groomer.

28.3(7) Cost-share eligibility. Only items listed in this rule and which can reasonably be utilized in the construction and maintenance of snowmobile trails or snowmobile ambulance facilities shall be eligible for snowmobile funds. Storage, shop or maintenance equipment shall not be funded from the snowmobile fund.

28.3(8) Prepayment, documentation, reimbursement. Excluding operation and maintenance, all approved items shall be prepaid at the rate of 75 percent. Grant recipients shall provide documentation as required by the department to substantiate all project expenditures by May 1. Any unexpended prepayment balance must be reimbursed to the local side of the snowmobile fund.

571—28.4(321G) Administration of all-terrain vehicle fund allocation to sponsors.

28.4(1) Application: Applications for cost-share moneys shall be made on application forms available from the department. The application must be completed and signed by the chairperson or chief executive officer of the applying sponsor. The application must be accompanied by a copy of the minutes of the meeting at which the request was approved.

28.4(2) Application deadline. Applications for all-terrain vehicle fund moneys must be received by the department and postmarked no later than 12 midnight, September 1 of each year. Applications received after that date shall be returned to the submitting sponsor and shall not be considered for cost-share moneys for that year. Application forms shall be provided upon request from the department.

28.4(3) Review and selection committee. The review and selection committee shall be comprised of the following:

a. Administrator of the parks, recreation and preserves division or designee,

b. Chief of the planning bureau or designee,

c. Chief of the budget and grants bureau or designee,

d. Two representatives appointed by the chairperson of the Iowa all-terrain vehicle association.

28.4(4) Project selection. The all-terrain vehicle cost-share committee shall meet September 20, or the closest working day, at the department's central office. Those projects that have been received by the deadline shall be reviewed and prioritized. Primary considerations for establishing priority shall include:

a. Number of registered all-terrain vehicles in project area.

b. Project cost.

c. Site quality including present use and site modifications required to create facility.

d. Environmental impacts.

e. Period of year facility shall be open for public use.

f. Project management and maintenance methodology.

g. For sponsors already participating, previous performance in grant program.

28.4(5) Director's review. The director shall review committee selections and may reject any application selected by the committee for funding. Appeals of the director's decision may be made to the natural resource commission.

28.4(6) Items included in all-terrain vehicle program.

a. Land acquisition including easements shall be funded as approved by the review and selection committee. The all-terrain vehicle fund may make direct payments to the landowner. Reimbursement or prepayment of land acquisitions are allowed including the cost of appraisals, abstracts and surveys. Appraisals must be approved by the department. The fund may pay or reimburse the sale price or the appraised value, whichever is less. Contracts for these services must be approved by the department.

b. Operation and maintenance. All operation and maintenance costs approved by the review and selection committee shall be paid. Labor by sponsor may be paid or reimbursed at a rate up to $5.50 per hour. If facility operation and maintenance are contracted, the contract must be provided with the application for funds and approved by the review and selection committee and the department. Operation and maintenance may include salaries, equipment necessary for grooming and maintenance, and gasoline and oil for such equipment. It will be the sponsor's responsibility to acquire program and facility liability insurance. A copy of the insurance policy and cost must be approved by the all-terrain vehicle review and selection committee to be eligible for reimbursement. The fund shall provide a 50 percent start-up payment to the sponsor for those operation and maintenance expenditures approved by the review and selection committee, excluding equipment purchase which shall be paid in full upon receipt of competitive bid documentation. The sponsor must apply by September 15 for reimbursement of approved expenditures in excess of the 50 percent prepayment previously provided. If those funds provided under the prepayment are not completely expended, the balance on hand shall be reimbursed to the local side of the all-terrain vehicle fund by September 15 accompanied by documentation as required by the department.

c. All-terrain vehicle signs. Signs shall be provided to the sponsor by the department. Only those signs approved for use on funded facilities or trails shall be used by the sponsor. Sign applications shall be provided upon request by the department with a request deadline of September 1. Posts for signs and installation costs shall be provided by the sponsor.

d. Facility and trail development. The all-terrain vehicle fund money shall be apportioned as follows:

(1) Earthwork includes necessary alterations to the existing land surface approved by the review and selection committee. If alterations are done by the sponsor, reimbursement may include salary for labor at a maximum reimbursement rate of $5.50 per hour. If contracted, reimbursement shall be at the amount specified in the contract approved by the review and selection committee and the department. Labor costs shall be documented on logs provided by the department.

(2) General development includes fencing, landscaping, shelters, gates at a reimbursement rate of $130 per gate and opening, permanent bridges, temporary bridges at a reimbursement rate of $300 per bridge, stiles, ramps, check stations, unusual items and equipment that supplement an all-terrain vehicle facility or trail.

28.4(7) Cost-share eligibility. Only items listed in this rule and which can reasonably be utilized in the construction or maintenance of all-terrain vehicle facilities shall be eligible for all-terrain vehicle funds. Documentation of expenditures eligible for prepayment or reimbursement from the fund shall be on forms available from the department.

571—28.5(321G) Use of funded items. Manufactured products or machinery purchased by sponsors with state assistance under this program shall be used only for the purpose of establishing or maintaining snowmobile trails or all-terrain vehicle facilities or emergency rescue operations where applicable.

571—28.6(321G) Disposal of equipment, facilities or property. Sponsors shall not dispose of any manufactured product or machinery, facilities or property in which the department paid all or a portion of the actual cost without the prior written consent of the department. Sponsors shall reimburse the department a percentage of the price received, that percentage being the percent of the original purchase price paid by the snowmobile or all-terrain vehicle fund. Reimbursements received by the department shall be credited to the appropriate snowmobile or all-terrain vehicle account from which the dollars originated.

571—28.7(321G) Record keeping. Sponsors receiving funds under this program shall keep adequate records relating to the administration of the program, particularly relating to all incurred costs. These records shall be available for audit by appropriate personnel of the department, the state auditor's office, and the Iowa state snowmobile association or the Iowa all-terrain vehicle association.

571—28.8(321G) Sponsors bonded. All nonpublic project sponsors making application for funds from this program must produce proof that their chair and treasurer are covered under a fidelity bond, personal or surety, to the sponsor in a sum no less than $10,000 for each office.

These rules are intended to implement Iowa Code chapter 321G.

[Filed 4/13/90, effective 6/6/90]
[Published 5/2/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/2/90.

ARC 834A

NURSING BOARD[655]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Iowa Board of Nursing hereby adopts a new Chapter 12, "Registered Nurse Certifying Organizations/Utilization and Cost Control Review," Iowa Administrative Code.

This chapter identifies the certifying organizations for registered nurses, establishes a utilization and cost control review (U.C.C.R.) committee and defines the process for utilization and cost control review.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 10, 1990, as **ARC 560A**.

There are no substantive differences between the rules as adopted and the Notice of Intended Action. Minor changes were made in the mechanism for review of the nursing services provided by certified registered nurses and the scope of review. The American Board of Medical Genetics was added to the national certifying organizations identified by the Board. The definition of "deemed medically necessary" was removed from the rules. Other language changes were made for clarification.

These rules will become effective June 6, 1990.

These rules are intended to implement Iowa Code Supplement sections 509.3, 514.7, 514B.1, and 514F.1.

The following new chapter is adopted:

CHAPTER 12

REGISTERED NURSE CERTIFYING ORGANIZATIONS/UTILIZATION AND COST CONTROL REVIEW

655—12.1(509,514,514B,514F) Purpose. The following chapter is promulgated for the purpose of administering the provisions of Iowa Code Supplement sections 509.3, 514.7, 514B.1 and 514F.1.

655—12.2(509,514,514B,514F) Definition. A "certified registered nurse" is a registered nurse with current active licensure in Iowa who possesses evidence of certification by a national certification organization or successor agency as recognized by the board in this rule.

655—12.3(509,514,514B) National certifying organizations. The national certifying organizations identified by the board pursuant to Iowa Code Supplement sections 509.3, 514.7, 514B.1, and 514F.1 are as follows:

1. American Association of Critical Care Nurses Certification Corporation.
2. American Association for Marriage and Family Therapy.
3. American Association of Spinal Cord Injury Nursing.
4. American Board of Medical Genetics.
5. American Board of Neuroscience Nursing.
6. American Board for Occupational Health Nurses, Inc.
7. American Board of Post Anesthesia Nursing Certification, Inc.
8. American Board of Urologic Allied Health Professionals, Inc.
9. American College of Nurse-Midwives.
10. American Nurses' Association.
11. American Society for Psychoprophylaxis in Obstetrics.

12. American Society of Plastic and Reconstructive Surgical Nurses, Inc.
13. Association for Practitioners in Infection Control.
14. Association of Rehabilitation Nurses, Certification Board.
15. Board of Certification for Emergency Nursing.
16. Board of Nephrology Examiners, Nursing and Technology.
17. Certifying Council for Gastroenterology Clinicians, Inc.
18. Council on Certification of Nurse Anesthetists.
19. Council on Recertification of Nurse Anesthetists.
20. Enterostomal Therapy Nursing Certification Board.
21. International Association of Infant Massage Instructors.
22. International Board of Lactation Consultant Examiners.
23. Intravenous Nurses Society Certification Corporation.
24. National Board for Certification of School Nurses.
25. National Board of Nutrition Support Certification.
26. National Certification Board of Pediatric Nurse Practitioners and Associates.
27. National Certification Board, Perioperative Nursing, Inc.
28. National Certifying Board for Ophthalmic Registered Nurses.
29. National Consortium of Chemical Dependency Nurses.
30. National Education Committee of the Oncology Nursing Society.
31. National Nurses Society on Addictions.
32. Nephrology Nursing Certification Board.
33. Nurses' Association of the American College of Obstetricians and Gynecologists Certification Corporation.
34. Oncology Nursing Certification Corporation.
35. Orthopedic Nurses Certification Board.
36. Plastic Surgical Nursing Certification Board.
37. Society of Peripheral Vascular Nursing.

655—12.4(514F) Utilization and cost control review (U.C.C.R.) committee. The board shall establish a U.C.C.R. committee for the purpose of providing a mechanism for review of questions related to:
1. Appropriateness of levels of nursing care.
2. Documentation of the credentials of the nurse(s) offering the service(s).
3. Documentation of the care provided.
4. Documentation of the costs of nursing services provided by certified registered nurses as requested by users and payers of such services.

655—12.5(514F) Selection and composition of the U.C.C.R. committee.

12.5(1) The U.C.C.R. committee shall consist of seven licensed registered nurses, four of whom shall be certified registered nurses.

12.5(2) The members of the U.C.C.R. committee shall serve three-year terms; however, the initial committee will have staggered terms with two members appointed for one year, two members appointed for two years and three members appointed for three years.

12.5(3) The chairperson of the Iowa board of nursing shall appoint the committee members, designate a chairperson and a secretary, subject to approval by the board, at the first meeting following the organizational meeting each year.

12.5(4) Members of the U.C.C.R. committee shall:
a. Have been actively practicing nursing in Iowa for a period of five years immediately prior to their appointment.
b. Hold a current Iowa registered nurse license.
c. Be actively involved in nursing practice during the term of appointment.
d. Not be exempt from mandatory disclosure requirements of Iowa Code section 258A.9.
e. Not be civilly liable when functioning in their capacity of committee members in compliance with Iowa Code section 258A.8.
f. Observe the requirements of confidentiality imposed by Iowa Code subsection 258A.6(4). For the purposes of this subsection, all information requested by or provided to the U.C.C.R. committee under this chapter shall be considered privileged and confidential complaint or investigative information. However, the final decision of the U.C.C.R. committee shall not be considered confidential.

655—12.6(514F) Scope of review.

12.6(1) Factors to determine appropriateness of nursing care deemed medically necessary shall include, but not be limited to, the following:
a. Utilization of the nursing process in establishing a nursing diagnosis.
b. Development of a nursing care plan based on documentation of client needs and standards of care for that particular clinical specialty.
c. Adequate completion of recommended nursing care plan.
d. Quality of care as measured by outcome.
e. Proper referral to specialists/physicians when conditions indicate.

12.6(2) Cost review shall result in an opinion as to the fairness of charges for nursing care services based on criteria which shall include, but not be limited to, the following:
a. The nurse's usual charge for the service.
b. The customary charge for the service based on a review of peer group charges.
c. Reasonable variance due to degree of difficulty factors which require extraordinary skill and judgment.

655—12.7(514F) Procedures for utilization and cost control review.

12.7(1) A request for review may be made to the committee by a patient, a licensee or any third party payer of health care benefits.

12.7(2) The fee for a utilization and cost control review will be $50 per individual patient review, made payable to the secretary of the U.C.C.R. committee at the time of the request. Such funds are to be used to pay expenses as deemed appropriate by the U.C.C.R. committee.

12.7(3) A request for review shall be submitted to the committee by addressing the request to the U.C.C.R. Committee, Iowa Board of Nursing, Executive Hills East, 1223 East Court Avenue, Des Moines, Iowa 50319. All requests shall be made on the approved forms. Forms will be made available upon request from the office of the board of nursing. All references to identification and location of the licensee shall be deleted prior to submission to the U.C.C.R. committee. The request will be forwarded by the office of the board to the chairperson of the U.C.C.R. committee who may assign a three-person subcommittee to review the case and issue an opinion. The subcommittee shall include at least one certified registered nurse.

12.7(4) The office of the Iowa board of nursing shall provide administrative services to the U.C.C.R. committee. The U.C.C.R. subcommittee shall respond in writing with its findings and recommendations within 90 days of the request to the chairperson of the U.C.C.R. committee, who, in turn, shall submit to the executive director of the Iowa board of nursing the results of the review or opinion. The executive director of the Iowa board of nursing shall notify the parties of the committee findings.

12.7(5) The chairperson of the U.C.C.R. committee shall issue a report to the board every six months summarizing the activities of the committee which shall include a signed report by the secretary indicating receipts and expenditures of the committee.

12.7(6) If the U.C.C.R. committee, by way of its review of the matter, determines that the matter constitutes possible violation of the Iowa practice of nursing Act [Iowa Code chapter 152], the chairperson of the committee shall immediately notify the board of nursing and submit a copy of the review findings. The board has authority to further investigate and pursue disciplinary action based on any information submitted pursuant to these rules.

12.7(7) Action of the U.C.C.R. committee does not constitute an action of the board.

[Filed 4/11/90, effective 6/6/90]
[Published 5/2/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/2/90.

ARC 842A

PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS

Adopted and Filed

Pursuant to the authority of Iowa Code section 135E.4, the Board of Examiners for Nursing Home Administrators hereby amends Chapter 141, "Licensure of Nursing Home Administrators," Iowa Administrative Code.

The proposed amendments clarify the licensee's responsibility to report a change of name or address and establish disciplinary procedure.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 21, 1990, as **ARC 689A**. There are no changes from the Notice of Intended Action.

These amendments were adopted by the Board of Examiners for Nursing Home Administrators on April 12, 1990.

These rules will become effective June 6, 1990.

These rules are intended to implement Iowa Code section 135E.10.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [141.4(2)"h," 141.6(4) to 141.6(9), 141.9] is being omitted. These rules are identical to those published under Notice as **ARC 689A**, IAB 2/21/90.

[Filed 4/13/90, effective 6/6/90]
[Published 5/2/90]

[For replacement pages for IAC, see IAC Supplement, 5/2/90.]

ARC 847A

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Pursuant to the authority of Iowa Code chapters 80 and 694, the Department of Public Safety amends Chapter 19, "Missing Person Information Clearinghouse," Iowa Administrative Code.

These amendments update references to the address and location of the Missing Person Information Clearinghouse within the organizational structure of the Department of Public Safety. The Clearinghouse is now administered by the Division of Criminal Investigation. A change is also proposed in the definition of a missing person to comply with applicable federal practice, and to comply with the definition of a missing person found in Iowa Code section 694.1, as amended by 1990 Iowa Acts, House File 2103.

These amendments were published as a Notice of Intended Action in the Iowa Administrative Bulletin on December 13, 1989, as **ARC 487A**.

A public hearing on these amendments was held on January 4, 1990, at 10 a.m. in the third floor conference room (west half) of the Wallace State Office Building. No comments were received orally or in writing at this hearing or otherwise.

One item is included herein that was not in the Notice of Intended Action. Item 3 corrects the title of the person responsible for the operation of the Missing Persons Information Clearinghouse from "Director" to "Administrator."

These rules are intended to implement Iowa Code chapter 694.

These amendments will become effective June 10, 1990.

The following amendments are adopted:

ITEM 1. Amend rule 661—19.2(694) as follows:

661—19.2(694) Administration of missing person information clearinghouse. The ~~administrative services~~ division *of criminal investigation* administers the missing person information clearinghouse statute and all questions, comments, or requests for, or submission of, information shall be directed to the ~~administrative services~~ division *of criminal investigation*. Correspondence should be addressed to: Missing Person Information Clearinghouse, ~~Administrative Services~~ Division *of Criminal Investigation*, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319.

ITEM 2. Amend rule **661—19.3(694)**, definition of "missing person," numbered paragraph "2," as follows:

2. ~~Was, or is, in the company of another person~~ *Is missing* under circumstances indicating that the missing person's safety may be in danger.

PUBLIC SAFETY DEPARTMENT[661] *(cont'd)*

ITEM 3. Amend subrule **19.4(7)** by striking "Director" and inserting "Administrator".

ITEM 4. Amend rule **661—19.12(694)**, introductory paragraph, by striking "Administrative Services Division" and inserting "Division of Criminal Investigation".

[Filed 4/13/90, effective 6/10/90]
[Published 5/2/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/2/90.

ARC 830A

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Department of Transportation, on April 3, 1990, rescinded Chapter 111, "Real Property Acquisition and Relocation Assistance," Iowa Administrative Code, and adopted a new Chapter 111 with the same title.

A Notice of Intended Action for this chapter was published in the February 7, 1990, Iowa Administrative Bulletin as **ARC 663A**.

This chapter implements the Federal Uniform Relocation Act, which applies to federally assisted activities that involve the acquisition of real property or the displacement of persons. Iowa Code chapter 316 as amended by 1989 Iowa Acts, chapter 20, directs the Department to implement the Act through adoption of administrative rules that would apply statewide to programs and projects undertaken with federal financial assistance. The Department is also required to adopt rules governing a review process for persons aggrieved by eligibility and payment decisions.

The regulatory activity at the federal level, the rule development activities undertaken by the Department, and the areas where the federal regulations allow the state to exercise discretion were described in detail in the Notice of Intended Action and are not repeated here.

This chapter is identical to the one published under Notice.

This chapter will become effective June 6, 1990.

Rule-making action:

Rescind **761—Chapter 111**, "Real Property Acquisition and Relocation Assistance," and adopt in lieu thereof the following:

CHAPTER 111

REAL PROPERTY ACQUISITION AND RELOCATION ASSISTANCE

761—111.1(316) Acquisition and relocation assistance manual. The May 1990 edition of Section II of the manual entitled "Uniform Manual, Real Property Acquisition and Relocation Assistance" is adopted by reference.

111.1(1) Contents. Section II establishes uniform rules and procedures that comply with Iowa law and the Federal Uniform Relocation Act for the acquisition of real property and for the provision of relocation assistance to persons who are displaced from real property as a result of programs and projects.

Relocation assistance is not compensation for real property acquired nor is it compensation for damages to remaining property. Rather, relocation assistance is assistance and compensation provided to a displaced person for making the move and relocating.

111.1(2) Applicability.

a. In general, Section II applies to any program or project that involves the acquisition of real property or that causes a person to be a displaced person if the program or project:

(1) Is undertaken with federal financial assistance, or

(2) Is a road or street program or project undertaken with state financial assistance from the primary road fund, including primary road funds allocated for state park and institutional roads, or

(3) Is on a federal-aid system.

b. In general, Section II applies to any of the following entities that acquire real property or displace a person for a program or project discribed in paragraph "a":

(1) The state of Iowa.

(2) A political subdivision of the state.

(3) A department, agency or instrumentality of one or more states or political subdivisions.

(4) A utility or railroad subject to Iowa Code section 327C.2, chapter 479 or chapter 476 authorized by law to acquire property by eminent domain.

(5) ANY other person who has the authority to acquire property by eminent domain under state law.

(6) Any other person who acquires real property or displaces a person for a program or project described in paragraph "a."

c. Any exceptions to paragraphs "a" and "b" are set out in Section II.

d. In accordance with Iowa Code subsection 316.9(4), an entity that provides relocation assistance benefits for any program or project is required to provide an appeal process, regardless of the source of funding for the program or project. The appeal process provided shall not diminish the rights of the appellant or the scope of the appeal as described in Section II.

111.1(3) Availability of manual. Copies of the manual or portions thereof are available from the Office of Right of Way, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

111.1(4) Future programs or projects. Failure to comply with Section II when acquiring real property or displacing persons for a program or project may preclude the receipt of future federal financial assistance for the program or project area.

This rule is intended to implement Iowa Code section 310.22, and Iowa Code Supplement chapter 316 and sections 472.42, 472.54 and 472.55.

[Filed 4/4/90, effective 6/6/90]
[Published 5/2/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/2/90.

ARC 832A

TRANSPORTATION DEPARTMENT[761]

Note: Rules not subject to Iowa Code chapter 17A

Pursuant to the authority of Iowa Code subsections 321.454(2) and 321.457(3), the Transportation Commis-

sion, on April 3, 1990, amended 761—Chapter 510, "Designated Highway System," by amending rule 761—510.1(321). This rule lists the highways that may be used by longer and wider vehicles. The amendment adds four routes to the list of highways and is effective April 3, 1990. This rule is exempt from the rule-making provisions of Iowa Code chapter 17A, but is published in the Iowa Administrative Code as a convenience to persons who need to use the rule.

Rule-making action:

Amend subrule **510.1(1)** by striking the words:
"IA 14 Chariton N. to Newton
IA 14 IA 223 N. to Charles City"
and inserting in lieu thereof the words:
"IA 14 Chariton N. to Charles City";
and by striking the words:
"US 18 Rock Valley E. to Wisconsin"
and inserting in lieu thereof the words:
"US 18 South Dakota E. to Wisconsin";
and by striking the words:
"US 59 Missouri N. to Denison
US 59 Ida Grove N. to IA 3"
and inserting in lieu thereof the words:
"US 59 Missouri N. to IA 3";
and by striking the words:
"IA 149 Parnell N. to I-80"
and inserting in lieu thereof the words:
"IA 149 South English N. to I-80".

[Filed 4/5/90, effective 4/3/90]
[Published 5/2/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/2/90.

ARC 836A

TREASURER OF STATE[781]

Adopted and Filed

Pursuant to the authority of Iowa Code Supplement section 12.51, the Treasurer of State hereby amends Chapter 4, "Linked Investments for Tomorrow (LIFT)," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 27, 1989, as **ARC 542A**.

There is one change from the Notice. Subrule 4.8(6) is added to address the eligibility of refinanced loans.

This rule will become effective June 6, 1990.

Amend 781—Chapter 4 by adding the following new rule:

781—4.8(12) LIFT—main street program.

4.8(1) Eligibility. Borrowers in the LIFT—main street program must meet all of the requirements of the joint rules promulgated by the main street program of the Iowa department of economic development 261—Chapter 43 and the historic preservation division of the Iowa department of cultural affairs 223—Chapter 46. Decisions on the eligibility of a building, the outlines of a central business district, determination of qualification for the National Register of Historic Places, restoration plans and specifications are all subject to the aforementioned rules. Certification of eligibility and compliance with the above rules will be the responsibility of the state design review board which must send to the treasurer a "Notice of Eligibility." This notice will be included as part of the linked investment loan package.

4.8(2) Use of proceeds. Funds borrowed may be used for planning, designing, researching and construction of the facades of eligible buildings.

4.8(3) Maximum amount. Not more than $50,000 may be linked per project. For the purpose of these rules, "Project" means all facade work on the same building by the same owner.

4.8(4) Renewal of every CD after the date the work is completed is contingent upon completion of the work in full compliance with the design and specifications approved by the state design review board. Upon completion of the work, the design review board will send to the treasurer a "Final Notice of Compliance" that the finished work is in compliance.

4.8(5) The LIFT—main street program may be used in conjunction with other local, state or federal financing programs including loan pools organized by the main street program and historic preservation tax exemptions. Also, it may be used in conjunction with other nonlinked loans to finance restoration of nonfacade improvements.

4.8(6) A loan is eligible to be refinanced with a LIFT—main street loan if it meets all the other criteria including, but not limited to, approval by the local and state review committees, and if the original financing for the project was closed after May 24, 1989.

This rule is intended to implement Iowa Code Supplement sections 12.51 and 12.52.

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[Published 5/2/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 5/2/90.

ARC 844A

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.4, 476.1, 476.2, and 476.8, the Iowa State Utilities Board (Board) gives notice that on April 13, 1990, the Board issued an order in Docket No. RMU-89-20, In Re: Take-or-Pay Adjustments, "Order Adopting Rules."

On September 28, 1989, the Board issued an order in this docket commencing a rule making to consider the adoption of an amendment to Iowa Administrative Code subrules 199—19.10(5) and 19.10(7) to allow for 100 percent recovery of take-or-pay charges and to provide for an annual reconciliation of the take-or-pay adjustment for all customers: sales and transportation.

The proposed rule making was published in the Iowa Administrative Bulletin on October 18, 1989, as **ARC 320A**. Comments were filed by United Cities Gas Company, Midwest Gas, a division of Iowa Public Service Company, Iowa Electric Light and Power Company, Iowa-Illinois Gas and Electric Company, Southeast Iowa Industrial Coalition, Iowa Industrial Intervenors, Fertilizer Acquisition Company VI, and the Consumer Advocate Division of the Department of Justice (Consumer Advocate). United Cities Gas Company, Midwest Gas Company, and the Consumer Advocate supported

the rule making as proposed. Except for minor changes, Iowa-Illinois and Iowa Electric supported the rule making. Iowa-Illinois recommended the term "past" be dropped from take-or-pay and that "P" be represented as an annualized amount. Iowa-Illinois suggested the definition of "T" reflect that it is based upon rather than for the prior twelve-month period. It recommended that a take-or-pay factor, rather than clause, be used. Iowa Electric proposed the sentence, "These charges will be flowed through to sales customers as part of the commodity cost," be eliminated as redundant. The Board finds these recommendations have merit and will adopt the recommendations in these rules.

The Board rejects the argument of the Southeast Iowa Industrial Coalition that the interruptible customers should not be charged any take-or-pay costs. All customers benefited from the spot market, including interruptibles. The Board also rejects the argument advanced by the large industrial customers that a portion of the take-or-pay costs should be absorbed by the distribution companies. The benefit of lower-priced gas was flowed-through to customers.

Fertilizer Acquisition Company VI argued recovery of the take-or-pay costs is retroactive rate making; however, this argument is not applicable since the costs to Iowa's companies are current and were not deferred from a prior period. It also raised several fact-specific issues which the Board believes are better addressed in a contested case.

The Board will adopt the amendments as revised. The adopted rules will become effective June 6, 1990, pursuant to Iowa Code section 17A.5.

ITEM 1. Amend subrule 19.10(5) as follows:

19.10(5) ~~Past take~~*Take*-or-pay adjustment.

a. Pipeline supplier charges to the utility based upon ~~past~~ take-or-pay payments or settlements may be recovered from customers ~~in an amount to be determined on a case by case basis by the board~~ through a separate adjustment. *This excludes those charges allocated by the pipeline on a total through-put basis and billed to the utility as part of the commodity costs and to the transportation customers as part of the transportation rate.*

b. The adjustment shall be applicable to all gas sales commodity volumes and to all gas transportation commodity volumes.

c. The calculation for the ~~past~~ take-or-pay adjustment shall be according to the following formula:

$$TPA = \frac{P}{(St+T)}$$

TPA is the ~~past~~ take-or-pay adjustment per unit of anticipated gas sales and transportation commodity volumes. The board will determine for each company whether the TPA will be set on a total company basis or by customer class.

P is the total amount of *annualized* take-or-pay charges allowed by the board for all groupings or customer classifications as determined in 19.10(5)"a," ~~and may, if the board so orders, include the amount of prior underrecoveries and overrecoveries of take-or-pay charges, as described by 19.10(5)"c."~~

St is the total anticipated yearly gas sales commodity volumes of all groupings or customer classifications as determined in 19.10(1).

T is the total anticipated yearly gas transportation commodity volumes ~~for~~ *based upon* the prior 12-month period ending June 30 plus such additional gas commodity volumes as may be expected to be transported based upon transportation contracts or agreements executed prior to September 1.

The take-or-pay adjustment formula, TPA=P/(St + T), shall include an E factor where E will be the per-unit overcollection or undercollection adjustment as calculated under subrule 19.10(7).

d. The TPA may be added to the PGA for purposes of billing for all groupings or customer classifications to which a PGA is applied and shall be billed as a separate line item for customers utilizing transportation service pursuant to transportation tariffs approved by and on file with the board.

e. The TPA shall be filed by August 1 concurrent with the rate-regulated utilities annual PGA filing pursuant to 19.10(1) and may be adjusted as part of *the* periodic filings pursuant to 19.10(1)"a."

f. The TPA filing shall include all worksheets and detailed supporting data adequate to support a determination of the amount of ~~undercollection or overcollection of~~ actual pipeline take-or-pay charges ~~recovered by the TPA~~ for the 12-month period ending *June 30* ~~August 31~~ *to be recovered by the TPA.*

ITEM 2. Amend subrule 19.10(7) as follows:

19.10(7) Reconciliation of underbillings and overbillings. The utility shall file with the board on or before October 1 of each year a purchased gas adjustment reconciliation for the 12-month period which began on September 1 of the previous year. This reconciliation shall be the actual net invoiced costs of purchased gas less the actual revenue billed through its purchased gas adjustment clause net of the prior year's reconciliation dollars for each customer classification or grouping. Actual net costs for purchased gas shall be the applicable invoice costs from all appropriate sources associated with the time period of usage.

Negative differences in the reconciliation shall be considered overbilling by the utility and positive differences shall be considered underbilling. This reconciliation shall be filed with all worksheets and detailed supporting data for each particular purchased gas adjustment clause. Penalty purchases shall only be includable where the utility clearly demonstrates a net savings.

The take-or-pay reconciliation shall be the actual net invoiced costs of take-or-pay less the actual revenue billed through its take-or-pay factors for each customer class or grouping. Actual net costs for take-or-pay shall be the applicable invoice costs from all appropriate sources associated with the time period of usage.

a. Any underbilling determined from the reconciliation shall be collected through ten-month adjustments to the appropriate purchased gas adjustment. The underbilling generated from each purchased gas adjustment clause shall be divided by the anticipated sales volume for the prospective ten-month period beginning November 1 (based upon the sales determination in subrule 19.10(1).

The quotient, determined on the same basis as the utility's tariff rates, shall be added to the purchased gas adjustment ~~clause~~ for the prospective ten-month period beginning November 1.

Any underbillings determined from the take-or-pay reconciliation shall be collected through ten-month

adjustments to appropriate take-or-pay adjustment. The underbilling shall be divided by the anticipated sales volumes or transport volumes for the prospective ten-month period beginning November 1 (based upon the volumes determined in subrule 19.10(5).

The quotient, determined on the same basis as the utility's tariff rates, shall be added to the take-or-pay factor for the prospective ten-month period beginning November 1.

b. Any overbilling determined from the reconciliation shall be refunded to the customer classification or PGA grouping from which it was generated. The overbilling shall be divided by the annual cost of purchased gas subject to recovery for the 12-month period which began the prior September 1 for each purchased gas adjustment clause and applied as follows:

(1) If the net overbilling from the purchased gas adjustment reconciliation exceeds 5 percent of the annual cost of purchased gas subject to recovery for a specific PGA grouping, the utility shall refund the overbilling by bill credit or check for the time period beginning November 1 of the current year to the date of refunding.

(2) If the net overbilling from the purchased gas adjustment reconciliation does not exceed 5 percent of the annual cost of purchased gas subject to recovery for a specific PGA grouping, the utility may refund the overbilling by bill credit or check for the time period beginning November 1 of the current year to the date of refunding, or the utility may refund the overbilling through ten-month adjustments to the particular purchased gas adjustment ~~clause~~ from which they were generated. This adjustment shall be determined by dividing the overcollection by the anticipated sales volume for the prospective ten-month period beginning November 1 as determined in subrule 19.10(1) for the applicable purchased gas adjustment clause.

The quotient, determined on the same basis as the utility's tariff rates, shall be a reduction to that particular purchased gas adjustment ~~clause~~ for the prospective ten-month period beginning November 1.

Any overbilling determined from the reconciliation shall be refunded to the customer classification of TPA grouping from which it was generated. The overbilling shall be divided by the anticipated sales volumes or transport volumes for the prospective ten-month period beginning November 1 (based upon the volumes determined in subrule 19.10(5). The 5 percent refund rule described in 19.10(7)"b"(1) and (2) shall also apply to the take-or-pay reconciliation.

The quotient, determined on the same basis as the utility's tariff rates, shall be a reduction to that particular take-or-pay adjustment for the prospective ten-month period beginning November 1.

c. When a customer has reduced or terminated system supply service and is receiving transportation service, any liability for overcollections and undercollections shall be determined in accordance with the utility's gas transportation tariff.

[Filed 4/13/90, effective 6/6/90]
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EFFECTIVE DATE DELAY

[Pursuant to §17A.4(5)]

AGENCY	RULE	EFFECTIVE DATE DELAY
Environmental Protection Commission[567]	39.8(3), 2nd para., 1st sentence 39.8(4)"a," 2nd para., 1st sentence (IAB 3/21/90, ARC 755A)	Effective date of April 25, 1990, delayed seventy days by the Administrative Rules Review Committee at its April 12, 1990, meeting.

State of Iowa

Executive Department

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

PROCLAMATION OF DISASTER EMERGENCY
As Appended to Include Additional Counties

WHEREAS, I declared a State of Emergency for twelve Iowa counties on March 8, 1990 due to a March 7, 1990 severe storm system containing freezing rain and strong winds and causing substantial damage; and

WHEREAS, after further contact with county and local officials, and conditions have been confirmed, I am including Adair, Audubon, Buena Vista, Calhoun, Cherokee, Crawford, Guthrie, Hamilton, Ida, Union, Webster, and Woodbury Counties in the proclamation; and

WHEREAS, assistance may be necessary from State and Federal agencies for services beyond local resources to enable all citizens to recover; and

WHEREAS, assistance could result in lessening of human suffering,

NOW THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, do hereby proclaim Adair, Audubon, Buena Vista, Calhoun, Cherokee, Crawford, Guthrie, Hamilton, Ida, Union, Webster, and Woodbury Counties to be a disaster area and call upon the citizens and agencies of local, state, and federal government to render good and sufficient aid to assist this area in its time of need.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 5th day of April in the year of our Lord one thousand nine hundred ninety.

Terry E. Branstad
GOVERNOR

Elaine Baxter
SECRETARY OF STATE

April 5, 1990

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWA

FILED APRIL 18, 1990

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. 89-503. IN THE INTEREST OF D.J.R.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Polk County, Vincent M. Hanrahan, District Associate Judge. **DECISION OF COURT OF APPEALS AND JUDGMENT OF DISTRICT COURT AFFIRMED.** Considered by McGiverin, C.J., and Larson, Carter, Lavorato and Neuman, JJ. Opinion by McGiverin, C.J.

(22 pages $8.80)

The court of appeals upheld a juvenile court's termination of parental rights. The father has applied for further review. OPINION HOLDS: I. We believe that clear and convincing evidence establishes at least two of the specific statutory grounds for termination relied on by the juvenile court: abandonment of D.J.R. within the meaning of Iowa Code section 232.116(1)(b), and D.J.R.'s need for treatment to cure serious mental illness, disorder, or emotional damage, for which D.R. is unable or unwilling to provide treatment, under Iowa Code section 232.116(1)(e)(3). II. The State has a compelling interest that would be served by terminating D.R.'s parental rights; therefore, termination does not offend substantive due process. III. A parent has no sixth amendment right to confront a child-witness at a civil termination of parental rights hearing. D.R.'s sixth amendment rights were not violated by denying him confrontation of D.J.R. at the termination hearing.

No. 89-222. LYNCH v. CITY OF DES MOINES.

Appeal from the Iowa District Court for Polk County, Michael J. Streit, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Carter, Lavorato and Neuman, JJ. Opinion by McGiverin, C.J. (29 pages $11.60)

Plaintiff Deborah Ann Lynch was a police officer employed by defendant City of Des Moines, Iowa. In May 1985, Lynch filed a complaint with the Iowa Civil Rights Commission in which she alleged that the City had discriminated against her on the basis of sex, in violation of Iowa Code chapter 601A (1985). The complaint became the basis of this lawsuit, which was tried to the district court. The court ruled that the City had violated chapter 601A by maintaining a sexually hostile work environment at the Des Moines Police Department and by retaliating against Lynch for her complaints about the work environment. The court awarded Lynch $10,000 to compensate her for emotional distress she suffered because of the City's conduct. The court also ordered the City to develop and implement an education and training plan to prevent, detect and correct sexual harassment at the police department. The City appealed and Lynch cross-appealed. OPINION HOLDS: I. When the plaintiff's claim is that her employer maintained a sexually hostile work environment, the alleged discriminatory practice must be viewed as a so-called "continuing violation" of chapter 601A and specific incidents of sexual harassment which occurred outside the limitations period may be considered. II. We conclude that the district court had authority to consider the retaliation claim arising out of lieutenant Rose's conduct toward Lynch, even though it was not mentioned in Lynch's administrative complaint. III. We conclude that there is substantial evidence to support the district court's findings that the City violated Iowa Code sections 601A.6(1)(a) and 601A.11(2) in its treatment of Lynch. IV. We have held that emotional distress is a recoverable element of damages in a private action for violation of the Iowa Civil Rights Act. V. We find no merit in the argument that the court lacked authority to order the City to develop and implement a plan to curb sexual harassment in the police department. VI. In her cross-appeal, Lynch argues that the district court's $10,000 award to her is grossly inadequate. We find no abuse of discretion in the judgment. VII. We hold that Iowa Code section 601A.6(1)(a) is not unconstitutionally vague. VIII. The district court did not abuse its discretion in refusing to allow the City's amendment only days before trial. IX. We find no error in this case. The judgment of the district court is affirmed.

No. 89-365. LYCO, INC. v. MORRIS & CO., INC.

Appeal from the Iowa District Court for Linn County, Thomas L. Koehler, Judge. **AFFIRMED.** Considered by Harris, P.J., and Schultz, Carter, Snell, and Andreasen, JJ. PER CURIAM (7 pages $2.80)

This case arose from the execution and later repudiation of a written contract between Lyco, Inc. and Morris & Co., Inc., an installer of rural water distribution systems. The trial was to the court, which held that Lyco failed to act in good faith by not performing the terms of its contract. It found that Lyco's demand for an irrevocable letter of credit before it began production on a pump station contravened the original agreement and that Morris should be excused from performance. The court also concluded that Morris failed to prove that additional costs were caused entirely by Lyco's breach of contract. Lyco appealed and Morris cross-appealed. OPINION HOLDS: I. Lyco admits it deleted a printed requirement contained in the original contract for a letter of credit but claims it reserved the right to monitor Morris' creditworthiness. Lyco's argument is untenable in light of its own evidence indicating that it had demanded a letter of credit, not because Morris' credit was poor, but rather out of fear that Morris might withhold part of the payment as damages caused by Lyco's untimely delivery of the order. II. Even though the order acceptance form did not state a specific completion date, Lyco was obligated to act within a reasonable time. We find substantial evidence to support the trial court's determination that Lyco breached the contract by failing to act within a reasonable time. III. We find no merit in Lyco's claim that the court erred in interpreting the deletion of the letter of credit provision to supersede the express terms of the contract. The demand for a letter of credit did not result from Lyco's monitoring of Morris' financial soundness. IV. Lyco advances several theories to support its claim that the trial court erred by failing to find that Morris committed an anticipatory repudiation of the contract in March 1984. We reject these arguments. V. We have reviewed the trial court's ruling on Lyco's objection to certain evidence on the grounds that it called for speculation by the witness. We find no error in this ruling. VI. Morris claims that the trial court erred in finding that it had failed to prove that the damages "were caused entirely by [Lyco's] breach of contract." While we may have arrived at a different result, the findings are supported by substantial evidence, and we are bound by them.

No. 88-1638. **LANDALS v. GEORGE A. ROLFES CO.**

Appeal from the Iowa District Court for Boone County, Dale E. Ruigh, Judge. **AFFIRMED AND REMANDED.** Considered by McGiverin, C.J., and Harris, Schultz, Neuman, and Andreasen, JJ. Opinion by Andreasen, J. (19 pages $7.60)

Landals was discharged from his job with Rolfes Co. in July 1983 at age fifty-two. He filed a complaint with the Iowa Civil Rights Commission under the Iowa Civil Rights Act, Iowa Code chapter 601A (1987), alleging age and disability discrimination. He obtained an administrative release and then filed suit in district court. The court granted the employer's motion for directed verdict on the disability discrimination claim. The jury returned a special verdict for Landals on the age discrimination claim, awarding him $72,100 for past loss of income and benefits. The employer has appealed. OPINION HOLDS: I. There was substantial evidence that Landals was not part of the general layoff and the claim that he was discharged because of economic conditions was a pretext. The jury rationally could draw an inference of age discrimination from Landals' proof that the reasons given were false. Under the instruction given, the jury had sufficient evidence to reach the conclusion that the plaintiff had established his right to recover damages. II. A successful plaintiff under chapter 601A may be awarded actual damages, which may include lost wages. Earned income and unemployment compensation operate to reduce the amount awarded for lost wages. Even though Landals has accepted another job, the jury reasonably could have decided that Landals remained available for a job with duties, income, and benefits comparable to his old job. Even if Landals decided to be unavailable, the jury reasonably could have concluded he did not so decide voluntarily. III. Under Iowa Code chapter 601A, an action is not commenced until it is filed in the district court. The district court did not err in refusing to allow interest on the award from the date of filing the initial complaint with the commission. Because Iowa Code section 535.3 does not provide for allowance of compound interest, we conclude it allows only simple interest on judgments and decrees of court. IV. We believe the district court retains jurisdiction to consider the matter of attorney fees as collateral to and not affecting the subject matter of the appeal. The district court did not abuse its discretion in determining the attorney fees. The district court properly allowed recovery of various litigation expenses as part of the "attorney fees." The district court had no authority to award prejudgment interest on the attorney fees under Iowa Code section 535.3 and properly refused to do so. The judgment of the district court is affirmed. This case is remanded to the district court for hearing on Landals' motion for appellate attorney fees and costs.

NO. 89-529. STATE v. WHITIS.

Appeal from the Iowa District Court for Black Hawk County, Robert E. Mahan, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Carter, Lavorato, and Neuman, JJ. Per curiam. (5 pages $2.00)

Lindberg Whitis appeals from his conviction for pimping in violation of Iowa Code section 725.2 (1985). **OPINION HOLDS:** I. In an earlier trial, Whitis was acquitted of pandering, and he claims his subsequent prosecution for pimping constituted double jeopardy. However, not all of the alternative ways of committing pimping and pandering have identical elements. Whitis was charged under statutory alternatives which do not have identical elements. Therefore, there was no double jeopardy. II. The evidence was sufficient to support the verdict. III. Whitis cannot complain of prosecutorial misconduct because he failed to take appropriate steps to cure any prejudicial effect. IV. The prosecutor established race-neutral reasons for striking two potential jurors who were black. V. The instructions did not allow the jurors to disregard the evidence in the record.

NO. 89-924. VER STEEG v. STATE FARM INSURANCE CO.

Appeal from the Iowa District Court for Mahaska County, Dan Morrison, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Carter, Lavorato, and Neuman, JJ. Per curiam. (4 pages $1.60)

Aaron Ver Steeg owned five insurance policies with State Farm, all of which included coverage for uninsured motorists. Ver Steeg's daughter, who was an insured under his policy, was killed in a one-vehicle accident involving a motorcycle. Neither the motorcycle nor its driver was insured. Ver Steeg filed a claim against State Farm for coverage under all five insurance policies, providing $20,000 each. State Farm moved for summary judgment, which was sustained. **OPINION HOLDS:** We conclude that there is no disputed issue of material fact sufficient to withstand the motion for summary judgment. The district court was correct in limiting Ver Steeg's recovery to just one policy.

No. 89-643. **IN RE RECEIVERSHIP OF MT. PLEASANT BANK & TRUST CO.**

Appeal from the Iowa District Court for Henry County, David B. Hendrickson, Judge. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.** Considered by Harris, P.J., and Schultz, Carter, Snell, and Andreasen, JJ. Opinion by Harris, J. (17 pages $6.80)

Mt. Pleasant Bank & Trust Company served as trustee for bondholders who invested in SAI, an Iowa corporation. Mt. Pleasant Bank executed a participation agreement with Centerre Bank in connection with joint bank loans whereby Mt. Pleasant Bank agreed to service and collect the bank loans for itself and as agent for Centerre. Mt. Pleasant Bank was thus responsible for the collection of both its own and Centerre's loan to SAI, and at the same time also owed the bondholders a fiduciary duty to collect the SAI bond loans. A successor trustee brought this equity action against Mt. Pleasant Bank and Centerre based on theories of breach of fiduciary duty. The district court ruled in favor of plaintiff trustee and fashioned a remedy intended to restore the parties to the status quo prior to the breach of fiduciary duty. The bondholders appealed, and Centerre and the FDIC (receiver for Mt. Pleasant Bank) cross-appealed. OPINION HOLDS: I. Centerre insists the breach of fiduciary duty case against it is based, not on primary, but secondary liability. Centerre loses the point, not on the law, but on the facts. We think Centerre's liability to the bondholders is clear. II. We agree with the district court that Centerre's conduct does not call for punitive-type damages. III. Where a fiduciary is in a position to take advantage over a principal, especially when the fiduciary has closer access to the facts, the burden shifts to the fiduciary to show fair dealing in all matters within the fiduciary obligation. Under these unusual circumstances we think the burden should shift to Centerre only as to those matters with respect to which it has been shown Centerre holds specific knowledge. IV. Where there is a breach of fiduciary duty the aggrieved party is entitled to prejudgment five percent interest under section 535.2(1)(b) from the dates the funds were improperly diverted. Prefiling interest thus accrued is to be added to the amount later awarded as judgment. The sum is to draw interest under section 535.3 at the rate of ten percent from the time papers were filed (in this case against Centerre) until paid. Upon remand interest should be computed in accordance with this opinion. V. The district court correctly ruled that there is no liability against FDIC in its corporate capacity. We reverse and remand on the appeal. VI. We affirm on the cross-appeal.

No. 89-659. WILLOW TREE INVESTMENTS, INC. v. WAGNER.
Appeal from the Iowa District court for O'Brien County, James L. McDonald, Judge. **AFFIRMED.** Considered by Harris, P.J., and Schultz, Carter, Snell, and Andreasen, JJ. Opinion by Schultz, J. (10 pages $4.00)

The Federal Deposit Insurance Corporation (FDIC) was appointed receiver of an insolvent bank and in its corporate capacity purchased a note and mortgage held by the bank. In turn, the FDIC sold these instruments to the plaintiff Willow Tree Investments, Inc. The makers of the note and mortgage, defendants Frederick A. Wagner and Mitzi K. Wagner, precipitated this action by refusing to honor the note because of an alleged oral agreement with the bank. The district court granted plaintiff's motion for summary judgment allowing foreclosure of the mortgage and a money judgment. The issue in district court and on appeal is whether a purchaser of a negotiable instrument from the FDIC takes free from any oral commitment made by the failed bank in favor of the maker. OPINION HOLDS: In order for the FDIC to successfully complete a purchase and assumption transaction pursuant to 12 U.S.C.A. section 1823(c)(2)(A) (1989), it must ultimately be able to resell the assets which it has acquired. The FDIC's protected status under 12 U.S.C.A. section 1823(e)(1989) assures that subsequent purchasers' acquisitions are not subject to hidden agreements which might diminish or defeat their value. The failure to extend this protection would undermine the statutory purposes of facilitating the continuance of normal banking operations and protecting the depositors and creditors of insolvent banks. We therefore agree with the growing number of courts addressing this issue that assignees and purchasers of the FDIC's assets "enjoy protection from claims or defenses based upon unrecorded side agreements." II. Defendants make the additional claim that plaintiff cannot be considered a holder in due course under state law. They point to Iowa Code section 554.3302(3)(c) (1989) for the proposition that a holder of an instrument does not become a holder in due course by purchasing it as part of a bulk transaction. When the FDIC acquires notes in a purchase and assumption transaction, it acts in its corporate capacity and federal law applies. Any fact issues arising from the application of state law are therefore irrelevant to the resolution of this case.

No. 89-265. **ADRIAN v. STATE.**

Appeal from the Iowa District Court for Davis County, Phillip R. Collett, Judge. **AFFIRMED.** Considered by Harris, P.J., and Schultz, Carter, Snell, and Andreasen, JJ. Opinion by Harris, J. (8 pages $3.20)

Plaintiffs, depositors of the now defunct Exchange Bank of Bloomfield, brought this action against the State of Iowa and its regulatory agencies to recover losses they suffered when the bank failed. They sought to recoup losses from the State on the theory that this unregulated bank should have been regulated. The district court granted the defendants a summary judgment, and the plaintiffs have appealed. OPINION HOLDS: I. Plaintiffs first allege the bank lost its status as a "private bank" when owner W.J. Steckel died in 1940 because from 1940 to 1983 the bank was owned and operated by persons who were not engaged in the business of banking in Iowa prior to April 19, 1919. That date is critical because a 1919 statute required bank regulation but exempted banks which already existed prior to April 19, 1919. The definitive case on this question is Daniel v. Best, 224 Iowa 1348, 279 N.W. 374 (1938). In Daniel we stated that private banks were continuous legal entities that were not terminated by the death of a member or shareholder. The statute interpreted in Daniel, Iowa Code section 9151 (1935), was essentially the same as present section 524.1701. The trial court was correct in holding that the bank retained its private status. II. Plaintiffs contend the banking department and the securities division of the office of the insurance commissioner owed them a duty with regard to the bank. We need not speculate on plaintiffs' assertion that the relationship between the banking superintendent and customers of a regulated bank is a special one. It is enough to say here that there is by statute no relationship when the bank is a private one. Therefore, the government agencies did not owe the plaintiffs a duty with regard to the bank. III. Plaintiffs argue that the failure to regulate is a failure to exercise a duty imposed by the General Assembly, a matter over which state agencies have no discretion. See Iowa Code § 25A.14(1) (tort liability not imposed for claims based on discretionary function or duty). The status of the bank as a private one deprives plaintiffs of a factual basis for urging this theory because the General Assembly expressly exempted state agencies from regulating private banks.

No. 88-1497. **STATE v. RUDD.**
On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Scott County, Douglas M. McDonald, District Associate Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered by Harris, P.J., and Schultz, Carter, Snell, and Andreasen, JJ. Opinion by Harris, J. (7 pages $2.80)

Rudd was convicted on two counts of simple possession of a controlled substance in violation of Iowa Code section 204.401(3). Rudd appealed, claiming that she did not have constructive possession of the substances and that the jury was not properly instructed on the question. OPINION HOLDS: I. Rudd was found by the police on a bed in a house while a man was standing near her. Drugs and drug paraphernalia were in plain view resting on the headboard of the bed, in close proximity to Rudd. We find there was sufficient evidence from which the jury could conclude that Rudd was in constructive possession of the substances. II. We find the jury instructions concerning constructive possession to have been proper in this case. The instruction did not improperly imply that mere possession and control of the premises and not the substances was sufficient. In addition, the instruction properly noted that constructive possession can be inferred even where the accused was not in exclusive possession of the premises.

No. 89-1157. **HOGAN v. STATE.**
Appeal from the Iowa District Court for Black Hawk County, Roger Peterson, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Carter, Lavorato, and Neuman, JJ. Opinion by Neuman, J. (4 pages $1.60)

In 1971 Hogan was convicted of manslaughter in Iowa. He discharaged his Iowa sentence in 1974. In 1985 he was convicted of murder in Nevada. The Nevada court imposed the death penalty and noted Hogan's 1971 Iowa manslaughter conviction as a factor mitigating against leniency. In 1989 Hogal filed the present application for postconviction relief to challenge his 1971 Iowa manslaughter conviction. The district court dismissed this application, and Hogan has appealed. OPINION HOLDS: Hogan's postconviction action was filed beyond the three-year limitation period stated in Iowa code section 663A.3 (1989) and Brewer v. Iowa District Court, 395 N.W.2d 841, 844 (Iowa 1986). Moreover, no circumstances existed to waive the time bar. Hogan cannot avoid the time bar simply by claiming that he was unaware, until his Nevada conviction for murder, that his 1971 Iowa conviction for manslaughter would enhance the penalty for a subsequent crime.

No. 88-1899. **STATE v. SIEMER.**

Appeal from the Iowa District Court for Polk County, Harry Perkins, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Carter, and Neuman, JJ. Opinion by Neuman, J. (22 pages $8.80)

Defendant Larry Siemer is the live-in boyfriend of Donna Simmons, and together they were charged in June 1988 with the kidnapping of Donna's seven-year-old son, Tracey. The evidence discloses that Tracey was confined, physically abused, and tortured over a period of several months. Siemer was convicted of first-degree kidnapping, and he has appealed. OPINION HOLDS: I. We cannot say the trial court abused its discretion by refusing to grant a change of venue in this case. The media coverage attending Tracey's discovery and Siemer's arrest was pervasive. However, the nature and tone of the reporting of these events was predominantly factual and no more sensational than the crimes alleged. As for the voir dire process itself, we have held that mere exposure to news accounts will not create a presumption of prejudice. Although all but one member of the initial panel admitted a general familiarity with the crime based on news reports, the court exercised abundant caution in dismissing for cause the venire persons who held negative attitudes toward the crime, generally, or against Siemer, particularly. II. We hold that parents, or persons standing in loco parentis, are not beyond the reach of the kidnapping statute as a matter of law. The authority to confine inherent in the parent-child relationship does not extend to unlawful confinement or asportation. While a parent has the authority to confine or remove a child under reasonable circumstances, we can conceive of no circumstance under which a parent could lawfully exercise such authority while harboring the intent to sexually abuse or subject the child to serious injury. III. We find substantial evidence in this record to support a finding of confinement which exceeds that normally incidental to the underlying crime of child abuse. IV. Following two days of juror voir dire and impaneling of the jury, Siemer moved to waive jury trial. The State did not consent to Siemer's waiver and the court, relying on Iowa Rule of Criminal Procedure 16(1), ruled that Siemer was not entitled to waive a jury within ten days of trial without the State's consent. Neither the plain language of the Iowa Constitution nor the legislative history of rule 16(1) furnishes Siemer the unconditional right to trial by the court that he seeks. The court was correct in overruling his request.

No. 89-988. **RICHARDS v. IOWA DEPARTMENT OF REVENUE AND FINANCE.**

Appeal from the Iowa District Court for Story County, Timothy J. Finn, Judge. **REVERSED AND REMANDED.** Considered by Harris, P.J., and Schultz, Carter, Snell, and Andreasen, JJ. Opinion by Andreasen, J. (8 pages $3.20)

Northcrest, a nonprofit community for elderly people in Ames, Iowa, was allowed an exemption from property taxes because it qualified as a charitable institution. R.K. Richards brought the present action pursuant to Iowa Code section 427.1(26)(1987), attempting to get the Iowa Department of Revenue and Finance to revoke Northcrest's exemption. The director held a hearing on Richards' claims and sustained the exemption. Richards filed a petition for judicial review and challenged the department's standing in district court. The department of revenue filed a motion to dismiss on the ground that Richards lacked standing. The district court agreed and dismissed the petition. Richards appealed. OPINION HOLDS: I. A person or party aggrieved or adversely affected by agency action upholding a tax exemption is entitled to judicial review upon exhausting administrative remedies. II. Whether the property of another is entirely exempted or merely underassessed, the taxpayer's burden is greater because of he exemption or underassessment. We hold that Richards' pecuniary interest as a taxpayer entitles him to judicial review of an order upholding the tax exemption granted Northcrest's property. III. The department clearly has standing to appear and to respond to a petition for judicial review of agency action filed in district court.

No. 89-480. **BRYANT v. STATE.**

Appeal from the Iowa District Court for Jones County, August F. Honsell Jr., Judge. **APPEAL DISMISSED.** Considered by Harris, P.J., and Schultz, Carter, Snell, and Andreasen, JJ. Per Curiam. (2 pages $.80)

Bryant appeals a district court decision denying his application for postconviction relief. OPINION HOLDS: We dismiss the appeal as moot. Because Bryant now is paroled, the issue he raises on appeal are academic. We decline Bryant's request to reach the merits of his appeal under the exceptions to the mootness doctrine outlined in Rush v. Ray, 332 N.W.2d 325, 326-27 (Iowa 1983).

NO. 88-1581. MILLS v. GUTHRIE COUNTY RURAL ELECTRIC COOPERATIVE ASSOCIATION.

Appeal from the Iowa District Court for Dallas County, Robert O. Frederick, Senior Judge. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.** Considered by Harris, P.J., and Schultz, Carter, Snell, and Andreasen, JJ. Opinion by Carter, J. (14 pages $5.60)

Plaintiffs, Richard Mills and Laureen Mills, who recovered a judgment against the defendant, Guthrie County Rural Electric Cooperative Association, for damages arising from an electrical fire in plaintiffs' hog farrowing facility, appeal urging that trial court errors resulted in an inadequate recovery of damages. **OPINION HOLDS:** I. We first consider plaintiffs' contention that the district court erred in failing to submit additional legal theories under which the jury might find the defendant to be liable. This court has consistently held that errors against a party are cured by a verdict in that party's favor unless the error goes to the amount of damages. II. The court did not err in refusing to allow plaintiffs' motion to amend their petition to assert a claim for intentional infliction of emotional distress. III. We next consider plaintiffs' contention that the trial court erred in refusing to permit the jury to consider a claim for lost profits during a period of business interruption. We conclude that a claim for lost profits as a measure of loss of use during the period of time reasonably required to replace plaintiffs' hog-farrowing facility should have been submitted to the jury. IV. Because the case must be retried on the issue of damages, we must also consider plaintiffs' claims that the district court erred in refusing to allow recovery for loss of the farrowing facility based on replacement cost. We find no error in that determination. V. Plaintiffs also urge that, even if the court did not err in refusing to submit their claim of intentional infliction of emotional distress, it should have allowed the jury to award emotional distress damages in connection with the negligence claim. We disagree. VI. We have considered all issues presented and conclude that for the reasons expressed in Division III the judgment of the district court should be reversed. The case is remanded to that court for a retrial of the damage issues only. Any attempt by plaintiffs on retrial to recover damages for lost profits should be submitted in accordance with the principles set forth in this opinion.

No. 89-1573. **COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT v. WENGER.**

On review of the report of the Grievance Commission. **LICENSE SUSPENDED.** Considered by McGiverin, C.J., and Harris, Larson, Carter, and Neuman, JJ. Opinion by Neuman, J. (9 pages $3.60)

The complaint alleged that Wenger failed to diligently pursue his client's breach of contract claim against the Burlington Northern Railroad Company. The committee also accused Wenger of repeated failure to respond to its inquiries concerning his client's complaint. In its written ruling, the Grievance Commission found that Wenger's dilatory handling of his client's matter warranted a reprimand and that his willful failure to cooperate with the committee justified a three-month suspension. The commission concluded, however, that Wenger testified falsely at the hearing and submitted false evidence, ethical violations which warranted revocation of his license. It is from this latter finding and recommended sanction of revocation that Wenger appeals. OPINION HOLDS: At the outset we note that Wenger does not dispute the allegation that he neglected legal matters entrusted to him and that such failure to exercise care in the representation of clients constitutes ethical misconduct. The record also reveals that the committee proved by a convincing preponderance of the evidence that Wenger failed to respond to correspondence with the committee or timely answer requests for admissions during the investigation of the complaint. These acts violated DR 1-102(A)(1) and (5). The fighting issue is whether the commission properly allowed the committee to amend its complaint at the close of all the evidence to charge Wenger with the independent offense of giving false testimony under oath. Without notice of this additional charge, Wenger argues, he has been deprived of his statutory and constitutional due process protections. In defense of its last minute allegation, the committee contends that the truth or falsity of the August 25 correspondence is inextricably intertwined with the charge that Wenger failed to cooperate with the investigation. Thus, the committee argues, Wenger cannot now claim that he was not on notice that false testimony in this regard would subject him to disciplinary action. We are convinced, however, that the failure to respond charge and the amended charge of false testimony are "two different, distinct, and unrelated incidents of misconduct" of which Wenger had notice of only one. Therefore, the committee's failure to provide Wenger of notice violated his right to due process. The committee may, however, bring the amended charge against Wenger in a separate proceeding. Accordingly, we decline to act on that portion of the commission's findings and recommended

No. 89-1573. **COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT v. WENGER** (continued).

sanction pertaining to the committee's amended charge of false testimony without prejudice to the right of the committee to pursue such charges in accordance with new rules. In the meantime, because of Wenger's neglect of client matters and unwillingness to cooperate with investigation of the complaint, we order the suspension of his license to practice law indefinitely with no possibility of reinstatement for three months from the date of this opinion.

No. 89-126. **STATE v. SIMMONS.**

Appeal from the Iowa District Court for Polk County, Anthony Critelli, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Carter, Lavorato, and Neuman, JJ. Opinion by Neuman, J. (7 pages $2.80)

This is an appeal by Donna Simmons from the judgment and sentence entered upon a jury verdict finding her guilty of first-degree kidnapping. Simmons was charged with aiding and abetting her live-in boyfriend, Larry Siemer, in the confinement and torture of Simmons' seven-year-old son Tracey. The defendants were tried separately. In an opinion filed today, we have affirmed Siemer's kidnapping conviction. State v. Siemer, ___ N.W.2d ___ (Iowa 1990). OPINION HOLDS: I. Parents are not immune from prosecution for kidnapping their own children as a matter of law. II. The record before us furnishes substantial evidence from which a jury could find that Tracey's confinement exceeded that "normally" incidental to the crime of child abuse. III. Next we review de novo Simmons' constitutional claim that the court's refusal to grant her motion for change of venue deprived her of a fair trial. As we noted in Siemer, the media attention to these cases was pervasive but it was neither substantially nonfactual nor more sensational than the crimes themselves. The vigorous voir dire conducted in this case was clearly effective in routing out any juror prejudice. Simmons incorrectly asserts that a juror's mere reservation about impartiality justifies a change of venue. It is well settled that the correct standard is "whether the juror holds such a fixed opinion of the merits of the case that he or she cannot judge impartially the guilt or innocence of the defendant." The trial court applied the correct standard here. IV. Simmons also argues that the trial court abused its discretion in refusing to grant her a continuance to allow the press coverage surrounding the first day of trial to subside. Simmons has shown neither "good and compelling cause" nor that "substantial justice" would have been obtained by a continuance.

No. 89-40. **IN RE PROPERTY SEIZED FROM KASTER.**
Appeal from the Iowa District Court for Cerro Gordo County, Stephen P. Carroll, Judge. **REVERSED AND REMANDED.** Considered en banc. Opinion by Andreasen, J. Dissent by Snell, J. (19 pages $7.60)

Dickey D. Kaster was charged with three counts of violating Iowa Code section 109.32, which, among other things, makes it a simple misdemeanor to catch fish with a net. The county attorney filed a notice of forfeiture claiming Kaster's boat, outboard motor, gill net, boat trailer, depth finder, trolling motor, gloves, plastic milk jug, fence post, and three fish were forfeitable property. The district court concluded section 809.12 did not give a person of ordinary intelligence fair warning of what property was at risk and did not provide explicit standards for those who enforce it. Having determined the statute was unconstitutionally vague, the district court sustained Kaster's application for return of the property. The State appealed and Kaster cross-appealed. OPINION HOLDS: I. Although forfeiture statutes are not criminal statutes, they are penal in nature and must be strictly construed. II. Iowa Code section 809.1(2)(b) defines "forfeitable property" to include property used to "facilitate the commission of a criminal offense." We are not persuaded the term "criminal offense" is vague. The term refers to conduct subjecting the offender to imprisonment or fine and includes misdemeanors as well as felonies. III. We also are not persuaded the word "facilitate" is unconstitutionally vague. We interpret "facilitate" as used in section 809.1 to require a substantial connection between the property and the crime. IV. Although a statute may not be "vague" in the ordinary sense of the word, it may yet violate due process requirements if it fails to provide explicit standards for those who enforce it. We conclude the language of the statute, viewed in light of the procedural safeguards attending it, provides sufficient standards governing its application. V. We reverse the district court ruling that section 809.1(2)(b) is unconstitutionally vague. We remand to the district court for further proceedings not inconsistent with this opinion. DISSENT ASSERTS: I respectfully dissent. Iowa Code section 809.1(a)(b) is void as applied to this defendant because it is unconstitutionally vague in violation of the due process guarantees of the federal and state constitutions. The judicially imposed requirement of a "substantial connection" has significance in defining by circumscription the clause "in any manner to facilitate." Iowa's statute does not contain the words, "in any manner," and as a consequence the doctrine has no referent connection with the Iowa statute. The phrase "substantial connection" is actually dichotomous to "facilitate." The statute is unconstitutionally vague because "there are no standards governing the exercise of discretion."

NO. 89-230. ANNEAR v. STATE.

Appeal from the Iowa District Court for Polk County, George W. Bergeson, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Carter, and Neuman, JJ. Opinion by Carter, J. (16 pages $6.40)

Robert Annear was discharged from his job due to back trouble which prevented him from performing his duties. After back surgery and a physician's release, Annear applied to be rehired. His employer, the State of Iowa, declined to rehire him. Annear filed a complaint with the Iowa Civil Rights Commission. That Commission issued Annear a right-to-sue letter, and Annear then filed the present lawsuit alleging employment discrimination based on disability. The district court initially dismissed Annear's petition on a ground relating to the statute of limitations, but this court reversed that ruling and remanded for a trial on the merits. Upon retrial the jury found that Annear had failed to establish the alleged discrimination. The district court therefore entered judgment in favor of the State. Annear has appealed. **OPINION HOLDS:** I. The district court did not abuse its discretion by refusing to let Annear amend his petition after the remand resulting from the earlier appellate decision. II. We need not determine whether the continuing violation doctrine will save Annear's claim of discrimination in discharge from the statute of limitations. Resolution of the discriminatory discharge claim is more readily based on the ground that, under the undisputed evidence, there was no discrimination practiced with respect to Annear's separation from employment. III. The statute of limitations does not, however, bar that portion of the suit alleging discrimination in rehiring. IV. There are no viable issues in this civil rights action involving reasonable accommodation, since Annear's claims were predicated on a theory that he was fully recovered and was able to resume work without any accommodation of job requirements. Therefore, the district court did not err by excluding testimony relevant only to the issue of reasonable accommodation. V. The district court's instructions accurately stated Annear's contractual rights concerning reinstatement. VI. The district court correctly instructed the jury concerning Annear's burden of proof. VII. The district court correctly instructed the jury on the definition of handicap or handicapped person. The issue here is whether, if the State did not rehire plaintiff because it believed he was physically unable to do the work and was wrong in that assessment, this error of judgment would constitute an unlawful discrimination in hiring under section 601A.6(1)(a). We believe it does not. To apply a regulation concerning perceived disability to this set of facts would extend the scope of an employment discrimination claim beyond the breadth of the statute by which such claims have been created. The district court did not err in rejecting plaintiff's proposed instruction on perceived disability.

No. 89-562. WAECHTER V. ALUMINUM COMPANY OF AMERICA.

Appeal from the Iowa District Court for Scott County, David J. Sohr, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Carter, Lavorato, and Neuman, JJ. Opinion by Lavorato, J. (14 pages $5.60)

Anne Waechter's employer, ALCOA, disciplined her for being intoxicated on the job. This occurred after an on-the-job drug test prompted by her careless behavior. Waechter filed a union grievance to protest her discipline. ALCOA offered to settle this grievance by reinstating Waechter at her former position following a suspension period, and by paying for an alcohol abuse evaluation. Waechter orally accepted this offer and withdrew her grievance. However, she did not sign a written settlement agreement. She later filed the present lawsuit against ALCOA, alleging ALCOA had violated Iowa's employee drug testing law, Iowa Code section 730.5, by disciplining an employee for a first-time offense. This was an issue she had raised earlier in her withdrawn grievance. The district court dismissed Waechter's suit on the ground she had previously reached a full and final settlement of all her grievance issues. Waechter has appealed. OPINION HOLDS: On our de novo review we are convinced the parties intended to settle Waechter's claim against ALCOA for allegedly violating Iowa's employee drug testing law. We affirm the dismissal of Waechter's suit.

No. 89-295. IN RE S.C.S.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Buchanan County, Stephen C. Clarke, Juvenile Referee, and Robert E. Mahan, Judge. **DECISION OF COURT OF APPEALS VACATED; JUDGMENT OF DISTRICT COURT AFFIRMED.** Considered by McGiverin, C.J., and Larson, Carter, Lavorato, and Neuman, JJ. Opinion by Lavorato, J. (12 pages $4.80)

A juvenile was adjudicated to be delinquent because he had committed the delinquent act of operating while intoxicated. He has appealed. OPINION HOLDS: I. The juvenile had not yet been "taken into custody" at the time he performed certain field sobriety tests. Therefore his right to counsel under Iowa Code section 232.11(1)(a) had not yet attached. For this reason the performance of the field sobriety tests, even though done without either an attorney's presence or a valid waiver of an attorney's presence, did not violate the juvenile's right to counsel. The results of the field sobriety tests were properly admitted into evidence at the delinquency hearing. II. The evidence was sufficient to establish beyond a reasonable doubt that the juvenile had committed the offense of operating while intoxicated.

NO. 89-751. OFFICE OF CONSUMER ADVOCATE v. IOWA UTILS. BD.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge. **AFFIRMED.** Considered en banc. Opinion by Larson, J. (16 pages $6.40)

Interstate Power Company (Interstate) proposed to raise its electric rates, and the matter was submitted to the Iowa Utilities Board. The board granted a portion of the rate increase and also allowed Interstate an additional increase as a reward for management efficiency under Iowa Code section 476.52 (1987). The Office of Consumer Advocate (OCA) petitioned for judicial review, and Interstate filed its own petition. The petitions for judicial review were consolidated in the district court. The district court affirmed, in large part, the board's rate increase but remanded for more specific findings by the board with respect to Interstate's entitlement to the statutory bonus for extraordinary efficiency. OCA appealed. **OPINION HOLDS:** I. Interstate invested substantial amounts of money in two proposed generating plants which were ultimately canceled. The board permitted Interstate to recover its investment through rates charged its customers on the ground that the initial investments, as well as the ultimate decisions to cancel them, were prudent when made. We agree with the district court that the board's inclusion of the costs of the abandoned plant projects in the utility's allowable expenses was supported by the law and the record. II. The board allowed Interstate to include in its rate base an acquisition adjustment, which represented the amount Interstate paid for an ownership interest in a generating station above the seller's original cost, less depreciation. We conclude that the acquisition adjustment allowance by the board was based on proper procedure and was amply supported in the record. III. OCA argues that the board may grant efficiency rewards only if the benefits are both tangible and financial, and can be measured, or quantified, in terms of dollars and cents. We believe the board acted within its realm of statutory authority under section 476.52 by allowing the efficiency reward without quantifying it in dollars saved. IV. OCA argues that the effect of the board's order denying Interstate's application for increased interim rates was to not set any rates at all. The clear import of the order, however, is to permit the existing rates under the prior board order to remain in effect. We find no error in the district court's disposition of the interim rate issue. We find no error in these proceedings and therefore affirm.

No. 89-1581. STATE ex rel. MILLER v. NATIONAL DIETARY RESEARCH, INC.

Appeal from the Iowa District Court for Polk County, Rodney Ryan, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Larson, Carter, Lavorato, and Neuman, JJ. Opinion by Lavorato, J. (17 pages $6.80)

In this interlocutory appeal the State complains about a discovery ruling in its suit against several defendants under the Iowa Consumer Fraud Act and the Iowa Drug and Cosmetic Act. The State alleges that the defendants sold a diet pill in Iowa, using false or deceptive advertising, and that the pill is a misbranded, unapproved new drug. The defendants objected to interrogatories and requests for production on several grounds: the discovery called for trade secrets; the discovery asked for legal conclusions and the work product of the defendants' attorneys; the State could use the information called for by the discovery to intimidate and harass customers. In response to this motion, the State filed a motion to compel discovery. In this motion, the State asked the court to compel the defendants to respond to the interrogatories and requests for production to which the defendants had objected. The State also asked the court to require defendant, Omicron International, to file responses to all the served discovery requests. The district court bifurcated the trial, ruling that the liability issues would be tried first, and the damages issues (if necessary) would be tried later. The court granted the defendants' motions for a protective order, but ordered the defendants to begin accumulating customer and financial information for the damages stage of the trial. The court denied, with certain exceptions, the State's motion to compel. The defendants were ordered to give the State copies of all advertisements used in connection with the pill. They also had to disclose the contents of the pill along with the names of persons involved in the origin and development of the pill. The State filed this interlocutory appeal. OPINION HOLDS: I. Because this case involves an appeal from the district court's ruling on discovery, our standard of review is abuse of discretion. II. A party is entitled to discover all evidence that is not privileged and that is relevant to the subject matter of the lawsuit. Relevancy to the subject matter of the lawsuit is broader than relevancy to the precise issues in the pleadings, and includes inadmissible information. To defeat discovery a party must make a specific demonstration that the information sought is privileged or irrelevant. III. The defendants made no showing in the district court that the customer information requested by the State was a trade secret or confidential.

No. 89-1581. STATE ex rel. MILLER v. NATIONAL DIETARY RESEARCH, INC. (continued).

We also think the customer information was relevant within the meaning of Iowa Rule of Civil Procedure 122(a). Evidence tending to show that customers were mislead is relevant to the State's allegations of consumer fraud. The defendants' failed to show that they provided the State will all the information regarding the defendants' basis for representations made in their pill advertisements. This information goes to the heart of the State's case as well as to the defendants' obvious defense. This information, which came into existence before this litigation ever began, does not fall within the protection of attorney work product under Iowa Rule of Civil Procedure 122(c). The State's request for the identification of persons with knowledge concerning the origination, development or marketing of the pill is relevant and discoverable under Iowa Rule of Civil Procedure 122(a). And the State's request for the identity of all suppliers and manufacturers of the defendants is not a trade secret and is clearly relevant to all the issues of this litigation. IV. The State's final complaint is that the district court incorrectly included defendant Omicron in its protective order when that company failed to respond to any of the discovery requests. Iowa Rule of Civil Procedure 126(a) requires a party to answer interrogatories unless the party objects to them. A failure to comply with this rule is deemed a failure to answer and shall be subject to sanctions as provided in Iowa Rule of Civil Procedure 126(a). Omicron had a duty under Rule 126(a) to answer these discovery requests and the district court should not have shielded it by including it in its protective order. On remand, the State should be allowed to renew its motion to compel Omicron to respond to its discovery request. We trust the district court will consider that motion in light of Omicron's duty to respond to the interrogatories and requests for production. V. In summary, we conclude the district court abused its discretion by denying the State discovery of information that was clearly discoverable within the meaning of rule 122 and was not subject to a protective order within the meaning of rule 123. We reverse and remand for further proceedings consistent with this opinion.

NO. 89-423. MANDERS v. IOWA DEPARTMENT OF TRANSPORTATION.
On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge. **DECISION OF COURT OF APPEALS AND JUDGMENT OF DISTRICT COURT AFFIRMED.** Considered by McGiverin, C.J., and Larson, Carter, Lavorato, and Neuman, JJ. Opinion by Carter, J. (7 pages $2.80)

The Iowa Department of Transportation revoked Mark Manders' license to operate a motor vehicle. Upon judicial review, the district court upheld the revocation. Manders has appealed. **OPINION HOLDS:** I. Manders has not demonstrated that his refusal to submit to chemical testing was justified because of the alleged failure of law enforcement officers to cooperate in Manders' efforts to contact an attorney. II. In Westendorf v. Iowa Department of Transportation, 400 N.W.2d 553 (Iowa 1987), we held that lack of probable cause to make an investigatory stop of a motor vehicle does not trigger a constitutional exclusionary rule prohibiting use of evidence thus obtained in an administrative proceeding. We now reaffirm that holding. In addition, we find no basis for applying a statutory exclusionary rule in administrative proceedings of this type. Therefore, Manders may not complain that evidence resulting from the stop of his car should have been excluded from the administrative hearing due to the alleged absence of reasonable cause to stop the car.

NO. 89-207. GARDNER v. GARDNER.
Appeal from the Iowa District Court for Pottawattamie County, Leo Connolly, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Larson, Carter, Lavorato, and Neuman, JJ. Opinion by Larson, J. (7 pages $2.80)

Mark and James Gardner (the brothers) conveyed their remainder interest in Pottawattamie County farmland to their brother Harry to be used by Harry as security for a loan. According to the brothers, Harry told them that, if he failed to refinance, he would reconvey the remainder interest to them. The deed did not mention any agreement to reconvey. Harry's application for a Federal Land Bank loan was denied, and his brothers requested the return of their remainder interests. When Harry refused, his brothers began this action. After this suit was commenced, Harry gave a mortgage to the real estate to his original bank, Citizens' State Bank, to secure his preexisting indebtedness. The district court held that evidence of any oral agreement to reconvey must be rejected under the statute of frauds, Iowa Code § 622.32 (1987). The district court entered judgment in favor of Harry, and his brothers appealed. **OPINION HOLDS:** I. In this case, evidence was

NO. 89-207. GARDNER v. GARDNER (continued).
offered to show that Harry's brothers performed their part of the alleged oral agreement by conveying their remainder interests in the land to Harry. This was sufficient performance to take the alleged oral agreement from the operation of the statute of frauds. The trial court erred in refusing to admit evidence of the alleged oral agreement. II. The bank's mortgage was taken with constructive notice of the pendency of the brothers' claim of interest in the land, and the bank may not acquire an interest superior to the brothers' claim, if it is established at trial.

No. 88-1755. MEIER v. ALFA-LAVAL, INC.
Appeal from the Iowa District Court for Jones County, L. Vern Robinson, Judge. **REVERSED AND REMANDED.** Considered by Harris, P.J., and Schultz, Lavorato, Snell, and Andreasen, JJ. Opinion by Schultz, J. (13 pages $5.20)

This is an action by dairy farmers against the manufacturer and dealer of a milking machine system for damages to their dairy operation caused by that system. The jury awarded damages to the plaintiffs. The district court then granted defendants' a motion for a new trial. Plaintiffs appeal and defendants cross-appeal. OPINION HOLDS: I. Plaintiffs argue that the defendants are equitably estopped from asserting the defense of the five-year statute of limitations; they claim the repairs and assurances made by defendants lulled them into inaction to their detriment under the limitations period. We do not believe that a jury could reasonably infer that by making the alterations and repairs, the dealer intended to mislead plaintiffs so they would not bring a timely suit. The evidence points to a dealer which was attempting to remedy, possibly negligently, plaintiffs' problems. Under these facts the claim of equitable estoppel is unavailable to plaintiffs. II. The issue is whether under this record plaintiffs can recover damages based on the theory of negligent misrepresentation for the period after 1980. We have previously recognized that a person in the profession or business of supplying information or opinions owes a duty of reasonable care to clients or others. There are no facts in the record to show that the dealer here was in the business of supplying information to others. We believe that this duty recognized under the tort of negligent misrepresentation is generally not applicable to a retailer, such as the dealer, in the business of selling and servicing his merchandise. Therefore, the court erred in submitting the theory of negligent misrepresentation to the jury.

No. 89-434. **FIRST NATIONAL BANK v. KENNY.**

Appeal from the Iowa District Court for Jefferson County, Dan F. Morrison, Judge. **REVERSED AND REMANDED.** Considered by Harris, P.J., and Schultz, Carter, Snell, and Andreasen, JJ. Opinion by Snell, J. (9 pages $3.60)

The Kobayashis obtained a deficiency judgment in a Hawaii court against William C. Fisher in 1984. Prior to entry of the deficiency judgment, Fisher had moved from Hawaii to Iowa and become involved in the real estate business in Fairfield, where he contracted to buy certain business property. The Kobayashis filed suit in Iowa in 1985, seeking to enforce the deficiency judgment, and the property at issue was placed on the lis pendens. A series of transactions involving Fisher, Kenny, and the bank took place which eventually placed legal title to the real estate in the hands of Kenny, who granted a mortgage to the bank. In 1988, the Kobayashis obtained a judgment lien against the property based on a default judgment against Fisher. When Kenny defaulted on the property, the bank sought foreclosure on the mortgage and the Kobayashis objected, asserting that their judgment against the property gave them a priority over the bank's mortgage. The bank claimed that the property did not belong to Fisher, but to Kenny, and consequently the Kobayashis' judgment lien was invalid. The Kobayashis claimed that the transactions that placed the property in Kenny's hands were part of a fraud designed by Fisher to hide his property from his creditors. The trial court entered summary judgment for the bank, ruling that the property passed from Fisher's hands prior to entry of the judgment lien in the Kobayashis' favor. The Kobayashis appealed. OPINION HOLDS: Summary judgment for the bank was improper. There was sufficient evidence to permit an inference that Fisher was the actual owner of the real estate, and that he had placed the title in other hands to protect the real estate from his creditors. Because rational minds could draw different inferences from the facts, the bank is not entitled to judgment as a matter of law. Instead, the Kobayashis are entitled to the opportunity to prove at trial their assertions to priority of lien against the mortgaged property.

NO. 89-235. CITIZENS' AIDE/OMBUDSMAN v. ROLFES.

Appeal from the Iowa District Court for Polk County, Luther T. Glanton, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Larson, Carter, Lavorato, and Neuman, JJ. Opinion by Larson, J.

(12 pages $4.80)

The Office of Citizens' Aide, a state office under Iowa Code chapter 601G (1989), began an investigation of Robert Rolfes, sheriff of Osceola County, Iowa. Rolfes initially cooperated but later refused to respond to Citizens' Aide subpoenas unless he was given "contested case" procedural protections under Iowa Code chapter 17A. Citizens' Aide sought an order from the district court to compel compliance with its subpoenas, and Rolfes sought a protective order. The district court granted a protective order, thus effectively halting Citizens' Aide's investigation. Citizens' Aide appealed. **OPINION HOLDS:** I. We agree with Rolfes that, for purposes of chapter 17A proceedings, the Office of Citizens' Aide is an "agency." Citizens' Aide concedes that, if it is an agency under the definition of chapter 17A, Rolfes is entitled to the protections accorded by that chapter. II. We believe the investigation by Citizens' Aide fails the test for a contested case under section 17A.2(2) in one key respect: it did not determine the legal rights, duties, or privileges of Sheriff Rolfes. We conclude that Citizens' Aide investigations are "other agency actions." No procedural due process rights attach to actions of an agency involved in a purely investigative and fact-finding mode. III. Rolfes' procedural due process argument is based on a claimed infringement of a liberty interest. In this case, that interest is continued employment. However, Rolfes is still employed as sheriff, and due process does not mandate a pre-investigation hearing under the circumstances of this case. IV. We agree with Citizens' Aide that its actions were not shown to be unreasonable or an abuse of its discretion. We conclude that the district court erred in entering the protective order and therefore reverse and remand for further proceedings.

No. 89-214. **STATE v. IOWA PUBLIC SERVICE CO.**

Appeal from the Iowa District Court for Woodbury County, Richard J. Vipond, Judge. **AFFIRMED IN PART AND REVERSED IN PART.** Considered by Harris, P.J., and Schultz, Lavorato, Snell, and Andreasen, JJ. Opinion by Andreasen, J. (10 pages $4.00)

Iowa Public Service Company (IPS) constructed in 1985 a gas pipeline in the right-of-way of state highway 12 within the city limits of Akron, Iowa. IPS also installed in 1985 an underground electric line in the right-of-way of state highway 3 within the city limits of LeMars, Iowa. IPS did not notify the DOT, seek a DOT permit, or comply with DOT rules governing the accommodation of utility use of highway right-of-way. The DOT brought an action against IPS seeking injunctive relief and a declaratory judgment concerning the failure of IPS to follow DOT rules. After trial, the district court denied the DOT's request for a mandatory or prohibitory injunction based on the failure to obtain permits. The court did order IPS to remove or reconstruct the utility lines to comply with DOT rules, however. No declaratory judgment was issued. IPS appealed and the DOT cross-appealed. OPINION HOLDS: Taken together, the applicable statutory provisions evidence a legislative intent to give the DOT authority over utility placements on freeway or interstate right-of-way. As to other highways, the special and later enacted statutes indicate utility companies are exempt from DOT authority to require permits and to require work performed to conform with DOT specifications. Therefore, we hold the district court erred in ordering IPS to remove or reconstruct the utility lines to comply with DOT rules. We affirm, however, the district court's denial of the DOT's request for a mandatory or prohibitory injunction based on IPS's failure to obtain a DOT permit. The utilities board recommends that utility companies confer with highway authorities before constructing utility lines in highway right-of-way. We would urge utility companies to follow the board's recommendation.

No. 89-174. **WELLMAN SAVINGS BANK v. ADAMS.**

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Keokuk County, Dan F. Morrison, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered by Harris, P.J., and Schultz, Carter, Snell, and Andreasen, JJ. Opinion by Snell, J. (12 pages $4.80)

In 1983 David Dumont obtained a loan from the Wellman Savings Bank to make alterations in his farming operation. Verna Adams, his mother, signed a guaranty instrument presented by the bank. The guaranty, as written, appeared to apply only to discounted notes. Dumont subsequently defaulted on two notes. Neither note involved the initial loan of $25,000 which led to Adams' guaranty. The bank filed a petition in district court seeking payment from Adams in the amount of the $25,000 guaranty. Adams defended on the basis that none of Dumont's notes were discounted and as a result the guaranty did not apply. She also claimed the parties did not intend for the guaranty to apply to any debt beyond the first $25,000 note. In a bifurcated trial, the district court reformed the guaranty by deleting the language referring to discounted notes. In the second stage of its hearing on the matter, the court found Adams liable for the $25,000 guaranty, after first prohibiting the introduction of parole evidence on the issue of the parties' intent. Adams appealed. OPINION HOLDS: I. We conclude that it was not the intent of the parties that the guaranty instrument apply only to discounted notes, and that the language relating to discounted notes was a mutual mistake. The district court properly reformed the agreement. II. The guaranty executed by Adams is unambiguous. It is a continuing guarantee of Dumont's debts up to $25,000. As a consequence, extrinsic evidence was properly excluded by the trial court. Based on the equities in this case, we conclude that the trial court properly determined that Adams was liable for the $25,000.

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