



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

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 [12C.6]; Workers' Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)"a"]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking—Notice of Application and Hearing [524.1905(2)].

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 Iowa Administrative Bulletin.

PHYLLIS BARRY, Administrative Code Editor Telephone: (515)281-3355
 KATHLEEN BATES, Administrative Code Assistant (515)281-8157

SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

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

First quarter	July 1, 1993, to June 30, 1994	\$221.00 plus \$11.05 sales tax
Second quarter	October 1, 1993, to June 30, 1994	\$165.75 plus \$8.29 sales tax
Third quarter	January 1, 1994, to June 30, 1994	\$110.50 plus \$5.53 sales tax
Fourth quarter	April 1, 1994, to June 30, 1994	\$ 55.25 plus \$2.76 sales tax

Single copies may be purchased for \$15.00 plus \$0.75 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 - \$1,002.75 plus \$50.14 sales tax

(Price includes 18 volumes of rules and index, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin. Additional or replacement binders can be purchased for \$9.00 plus \$0.45 tax.)

Iowa Administrative Code Supplement - \$350.00 plus \$17.50 sales tax
 (Subscription expires June 30, 1994)

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

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

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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

- | | |
|-----------------------|----------------|
| 441 IAC 79 | (Chapter) |
| 441 IAC 79.1(249A) | (Rule) |
| 441 IAC 79.1(1) | (Subrule) |
| 441 IAC 79.1(1)"a" | (Paragraph) |
| 441 IAC 79.1(1)"a"(1) | (Subparagraph) |

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

Schedule for Rule Making 1993

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
Dec. 4 '92	Dec. 23 '92	Jan. 12	Jan. 27	Feb. 17	Mar. 24	June 21
Dec. 18 '92	Jan. 6	Jan. 26	Feb. 10	Mar. 3	Apr. 7	July 5
Jan. 1	Jan. 20	Feb. 9	Feb. 24	Mar. 17	Apr. 21	July 19
Jan. 15	Feb. 3	Feb. 23	Mar. 10	Mar. 31	May 5	Aug. 2
Jan. 29	Feb. 17	Mar. 9	Mar. 24	Apr. 14	May 19	Aug. 16
Feb. 12	Mar. 3	Mar. 23	Apr. 7	Apr. 28	June 2	Aug. 30
Feb. 26	Mar. 17	Apr. 6	Apr. 21	May 12	June 16	Sept. 13
Mar. 12	Mar. 31	Apr. 20	May 5	May 26	June 30	Sept. 27
Mar. 26	Apr. 14	May 4	May 19	June 9	July 14	Oct. 11
Apr. 9	Apr. 28	May 18	June 2	June 23	July 28	Oct. 25
Apr. 23	May 12	June 1	June 16	July 7	Aug. 11	Nov. 8
May 7	May 26	June 15	June 30	July 21	Aug. 25	Nov. 22
May 21	June 9	June 29	July 14	Aug. 4	Sept. 8	Dec. 6
June 4	June 23	July 13	July 28	Aug. 18	Sept. 22	Dec. 20
June 18	July 7	July 27	Aug. 11	Sept. 1	Oct. 6	Jan. 3 '94
July 2	July 21	Aug. 10	Aug. 25	Sept. 15	Oct. 20	Jan. 17 '94
July 16	Aug. 4	Aug. 24	Sept. 8	Sept. 29	Nov. 3	Jan. 31 '94
July 30	Aug. 18	Sept. 7	Sept. 22	Oct. 13	Nov. 17	Feb. 14 '94
Aug. 13	Sept. 1	Sept. 21	Oct. 6	Oct. 27	Dec. 1	Feb. 28 '94
Aug. 27	Sept. 15	Oct. 5	Oct. 20	Nov. 10	Dec. 15	Mar. 14 '94
Sept. 10	Sept. 29	Oct. 19	Nov. 3	Nov. 24	Dec. 29	Mar. 28 '94
Sept. 24	Oct. 13	Nov. 2	Nov. 17	Dec. 8	Jan. 12 '94	Apr. 11 '94
Oct. 8	Oct. 27	Nov. 16	Dec. 1	Dec. 22	Jan. 26 '94	Apr. 25 '94
Oct. 22	Nov. 10	Nov. 30	Dec. 15	Jan. 5 '94	Feb. 9 '94	May 9 '94
Nov. 5	Nov. 24	Dec. 14	Dec. 29	Jan. 19 '94	Feb. 23 '94	May 23 '94
Nov. 19	Dec. 8	Dec. 28	Jan. 12 '94	Feb. 2 '94	Mar. 9 '94	June 6 '94
Dec. 3	Dec. 22	Jan. 11 '94	Jan. 26 '94	Feb. 16 '94	Mar. 23 '94	June 20 '94
Dec. 17	Jan. 5 '94	Jan. 25 '94	Feb. 9 '94	Mar. 2 '94	Apr. 6 '94	July 4 '94
Dec. 31	Jan. 19 '94	Feb. 8 '94	Feb. 23 '94	Mar. 16 '94	Apr. 20 '94	July 18 '94

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
7	Friday, September 10, 1993	September 29, 1993
8	Friday, September 24, 1993	October 13, 1993
9	Friday, October 8, 1993	October 27, 1993

PLEASE NOTE:

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.

A T T E N T I O N

TO: Administrative Rules Coordinators and Text Processors of State Agencies
 FROM: Phyllis Barry, Iowa Administrative Code Editor
 SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Iowa Administrative Code Division is using a PC system to assist in the printing of the Iowa Administrative Bulletin. In order to most effectively transfer rules from the various agencies sending their rules on a diskette, please note the following:

1. We use a Windows environment with Lotus Ami Professional 3.0 as our word processing system and can import directly from any of the following:

Ami Pro 1.2	Manuscript	SuperCalc
Ami Pro Macro	Microsoft Word	Symphony Document
dBase	MultiMate	Windows Write
DCA/FFT	Navy DIF	Word for Windows 1.x, 2.0
DCA/RFT	Office Writer	WordPerfect 4.1, 4.2, 5.0, 5.1
DIF	Paradox	WordStar
Display Write 4	PeachText	WordStar 2000 ver 1.0, 3.0
Enable	Professional Write	
Exec MemoMaker	Rich Text Format	
Excel 3.0, 4.0	Samna Word	
	SmartWare	

2. If you do not have any of the above, a file in an ASCII format is helpful.

3. Submit only 3 1/2" or 5 1/4" DOS-formatted diskettes. Please indicate on each diskette the agency name, file name, the format used for exporting, chapter or chapters of rules being amended.

4. **Deliver this diskette to the Administrative Code Division, 4th Floor, Lucas Building when documents are submitted to the Governor's Administrative Rules Coordinator.**

Diskettes from agencies will be returned unchanged by the Administrative Code Division. Please refer to the hard-copy document which is returned to your agency by the Governor's office. This document reflects any changes in the rules—update your diskettes accordingly.

Your cooperation helps us to print the Bulletin more quickly and cost-effectively than was previously possible and is greatly appreciated.

Memorandum

To: All Agencies

From: Phyllis Barry
Administrative Code Editor

Paula Dierenfeld
Administrative Rules Coordinator

Subject: Rule-making Documents — Change to 8½" × 11" Paper

Beginning with the October 13, 1993, Iowa Administrative Bulletin, all rule-making documents submitted for publication shall be prepared on 8½" × 11" paper (submission deadline for that Bulletin is 9/24/93).

Please continue to follow other existing guidelines for style and format.

To All Agencies:

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

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21] Animal welfare, 67.2, 67.5(4), 67.7(2) IAB 9/15/93 ARC 4279A	Conference Room — 2nd Floor Wallace State Office Bldg. Des Moines, Iowa	October 8, 1993 10 a.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261] CDBG — flood recovery, 23.6(8), 23.16 IAB 9/15/93 ARC 4253A (See also ARC 4254A herein)	Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	October 5, 1993 1 p.m.
HOME investment partnership program — flood recovery, 25.9(6), 25.12 IAB 9/15/93 ARC 4251A (See also ARC 4252A herein)	Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	October 5, 1993 2 p.m.
EDUCATIONAL EXAMINERS BOARD[282] Alternative preparation program, 14.31 IAB 9/15/93 ARC 4265A	State Board Room Second Floor Grimes State Office Bldg. Des Moines, Iowa	November 5, 1993 9:30 a.m.
NCATE accredited programs, 14.32 IAB 9/15/93 ARC 4280A	State Board Room Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 13, 1993 9:30 a.m.
Occupational and postsecondary endorsements and licenses, 16.2(1)"c," 16.5(1)"a"(3), 16.9(2) IAB 9/15/93 ARC 4256A (See also ARC 4255A herein)	State Board Room Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 13, 1993 2 p.m.
ELDER AFFAIRS DEPARTMENT[321] Definitions of "accessible" and "information and assistance," 1.7 IAB 9/15/93 ARC 4259A	Jewett Bldg. — Suite 236 914 Grand Ave. Des Moines, Iowa	October 19, 1993 9 a.m.
Fiscal policy, 5.1(4)"j," 5.2(1)"b" IAB 9/15/93 ARC 4257A	Jewett Bldg. — Suite 236 914 Grand Ave. Des Moines, Iowa	October 19, 1993 9 a.m.
Nutrition services for persons with disabilities, 6.8"20," 7.3(4)"b" IAB 9/15/93 ARC 4260A	Jewett Bldg. — Suite 236 914 Grand Ave. Des Moines, Iowa	October 19, 1993 9 a.m.
Meal site participation; information and assistance, 7.3, 7.4 IAB 9/15/93 ARC 4258A	Jewett Bldg. — Suite 236 914 Grand Ave. Des Moines, Iowa	October 19, 1993 9 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Training fires, 23.2(3)"g" IAB 9/15/93 ARC 4277A	Conference Room — 5th Floor East Half Wallace State Office Bldg. Des Moines, Iowa	October 5, 1993 1:30 p.m.
Repair and maintenance of drainage district ditch, 61.2(2), 70.2 IAB 8/18/93 ARC 4198A	Algona Public Library—Room D 210 N. Phillips Algona, Iowa	September 16, 1993 7 p.m.
	Burlington Public Library—Upstairs 501 N. 4th Burlington, Iowa	September 17, 1993 7 p.m.
	Conference Room 5W Wallace State Office Bldg. Des Moines, Iowa	September 20, 1993 10:30 a.m.
Protected streams, 72.50(2), 72.52 IAB 8/18/93 ARC 4204A	Conference Room — 4th Floor Wallace State Office Bldg. Des Moines, Iowa	September 15, 1993 10:30 a.m.
Regional collection centers, 211.8(2) IAB 8/18/93 ARC 4208A	Conference Room — 5th Floor Wallace State Office Bldg. Des Moines, Iowa	September 16, 1993 1 p.m.

HEALTH DATA COMMISSION[411]

Collection categories consistent with hospital licensing, RCF information, 6.3, 6.5, rescind chs 8 and 9 IAB 9/15/93 ARC 4271A	Director's Conference Room Fourth Floor Lucas State Office Bldg. Des Moines, Iowa	October 6, 1993 9 a.m.
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HUMAN SERVICES DEPARTMENT[441]

Rehabilitative treatment and supportive services program, amendments to chs 7, 77 to 80, 86, 88, 130, 150, 156, 182, 202; new chs 152, 181, 185 IAB 9/1/93 ARC 4219A (See also ARC 4223A)	Conference Room — 6th Floor 221 4th Ave. S.E. Cedar Rapids, Iowa	September 28, 1993 10 a.m.
	Community Hall 205 S. Main St. Council Bluffs, Iowa	September 22, 1993 9:30 a.m.
	Conference Room — 3rd Floor Bicentennial Bldg. 428 Western Davenport, Iowa	September 22, 1993 10 a.m.
	Conference Room 100 City View Plaza 1200 University Des Moines, Iowa	September 24, 1993 10 a.m.
	Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	September 24, 1993 10 a.m.
	Conference Room 120 E. Main Ottumwa, Iowa	September 24, 1993 10 a.m.
	Suite 614 507 7th St. Sioux City, Iowa	September 22, 1993 1 p.m.

HUMAN SERVICES DEPARTMENT[441](cont'd)

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Pinecrest Office Bldg.
1407 Independence Ave.
Waterloo, Iowa

September 24, 1993
10 a.m.

INSPECTIONS AND APPEALS DEPARTMENT[481]

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new ch 58; rescind ch 59
IAB 9/15/93 ARC 4262A

New Historical Bldg.
Auditorium — First Floor West
600 E. Locust
Des Moines, Iowa

October 5, 1993
10 a.m. to 2 p.m.

Community Room
111 N. Main
Denison, Iowa

October 11, 1993
10 a.m. to 2 p.m.

Kirkwood Community College
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6301 Kirkwood Blvd.
Cedar Rapids, Iowa

October 13, 1993
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LABOR SERVICES DIVISION[347]

General industry safety and health —
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IAB 9/1/93 ARC 4248A

Labor Services Division
1000 E. Grand Ave.
Des Moines, Iowa

September 23, 1993
9 a.m.
(If requested)

Construction safety and health —
incorporation of general industry
safety and health standards applicable
to construction work, 26.1
IAB 9/1/93 ARC 4237A

Labor Services Division
1000 E. Grand Ave.
Des Moines, Iowa

September 23, 1993
9 a.m.
(If requested)

NATURAL RESOURCE COMMISSION[571]

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IAB 9/1/93 ARC 4242A

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

September 22, 1993
9 a.m.

Sport fishing,
81.2
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Conference Room — 4th Floor
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Des Moines, Iowa

September 21, 1993
2 p.m.

Trotlines,
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IAB 9/1/93 ARC 4240A

Conference Room — 4th Floor
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Des Moines, Iowa

September 21, 1993
3 p.m.

Falconry regulations for hunting
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IAB 9/1/93 ARC 4239A

Conference Room
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Des Moines, Iowa

September 22, 1993
9:30 a.m.

PERSONNEL DEPARTMENT[581]

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Director's Conference Room
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Des Moines, Iowa

October 6, 1993
10 a.m.

PUBLIC HEALTH DEPARTMENT[641]

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IAB 9/1/93 ARC 4235A

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

September 21, 1993
1:30 p.m.

UTILITIES DIVISION[199]

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Lucas State Office Bldg.
Des Moines, Iowa

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10 a.m.

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IAB 8/18/93 **ARC 4172A**

Hearing Room — 1st Floor
Lucas State Office Bldg.
Des Moines, Iowa

September 15, 1993
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 small capitals 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:

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 TREASURER OF STATE[781]
 UNIFORM STATE LAWS COMMISSION[791]
 VETERANS AFFAIRS COMMISSION[801]
 VETERINARY MEDICINE BOARD[811]
 VOTER REGISTRATION COMMISSION[821]
 WALLACE TECHNOLOGY TRANSFER FOUNDATION[851]

REORGANIZATION—NOT IMPLEMENTED

Agencies listed below are identified in the Iowa Administrative Code with WHITE TABS*. These agencies have not yet implemented government reorganization.

Citizens' Aide[210]

Iowa Advance Funding Authority[515]

Records Commission[710]

* It is recommended that all white tabs be moved to a separate binder rather than interspersed with the colored tabs, which implemented state government reorganization.

NOTICE --- AVAILABILITY OF PUBLIC FUNDS

<u>Agency</u>	<u>Program</u>	<u>Service Delivery Area</u>	<u>Eligible Applicants</u>	<u>Services</u>	<u>Application Due Date</u>	<u>Contract Period</u>
Public Health	Bicycle Safety	Southwest and Northwest Iowa	Bicycle Clubs Identifying Specific Need	Bicycle Safety Education	11/30/93	1/1/94 to 9/30/94

Request application packet from:

Mary Harlan, Bureau of Disability and Injury Prevention
 Division of Health Protection; Iowa Department of Public Health
 Lucas Building; Des Moines, Iowa 50319-0075
 Telephone: (515)242-6336

NOTICE --- AVAILABILITY OF PUBLIC FUNDS

<u>Agency</u>	<u>Program</u>	<u>Service Delivery Area</u>	<u>Eligible Applicants</u>	<u>Services</u>	<u>Application Due Date</u>	<u>Contract Period</u>
Public Health	Bucklebear	Dallas, Webster and Harrison Counties	Licensed day care centers and preschools loaner programs	Child passenger safety education and toddler seat	11/15/93	1/1/94 to 9/30/94

Request application packet from:

Angie McLaughlin, Bureau of Disability and Injury Prevention
Division of Health Protection; Iowa Department of Public Health
Lucas Building; Des Moines, Iowa 50319-0075
Telephone: (515)242-5833

NOTICE --- AVAILABILITY OF PUBLIC FUNDS

<u>Agency</u>	<u>Program</u>	<u>Service Delivery Area</u>	<u>Eligible Applicants</u>	<u>Services</u>	<u>Application Due Date</u>	<u>Contract Period</u>
Public Health	Tobacco Control	City, county or multi-county projects.	County or city public health departments, hospitals and non-profit organizations.	Local cessation class and patch distribution.	9/10/93	9/15/93 to 12/31/93

Instructions: Application forms may be obtained by contacting:
 Tim Lane, Tobacco Control
 Iowa Department of Public Health
 Division of Substance Abuse & Health Promotion
 Lucas State Office Building, Des Moines, Iowa 50319-0075
 (515) 281-7833

ARC 4279A

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

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 162.16, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 67, "Animal Welfare," Iowa Administrative Code.

These amendments are intended to allow for the regulated use of grass exercise areas and runs, provide a definition for "breeding animal," create a classification for in-home kennels with modified regulation, and provide for the sterilization of dogs and cats adopted from animal shelters and pounds.

Interested persons may submit their comments in writing to Dr. John J. Schiltz, Bureau of Animal Industry, Second Floor Wallace State Office Building, Des Moines, Iowa 50319, prior to 4:30 p.m. on Friday, October 8, 1993.

A public hearing will be held commencing at 10 a.m. on Friday, October 8, 1993, in the Second Floor Conference Room of the Wallace State Office Building. Interested persons may submit their comments orally or in writing at that time.

These amendments are intended to implement Iowa Code sections 162.3, 162.4, 162.8, 162.9 and 162.20.

The following amendments are proposed.

ITEM 1. Amend subrule 67.2(1), paragraph "j," as follows:

j. Outdoor dog runs and exercise areas shall be of sound construction and kept in good repair so as to safely contain the animal(s) therein without injury. Floors shall be concrete, gravel or materials which can be regularly cleaned and kept free of waste accumulation. *Grass runs and exercise areas are permissible provided adequate ground cover is maintained, holes are kept filled and the ground cover is not allowed to become overgrown. Dog runs and exercise areas utilizing wire floors are permissible, provided that they are not injurious to the animals and adequately maintained.*

ITEM 2. Amend rule 67.2(162) by adding the following new subrule:

67.2(3) In-home kennel.

a. For the purposes of this subrule, "in-home kennel" means an individual required to be licensed as a boarding kennel or as a commercial breeder under Iowa Code chapter 162 who maintains or harbors not more than six adult animals in the individual's living quarters.

b. Notwithstanding subrules 67.2(1), 67.2(2), and 67.3(2), an in-home kennel shall comply with the following standards:

(1) Food supplies shall be stored so as to adequately protect them from contamination or infestation by vermin or other factors which would render the food unclean.

(2) Ample lighting shall be provided by natural or artificial means or both during sunrise to sunset hours. Animals shall be protected from excessive illumination.

(3) Building shall be of adequate structure and maintained in good repair so as to ensure protection of animals from injury.

(4) Facilities shall be provided to isolate diseased animals to prevent exposure to healthy animals.

(5) Outdoor dog runs and exercise areas shall be of sound construction and kept in good repair so as to safely contain the animal(s) therein without injury. Floors shall be concrete, gravel or materials which can be regularly cleaned and kept free of waste accumulation. Grass runs and exercise areas are permissible provided adequate ground cover is maintained, holes are kept filled and the ground cover is not allowed to become overgrown. Wire floors are permissible, provided they are not injurious to the animals and adequately maintained.

(6) Group housing is permitted for animals which are compatible with one another. Adequate space shall be provided to prevent crowding and to allow freedom of movement and comfort to animals of the size which are housed within the facility. Females in estrus shall not be housed with males, except for breeding purposes.

(7) If the animals are confined to a restricted area of the living quarters, the restricted area shall meet the space requirements set out in subrule 67.2(2)"c."

(8) Litter pans, containing clean litter, shall be provided at all times for kittens and cats.

(9) Means shall be provided to maintain that temperature and ventilation which is comfortable for the species within the primary enclosure or housing facility.

(10) Animals shall be removed from their primary enclosures at least twice in each 24-hour period and exercised.

(11) Housing facilities shall be cleaned as necessary to reduce disease hazards and an effective program shall be established and maintained for the control of vermin infestation.

ITEM 3. Rescind subrule 67.5(4) and insert in lieu thereof the following new subrule:

67.5(4) For the purposes of determining an individual's obligation to be licensed under Iowa Code section 162.8, "breeding animal" will include any sexually intact animal over the age of 12 months.

ITEM 4. Rescind subrule 67.7(2), paragraph "b," and insert in lieu thereof the following new paragraph:

b. Animal shelters and pounds shall develop and implement a plan providing for the surgical sterilization of all dogs and cats released, unless exempted from this provision in accordance with Iowa Code section 162.20(5).

Further amend subrule 67.7(2) by adding the following new paragraphs "c," "d," "e," and "f":

c. Sterilization agreements shall contain the following:

(1) Name, address and signature of the person receiving custody of the dog or cat.

(2) A complete description of the animal, including any identification.

(3) The signature of the representative of the pound or animal shelter.

(4) The date that the agreement is executed and the date by which sterilization must be completed.

(5) A statement which states the following:

1. Sterilization of the animal is required pursuant to Iowa Code section 162.20.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

2. Ownership of the dog or cat is conditioned upon the satisfaction of the terms of the agreement.

3. Failures to satisfy the terms of the agreement constitute a breach of contract, requiring the return of the dog or cat.

4. A person failing to satisfy the sterilization provisions of the agreement is guilty of a simple misdemeanor.

d. In addition to records required by 67.5(1), animal shelters and pounds shall maintain, for a period of 12 months, the following records:

(1) Euthanasia records, including date of entry, source of animal, and date of euthanasia.

(2) Sterilization agreements, including confirmation in the form of a receipt furnished by the office of the attending veterinarian.

(3) Disposition records of all animals lawfully claimed by owners, research facilities, or Class B federal dealers.

e. A pound or animal shelter may apply in writing for an enforcement waiver pursuant to Iowa Code section 162.20(5), paragraph "b." The application shall include the specific guidelines under which the waiver is being requested and a certified copy of the ordinance providing the basis for the waiver application. A waiver application fee of \$10 shall accompany the application.

f. A pound or animal shelter shall be subject to civil penalties as provided in Iowa Code section 162.20(3), paragraph "c," for not procuring and maintaining required records documenting compliance with the sterilization agreement, successfully seeking return of the animal from a noncompliant custodian, failing to effect a sterilization agreement when required for an animal which is released, or seeking legal recourse as provided in Iowa Code section 162.20(4). The pound or animal shelter shall be entitled to appeal pursuant to Iowa Code chapter 17A.

ARC 4253A**ECONOMIC DEVELOPMENT,
IOWA DEPARTMENT OF[261]****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 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 23, "Community Development Block Grant Non-entitlement Program," Iowa Administrative Code.

The proposed amendments establish the Flood Recovery Fund and set program implementation guidelines.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on October 5, 1993. In-

terested persons may submit written or oral comments by contacting: Roselyn McKie Wazny, Division of Community and Rural Development, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4822.

A public hearing to receive comments regarding the proposed amendments will be held on October 5, 1993, at 1 p.m. at the above address in the IDED main conference room. Individuals interested in providing comments at the hearing should contact Roselyn McKie Wazny by 4 p.m. on October 4, 1993, to be placed on the hearing agenda.

These proposed amendments are intended to implement Iowa Code section 15.108.

These amendments are also Adopted and Filed Emergency and are published herein as **ARC 4254A**. The content of that submission is incorporated by reference.

ARC 4251A**ECONOMIC DEVELOPMENT,
IOWA DEPARTMENT OF[261]****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 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 25, "HOME Investment Partnership Program," Iowa Administrative Code.

The proposed amendments allow for the expenditure of supplemental funds allocated by the U.S. Department of Housing and Urban Development to address flood recovery efforts.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on October 5, 1993. Interested persons may submit written or oral comments by contacting: Roselyn McKie Wazny, Division of Community and Rural Development, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4822.

A public hearing to receive comments about the proposed amendments will be held on October 5, 1993, at 2 p.m. at the above address in the IDED Main Conference Room. Individuals interested in providing comments at the hearing should contact Roselyn McKie Wazny by 4 p.m. on October 4, 1993, to be placed on the hearing agenda.

These amendments were also Adopted and Filed Emergency and published herein as **ARC 4252A**. The content of that submission is incorporated by reference.

ARC 4266A**EDUCATIONAL EXAMINERS
BOARD[282]****Notice of Termination**

Pursuant to the authority of Iowa Code section 272.2(13), the Board of Educational Examiners hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on December 9, 1992, as **ARC 3631A**, amending Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

The Notice proposed a new rule 14.31(260) to establish an alternative preparation option for persons who hold a bachelor's degree from an accredited college or university and who do not meet the basic requirements for regular licensure.

The rule was not adopted within the statutory 180-day period; therefore the Board is terminating the rule making commenced in **ARC 3631A** and will renounce herein as **ARC 4265A** the proposed rule 14.31(272) to provide opportunities for additional public comment.

ARC 4265A**EDUCATIONAL EXAMINERS
BOARD[282]****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 272.2(13), the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

These proposed amendments strike all references to "260" and insert "272" to reflect renumbering of the 1993 Iowa Code and establish an alternative program as a non-traditional preparation option for persons who hold a bachelor's degree from an accredited college or university and who do not meet the basic requirements for regular licensure.

This program will be effective for a five-year period during which the Board of Educational Examiners will evaluate the effectiveness and viability of the program.

There will be a public hearing on this proposed program on November 5, 1993, at 9:30 a.m. in the State Board Room, second floor, Grimes State Office Building, E. 14th and Grand Avenue, Des Moines, Iowa. Persons may present their views at this public hearing orally or in writing. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, Des Moines, Iowa 50319-0147, or at (515)281-5849 prior to the date of the public hearing.

Any interested person may make written comments or suggestions to the proposed amendments through November 5, 1993. Written comments and suggestions should be directed to Orrin Nearhoof, Executive Director, Board of Educational Examiners, at the address above.

These amendments are intended to implement Iowa Code chapter 272.

The following amendments are proposed.

ITEM 1. Amend **282—Chapter 14** by striking all references to "260" and inserting "272" to reflect renumbering of the 1993 Iowa Code.

ITEM 2. Amend **282—Chapter 14** by adding the following **new** rule:

282—14.31(272) Alternative preparation program.**14.31(1) Candidate selection process.**

a. Candidates for the alternative preparation program (hereinafter APP) shall possess at least a bachelor's degree from a regionally accredited institution with a major in the prospective teaching area.

b. Candidates shall have been graduated for over five years prior to application to the program.

c. Candidates with a record of felony conviction or a record of child abuse will not be considered.

d. Candidates shall apply to an agency offering an approved APP program. Recognized agencies are approved practitioner preparation institutions in cooperation with one or more school districts or school districts (local public and accredited nonpublic schools) in association with approved practitioner preparation institutions.

e. The selection process must involve a local district committee or a committee formed by several cooperating districts.

(1) This committee shall be composed of licensed practitioners employed in positions requiring a license issued by the state board of educational examiners, provided a majority of the members of the committee shall be classroom teachers. The members of the committee shall be representative of the elementary, middle, and secondary school levels, as applicable, and must include at least one representative from the practitioner preparation program involved in the APP program.

(2) The local administrator and the chair of the committee shall determine the size of the committee.

(3) A fair and equitable process for selecting committee members shall be established by the board of education or the boards of education in cooperating programs and the teachers' exclusive bargaining representatives, as applicable. If the board of education and such representatives cannot agree upon the process for selection of district committee members, then the selection process shall be by a secret ballot election conducted by the exclusive bargaining representative for members in each category that shall serve on the committee, provided that all licensed practitioners employed in positions requiring a license issued by the state board shall have the right of self-nomination.

(4) The committee shall adopt written procedures which shall include, but not be limited to, rotation of committee members, the application process, the selection process for program candidates, the selection process for mentors, and criteria and procedures for local mentor training.

(5) The committee shall review annually its written procedures and, as necessary, make revisions.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

14.31(2) Application process for program approval.

a. Institutions approved to offer practitioner preparation programs in conjunction with one or more school districts may file applications to offer an approved alternative preparation program. School districts individually or in cooperation with other districts and in conjunction with approved practitioner preparation institutions may file an application to offer an alternative preparation program.

b. The application shall include the name of the approved college or university and the cooperating districts, including verification of the local school board approval for the application.

c. The application shall establish academic and experience standards for admission to the alternative preparation program. These standards shall meet or exceed those established for regular admission to the practitioner preparation program, including a minimum grade point average and demonstration of good communication skills.

d. The application shall establish the content teaching areas to be offered in the alternative preparation program.

e. The application shall establish the sequence of course work for completion of the professional education core or its approved equivalent and any deficiencies in the major content teaching area.

f. The application shall establish the sequence for the on-site institutional supervisory evaluation visits, at least four during the first year of employment. As an option, the program may provide for the use of other personnel for this evaluation.

g. Approved licensed practitioners from other districts in the same teaching field or a licensed practitioner from an area education agency may conduct these evaluations.

h. Any cost associated with the evaluation visits shall be borne by the local district.

i. The program shall provide for the summary evaluation of the teacher candidate for licensure. The summary evaluation shall include the mentor and the college supervisor for the program, or the optional supervisory procedure set out in "f" above.

j. The selection process for each teacher candidate shall be completed by May 1 of the year. This will provide time for summer enrollment in the initial component of the alternative preparation programs. This first summer session shall be no less than nine semester hours.

14.31(3) Local mentors. Each individual involved in the alternative preparation program shall be assigned a local mentor.

14.31(4) Selection of mentors. Each approved mentor shall be selected in accordance with the following guidelines.

a. Individuals who are employed by a board of education and who apply to become mentors shall present evidence to the committee of meeting the following prerequisites:

- (1) Possession of a valid Iowa teacher's license;
- (2) Employment as a classroom teacher with at least five years of teaching experience and currently employed by the participating district;
- (3) Demonstration of effective teaching practice;
- (4) Ability to work cooperatively as team members to aid the professional growth of beginning teachers;
- (5) Professional commitment to improving the induction of beginning teachers into the teaching profession;

(6) Ability to relate effectively to adult learners;

(7) Ability to be reflective and articulate about the craft of teaching; and

(8) Such other criteria as may be deemed necessary by the district committee.

b. Committee members shall review all applications and recommend to the board of education through its employing agent those classroom teachers eligible to be mentors.

c. The board of education shall review and approve or disapprove the recommendations submitted to it by the district committee.

d. The committee chair shall submit to the state board of educational examiners by March 30 of each year, in such form as the executive director shall prescribe, the names of mentors involved with the alternative preparation program.

14.31(5) Responsibilities of mentors.

a. The mentor's responsibilities shall include, but not be limited to, the following:

(1) Meeting weekly with the teacher candidate during the school year and recording such activities;

(2) Observing the teacher candidate and providing classroom demonstrations for the teacher candidate on at least eight occasions during the school year;

(3) Providing support for the development of the teacher candidate's skills, including planning of instruction, classroom management, instruction and assessment of student learning.

b. Teacher candidates shall be placed with mentors under the following conditions:

(1) Each teacher candidate will be placed with a mentor;

(2) Placement of a teacher candidate with a mentor shall be made as soon as possible after a teacher candidate is assigned to a school building;

(3) School administrators shall place teacher candidates with mentors who teach in the same school building;

(4) A teacher candidate assigned to more than one building shall be placed by the employing agent with a mentor who teaches in one of the buildings to which the teacher candidate is assigned or with a mentor with a similar subject assignment who is assigned to more than one building.

14.31(6) Released time for mentors and teacher candidates in the alternative preparation programs.

a. From the date of placement, mentors and teacher candidate pairs shall receive annually not less than the equivalent of five school days of released time consisting of no less than ten meetings.

b. Alternatively, from the date of placement, the teacher candidate would have a full teaching contract, but be assigned only five-sixths time; the one-sixth time would be reserved for work with the mentor for the first school year.

14.31(7) Program completion.

a. The teacher candidate will complete a second stage preparation component following the first year in the program.

b. During the second year, the teacher candidate will teach full-time but will have release time, within the school year, to work with the mentor and the college/university supervisor, or the optional supervisory process set out in 14.31(2)"f."

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

c. During the second year, there will be at least three evaluations by the college/university supervisor or under the optional supervisory process.

d. At the completion of the second year, the teacher candidate will have taught two years under evaluation and thus will be eligible for the five-year educational license. The student teaching requirement will be waived.

e. Each person completing the alternative preparation program will be identified for follow-up studies on their performance as classroom teachers and for their evaluation of the program.

14.31(8) Program information.

a. This alternative program will expire five years from the effective date of the rule.

b. This program is restricted to secondary level instructional programs only.

c. The intent of this program is to provide an opportunity for persons making a career change to enter the field of education. It is not a program designed to circumvent the currently established practitioner preparation programs or the rules for licensure.

ARC 4280A**EDUCATIONAL EXAMINERS
BOARD[282]****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 272.2(13), the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

This proposed new rule provides for the acceptance of professional education course work for certain elements of the required professional education core from colleges and universities accredited by the National Council for Accreditation of Teacher Education.

There will be a public hearing on the proposed rule on October 13, 1993, at 9:30 a.m. in the State Board Room, second floor of the Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa. Persons may present their views at this public hearing orally or in writing. Persons who wish to make oral presentation at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, Des Moines, Iowa 50319-0147, or at (515)281-5849 prior to the date of the public hearing.

Any interested person may make written comments or suggestions on the proposed rule through October 15, 1993. Written comments and suggestions should be directed to Orrin Nearhoof, Executive Director, Board of Educational Examiners, at the address above.

This rule is intended to implement Iowa Code chapter 272.

The following rule is proposed.

Amend 282—Chapter 14 by adding the following new rule:

282—14.32(272) NCATE accredited programs. The requirements of the professional education core at 282—subrule 14.19(3), notwithstanding, an applicant from an out-of-state institution who has completed a program accredited by the National Council for the Accreditation of Teacher Education on and after October 1, 1988, shall be recognized as having completed the professional education core set out in 14.19(3), with the exception of paragraphs "h" and "n."

ARC 4256A**EDUCATIONAL EXAMINERS
BOARD[282]****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 272.2(2) and 272.10, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 16, "Occupational and Postsecondary Endorsements and Licenses," Iowa Administrative Code.

These proposed amendments strike all references to "260" and insert "272" to reflect renumbering of the 1993 Iowa Code and remove the rules that require practitioners to complete a state or nationally recognized vocational competency test, since the options for this test are no longer available within the state of Iowa.

There will be a public hearing on these proposed amendments on October 13, 1993, at 2 p.m. in the State Board Room, second floor of the Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa. Persons may present their views at this public hearing orally or in writing. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, Des Moines, Iowa 50319-0147, or at (515)281-5849 prior to the date of the public hearing.

Any interested person may make written comments or suggestions on the proposed amendments through October 13, 1993. Written comments and suggestions should be directed to Orrin Nearhoof, Executive Director, Board of Educational Examiners, at the address above.

These amendments are intended to implement Iowa Code chapter 272.

The Board of Educational Examiners adopted the amendments on July 12, 1993. These amendments are also Adopted and Filed Without Notice and published herein as **ARC 4255A**. The content of that submission is incorporated by reference.

ARC 4259A

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 231.14(9), the Department of Elder Affairs hereby gives Notice of Intended Action to amend Chapter 1, "Introduction," Iowa Administrative Code.

Rule 1.7(249D), "Definitions," is amended by adding two new terms, "Accessible" and "Information and assistance," which are related to the amendments proposed for subrule 7.4(3) [See ARC 4258A herein]. Groups and individuals that have special needs shall have barrier-free access to an appropriate aging "Information and Assistance (I & A)" service, insofar as possible. These amendments also update Iowa Code references to reflect renumbering of the 1993 Iowa Code.

Any interested person may make written suggestions or comments on the proposed amendments on or before Tuesday, October 19, 1993. Written comments should be directed to Betty Grandquist, Executive Director, Department of Elder Affairs, 914 Grand Avenue, Des Moines, Iowa 50309.

Oral or written comments may be submitted at a public hearing to be held at 9 a.m. on Tuesday, October 19, 1993, in the office of the Iowa Department of Elder Affairs, Jewett Building, Suite 236, 914 Grand Avenue, Des Moines, Iowa. Anyone who wishes to attend the hearing should notify Jim Corbett no later than 4:30 p.m. on Friday, October 15, 1993. Notice may be made in writing or by telephone to (515)281-4658.

These amendments are intended to implement Iowa Code sections 231.4 and 231.14(9).

The following amendments are proposed.

ITEM 1. Amend 321—Chapter 1 by striking all references to Iowa Code chapter "249D" and inserting "231" to reflect renumbering of the 1993 Iowa Code.

ITEM 2. Amend rule 321—1.7(231), "Definitions," by adding **new** definitions for "Accessible" and "Information and assistance" in alphabetical order as follows:

"Accessible" means without physical, cultural, financial, psychological barriers to service.

"Information and assistance (I & A)" means a service designed to link people in need with the appropriate service(s) designed to eliminate or alleviate that need.

ARC 4257A

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 231.14(9), the Department of Elder Affairs hereby gives Notice of Intended Action to amend Chapter 5, "Department Fiscal Policy," Iowa Administrative Code.

The amended paragraph 5.1(4)"j" will increase by 15 calendar days the additional time needed to meet the state fiscal year requirement to process and close out the fiscal year report by September 1.

The amended paragraph 5.2(1)"b" revises the Title III funding formula and changes the allotment each area agency on aging (AAA) receives as a result of the implementation of the 1990 census data and Iowa Aging Program Instruction 93-18. The rule change will increase the amount of Title III allotment each AAA receives for each county in their planning and service area (PSA) for administration or for services.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 19, 1993. Written comments should be directed to Betty Grandquist, Executive Director, Iowa Department of Elder Affairs, 236 Jewett Building, 914 Grand Avenue, Des Moines, Iowa 50309.

Oral or written comments may be submitted at a public hearing to be held at 9 a.m. on Tuesday, October 19, 1993, in the office of the Department of Elder Affairs, Jewett Building, Suite 236, 914 Grand Avenue, Des Moines, Iowa. Anyone who wishes to attend the hearing should contact Jim Corbett no later than 4:30 p.m. on Friday, October 15, 1993. Notice may be made in writing or by telephone to (515)281-4658.

These amendments are intended to implement Iowa Code section 231.23(8).

The following amendments are proposed.

ITEM 1. Amend paragraph 5.1(4)"j" as follows:

j. The amount of carryover will initially be determined on the basis of the year-end final cumulative cost-sharing report for the budget year, which is due not later than 30 45 calendar days after the end of the budget year, and is subject to confirmation by the annual audit.

ITEM 2. Amend paragraph 5.2(1)"b" as follows:

b. Each AAA shall receive ~~three~~ *four-hundredths* of 1 percent of the Title III funds available or \$3,000 \$4,000, whichever is greater, for each county in their planning and service area, to be used for AAA administration or services.

ARC 4260A

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 231.14(9), the Department of Elder Affairs hereby gives Notice of Intended Action to amend Chapter 6, "Area Agency on Aging Planning and Administration," and Chapter 7, "Area Agency on Aging Service Delivery," Iowa Administrative Code.

The amended 6.8"20" and 7.3(4)"b" change the language to more appropriate wording for individuals with disabilities in two specific chapters relating to nutrition services.

Any interested person may make written suggestions or comments on the proposed amendments on or before Tuesday, October 19, 1993. Written comments should be directed to Betty Grandquist, Executive Director, Iowa Department of Elder Affairs, 236 Jewett Building, 914 Grand Avenue, Des Moines, Iowa 50309.

Oral or written comments may be submitted at a public hearing to be held at 9 a.m. on Tuesday, October 19, 1993, in the office of the Iowa Department of Elder Affairs, Jewett Building, Suite 236, 914 Grand Avenue, Des Moines, Iowa. Anyone who wishes to attend the hearing should notify Jim Corbett no later than 4:30 p.m. on Friday, October 15, 1993. Notice may be made in writing or by telephone to (515)281-4658.

These amendments are intended to implement Iowa Code section 231.14(6).

The following amendments are proposed.

ITEM 1. Amend **321—Chapter 6 and Chapter 7** by striking references to Iowa Code chapter "249D" and inserting "231" to reflect renumbering of the 1993 Iowa Code.

ITEM 2. Amend **6.8"20"** as follows:

20. Procedures to offer home-delivered meals to non-elderly ~~disabled~~ individuals *with disabilities* when their eligible elderly caregiver is in need of a home-delivered meal.

ITEM 3. Amend **7.3(4)"b"** as follows:

b. Noneligible individuals may eat at a congregate nutrition site, paying the programmatic cost of the meal, if that meal does not deprive an eligible participant of a meal. Meals may be made available to ~~handicapped or disabled~~ individuals *with disabilities* who have not attained 60 years of age but who reside in housing facilities occupied primarily by the elderly at which congregate nutrition services are provided.

ARC 4258A

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 231.14(9), the Department of Elder Affairs hereby gives Notice of Intended Action to amend Chapter 7, "Area Agency on Aging Service Delivery," Iowa Administrative Code.

The amendments to rule 321—7.3(231) clarify provisions which apply to all meal providers as required by the Older Americans Act (OAA). Greater flexibility is provided to the Area Agencies on Aging to try new ways to encourage meal site participation by the eligible elderly. These amendments reduce the percent of total number of meals which must be served to elders or their spouses and also clarify the role of the provider of holiday meals.

The amendments to 321—7.4(231) delete "referral" and insert the expanded term "assistance" and incorporate changes approved by the Commission on May 13, 1993.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 19, 1993. Written comments should be directed to Betty Grandquist, Executive Director, Iowa Department of Elder Affairs, 236 Jewett Building, 914 Grand Avenue, Des Moines, Iowa 50309.

Oral or written comments may be submitted at a public hearing to be held at 9 a.m. on Tuesday, October 19, 1993, in the office of the Iowa Department of Elder Affairs, Jewett Building, Suite 236, 914 Grand Avenue, Des Moines, Iowa. Anyone who wishes to attend the hearing should notify Jim Corbett no later than 4:30 p.m. on Friday, October 15, 1993. Notice may be made in writing or by telephone to (515)281-4658.

These amendments are intended to implement Iowa Code section 231.14(9).

The following amendments are proposed.

ITEM 1. Amend **321—Chapter 7** by striking "249D" and inserting "231" to reflect renumbering of the 1993 Iowa Code.

ITEM 2. Amend subrules 7.3(1) and 7.3(2) as follows:

7.3(1) Purpose of ~~making awards the program~~. The AAA may ~~award nutrition services funds to service providers~~ to provide meals and other nutrition services, including outreach and nutrition education to older persons, ~~or may contract for these services~~.

7.3(2) Assessment of need. The AAA shall ~~assess biannually the level of need for congregate and home-delivered meals~~ determine the best location of nutrition services within the planning and service area ~~and must~~

ELDER AFFAIRS DEPARTMENT[321](cont'd)

~~base the awards on that assessment at least once during the long-range plan development cycle.~~

ITEM 3. Amend 7.3(7)"a" as follows:

a. At least ~~95~~ 80 percent of the total number of meals served by an AAA during the fiscal year must be served to elders or their spouse.

ITEM 4. Amend subrule 7.3(9) as follows:

Amend 7.3(9)"a" as follows:

a. ~~Contracts. The AAA shall maintain a contract system according to procedures issued by the department to ensure that congregate and home-delivered nutrition services providers perform in accordance with terms, conditions, and specifications for funding. At a minimum, the procedures shall require that the contract include meal pattern, use of project income, length of contract, cost per unit, and performance requirements to ensure accountability and monitoring may provide nutrition services directly or contract for these services. In either case, procedures issued by the department are followed in accordance with terms, conditions, and specifications for funding. At a minimum, the procedures addressing a contract for nutrition services should require the contract to include meal pattern, use of project income, length of contract, cost per unit, and performance requirements to ensure accountability and monitoring.~~

Amend 7.3(9)"b," introductory paragraph, as follows:

b. ~~In making awards for congregate nutrition services, In providing nutrition services or in making awards for congregate nutrition services, the AAA shall:~~

Amend 7.3(9)"b"(2) as follows:

(2) Provide for hot or other appropriate meals at least once a day, five or more days a week, ~~including all federal and state holidays that occur on a regularly scheduled serving day in coordination with other community providers; where feasible and appropriate, coordinate with other community providers to make arrangements for the availability of meals to elders on holidays that occur on regularly scheduled serving days.~~

ITEM 5. Amend subrules 7.3(10) and 7.3(11) as follows:

7.3(10) Meal provider assessment. ~~In making awards for congregate nutrition services, the~~ The AAA or contractor shall require the service providers to assess the individual need for home-delivered meals among participants.

7.3(11) Home-delivered meal requirements for area agencies. ~~In making awards for home-delivered nutrition services, the~~ The AAA or contractor shall:

a. Provide for home-delivered meals at least once a day, five or more days a week;

b. Where feasible and appropriate, make arrangements for the availability of meals to elders in weather- and disaster-related emergencies;

ITEM 6. Rescind 7.3(12), introductory paragraph, and amend paragraphs "a" to "f" to appear as 7.3(11)"c" to 7.3(11)"h" as follows:

~~7.3(12) Home-delivered meal provider requirements. In making awards for home-delivered meals, the AAA shall require the service providers to:~~

a. Provide other nutrition and supportive services either directly or through referral to meet the need of the homebound elder:

b. d. Provide nutrition education for recipients that includes emphatic instruction in the storage and preparation of the home-delivered meal;

e. e. Assess, every six months, the individual need for home-delivered meals among participants provided with home-delivered meals;

d. f. Provide for home-delivered meals to participants according to the frequency of need determined by procedures required in subrule 7.3(12 11), paragraph "f. h." Meals may be hot, cold, frozen, dried, canned or supplemental foods with a satisfactory storage life. The provider is not required to provide meals more than five days per week, but is encouraged to do so.

e. g. With the consent of the elders or their representative, bring to the attention of appropriate officials for follow-up, conditions or circumstances which place the elders or the household in imminent danger. The AAA should make provision for other agencies to provide services to the homebound elder to reduce isolation and dependency; and

f. h. The AAA or the home-delivered meals provider contractor, subject to AAA approval, shall establish procedures for the determination of an elder's eligibility for home-delivered nutrition services, including specific criteria for:

(1) Initial and subsequent six-month assessments of the elder's eligibility for home-delivered meals;

(2) Determination of the number of days per week the elder has a need for home-delivered meals;

(3) Determination of the elder's need for other home-delivered nutrition services.

ITEM 7. Renumber subrules 7.3(13) to 7.3(21) as 7.3(12) to 7.3(20) and amend as follows:

7.3(13 12) Food-borne illness: The AAA shall develop written procedures for handling suspected cases of food-borne illnesses. The ~~food-service provider contractor~~ shall report the occurrence or suspected occurrence of a food-borne illness to the AAA within 12 hours. The AAA shall notify the department within 12 hours *after becoming aware of this situation.*

7.3(14 13) Evaluation of providers sites. Conduct, record and keep on file systematic on-site evaluations of ~~nutrition service providers~~ on a semiannual basis in order to document program compliance and analyze areas for ongoing monitoring.

7.3(15 14) Requirements for opening or closing congregate nutrition sites. The department must be notified in writing 30 days before the AAA may open, relocate, or terminate a nutrition site. The notification must include:

a. Reasons for the action;

b. Impact on eligible individuals;

c. Impact on nearby meal sites; and

d. Impact on provision of nutrition-related services.

7.3(16 15) Food standards. The AAA or contractor shall ~~require that the service provider~~, when purchasing food and preparing and delivering meals, comply with all state and local health laws and ordinances concerning preparation, handling and serving food.

a. Each ~~service provider~~ AAA shall establish and implement written procedures, in consultation with a registered and licensed dietitian, on handling foods prepared for a meal but not served. The procedures shall address which foods may be saved, which foods need to be de-

ELDER AFFAIRS DEPARTMENT[321](cont'd)

stroyed, and instructions on cooling and storing foods for reuse.

b. All raw fruits and vegetables and other foods utilized shall be free from spoilage, filth or contamination and must be safe for human consumption.

c. Foods prepared, canned or preserved in the home shall not be used. The use of hermetically sealed non-commercially prepared foods is prohibited because of the history of such food causing food-borne illness.

d. Standardized tested quantity recipes, adjusted to yield the number of servings needed, shall be used to achieve the consistent and desirable quality and quantity of meals.

7.3(17) Menus.

a. All menus shall be planned for a minimum of four weeks, certified in writing by the licensed dietitian whose services are utilized by the AAA and submitted to the department for review at least two weeks prior to the initial use of the menu. For purposes of audit, AAAs shall keep copies of the certified menus on file for a period of one year.

b. All certified menus shall be posted in a conspicuous location in each congregate meal site and regularly provided to home-delivered meal recipients. The certified menus may be modified occasionally if the provisions of subrule 7.3(15) are maintained and a licensed dietitian or nutrition director is consulted prior to the change.

7.3(17) Special diet menus. The AAA shall ensure that ~~the nutrition service provider provide~~ special menus *are provided*, where feasible and appropriate, to meet the particular dietary needs arising from the health requirements, religious requirements, or the ethnic backgrounds of eligible individuals.

a. ~~The provider shall use the~~ following criteria *shall be used* to determine feasibility and appropriateness:

(1) Sufficient numbers of elders exist who need the special menus to make the provision practical;

(2) Skills and food necessary to provide the special menus are available.

b. Special diet menus must be planned under the supervision of a licensed dietitian in accordance with a current diet manual approved by the executive director and supplied to each AAA by the department. Certified menus must be submitted to the department at least two weeks prior to the initial use of the menus.

c. A written physician's order for each elder requesting a special diet shall be obtained prior to receipt of the meal, and kept on file where the meal is prepared and served. The order shall be interpreted by a licensed dietitian and the individual's physician.

d. ~~The service provider shall have available for use, upon request, appropriate~~ *Appropriate* food containers and utensils for blind and handicapped participants *with disabilities shall be available for use, upon request.*

7.3(18) USDA food assistance programs.

a. The AAA shall have an agreement with the department to receive USDA commodities, cash or a combination of commodities and cash.

b. The department shall allocate all food, cash or the combination of food and cash received from USDA to AAAs based on each AAA's *actual proportion of the total* number of meals served to eligible recipients in the state.

c. The AAA shall comply with the requirements of 7CFR, Part 250, June 3, 1988, for participation in the USDA program.

d. The AAA shall maintain perpetual inventories of all USDA foods at each site and storage area and must submit an areawide inventory at least quarterly to the department within 30 days after the reporting period.

e. Nutrition service providers shall accept and use appropriate USDA foods made available by the AAA and shall ensure appropriate and cost-effective arrangements for the transportation, storage, inventory, and use of the food.

f. USDA commodities shall be consumed as food only and shall not be sold, exchanged, traded, transferred, destroyed, or otherwise disposed of for any reason without prior approval from the department.

g. The AAA shall report the loss, theft, damage, spoilage, or infestation of USDA commodities to the department within five working days to initiate claim action.

h. An AAA which receives cash in lieu of commodities shall spend all cash received from the USDA to purchase United States agricultural food items.

7.3(19) Food stamp program. The AAA and nutrition service providers shall assist participants in taking advantage of benefits available to them under the food stamp program by providing current information to participants in both the congregate and home-delivered meals programs. Activities shall be coordinated with agencies responsible for administering the food stamp program and by being certified to accept and accepting food stamps as contributions for meals.

7.3(20) Noncompliance. When a grantee's performance falls below these standards, the department shall follow the procedure identified in rule 321—4.15(231).

ITEM 8. Amend 321—7.4(231) as follows:

321—7.4(231) Information and ~~referral~~ assistance services.

7.4(1) General rule. The multiyear area plan shall provide for information and ~~referral~~ *assistance* services sufficient to ensure that all elders within the planning and service area have convenient access to the service.

7.4(2) English not principal language. In *planning and service* areas in which 3 percent of the elder population does not speak English as their principal language, the service provider must provide information and ~~referral~~ *assistance* services in the language spoken by elders.

7.4(3) Provider requirements. A provider of information and ~~referral~~ *assistance* services must *adopt as guidelines the information and assistance standards issued by the department.*

~~a. Develop and maintain current information about services and opportunities available to elders;~~

~~b. Develop and maintain current lists of elders in need of services and opportunities and of services needed but not available;~~

~~c. Employ a trained staff to inform elders about those opportunities and services and assist elders to take advantage of them;~~

~~d. Make available at least four hours of training annually for information and referral assistance staff and volunteers; and~~

~~e. Obtain the informed written consent of the elders or an authorized representative before disclosing information about an elder.~~

ARC 4277A

ENVIRONMENTAL PROTECTION
COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission gives Notice of Intended Action to amend Chapter 23, "Emission Standards for Contaminants," Iowa Administrative Code.

The Commission proposes to amend paragraph 23.2(3)"g" by revising the training fire notification requirements. This revision makes the notification requirements consistent with the asbestos National Emission Standards for Hazardous Air Pollutants.

Any interested person may make written suggestions or comments on the proposed amendment on or before October 5, 1993. Such written materials should be directed to the Enforcement and Compliance Bureau, 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 Ms. Anne Preziosi, Enforcement and Compliance Bureau, at (515)281-6243.

Also, there will be a public hearing on October 5, 1993, at 1:30 p.m. in the Fifth Floor Conference Room, East Half, Wallace State Office Building, 900 East Grand, Des Moines, Iowa, 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 amendment may impact small businesses.

This amendment is intended to implement Iowa Code chapter 455B.133.

The following amendment is proposed.

Amend paragraph 23.2(3)"g" as follows:

g. Training fires. Fires set for the purpose of bona fide training of public or industrial employees in fire fighting methods, provided that ~~the director receives notice in writing at least one week written notification is postmarked or delivered to the director at least ten working days before such action commences. Notification shall be made in accordance with 40 CFR Section 61.145, "Standard for demolition and renovation," of the asbestos National Emission Standards for Hazardous Air Pollutants as amended through March 5, 1992.~~ All asphalt roofing and asbestos-containing materials shall be removed prior to the training fire.

ARC 4271A

HEALTH DATA COMMISSION[411]

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 117A.3, the Health Data Commission hereby gives Notice of Intended Action to amend Chapter 6, "Submission of Data," and rescind Chapter 8, "Posting and Submission of Hospital Price Information," and Chapter 9, "Health Care Utilization Task Force," Iowa Administrative Code.

The proposed amendments modify Chapter 6 by making collection categories consistent with hospital licensing with additional data items from UB 92 and discontinuing collection of RCF information. Chapters 8 and 9 will be rescinded. Optional requirements in Chapter 8 are no longer necessary and the Task Force in Chapter 9 is no longer serving.

A public hearing will be held on October 6, 1993, 9 a.m., Department of Public Health, Lucas State Office Building, Director's 4th Floor Conference Room, Des Moines, Iowa. Public comments may be mailed to Pierce Wilson, Iowa Department of Public Health, Lucas State Office Building, East 12th and Grand Avenue, Des Moines, Iowa 50319, prior to October 6, 1993.

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

The following amendments are proposed.

ITEM 1. Amend rule 411-6.3(145) as follows:

Amend subrule 6.3(2) as follows:

6.3(2) On and after July 1, 1984, the following data compiled from the uniform hospital billing form (UB-82 92 HCFA-1450) shall be submitted by the primary third-party payer upon payment of a claim on a per discharge basis:

a. Patient age ~~from field number 12 of the uniform hospital billing form;~~

b. Patient sex ~~from field number 13 of the uniform hospital billing form;~~

c. Patient zip code ~~from field number 11 of the uniform hospital billing form;~~

d. Third-party coverage ~~from field number 57 of the uniform hospital billing form;~~

e. Date of admission ~~from field number 15 of the uniform hospital billing form;~~

f. Discharge date ~~from field number 22 of the uniform hospital billing form;~~

g. Principal and ~~the top nine~~ other diagnoses ~~and E code from field numbers 77 to 81 of the uniform hospital billing form;~~

h. Principal procedure and date ~~from field number 84 of the uniform hospital billing form;~~

i. ~~Five~~ other procedures and dates ~~from field numbers 85 and 86 of the uniform hospital billing form;~~

j. Total charges and components of those charges ~~from field numbers 53 and 46 to 49 of the uniform hospital billing form;~~

HEALTH DATA COMMISSION[411](cont'd)

k. Attending physician *and other* identification number numbers; ~~from field number 92 of the uniform hospital billing form; and~~

l. Hospital identification number; ~~and from field number five, six, seven, or eight of the uniform hospital billing form, as appropriate to the third-party payer making the submission.~~

m. ~~An alphanumeric number based on the information recorded in field number 68 of the uniform hospital billing form and which has been encoded by the third-party payer.~~

n. ~~Patient status from field number 21 of the uniform hospital billing form.~~

Amend subrule 6.3(8), introductory paragraph, and paragraphs "j" and "l" as follows:

6.3(8) Direct submission of hospital inpatient data. As of January 1, 1993 1994, hospitals shall submit the following hospital inpatient information based on the discharge date to the state health data commission on a per discharge basis from the discharge record with the exception of paragraphs "p" and "q" which shall come from the uniform hospital billing form:

j. Principal diagnosis, ~~and the top nine other diagnoses, and E code,~~

l. Top ~~four~~ five other procedures and dates (months and years),

Further amend subrule 6.3(8) by adding the following new paragraph:

u. *Two other physician IDs.*

ITEM 2. Amend subrules 6.5(1) and 6.5(2), introductory paragraph, as follows:

6.5(1) Data required to be submitted pursuant to this rule shall be sent to the Iowa Health Data Commission, 601 Locust, Suite 330, Des Moines, Iowa 50309, within 30 45 days following the close of each calendar quarter.

6.5(2) Nursing facilities shall submit the following information by ~~ICF, RCF, SNF, NF, ICF/MR, RCF/MR~~ and total service categories on a form designated by the Iowa health data commission:

ITEM 3. Rescind 411—Chapters 8 and 9.

ARC 4274A

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 78, "Amount, Duration and Scope of Medical and Remedial Services," appearing in the Iowa Administrative Code.

These amendments allow other certified or licensed staff with less than a bachelor's degree, such as a certified addiction counselor, to provide direct patient services in a day treatment program. Certified addiction counselors will not be included in the staff-to-patient ratio, but will be allowed to provide direct services along with other certified or licensed staff. This revision is being proposed in response to provider comments at the Administrative Rules Review Committee meeting.

In addition, these amendments add the day treatment and partial hospitalization for persons aged 20 and under to the general prior authorization reference which was inadvertently overlooked when the rules were adopted.

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 October 6, 1993.

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

The following amendments are proposed.

ITEM 1. Amend subrule 78.16(7), paragraph "b," subparagraph (1), numbered paragraph "5," as follows:

5. Be provided by or under the general supervision of a mental health professional as defined in rule 441—33.1(225C,230A). When services are provided by an employee or consultant of the community mental health center who is not a mental health professional, the employee or consultant shall be supervised by a mental health professional who gives direct professional direction and active guidance to the employee or consultant and who retains responsibility for consumer care. The supervision shall be timely, regular and documented. The employee or consultant shall have a bachelor's degree in a human services related field from an accredited college or university or have an Iowa license to practice as a registered nurse with two years of experience in the delivery of nursing or human services. Exception: ~~Certified Other certified or licensed staff, such as certified addiction counselors or certified occupational and recreational therapy assistants, are eligible to provide direct services under the general supervision of an occupational or recreational therapist and the a mental health professional, but they shall not be included in the staff-to-patient ratio.~~

ITEM 2. Amend rule 441—78.28(249A) by adding the following new subrule.

78.28(8) Partial hospitalization and day treatment for persons aged 20 and under are subject to prior approval. (Cross-references, 78.16(7)"d," 78.31(4)"d"(7)"7," and 441—85.26(249A)).

ARC 4275A

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 85, "Services in Psychiatric Institutions," appearing in the Iowa Administrative Code.

Under policy prior to July 1, 1993, psychiatric medical institutions for children (PMICs) had to be licensed by the Department of Inspections and Appeals (DIA) under Iowa Code chapter 135H and by the Department of Human Services (DHS) under Iowa Code section 237.3, subsection 2, paragraph "a," subparagraph (3). The Seventy-fifth General Assembly passed legislation which provides that PMICs have to be licensed by DIA and either by DHS or, for facilities which provide substance abuse, by the Department of Public Health under Iowa Code section 125.13. This amendment conforms policy regarding conditions of participation for PMICs with what exists in the Iowa Code.

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 October 6, 1993.

This amendment is intended to implement Iowa Code section 249A.4 and 1993 Iowa Acts, House File 484, section 6.

The following amendment is proposed.

Rescind rule 441—85.21(249A) and insert the following new rule in lieu thereof:

441—85.21(249A) Conditions for participation. Psychiatric medical institutions for children shall be issued a license by the department of inspections and appeals under Iowa Code chapter 135H and shall hold either a license from the department of human services under Iowa Code section 237.3, subsection 2, paragraph "a," subparagraph (3) or, for facilities which provide substance abuse treatment, a license from the department of public health under Iowa Code section 125.13.

ARC 4273A

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 234.6, the Department of Human Services proposes to amend Chapter 156, "Payments for Foster Care and Foster Parent Training," appearing in the Iowa Administrative Code.

Current policy provides that payment for foster care for youth aged 18 and older is limited to family foster care or independent living for a child who is 18 years of age and to independent living for a child who is 19 years of age unless the regional administrator or designee grants an exception. To be granted an exception the child must meet all of the following criteria and funds must be available for the type of placement in the region's allocation:

1. The child does not have mental retardation.
2. The child is at imminent risk of becoming homeless or of failing to graduate from high school or obtain a general equivalency diploma. "At imminent risk of becoming homeless" shall mean that a less restrictive living arrangement is not available.
3. The placement is in the child's best interests.

This amendment provides that unaccompanied refugee minors aged 18 and older are eligible for group care and for foster care when they are 19 years of age without an exception being granted by the regional administrator if they are in need of that type of placement, meet the definition of child, and have signed a voluntary placement agreement. Services for unaccompanied refugee minors are paid for with 100 percent federal funding.

This exception was previously in effect from July 1, 1992, through July 1, 1993.

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 October 6, 1993.

This amendment is intended to implement Iowa Code section 234.35.

The following amendment is proposed.

Amend subrule 156.20(1), paragraph "b," subparagraph (3), as follows:

- (3) Exceptions. An exception to subparagraphs (1) and (2) shall be granted for all unaccompanied refugee minors ~~for the time period July 1, 1992, through June 30, 1993, and for all other children for the time period July 1, 1992, through July 31, 1992.~~ Subsequent to July 31, 1992, the regional administrator or designee shall grant an exception *for other children* when the child meets all of the following criteria. The child's eligibility for the exception shall be documented in the case record.

ARC 4272A

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 234.6, the Department of Human Services proposes to rescind Chapter 200, appearing in the Iowa Administrative Code, and to insert a new Chapter 200, "Adoption Services," in its place.

These rules revise adoption services policy to reflect current practice, clarify inconsistent and misleading policy, and add policy which was previously omitted. Specific changes are as follows:

1. Policy is revised to provide that no applications shall be taken for home studies for easy-to-place children, except for relative and foster parents with a significant relationship with the child and court-ordered home studies. Applications for children with special needs shall be accepted. If Department staff are unable to begin an adoptive home study within 90 days, a referral shall be made to a private agency to purchase the home study within available funding.

Under current policy, regions were able to accept home studies for up to 30 applications for easy-to-place children. Persons with applications on file for home studies for easy-to-place children shall be notified that their applications will not be processed, and persons with home studies on file for easy-to-place children will have their home studies returned so that they can contact a private agency.

2. The components of adoption services are defined and described fully, including: the adoptive home study, preparation of the child, selection of the family, preparation of the family, preplacement visits, placement services, and postplacement services.

3. The record check evaluation process used to evaluate whether adoptive parents who have a record of founded child abuse reports or criminal convictions should be approved is revised.

This change requires that the final decision on approval for a person with a positive record check shall be made by the Administrator of the Division of Adult, Children and Family Services or the Administrator's designee unless the person with the positive record check was convicted of a simple misdemeanor or of a serious misdemeanor that occurred five or more years prior to the application. In those cases only the decision can be made by the DHS worker and supervisor.

In addition, policy is amended to provide that failure of the person with the founded child abuse or criminal conviction report to complete and return the Record Check Evaluation, Form 470-2310, within ten calendar days of the time it is mailed shall be grounds for denial of the application or renewal.

4. A fee schedule for adoptive services is established and policy is established for who will be charged a fee. No fee will be charged to persons wanting to adopt a special needs child or to relatives and foster parents with a significant relationship with a specific child. Fees will be charged for court-ordered home studies.

5. Policy regarding the Department's role in the international adoption process and a charge for services is established.

6. Reasons are listed for denial of a home study and for rescinding a consent to adoption. Removal of a child from an adoptive home prior to the adoption being finalized is not appealable as the Department has guardianship of the child.

7. Procedures for processing requests for information from sealed adoption records are described.

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 October 6, 1993.

These rules are intended to implement Iowa Code chapter 600.

Rescind 441—Chapter 200 and adopt the following new chapter in lieu thereof:

CHAPTER 200
ADOPTION SERVICES

PREAMBLE

These rules define and structure the adoption services to be provided to birth families, children legally available for adoption, prospective adoptive families and adoptive families. These rules also establish policy regarding requests for access to sealed records.

441—200.1(600) Definitions.

"Adoption" means a legal and social process through which a child becomes a member of a family into which the child was not born. Adoption provides the child the same rights, privileges and duties as a birth child.

"Adoption service" means a service directed towards children who are legally available for adoption, the birth family, prospective adoptive family and adoptive family.

"Adoptive family" means an approved person or persons who have a child placed in their home and are being supervised prior to finalizing the adoption; or who have a child in their home who is legally adopted and entitled to the same benefits as a child born into the family.

"Adoptive home study" includes an assessment of the family's parental attributes and a written report stating approval or nonapproval of the family for adoptive placement of a child or children.

"Child study or social history" includes a written description of the child including strengths and needs; medical, mental, social, educational, placement and court history; a description of the child's relationships with the birth family, foster family, and significant others; a summary of the child's understanding and feeling about adoption and recommendations as to the type of family that can best meet the child's needs.

"Court-ordered studies" means home studies ordered by a judge for the purpose of determining custody of a child or placement of a child for the purpose of adoption.

"Department" means the department of human services.

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"Easy-to-place child" means a healthy child who does not meet one or more of the criteria of a child with special needs.

"Foster family adoption" means the adoption of a child by a licensed foster family who has cared for the child.

"Guardianship record" means a case record regarding a child, established and retained by the department when the department is named guardian of the child by court order. The purpose of the guardianship record is to collect and maintain information about the child and the birth family, legal documents, and other information that will assist in fulfilling the responsibility of guardian.

"Life book" means a compilation of information about the child, including birth information, photographs of the child; placement history, including dates of placement, names of caretakers, reasons for leaving the placement; relationships; school reports; social, medical, mental health developmental history; awards received, important events, letters from significant persons, and other information that the child wishes to include. The life book will assist the child in dealing with separation and loss issues and provide background and genealogy data.

"Placement services" includes the activities and travel necessary to place the child in the adoptive family.

"Postadoption services" includes those services that an adoptive family may access after the adoption is finalized. These services may be obtained through community resources, the department, or support groups, to assist the family in coping with and resolving problems within the family.

"Postplacement services" includes the supervision, support and intervention necessary prior to finalization to assist in maintaining the adoptive placement.

"Preadoptive family" means an adoptive family with a child placed in the home whose adoption has not been finalized.

"Preparation of child" includes activities necessary to ready the child for placement into an adoptive family.

"Preparation of family" includes the activities necessary to assist the family in adding an adoptive child as a new member of their family.

"Preplacement visits" means contacts, activities, and visits between the child and adoptive family prior to the adoptive placement.

"Procedendo" means an order issued by the supreme court returning jurisdiction to the district court after a final appellate decision regarding an appeal.

"Release of custody services" includes providing information regarding options to assist the parents in making permanent plans for their child and counseling regarding resulting personal and emotional issues.

"Selection of family" means reviewing approved home studies to match a family's strengths with a specific child's needs.

"Special needs child" means a child who meets one or more of the criteria set forth at 441—subrule 201.3(1).

441—200.2(600) Release of custody services. The parents shall be provided a minimum of three hours of counseling and any additional hours needed to:

200.2(1) Provide information about options to assist them in making an informed decision regarding adoption.

200.2(2) Assist them in resolving emotional, separation and loss issues.

200.2(3) Assist them in understanding their legal rights, such as direct or indirect contact with the child after adoption.

200.2(4) Assist them in completing and filing the following forms:

a. Birth Parent Affidavit to Court, Form 470-3031, requesting the court to reveal or not reveal their identity to an adult adopted child.

b. Affidavit Naming Legal or Alleged Father, Form SS-6609.

c. Notice to Alleged Father, Form 470-3060, which shall be mailed by registered mail to each alleged father named.

d. Release of Custody, Form 470-3059, which shall be signed by each birth parent.

200.2(5) Make them aware of the right to revoke the release of custody prior to a hearing for termination of parental rights.

441—200.3(600) Application. Persons wishing to apply to adopt a child through the department shall use Form 470-0771, Application for Adoption. An application for adoption shall only be accepted for children who are under the guardianship of the department.

200.3(1) Limitations. No applications shall be accepted or approved in any department office for the adoption of an easy-to-place child. Those applicants shall be referred to private child-placing agencies. Exceptions to this rule may be made for relatives of a child under the guardianship of the department or foster parents applying to adopt a child with whom the child has a significant relationship.

a. Foster parents. Foster parents shall be given consideration for selection as the adoptive family for a child in the foster parent's care who is legally available for adoption if the child has been in the foster parent's care for one year or longer, or the child has a significant relationship with the family.

b. Relatives. A relative who is within the fourth degree of consanguinity shall be given consideration for selection as the adoptive placement for a child who is legally available for adoption if the child has a significant relationship with the relative, or the child is aged 14 or over and elects adoption by the relative.

200.3(2) Procedures. An application for a special needs child shall be accepted by any department office. If a family assessment and home study cannot be begun by a department worker within 90 days, a referral shall be made to purchase a home study from a provider with whom the department has a purchase of service contract within available funding. Prior to completion of a home study, applicants shall complete Form 470-0771, Foster Care and Adoption Home Study Packet, and ensure that Form 470-0720, Physician's Report for Foster and Adoptive Parents, is completed by their family physician.

441—200.4(600) Components of adoption services. The components of adoption services are as follows: adoptive home study, preparation of child, selection of family, preparation of family, preplacement visits, placement services, and postplacement services.

200.4(1) Adoptive home study. This component includes the following activities:

a. Family assessment. The family assessment shall include a minimum of two face-to-face interviews with the applicants and at least one face-to-face interview with each member of the household. At least one of the interviews shall take place at the applicant's home. The assessment of the prospective adoptive family shall include an evaluation of the family's ability to parent a special needs child or children including the following:

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(1) Motivation for adoption and whether the family has biological, adopted or foster children.

(2) Family's and extended family's attitude toward accepting an adopted child and plans for discussing adoption with the child.

(3) The attitude toward adoption of the significant other people involved with the family.

(4) Emotional stability, marital history, including verification of marriages and divorces, family relationships and compatibility of the adoptive parents.

(5) Ability to cope with problems, stress, frustrations, crises, separation, and loss.

(6) Medical, mental and emotional conditions that may affect the applicant's ability to parent a child, treatment history, and current status of treatment.

(7) Willingness to accept a child who has medical problems (such as a child who is at risk of, or is HIV positive), mental retardation, or emotional or behavioral problems. Ability to provide for the child's physical, medical and emotional needs and respect the child's ethnic and religious identity.

(8) Adjustment of any children in the home, including their attitudes toward adoption, relationships with others, and school performance.

(9) Disciplinary practices that will be used.

(10) Capacity to give and receive affection.

(11) Statements from three references provided by the family and additional references the worker may wish to contact.

(12) Financial information, ability to provide for a child and whether there is a need for adoption subsidy for a special needs child or children.

(13) Attitudes of the adoptive applicants toward the birth parents and the reasons the child is available for adoption.

(14) Commitment to and capacity to maintain significant relationships.

(15) Substance use or abuse, if any, by family members, or members of the household, treatment history and current status of treatment.

(16) History of abuse, if any, by family members, or members of the household, treatment history, current status of treatment and the evaluation of the abuse.

(17) Criminal convictions, if any, by family members, or adults in the household, and the evaluation of the criminal record.

(18) Recommendations for number, age, sex, characteristics, and special needs of a child or children the family can best parent.

b. Record checks. The department or the licensed child-placing agency shall submit record checks for each applicant and for any other adult living in the home of the applicant to determine whether they have founded child abuse reports or criminal convictions. Form SS-1606-0, Request for Child Abuse Information, and Form 595-1396, Request for Non-Law Enforcement Record Check, shall be used for this purpose.

If there is a record of founded child abuse or a criminal conviction for the applicant, or any other adult living in the home of the applicant, the applicant shall not be approved as an adoptive family, unless an evaluation of the abuse or criminal conviction does not warrant prohibition of license. The evaluation shall consider the nature and seriousness of the abuse or crime, the time elapsed since the commission of the abuse or crime, the circumstances

under which the abuse or crime was committed, the degree of rehabilitation, the likelihood that the person will commit the abuse or crime again, and the number of abuses or crimes committed by the person. The person with the founded child abuse or criminal conviction report shall complete and return Form 470-2310, Record Check Evaluation, within ten calendar days of the date on the form to be used to assist in the evaluation. Failure of the person to complete and return the form within the specified time frame shall result in denial or revocation of the study.

(1) If the applicant, or any other adult living in the home of the applicant, has been convicted of a simple misdemeanor or a serious misdemeanor that occurred five or more years prior to application, the evaluation and decision may be made by the department adoption worker and supervisor. The department adoption worker and supervisor shall notify the applicant of the results of the evaluation using Form 470-2386, Record Check Decision.

(2) If the applicant, or any other adult living in the home of the applicant, has a founded child abuse report, has been convicted of an aggravated misdemeanor or felony at any time, or has been convicted of a simple or serious misdemeanor that occurred within five years prior to application, the evaluation shall be initially conducted by the department adoption worker and supervisor.

1. If the department adoption worker and supervisor determine that the abuse or crime does warrant prohibition of approval, the department adoption worker and supervisor shall notify the applicant of the results of the evaluation using Form 470-2386, Record Check Decision.

2. If the department adoption worker and supervisor believe that the applicant should be approved despite the abuse or criminal conviction, the department adoption worker and supervisor shall provide copies of the child abuse report or criminal history record, Form 470-2310, Record Check Evaluation, and Form 470-2386, Record Check Decision, to the Department of Human Services, Administrator, Division of Adult, Children, and Family Services, Hoover State Office Building, Des Moines, Iowa 50319-0114. Within 30 days the administrator or designee shall determine whether the abuse or crime merits prohibition of approval, and shall notify the department adoption worker and supervisor in writing of that decision. The adoption worker shall mail the applicant Form 470-2386, Record Check Decision, when a decision is reached regarding the evaluation of an abuse or crime, or when an applicant fails to complete the evaluation form.

(3) Fees associated with the record checks shall be assessed to the adoptive applicant unless the family is being studied to adopt a child with special needs.

c. Written report. The worker shall prepare a written report of the family assessment, known as the adoptive home study, using Form RC-0025, Home Study Format. The home study shall be used to approve or deny a prospective family as an appropriate placement for a child or children. The department adoption worker and supervisor shall date and sign the adoptive home study. The worker shall notify the family of the decision using Form SS-6104-0, Adoption Notice of Decision, and if the worker denies the placement, reasons for denial shall be stated. The worker shall provide the family a copy of the adoptive home study with the notification of approval or denial.

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d. Preplacement assessment and home study update. A preplacement assessment and home study update is required if the adoptive home study was written more than one year previously, in accordance with Iowa Code section 600.8, and placement of the child is imminent. The preplacement assessment and home study update shall be conducted by completing the following:

(1) The child abuse and criminal record checks shall be repeated and any founded abuses or convictions of crimes since the last record check shall be evaluated using the same process.

(2) One face-to-face visit shall be conducted with the approved adoptive family.

(3) The information in the approved adoptive home study shall be reassessed.

(4) An updated written report of the reassessment and adoptive home study shall be written, dated, signed by the worker and the supervisor; and a copy provided to the adoptive family.

200.4(2) Preparation of child. This component includes specific activities designed to enable a child to make the transition to an adoptive placement. The activities shall include, but are not limited to:

a. Counseling regarding issues of separation, loss, grief, guilt, anger and adjustment to an adoptive family.

b. Preparation or update of a life book.

c. Provision of age-appropriate information regarding community resources available, such as children's support groups, to assist the child in the transition and integration into the adoptive family.

d. Any appropriate evaluations or testing.

e. HIV testing of a child by the University of Iowa Hospital or a local physician when any of the following conditions exist:

1. The child was, or may have been, sexually abused by a person who participated in high risk behavior such as sharing of needles with an infected person or sex participation with an infected person.

2. The child's birth mother participated in high risk behavior, or is HIV positive.

3. The child participated in, or has participated in, high risk behavior.

4. The child is symptomatic or at high risk of infections.

5. The child received blood products prior to 1986 or the birth parents received blood products prior to 1986, before or during pregnancy.

6. There is a lack of medical information regarding the birth parents or the child.

200.4(3) Selection of family. This component includes the activities necessary to select the family which can best meet the needs of the adoptive child.

Prior to preplacement visits a staffing of the child shall be held to select an approved family. A minimum of two social workers and a supervisor shall be included in the staffing. The child's special needs, characteristics, and anticipated behaviors shall be reviewed in the staffing to determine a family that can best meet the needs of the child. Approved families shall also be reviewed in an effort to match the specific family's parenting strengths with a particular child's needs.

The following selection criteria shall be observed:

a. Preference shall be given to placing children from the same birth family together. If placement together is not possible, or is not in the best interest of the children, the reasons shall be identified and documented in each

child's case record. Efforts shall be made to ensure continuous contact between siblings when the siblings are not placed together.

b. Preference shall be given to placing a child in an adoptive family of the same ethnic or racial background as the child. If this is not possible, or is not in the best interest of the child, the reasons shall be documented in the child's record and another appropriate approved family selected.

c. A child who is sexually active and at risk of or is HIV positive shall not be placed in a family where other children reside due to the risk of transmission.

200.4(4) Preparation of family. This component includes activities designed to assist the adoptive family in expanding its knowledge and understanding of the child or children. This component should enhance the family's readiness to accept the child or children into their family and encourage their commitment. The activities shall include, but are not limited to:

a. Completion of preservice Nova Training and the Blood Born Pathogens course and Universal Precautions prior to placement of a child. If the family is accepting placement of a child who is at high risk of or is HIV positive, they shall also complete the Caring for Children With HIV course.

b. Discussion with family members regarding problems resulting from a child's separation, loss, grief, and anger due to the loss of the birth parents.

c. Provision of background information on the child and birth family, including a child study that includes experiences such as foster and adoption placements and other pertinent information and the child's life book.

d. Provision of information regarding the child's special needs and behavior patterns.

e. Provision of a description of the child's medical needs, including whether or not the child is at risk of or is HIV positive.

f. Discussion of the impact that adding a new member or members to the family may have on all current family members.

g. Explanation of the subsidized adoption program.

h. Provision of information regarding the community resources that are available to assist the family, such as parent support groups.

200.4(5) Preplacement visits. This component includes activities necessary to plan, conduct and assess the transitional visits between the adoptive family and the child or children prior to the adoptive placement of the child in the home.

200.4(6) Placement services. Placement services include the activities necessary to plan and carry out the placement of a child or children into the adoptive family.

Prior to placement of a child, the Agreement of Placement for Adoption, Form SS-6623, shall be signed by all parties.

200.4(7) Postplacement services. Postplacement services include supervision, support, crisis intervention and required reports. Postplacement supervision is provided from the time a child is placed with an adoptive family until finalization of the adoption occurs.

a. Postplacement supervision shall focus on the following areas:

(1) Integration and interaction of the child or children with the family.

(2) Changes in the family functioning which may be due to the placement.

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(3) Social and emotional adjustment of the child or children.

(4) School adjustment of the child or children who are attending school.

(5) Changes and adjustments that have been made in the family since the placement.

(6) Family's method of dealing with testing behaviors and discipline.

(7) Child's growth and development since placement in the family.

(8) Behavioral evidence of the degree of bonding that is taking place and the degree to which the child is becoming a permanent member of the adoptive family.

b. A minimum of three adoptive home visits are required or, if the family is experiencing problems, as many as are necessary to assess and support the placement.

Home visits shall be completed at a minimum as follows: one no later than 30 days after placement, one no later than 90 days after placement, and a final visit prior to requesting a consent to adopt. Supervisory reports based on observations shall be completed after the home visits using Form SS-6713, Supervisory Report.

c. A written report based on the postplacement visits with recommendations regarding the finalization of the adoption shall be submitted to the court prior to the hearing to consider granting a decree of adoption.

441—200.5(600) Termination of parental rights. The department shall not place a child in an approved adoptive home until parental rights of the child's birth parents have been terminated and guardianship assigned to the department. If one or both birth parents are deceased, the worker shall provide the court with verification of the birth parents' death and the death shall be stated in the guardianship order. When the termination of parental rights is appealed by a birth parent, an adoptive placement

shall not be made and an adoptive placement agreement shall not be signed until the appeal is withdrawn or a final decision regarding the appeal is reached and a procedendo issued.

441—200.6(600) Service provision. Services to a child, a prospective adoptive family or an adoptive family may be provided by the following methods:

200.6(1) Direct. All components of adoption service may be provided directly by department adoption workers.

200.6(2) Purchase. Components of adoption service may be purchased by the department from a licensed child-placing agency with a purchase of service contract with the department.

441—200.7(600) Department fees.

200.7(1) Cost of service. When the court orders the department to provide services to an individual or family, a fee for the cost of service based on a sliding fee schedule shall be used. The fee assessed shall be based on a reasonable fee for providing the service, median income as determined by the U.S. Department of Health and Human Services, Office of Family Assistance, and the family's gross income and household size. Fee schedules shall be revised whenever the median income is redetermined. Fee schedules shall be compiled by the department for:

- a. Preplacement assessment and adoptive home studies.
- b. Postplacement supervision and reports.
- c. Reassessment and adoptive home study updates.
- d. Any supplemental reports including court-ordered home studies for adoption or custody.

200.7(2) Fee schedule. The fee schedule to be used in determining the cost of service is as follows:

SCHEDULE RATE
FEE SCHEDULE

Percent of Median Income	1 Member Income Range	2 Member Income Range	3 Member Income Range	4 Member Income Range	5 Member Income Range	6 Member Income Range	7 Member Income Range	8 Member Income Range	Preplacement Assessment Home Study	Home Study Update	Postplacement Supervision/ Reports	Court Ordered Preplacement Assessment or Custody Home Study
0-50%	\$0-9,904	\$0-12,950	\$0-15,998	\$0-19,045	\$0-22,092	\$0-25,211	\$0-25,711	\$0-26,282	\$100	\$ 50	\$100	\$100
51-70%	\$9,905-13,865	\$12,951-18,131	\$15,999-22,397	\$19,046-26,663	\$22,093-30,929	\$25,212-35,195	\$25,712-35,995	\$26,283-36,974	\$200	\$100	\$100	\$200
71-90%	\$13,866-17,826	\$18,132-23,311	\$22,398-28,796	\$26,664-34,281	\$30,930-39,765	\$35,196-45,251	\$35,996-46,280	\$36,975-47,308	\$300	\$150	\$150	\$300
91-100%	\$17,827-19,807	\$23,312-25,901	\$28,797-31,996	\$34,282-38,090	\$39,766-44,184	\$45,252-50,279	\$46,281-51,422	\$47,309-52,564	\$500	\$150	\$150	\$500
101% or more	\$19,808 and over	\$25,902 and over	\$31,997 and over	\$38,091 and over	\$44,185 and over	\$50,280 and over	\$51,423 and over	\$52,565 and over	\$650	\$200	\$200	\$650
Per person additional \$1,143.												

Checks or money orders for fees for adoption services shall be made payable to the department of human services. Fees shall be collected by the worker prior to provision and delivery of a study or report.

200.7(3) Determination of income and household size. Income of families requesting adoptive services shall be verified in order to determine the appropriate fee. Income and family composition shall be defined as set forth in 441—Chapter 130.

200.7(4) Waiver of fees. The fees for adoption services shall be waived for the following:

- a. A family wishing to adopt a special needs child.
- b. A relative within the fourth degree of consanguinity wishing to adopt an easy-to-place child for whom the department has guardianship.
- c. A current or former foster family wishing to adopt a special needs child.

441—200.8(600) Interstate placements. Interstate placement of a child into Iowa, or out of Iowa, shall follow interstate placement of child procedures according to Iowa Code section 238.33.

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441—200.9(600) International adoptions.

200.9(1) Procedures. International adoptions involving child-placing agencies located outside Iowa shall follow the procedures outlined in the interstate compact on the placement of children, Iowa Code section 238.33. The compact is only applicable in instances when the child is placed through a child-placing agency. When a child is placed by an entity other than a child-placing agency, a child shall only be placed after the department has been furnished a preplacement assessment and adoptive home study as required by Iowa Code section 600.8; legal documents from the child's country of origin which demonstrate the child is legally available for adoption; and all available medical, social, and background information regarding the child.

200.9(2) Services provided and fees. The family wishing approval for placement of a child from a country other than the United States into their home for the purpose of adoption shall be assessed a fee of \$75 regardless of their income for service provided by the department. The fee shall accompany the request for service. Checks shall be made to the department of human services.

The services shall include: reviewing and processing the family's adoptive home study; reviewing the child's background and legal information and birth verification to ensure that both are in compliance with requirements in Iowa Code chapter 600; submitting documents to Immigration and Naturalization Services approving the Iowa family for adoptive placement of a child; and submitting a certification letter to the attorney, agency, or family, after the child has resided with the adoptive family 180 days, and the family has had postplacement supervision by an agency or certified adoption investigator. The department's certification letter shall indicate that the family has met the requirements in the Iowa Code and that there are no impediments to finalizing the adoption.

441—200.10(600) Requests for home studies.

200.10(1) Court-ordered. Court-ordered home studies for adoption or custody of a child or children shall be completed by department workers. When a department worker completes the court-ordered home study, a fee shall be assessed the family based on subrule 200.7(2).

200.10(2) Interstate compact. Requests for an adoptive home study through the interstate compact process shall be completed by a department worker and the family assessed a fee based on the department's current fee schedule. No fee shall be charged the family if they are a relative of the child within the fourth degree of consanguinity, or the family is the child's foster family.

200.10(3) Referrals. Families wishing to adopt an easy-to-place child shall be referred to a child-placing agency or a certified adoption investigator for completion of the home study. Payment of a fee for completion of the home study shall be the family's responsibility.

441—200.11(600) Reasons for denial. An individual or family shall be denied approval of an adoptive home study for one or more of the following reasons:

200.11(1) Founded child abuse report. A founded child abuse report shall mean denial of approval unless an evaluation determines that it does not merit denial.

200.11(2) Criminal conviction. A criminal conviction shall mean denial of approval unless an evaluation determines that it does not merit denial.

200.11(3) Documented concerns. Concerns may be documented in one or more of the following areas:

- a. Motivation to adopt.
- b. Child-rearing ability and practices.
- c. Emotional stability.
- d. Physical or mental health.
- e. Interpersonal relationships.
- f. Finances.
- g. Marital relationship.

200.11(4) Substance abuse. Verified substance use or abuse that prevents the family from adequately caring for the child shall mean denial of approval.

200.11(5) Lack of cooperation. If the individual or family fails to cooperate in providing the information needed to complete the preplacement assessment or home study, the application shall be denied.

441—200.12(600) Removal of child from preadoptive family. When the department determines that it is in the best interest of a child to be removed from a preadoptive family, a Letter of Removal, Form 470-3018, shall be mailed to the family prior to the removal. Removal of a child from a preadoptive family is not an appealable issue, as a child continues to be under the guardianship of the department until an adoption is finalized.

441—200.13(600) Consents. A request for consent to the adoption shall be submitted to the guardian for a child who is under the guardianship of the department and for whom finalizing an adoption is recommended. If the adoption is in the best interest of the child, the director or designee shall sign a Consent to Adoption, Form 470-0775, prior to a court hearing to finalize the adoption.

A consent to adopt may be rescinded by the department, by signing Rescinding the Consent to Adoption, Form 470-2990, for any of the following reasons:

1. At the request of the adoptive family.
2. A founded child abuse report, or accusation of child abuse, pending determination of the report.
3. Conviction of a crime, or accusation of a crime, pending a court decision regarding the crime.
4. At the request of a child who is aged 14 or over and has reversed the decision regarding the adoption.
5. Other verified indications that the adoption is not in the best interest of the child.

441—200.14(600) Requests for access to information for research or treatment.

200.14(1) Requests. Any person seeking access to the department's sealed adoption records for the purpose or purposes set forth in Iowa Code paragraph 600.16(1)"c" or Iowa Code subsection 600.24(2) shall submit a request in writing to the director. Each request shall contain sufficient facts to establish that the information sought is necessary for conducting a legitimate medical research project, or for treating a patient in a medical facility.

200.14(2) Process. Upon receipt of a request for information sought in conducting a research project, the director or a designee shall review the request for information and make a decision to approve, or deny, the request based on the research to be conducted, the benefits of the research, the methodology, and the confidentiality measures to be followed. Upon a request for information for treating a patient in a medical facility, a decision regarding approval or denial shall be made by the director or designee based on the written information provided by a physician or the medical facility, making the request. Requestors shall be notified in writing of approval or denial and if denied, reasons for denial given.

HUMAN SERVICES DEPARTMENT[441](cont'd)

441—200.15(600) Requests for information for other than research or treatment. Requests for information from department adoption records for other than research or treatment shall be made to the Department of Human Services, Division of Adult, Children and Family Services, Adoption Program, Hoover State Office Building, Des Moines, Iowa 50319-0114.

The department shall not release identifying information from sealed adoption records. Adult adoptees, adoptive parents, birth parents, siblings or descendants of an adopted person, or legal representatives of any of the above shall be provided an adoption packet containing a sample affidavit for filing with the court, directions for filing the affidavit, a list of county clerks of court and the address of the bureau of vital statistics which retains the name of the county where their adoption was finalized in Iowa.

An adopted person who was a resident of the Annie Wittenmeyer Home (Iowa Soldier's and Sailor's Home) may receive nonidentifying information from Annie Wittenmeyer records if the information is available.

441—200.16(600) Appeals. Prospective adoptive families may appeal denial of approval of their home study based on rule 441—200.11(600), pursuant to 441—Chapter 7.

ARC 4261A

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 135C.14, the Department of Inspections and Appeals gives Notice of Intended Action to amend Chapter 50, "Health Care Facilities Administration"; Chapter 57, "Residential Care Facilities"; Chapter 58, "Intermediate Care Facilities"; Chapter 59, "Skilled Nursing Facilities"; and Chapter 63, "Residential Care Facilities for the Mentally Retarded," Iowa Administrative Code.

These amendments reorganize rules regarding payment of witness fees for persons subpoenaed to attend a formal hearing. These amendments delete an identical rule concerning witness fees which currently appears in several chapters and place the rule under the chapter pertaining to the administration of all types of health facilities.

Interested persons may make written comments or suggestions on the proposed amendments on or before October 8, 1993. Written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; FAX (515)242-5022.

These amendments are intended to implement Iowa Code section 135C.11(2).

The following amendments are proposed.

ITEM 1. Amend rule 481—50.6(10A) by adding the following new subrule:

50.6(4) The fees of witnesses for attendance and travel shall be the same as the fees for witnesses before the district court and shall be paid by the party to the proceeding at whose request the subpoena is issued.

ITEM 2. Rescind and reserve rules 481—57.7(135C), 481—58.6(135C), 481—59.6(135C), and 481—63.6(135C).

ARC 4262A

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 135C.14, the Department of Inspections and Appeals gives Notice of Intended Action to rescind Chapter 58, "Intermediate Care Facilities," and Chapter 59, "Skilled Nursing Facilities," and to adopt in lieu thereof a new Chapter 58, "Nursing Facilities," Iowa Administrative Code.

The proposed rules reflect federal regulations which apply to nursing facilities certified under the Medicaid program with changes discussed by the industry and the Department. The rules also include the requirements for nursing facilities under Iowa Code chapter 135C.

Interested persons may make written comments or suggestions on the proposed rules on or before October 14, 1993. Written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; FAX (515)242-5022.

Oral presentations may be made by appearing at the following meetings. Written comments will also be accepted at that time. Any oral presentations made at the meetings must also be submitted in writing. Persons who wish more information concerning the public hearings should contact Mary Oliver, Health Facilities Division, at (515)281-4081.

Des Moines – October 5, 1993 10 a.m. to 2 p.m.
New Historical Building
600 East Locust
Auditorium - First Floor West
Des Moines, Iowa

Denison – October 11, 1993 10 a.m. to 2 p.m.
Denison Community Room
111 N. Main (Next to City Hall)
Denison, Iowa

Cedar Rapids – October 13, 1993 10 a.m. to 2 p.m.
Kirkwood Community College
6301 Kirkwood Blvd.
Iowa Bldg. - Rooms B, C, and D
Second Floor (Use South Entrance)
Cedar Rapids, Iowa

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

These rules are intended to implement Iowa Code sections 10A.202, 10A.402, 135C.6(1), 135C.14, 135C.14(3), 135C.14(5), 135C.14(8), 135C.25, 135C.32, 135C.36 and 227.4 and 1990 Iowa Acts, chapter 1016.

The following amendment is proposed.

Rescind **481—Chapters 58 and 59** and insert in lieu thereof the following **new** chapter:

CHAPTER 58
NURSING FACILITIES

481—58.1(135C) Definitions. For the purpose of these rules, the following terms shall have the meaning indicated in this chapter. The definitions set out in Iowa Code section 135C.1 shall be considered to be incorporated verbatim in the rules. The use of the words "shall" and "must" indicate those standards are mandatory. The use of the words "should" and "could" indicate those standards are recommended.

"Abuse" means any of the following as a result of the willful or negligent acts or omissions of a caretaker:

1. Physical injury to or unreasonable confinement or unreasonable punishment of a dependent adult.

2. The commission of a sexual offense under Iowa Code chapter 709 or Iowa Code section 726.2 with or against a dependent adult.

3. Exploitation of a dependent adult which means the act or process of taking unfair advantage of a dependent adult or the adult's physical or financial resources for one's own personal or pecuniary profit, including theft, by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.

4. The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, or other care necessary to maintain a dependent adult's life or health.

"Administrator" means a person licensed pursuant to Iowa Code chapter 155.

"Base rate" means that daily fee charged for all residents equally and shall include the cost of all minimum services required in these rules.

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat medical symptoms.

"Communicable disease" means a disease caused by the presence of viruses or microbial agents within a person's body, which agents may be transmitted either directly or indirectly to other persons.

"Department" means the Iowa department of inspections and appeals.

"Highest practicable" means the facility must ensure that the resident obtains optimal improvement or does not deteriorate within the limits of a resident's right to refuse treatment, and within the limits of recognized pathology and the normal aging process.

"Legal representative" means a person who is allowed, under Iowa law, to make decisions for a resident. This could include a court-appointed representative, power of attorney, or a designated family member.

"Licensed nurse" means a registered nurse or a licensed practical nurse, as defined in Iowa Code chapter 152.

"Medication" means any drug including over-the-counter substances ordered and administered under the direction of the physician.

"Nonambulatory" means the condition of a person who immediately and without aid of another is not physically

and mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

"Personal care" means assistance with the activities of daily living which the recipient can provide for himself or herself only with difficulty. Examples are help in getting in and out of bed, assistance with personal hygiene and bathing, help with dressing and feeding, and supervision over medications which can be self-administered.

"Physical restraints" means any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's body.

"Pressure sore" means ischemic ulceration or necrosis of tissues overlying a bony prominence that has been subjected to pressure, friction or shear. The staging system that follows is one method of describing the extent of tissue damage in the pressure sore. Pressure sores cannot be adequately staged when covered with eschar or necrotic tissue.

Stage I. A persistent area of skin redness (without a break in the skin) that does not disappear within 30 minutes.

Stage II. A partial thickness loss of skin layers that presents clinically as an abrasion, blister or shallow crater.

Stage III. A full thickness of skin is lost, exposing the subcutaneous tissue that presents as a deep crater with or without undermining adjacent tissue.

Stage IV. A full thickness of skin and subcutaneous tissue is lost, exposing muscle or bone.

"Program of care" means all services being provided for a resident in a nursing facility.

481—58.2(135C) Right to exercise rights. The resident has the right to exercise his or her rights as a resident of the facility and as a citizen of the United States. "Exercising rights" means that residents have autonomy and choice, to the maximum extent possible, about how they wish to live their everyday lives and receive care, subject to the facility's rules affecting resident conduct and those regulations governing protection of resident health and safety. (II)

58.2(1) Right to be free of interference, coercion, discrimination or reprisal. The resident has the right to be free of interference, coercion, discrimination, or reprisal from the facility in exercising his or her rights. (II)

58.2(2) Adjudicated incompetent. In the case of a resident adjudicated incompetent under the laws of Iowa by a court of competent jurisdiction, the rights of the resident are exercised by the person appointed under state law to act on the resident's behalf to the extent authorized by the court. (II)

58.2(3) Not adjudicated incompetent. In the case of a resident who has not been judged incompetent by the state court, any legal surrogate designated in accordance with state law may exercise the resident's rights to the extent provided by state law. (II)

481—58.3(135C) Notice of rights and services. The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. (II) "In a language that the resident understands" means that communication of information concerning rights and responsibilities shall be both clear and understandable to the resident.

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58.3(1) Timing of notice. The notification must be made not more than two weeks prior to or upon admission and after the facility adopts or amends residents' rights policies during the resident's stay. Receipt of the information, and any amendments to it, must be acknowledged in writing. (II)

58.3(2) Right to inspect and purchase records. The resident or his or her legal representative has the right:

a. Upon oral or written request, to access all records pertaining to the resident, including clinical records, within 24 hours; (II)

b. After receipt of the records for inspection, to purchase, at a cost not to exceed the community standard, photocopies of records or any portions of them upon oral or written request and two working days advance notice to the facility. (II)

58.3(3) Right to be fully informed. The resident has the right to be fully informed in a language that he or she can understand of his or her total health status including, but not limited to, his or her medical condition. (II)

58.3(4) Right to refuse treatment and experimental research. The resident has the right to refuse treatment and to refuse to participate in experimental research. (I, II)

58.3(5) Required notice of services and charges. The facility shall inform each resident before, or at the time of admission, and periodically during the resident's stay of services available in the facility and of charges for those services, including any charges for services not covered under Medicare, Medicaid or the facility's base rate. (II)

58.3(6) Written description of legal rights and posting of names. The facility shall furnish each resident with a written description of legal rights which include a description of the manner of protecting personal funds under rule 481—58.4(135C). (II)

a. The facility shall post the following names, addresses and telephone numbers:

Iowa Department of Inspections and Appeals
Division of Health Facilities
Lucas State Office Building
Des Moines, IA 50319-0083
(515)281-4115

Iowa Department of Inspections and Appeals
Division of Investigations
Medicaid Fraud Control Bureau
Lucas State Office Building
Des Moines, IA 50319-0083
(515)281-7107

Iowa Department of Elder Affairs
Iowa Long-term Care Resident Advocate/Ombudsman
236 Jewett Building
914 Grand Avenue
Des Moines, IA 50309
(515)281-5187

Iowa Protection and Advocacy Services, Inc.
3015 Merle Hay Road
Des Moines, IA 50310
(515)278-2502 (II)

b. The facility shall furnish each resident with a statement that the resident may file a complaint with the department concerning resident abuse, neglect and misappropriation of resident property in the facility. (II)

c. The facility must inform each resident of the name, specialty and way of contacting the physician responsible for his or her care. (II)

58.3(7) Notices required in certain circumstances. A facility shall immediately inform the resident; consult with the resident's physician; and, if known, notify the resident's legal representative or interested family member when there is:

a. An accident involving the resident which results in injury and has the potential for requiring physician intervention; (I, II)

b. A significant change in the resident's physical, mental or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications); (I, II)

c. A need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences or to commence a new form of treatment); (I, II) or

d. A decision to transfer or discharge the resident from the facility. (I, II)

58.3(8) Record update required. The facility shall record and periodically update the address and phone number of the resident's legal representative or interested family member. (II)

481—58.4(135C) Personal property or affairs of patients or residents. The admission of a resident to a nursing facility and the resident's presence therein shall not in and of itself confer on the facility, its owner, administrator, employees, or representatives any authority to manage, use, or dispose of any property of the resident, nor any authority or responsibility for the personal affairs of the resident, except as may be necessary to the safety and orderly management of the facility and as required by this rule.

58.4(1) Guardian, trustee or conservator. No nursing facility, and no owner, administrator, employee or representative thereof shall act as guardian, trustee or conservator for any resident of the facility, or any of the resident's property, unless the resident is related to the person acting as guardian, trustee or conservator within the third degree of consanguinity.

58.4(2) Conservator or guardian of resident of county care facility. The provisions of this rule notwithstanding, upon the verified petition of the county board of supervisors, the district court may appoint the administrator of a county care facility as conservator or guardian, or both, of a resident of the county care facility, in accordance with the provisions of Iowa Code chapter 633. The administrator shall serve as conservator or guardian, or both, without fee. The county attorney shall serve as attorney for the administrator in the conservatorship or guardianship, or both, without fee. The administrator may establish either separate or common bank accounts for cash funds of resident wards.

The resident has the right to manage his or her financial affairs. The facility may not require residents to deposit their personal funds with the facility. (II)

58.4(3) Records of personal funds. A nursing facility shall keep complete and accurate records of all funds and other effects and property of its residents received by it for safekeeping.

58.4(4) Personal funds or property. Any funds or other property belonging to or due a resident, or expendable for the resident's account, which are received by a nursing facility shall be trust funds, shall be kept separate from the funds and property of the facility and of its other residents, or specifically credited to the resident, and shall be used or otherwise expended only for the account of the

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resident. Upon request, the facility shall furnish the resident, the guardian, trustee or conservator, if any, for any resident, or any governmental unit or private charitable agency contributing funds or other property on account of any resident, a complete and certified statement of all funds or other property to which this subrule applies detailing the amounts and items received, together with their sources and disposition.

58.4(5) Written consent. A resident's personal funds or property shall not be used without the written consent of the resident or the legal representative. (II)

58.4(6) Return of personal funds or property. A resident's personal funds or property shall be returned to the resident when the funds or property have been used without the written consent of the resident or the resident's legal representative. The department may report findings that resident funds have been used without written consent to the audits division or the local law enforcement agency, as appropriate. (II)

481—58.5(135C) Free choice. The resident has the right to choose a personal attending physician and to be fully informed in advance about care and treatment and any changes in that care or treatment that may affect the resident's well-being. (II)

481—58.6(135C) Privacy and confidentiality. The resident has the right to personal privacy and confidentiality of his or her personal and clinical records. (II)

58.6(1) Privacy. Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups, but does not require the facility to provide a private room for each resident.

The facility shall provide privacy for the resident and persons with whom the resident wishes privacy. This privacy shall include full visual, and to the extent possible, auditory privacy. (II)

58.6(2) Right to refuse or approve release of information. The resident may approve or refuse the release of personal and clinical records to any individual outside the facility with the following exceptions: (II)

- a. The resident is transferred to another health care institution; or (II)
- b. Record release is required by law, including, but not limited to, release to the department; (II) or
- c. Third-party payment contract. (II)

481—58.7(135C) Grievances.

58.7(1) A resident has the right to:

a. Voice grievances without discrimination or reprisal. Grievances include those with respect to treatment which has been furnished as well as that which has not been furnished; and

b. Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

58.7(2) The facility shall implement a written procedure for registering and resolving grievances and recommendations by residents or their legal representatives. The procedure shall ensure protection of the resident from any form of reprisal or intimidation. (II)

481—58.8(135C) Examination of survey results. A resident has the right to examine the results of the most recent annual licensing inspection, any subsequent inspections and any plan of correction in effect with respect to the facility. The results shall be made available by the fa-

cility for examination in a place readily accessible to residents. (II)

58.8(1) Posting of Class I and Class II citations. Citations for Class I or Class II violations which have become final shall be prominently posted until the violation is corrected to the department's satisfaction. These documents shall be posted in plain view of residents, persons visiting residents, and persons inquiring about placement in the facility. (II)

58.8(2) Right to information from other agencies. Each resident has the right to receive information from agencies acting as client advocates including, but not limited to, those listed in subrule 58.3(6), paragraph "a," and be afforded the opportunity to contact these agencies. (II)

481—58.9(135C) Work. The resident has the right to refuse to perform services for the facility and to perform services for the facility if he or she chooses when:

58.9(1) The facility has documented the need or desire for work in the plan of care; (II)

58.9(2) The plan specifies the nature of the services performed and whether the services are voluntary or paid; (II)

58.9(3) Compensation for paid services is at or above prevailing rates; (II) and

58.9(4) The resident agrees to the work arrangement described in the plan of care. (II)

481—58.10(135C) Mail. The resident has the right to privacy in written communications, including the right to:

58.10(1) Send and promptly receive mail that is unopened; (II)

58.10(2) Have access to stationery, postage and writing implements at the resident's own expense. (II)

481—58.11(135C) Access and visitation rights.

58.11(1) The resident has the right and the facility must provide immediate access to any resident by the following:

- a. Any authorized representative of the state; (II)
- b. The resident's individual physician; (II)
- c. The Iowa long-term care advocate/ombudsman and care review committee; (II)
- d. Iowa protection and advocacy, incorporated; (II)
- e. Subject to resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; (II) and
- f. Subject to reasonable restrictions and the resident's rights to deny or withdraw consent at any time, others who are visiting with the consent of the resident. (II)

58.11(2) The facility shall provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident subject to the resident's right to deny or withdraw consent at any time. Visiting hours shall be posted. (II)

58.11(3) The facility shall allow the Iowa long-term care advocate/ombudsman to examine a resident's clinical records with the permission of the resident or the resident's legal representative and consistent with state law. (II)

481—58.12(135C) Telephone. The resident has the right to have reasonable access to the use of a telephone where calls can be made without being overheard. Residents who need help shall be assisted in using the phone. Telephone equipment shall be available to accommodate hearing impaired and wheelchair bound residents. (II)

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481—58.13(135C) Personal property. The resident has the right to retain and use personal possessions including some furnishings and appropriate clothing as space permits, unless to do so would infringe upon the rights or health and safety of other residents. (II)

58.13(1) Safekeeping of personal effects. A nursing facility shall provide for the safekeeping of personal effects, funds and other property of its residents.

58.13(2) Items of exceptional value. The facility may require that items of exceptional value or which would convey unreasonable responsibilities to the licensee be removed from the premises of the facility for safekeeping.

58.13(3) Secure storage. The facility shall be responsible for secure storage of the items accepted for storage, and they shall be returned to the resident promptly upon request or upon discharge from the facility. (III)

481—58.14(135C) Married couples and family members. The resident has the right to share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement. Family members may be permitted to share a room, if available, if requested by both parties.

481—58.15(135C) Self-administration of drugs. An individual resident may self-administer drugs if the interdisciplinary team has determined that this practice is safe for the resident. (I, II)

481—58.16(135C) Involuntary discharge or transfer. A facility shall not involuntarily discharge or transfer a resident from a facility except:

1. For medical reasons;
2. For the resident's welfare or that of other residents;
3. For nonpayment for the resident's stay (as contained in the contract for the resident's stay), except as prohibited by Title XIX of the Social Security Act, 42 U.S.C. 1396 to 1396k; by reason of action pursuant to Iowa Code chapter 229; by reason of negative action by the Iowa department of human services; and by reason of negative action by the professional standards review organization. A resident shall not be transferred or discharged solely because the cost of the resident's care is being paid under Iowa Code chapter 249A, or because the resident's source of payment is changing from private support to payment under Iowa Code chapter 249A. (I, II)

58.16(1) "Medical reasons" for transfer or discharge are based on the resident's needs and are determined and documented in the resident's record by the attending physician. Transfer or discharge may be required to provide a different level of care. In the case of transfer or discharge for the reason that the resident's condition has improved such that he or she no longer needs the level of care being provided by the facility, the determination that the medical reason exists is the exclusive province of the professional standards review organization or utilization review process in effect for residents whose care is paid in full or in part by Title XIX. (II)

58.16(2) "Welfare" of a resident or that of other residents refers to their social, emotional, or physical well-being. A resident might be transferred or discharged because his or her behavior poses a continuing threat to himself or herself (e.g., suicidal) or to the well-being of other residents (e.g., his or her behavior is incompatible with their needs and rights). Evidence that the resident's continued presence in the facility would adversely affect the resident's own welfare or that of other residents shall be

made by the administrator or a designee and shall be in writing and shall include specific information to support this determination.

58.16(3) Involuntary transfer or discharge of a resident from a facility shall be preceded by a written notice to the resident or legal representative at least 30 days in advance of the proposed transfer or discharge. The 30-day requirement shall not apply in any of the following instances:

a. If an emergency transfer or discharge is mandated by the resident's health care needs and is in accord with the written orders and medical justification of the attending physician. Emergency transfers or discharges may also be mandated to protect the health, safety, or well-being of other residents and staff from the resident being transferred; (II)

b. If the transfer or discharge is subsequently agreed to by the resident or the legal representative, and notification is given to the legal representative, physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility;

c. If the discharge or transfer is the result of a final, nonappealable decision by the department of human services or the professional standards review organization;

d. If the discharge or transfer is the result of an Iowa Code chapter 229 proceeding.

58.16(4) The written notice required by subrule 58.16(3) shall contain all of the following information:

a. The stated reason for the proposed transfer or discharge; (II)

b. The effective date of the proposed transfer or discharge; (II)

c. A statement in not less than 12-point type which reads: "You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Iowa state department of inspections and appeals (hereinafter referred to as "department") within seven days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than 14 days after receipt of your request by the department and you will not be transferred prior to a final decision except in an emergency. Provision may be made for extension of the 14-day requirement upon request to the designee of the department of inspections and appeals in emergency circumstances. If you lose the hearing, you will not be transferred before the expiration of 30 days following receipt of the original notice of the discharge or transfer, or no sooner than five days following final decision of the hearing. To request a hearing or receive further information, telephone the department at (515)281-4115 or you may write to the department to the attention of: Administrator, Division of Health Facilities, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083." (II)

58.16(5) A request for a hearing made under subrule 58.16(4), paragraph "c," shall stay a transfer or discharge pending a hearing or appeal decision. (II)

58.16(6) The hearing shall be held in the facility, or in another location agreed upon by all parties and the department, and the date and time of the hearing shall be determined by an administrative law judge of the department. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the licens-

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ee and resident or legal representative, and Iowa department of elder affairs long-term care ombudsman not later than five full business days after receipt of request. This notice shall also inform the licensee and resident or legal representative that they have a right to appear at the hearing in person or be represented by their attorneys or another individual. The hearing shall be dismissed if neither party is present or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. The Iowa department of elder affairs long-term care ombudsman shall have the right to appear at the hearing.

58.16(7) The hearing shall be conducted by an administrative law judge from the department pursuant to Iowa Code chapter 17A. The hearing shall be closed unless the resident or representative requests that it be open. The licensee or designee shall have the opportunity to present oral testimony or written materials to show by a preponderance of the evidence just cause why a transfer or discharge may be made. The resident and legal representative shall also have an opportunity to present to the administrative law judge of the department oral testimony or written material to show just cause why a transfer or discharge should not be made. In a determination as to whether a transfer or discharge is authorized, the burden of proof rests on the party requesting the transfer or discharge.

58.16(8) Based upon all testimony and materials submitted, the administrative law judge shall issue, in accordance with Iowa Code chapter 17A, a written findings of fact, conclusions of law, and a decision and order in respect to the adverse action. This decision shall be sent by certified mail to the licensee, resident, and legal representative, and by regular mail to the department of elder affairs long-term care ombudsman within ten working days after the hearing has been concluded.

Appeals from any decision or order must be made in writing and submitted to the director of department of inspections and appeals by mail or by personal service within ten days after the receipt of the decision or order to the aggrieved party. A party who has exhausted all adequate administrative remedies and is aggrieved by the final action of the department may petition for judicial review in the manner provided by Iowa Code chapter 17A.

58.16(9) A copy of the written notice required by subrule 58.16(3) shall be personally delivered to the resident and a copy placed in the resident's record. A copy shall also be transmitted to the department, the resident's legal representative, physician, the person or agency responsible for the resident's placement, maintenance, and care in the facility, and the department of elder affairs long-term care ombudsman.

58.16(10) If the basis for an involuntary transfer or discharge is the result of a negative action by the Iowa department of human services or the professional standards review organization (Iowa foundation for medical care), appeals shall be filed with those agencies as appropriate. Continued payment shall be consistent with rules of those agencies.

58.16(11) If nonpayment is the basis for involuntary transfer or discharge, the resident shall have the right to make full payment up to the date that the discharge or transfer is to be made and then shall have the right to remain in the facility. (II)

58.16(12) The involuntary transfer or discharge shall be discussed with the resident, the resident's legal repre-

sentative, and the person or agency responsible for the resident's placement, maintenance, and care in the facility within 48 hours after notice of discharge has been received. The explanation and discussion of the reasons for involuntary transfer or discharge shall be given by the facility administrator or other appropriate facility representative as the administrator's designee. The content of the discussion and explanation shall be summarized in writing and shall include the names of the individuals involved in the discussions and made part of the resident's record. (II)

58.16(13) The resident shall receive counseling services before (by the sending facility) and after (by the receiving facility) the involuntary transfer to minimize the possible adverse effects of the involuntary transfer. Counseling shall be documented in the resident's record. (II)

a. Counseling shall be provided by a qualified individual who meets one of the following criteria:

(1) Has a bachelor's or master's degree in social work from an accredited college; (II)

(2) Is a graduate of an accredited four-year college and has at least one year of full-time paid employment in a social work capacity with a public or private agency; (II)

(3) Has been employed in a social work capacity for a minimum of four years in a public or private agency; (II)

(4) Is a licensed psychologist or psychiatrist; (II)

(5) Is any other person of the resident's choice. (II)

b. The facility shall develop a plan to provide for the orderly and safe transfer or discharge of each resident to be involuntarily discharged or transferred. (II)

c. The receiving health care facility of a resident involuntarily discharged or transferred shall immediately formulate and implement a plan of care which takes into account possible adverse effects the transfer may cause. (II)

58.16(14) In the case of an emergency transfer or discharge as outlined in 58.16(3)"a," the resident must still be given a written notice prior to or within 48 hours following transfer or discharge. A copy of this notice must be placed in the resident's file and it must contain all the information required by 58.16(4)"a" and "b." In addition, the notice must contain a statement in not less than 12-point type, which reads: "You have a right to appeal the facility's decision to transfer or discharge you on an emergency basis. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Iowa state department of inspections and appeals within seven days after receiving this notice. If you request a hearing, it will be held no later than 14 days after receipt of your request by the department. You may be transferred or discharged before the hearing is held or before a final decision is rendered. If you win the hearing, you have the right to be transferred back into the facility. To request a hearing or receive further information, telephone the department at (515)281-4115 or you may write to the department to the attention of: Administrator, Division of Health Facilities, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083." A hearing requested pursuant to this subrule shall be held in accordance with subrules 58.16(6), 58.16(7), and 58.16(8). (II)

58.16(15) Residents shall not have the right to a hearing to contest an involuntary discharge or transfer resulting from the revocation of the facility's license by the

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department of inspections and appeals. In the case of a facility voluntarily closing, a period of 30 days must be allowed for an orderly transfer of residents to other facilities.

481—58.17(135C) Notices of bed-hold policy and readmission. Before a nursing facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the facility shall provide written information to the resident and a family member or legal representative that specifies the bed will be held at the request of the resident or the resident's legal representative for as long as current payments for the bed-hold are made as required by the contract. 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 response shall be documented. (II)

481—58.18(135C) Restraints. The resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms. (I, II)

58.18(1) Required for use. When restraints are utilized, they must be the least restrictive measure. (I, II)

58.18(2) Physician's order required. Physician's orders are required to utilize all types of physical restraints. (I, II)

58.18(3) Required release from restraint and exercise. The opportunity for motion and exercise shall be provided each two hours in which restraints are employed, except when a resident is sleeping or engaged in an organized activity where the action would be disruptive. However, when a resident awakens, this exercise shall be provided.

58.18(4) Locked and leather restraints. Locked restraints or leather restraints shall not be permitted except in life-threatening situations. (I, II)

481—58.19(135C) Abuse. The resident has the right to be free from abuse as defined in Iowa Code chapter 235B. (I, II)

58.19(1) Suspected abuse reports. The department shall investigate all complaints of dependent adult abuse which are alleged to have happened in a nursing facility. The department shall inform the department of human services of the results of all evaluations and dispositions of dependent adult abuse investigations.

58.19(2) Separation of alleged abuser and victim. Upon a claim of dependent adult abuse of a resident being reported, the administrator of the facility shall separate the victim and accused abuser immediately and maintain that separation until the abuse investigation is completed. (I, II)

58.19(3) Timing of report to department of inspections and appeals (DIA). The facility shall report abuse to the DIA no later than the end of the next working day after it is suspected. (I, II)

58.19(4) Investigation by facility required. The facility shall have evidence that all alleged violations are thoroughly investigated by the facility and must prevent further potential abuse while the investigation is in progress. (I, II)

58.19(5) Staff treatment of residents. Each resident shall receive kind and considerate care at all times.

481—58.20(135C) Quality of life. A facility shall care for its residents in a manner and in an environment that

promotes maintenance or enhancement of each resident's quality of life. (II)

58.20(1) Dignity. The facility shall promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality. (II)

58.20(2) Manner of dress. All residents shall be dressed in a manner which is consistent with their desires and which will maintain self-esteem and privacy of their bodies, and will promote a normal lifestyle. (II)

58.20(3) Call lights. The facility shall provide prompt response from qualified staff when residents use the call system. Prompt response means no longer than 15 minutes. (I, II)

481—58.21(135C) Self-determination and participation. The resident has a right to choose activities, schedules, and health care consistent with his or her interests, assessments and plans of care. (II)

58.21(1) Right to interact. Residents have a right to interact with members of the community both inside and outside the facility. (II)

58.21(2) Right to make choices. Residents have a right to make choices about aspects of their life in the facility that are significant to the resident including time of arising and retiring. Residents shall not be required to arise before 6 a.m. for the convenience of staff. Resident preference shall be considered. (II)

481—58.22(135C) Participation in resident and family groups. A resident has the right to organize and participate in resident groups in the facility. A resident's family has the right to meet in the facility with the families of other residents in the facility. (II)

58.22(1) Required space. The facility must provide a resident or family group with private space, if space exists. (II)

58.22(2) Attendance at meetings. Staff or visitors may attend meetings at the group's invitation. (II)

58.22(3) Designated staff person. The facility must provide a designated staff person responsible for providing assistance and responding to written requests that result from group meetings. (II)

58.22(4) Grievances and recommendations. When a resident or family group exists, the facility shall listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility. (II)

481—58.23(135C) Accommodation of needs. A resident has the right to reside and receive services in the facility with reasonable accommodation of the individual needs and preferences, except when the health or safety of the individual or other residents would be endangered. (II)

58.23(1) The resident has a right to receive notice before the resident's room or roommate in the facility is changed. The resident's legal representative or interested family member shall be informed as soon as possible. (II)

58.23(2) Residents shall not be arbitrarily relocated from room to room within a licensed nursing facility. Involuntary relocation may occur only in the following situations. The situations shall be documented in the resident's record. (II)

a. Incompatibility with or disturbing to other roommates, as documented in the resident's record; (II)

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b. For the welfare of the resident or other residents of the facility; (II)

c. For medical, nursing or psychosocial reasons, as documented in the resident's record, as judged by the attending physician, nurse or social worker in the case of a facility which groups residents by medical, nursing or psychosocial needs; (II)

d. To allow a new admission to the facility which would otherwise not be possible due to separation of roommates by sex; (II)

e. In the case of a resident whose source of payment was previously private, but who now is eligible for Medicaid assistance, the resident may be transferred from a private room to a semi-private room or from one semi-private room to another; (II)

f. Reasonable and necessary administrative decisions regarding the use and functioning of the building. (II)

58.23(3) Unreasonable and unjustified reasons for changing a resident's room without the concurrence of the resident, or the resident's legal representative include:

a. As punishment or behavior modification; (II)

b. Discrimination on the basis of race or religion. (II)

58.23(4) If intrafacility relocation is necessary for reasons outlined in subrule 58.23(2), the resident, the staff social worker or social service designee shall be notified prior to the transfer. The reason for the change shall be explained to the resident. The legal representative shall be notified as soon as possible. The notification shall be documented in the resident's record and signed by the resident or legal representative. (II)

58.23(5) If emergency relocation is required to protect the safety or health of the resident or other residents, the notification requirements may be waived. The conditions of the emergency shall be documented. The family or legal representative shall be notified immediately or as soon as possible of the condition requiring emergency relocation and the notification shall be documented. (II)

481—58.24(135C) Activities. The facility shall provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well-being of each resident. (II)

The activities program must be directed by a qualified professional who:

1. Is a qualified therapeutic recreation specialist certified or eligible to be certified as a therapeutic recreation specialist or an activities professional by a recognized accrediting body; (II, III) or

2. Has two years' experience in a social or recreational program within the last five years, one of which was full-time in a patient activities program in a health care setting; (II, III) or

3. Is a qualified occupational therapist or occupational therapy assistant; (II, III) or

4. Has completed a training course approved by the state. (I, II)

481—58.25(135C) Social services. The facility shall provide medically related social services to attain or maintain the highest practicable physical, mental, or psychosocial well-being of each resident.

58.25(1) The administrator or designee shall be responsible for developing a written, organized orientation program for all residents. (III)

58.25(2) The social service program shall be planned and implemented to resolve or reduce personal, family,

business and emotional problems that may interfere with the medical or health care, recovery, and rehabilitation of the individual. (III)

58.25(3) The social services plan, including specific goals and regular evaluation of progress, shall be incorporated into the overall plan of care. (III)

58.25(4) A facility with more than 120 beds shall employ a qualified social worker on a full-time basis. (II)

58.25(5) A qualified social worker is an individual with:

a. A bachelor's degree in social work; (II, III) or

b. A bachelor's degree in a human services field including, but not limited to, sociology, special education, rehabilitation counseling and psychology; (II, III) and

c. One year of supervised social work experience in a health care setting working directly with individuals. (II, III)

481—58.26(135C) Environment. The facility shall provide a safe, clean, comfortable and homelike environment, allowing the resident to use his or her personal belongings to the extent possible. (I, II, III)

58.26(1) Housekeeping and maintenance. The facility shall provide housekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior in good repair. (II, III)

58.26(2) Bed and bath linens. The facility shall provide clean bed and bath linens that are in good condition and appropriate to the weather and climate. Beds shall be made daily. (III)

58.26(3) Ground floor. Nonambulatory residents shall be housed on the ground level unless an approved elevator is available. (I, II, III)

481—58.27(135C) Resident assessment. The facility shall conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity as required in 58.27(2). (I, II, III)

58.27(1) Admission orders. At the time each resident is admitted, the facility shall have:

a. Physician orders for the resident's immediate care. At a minimum, these orders shall include diet, drugs, and routine care. (I, II, III)

b. A history and physical or hospital discharge summary which accurately reflects the resident's current health status. (I, II, III)

58.27(2) Comprehensive assessments. The facility shall make a comprehensive assessment of a resident's needs which is completed:

a. No later than 14 days after the date of admission; (II, III)

b. Promptly after a significant change in the resident's physical or mental condition; (II, III) and

c. In no case less often than once every 12 months. (II, III)

58.27(3) Review of assessments. The nursing facility must review each resident no less than once every three months and, as appropriate, revise the resident's assessment to ensure the continued accuracy of the assessment. (II, III)

58.27(4) Use of assessments. Results of the assessment shall be used to develop, review, and revise the resident's comprehensive care plan. (II, III)

481—58.28(135C) Comprehensive care plans. The facility shall develop and implement a comprehensive care plan for each resident that includes measurable objectives

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and timetables to meet a resident's medical, nursing, mental and psychosocial needs that are identified in the comprehensive assessment. (I, II, III)

58.28(1) Preparation of comprehensive care plan. A comprehensive care plan must be:

a. Developed within seven days after the completion of the comprehensive assessment; (II, III)

b. Prepared by an interdisciplinary team that includes the attending physician, a nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs; and to the extent practicable with the participation of the resident, the resident's family or legal representative; (II, III) and

c. Periodically reviewed and revised by a team of qualified persons after each assessment. (II, III)

58.28(2) Services. The services provided or arranged by the facility shall:

a. Meet professional standards of quality; (I, II, III) and

b. Be provided by qualified persons. (I, II, III)

481—58.29(135C) Discharge summary. When the facility anticipates discharge, a resident shall have a discharge summary that includes:

58.29(1) Recapitulation. A recapitulation of the resident's stay; (II, III)

58.29(2) Final summary. A final summary of the resident's status at the time of the discharge that is available for release to authorized persons and agencies with the consent of the resident or legal representative; (II, III) and

58.29(3) Postdischarge plan. A postdischarge plan of care that is developed with the participation of the resident and his or her family, which will assist the resident to adjust to his or her new living environment. (II, III)

481—58.30(135C) Quality of care. Each resident shall receive and the facility shall provide the necessary care and services to attain or maintain the highest practicable mental and physical functional status in accordance with the comprehensive assessment and plan of care. (I, II, III)

58.30(1) Activities of daily living. Based on the comprehensive assessment of a resident, the facility must ensure that a resident's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrate that diminution was unavoidable. (I, II, III)

a. Activities of daily living include the resident's ability to bathe, dress and groom, transfer and ambulate, toilet, eat, and to use speech, language or other functional communication system. (I, II, III)

b. A resident shall be given appropriate treatment and services to maintain or improve his or her abilities in activities of daily living. (I, II, III)

c. A resident who is unable to carry out the activities of daily living shall receive the necessary services to maintain good nutrition, grooming and personal and oral hygiene. (I, II, III)

58.30(2) Vision and hearing. To ensure that residents receive proper treatment and assistive devices to maintain vision and hearing abilities the facility shall, if necessary, assist the resident:

a. In making appointments, (II, III) and

b. By arranging for transportation to and from the office of a practitioner specializing in the treatment of vision or hearing impairments or the office of a professional

specializing in the provision of vision or hearing assistive devices. (II, III)

58.30(3) Pressure sores. Based on the comprehensive assessment of a resident, the facility shall ensure that:

a. A resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable; (I, II, III) and

b. A resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing. (I, II, III)

58.30(4) Urinary and bowel incontinence. Based on the resident's comprehensive assessment, the facility shall ensure that:

a. A resident who is incontinent of bladder or has a catheter receives the appropriate treatment and services. (I, II, III)

b. A resident who enters the facility without an indwelling catheter is not catheterized unless the resident's clinical condition demonstrates that catheterization was necessary. (I, II, III)

c. A resident who enters the facility with normal bowel or bladder function does not develop abnormal bowel or bladder function unless the resident's clinical condition demonstrates that it was unavoidable. (I, II, III)

d. There shall be an individualized written bowel and bladder training plan for each resident when the need is identified by the assessment. (I, II, III)

58.30(5) Range of motion. Based on the comprehensive assessment of the resident, the facility shall ensure that:

a. A resident who enters the facility without a limited range of motion does not experience reduction in range of motion unless the resident's clinical condition demonstrates that a reduction in range of motion was unavoidable; (I, II, III) and

b. A resident with a limited range of motion receives appropriate treatment and services to increase range of motion to prevent further decrease in range of motion. (I, II, III)

58.30(6) Mental and psychosocial functioning. Based on the comprehensive assessment of a resident the facility shall ensure that:

a. A resident who displays mental or psychosocial adjustment difficulty receives appropriate treatment and services to correct the assessed problem; (I, II, III) and

b. A resident whose assessment did not reveal a psychosocial adjustment difficulty does not display a pattern of decreased social interaction or increased withdrawn, angry, or depressive behavior, unless the resident's clinical condition demonstrates that such a pattern was unavoidable. (I, II, III)

58.30(7) Enteral tubes. Based on the comprehensive assessment of a resident, the facility shall ensure that:

a. A resident who has been able to eat enough alone or with assistance is not fed by enteral tube unless the resident's clinical condition demonstrates that use of an enteral tube was unavoidable. (I, II, III)

b. A resident who is fed by an enteral tube receives the appropriate treatment and services to prevent aspiration pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, and nasal-pharyngeal ulcers and to restore, if possible, normal feeding function. (I, II, III)

58.30(8) Accidents. The facility shall ensure that:

a. The resident's environment remains as free of accident hazards as is possible; (I, II, III) and

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b. Each resident receives adequate supervision and assistive devices to prevent accidents; (I, II, III) and

c. Each resident receives adequate supervision to ensure against hazard from himself or herself, other people, or elements in the environment. (I, II, III)

58.30(9) Nutrition. Based on a resident's comprehensive assessment, the facility shall ensure that a resident:

a. Maintains acceptable parameters of nutritional status such as body weight and protein levels unless the resident's clinical condition demonstrates that this is not possible; (I, II, III) and

b. Receives a therapeutic diet when there is a nutritional problem. (I, II, III) Therapeutic diet means a diet ordered by a physician as part of treatment for a disease or clinical condition to eliminate or decrease certain substances in the diet (i.e., sodium), or to increase certain substances in the diet (i.e., potassium).

c. Receives when needed:

- (1) Assistance with preparation for mealtime; (II, III)
- (2) Assistance to and from meals; (II, III)
- (3) In-room meal service or tray service; (II, III)
- (4) Prompt assistance with food preparation and feeding, including total feeding if needed; (II, III)
- (5) Assistance with adaptive devices; (II, III)
- (6) Tube feeding (to be performed by a licensed nurse only). (I, II, III)

58.30(10) Hydration. The facility shall provide each resident with sufficient fluid intake needed to maintain proper hydration and health. (I, II, III)

58.30(11) Special needs. The facility shall ensure that residents receive proper treatment and care for special services provided, such as:

- a. Injections; (I, II, III)
- b. Parenteral and enteral fluids; (I, II, III)
- c. Blood transfusions; (I, II, III)
- d. Colostomy, ureterostomy or ileostomy care; (I, II, III)
- e. Tracheostomy care; (I, II, III)
- f. Tracheal suctioning; (I, II, III)
- g. Respiratory care; (I, II, III)
- h. Foot care; (I, II, III)
- i. Prostheses. (I, II, III)

58.30(12) Monitoring required. The facility shall ensure that pulse, respiration, blood pressure and weights are recorded each month unless ordered more frequently by the physician. (II, III)

58.30(13) Unnecessary drugs. Each resident's drug regimen shall be free from unnecessary drugs. The facility shall inform the physician when a resident is receiving unnecessary drugs. An unnecessary drug is any drug used:

- a. In excessive dose (including duplicate drug therapy); (I, II, III) or
- b. For excessive duration; (I, II, III) or
- c. Without adequate monitoring; (I, II, III) or
- d. Without adequate indications for use; (I, II, III) or
- e. In the presence of adverse consequences which indicate the dose should be reduced or discontinued; (I, II, III) or
- f. Any combination of the reasons above. (I, II, III)

58.30(14) Antipsychotic drugs. Based on a comprehensive assessment of a resident, the facility shall inform the physician when:

a. Residents who have not previously used antipsychotic drugs are given these drugs unless antipsychotic drug therapy is necessary to treat a specific condition as

diagnosed and documented in the clinical record; (I, II, III) and

b. Residents who use antipsychotic drugs are to receive gradual dose reductions and behavioral interventions, unless clinically contraindicated, in an effort to discontinue these drugs. (I, II, III)

58.30(15) Medication errors. The facility shall ensure that:

a. It is free of medication error rates of 5 percent or greater; (I, II, III) and

b. Residents are free of any significant medication errors; (I, II, III) and

c. The director of nursing is responsible for the supervision and direction of all personnel administering medications. (I, II, III)

481—58.31(135C) Nursing staff. The facility shall have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care. (I, II, III)

58.31(1) Sufficient staff. The facility shall provide services by sufficient numbers of licensed nurses and other nursing personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans. (I, II, III)

58.31(2) Charge nurse. The facility shall designate a licensed nurse to serve as a charge nurse on each tour of duty. (II, III)

58.31(3) Staff awake. There shall be at least two people who are capable of rendering nursing service, awake and dressed, on duty at all times.

481—58.32(135C) Registered nurse.

58.32(1) RN required. The facility shall use the services of a registered nurse for at least eight consecutive hours per day, seven days per week. (II, III)

58.32(2) RN-DON required. The facility shall designate a registered nurse to serve as the director of nursing on a full-time basis. The facility shall plan for and direct the nursing care, services, treatments, procedures, and other services in order that each resident's needs are met. (II, III)

58.32(3) DON as charge nurse. The director of nursing may serve as a charge nurse only when the facility has an average daily occupancy of 60 or fewer residents. (II, III)

481—58.33(135C) Dietary service. The facility shall provide each resident with a nourishing, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident. (I, II, III)

58.33(1) Staffing. A facility shall employ a dietitian either full-time, part-time or on a consultant basis. "Dietitian" means a person who is licensed under Iowa Code chapter 152A. (II, III)

If a dietitian is not employed full-time, the facility shall designate a person as the director of food service who receives frequent, scheduled consultation from a licensed dietitian. (III)

58.33(2) Sufficient staff. The facility shall employ sufficient support personnel competent to carry out the functions of the dietary service.

58.33(3) Nutritional adequacy. Menus shall meet the nutritional needs of residents in accordance with the recommended dietary allowances of the Food and Nutrition

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Board of the National Research Council, National Academy of Sciences.

58.33(4) Menus. Menus shall be prepared in advance and followed. Menus shall include a variety of foods prepared in various ways. (II)

58.33(5) Food. Each resident shall receive and the facility shall:

a. Provide food prepared by methods that conserve nutritive value, flavor, and appearance; (III)

b. Provide food that is palatable, attractive and at the proper temperature of 140°F or above for hot foods or 45°F or below for cold foods when served to the resident; (III)

c. Provide food prepared in a texture which meets individual needs; (I, II, III)

d. Offer substitutes of similar nutritive value to residents who refuse food served; (III)

e. Make available appropriate seasonings, condiments, napkins, utensils, and beverages. (III)

58.33(6) Therapeutic diets. Therapeutic diets and enteral feedings shall be prescribed by the attending physician. (I, II, III)

58.33(7) Frequency of meals. Each resident shall receive and the facility shall provide at least three meals daily, at regular times comparable to normal mealtimes in the community. (I, II, III)

a. There shall be no more than 14 hours between a substantial evening meal and breakfast the following day, except as provided in paragraph "c" of this subrule. (III)

b. The facility shall offer daily bedtime snacks consistent with the residents' diet orders. (III)

c. Up to 16 hours may elapse between a substantial evening meal and breakfast the following day if a resident group agrees to this meal span and a nourishing bedtime snack is served. (III)

58.33(8) Assistive devices. The facility shall provide special eating equipment and utensils for residents who need them. (II, III)

58.33(9) Sanitary conditions. Good sanitation, hygienic food handling techniques and safety shall be maintained in food service areas. (I, II, III) Each facility shall have a written and implemented safety and sanitation program. (II, III) The following chapters of the 1976 edition of the Food Service Sanitation Manual, U.S. Department of Health, Education and Welfare, Public Health Service, U.S. Government Printing Office, Washington, D.C., shall be the basis of the program. The content of this document can also be found in "Food Service Establishment Laws and Rules", pages 7 through 50, Iowa Department of Inspections and Appeals, Inspections Division, Lucas State Office Building, Des Moines, Iowa 50319.

a. Chapter 2, Food care; (exception to 2-502: Milk may be poured from a commercially filled container of not more than one-gallon capacity); (II, III)

b. Chapter 3, Personnel; (II, III)

c. Chapter 4, Equipment and utensils, Section 4-100 Materials, and Section 4-200 Design and Fabrication; (II, III)

d. Chapter 5, Cleaning, sanitation and storage of equipment and utensils; (II, III)

e. Chapter 7, Construction and maintenance of physical facilities. (II, III)

58.33(10) Food sources. The facility shall procure food from sources approved or considered satisfactory by federal, state or local authorities. The use of food from

salvaged, damaged, or unlabeled containers is prohibited. (I, II, III)

58.33(11) Food storage, preparation and distribution. The facility shall store, prepare, distribute, and serve food under sanitary conditions. The facility shall dispose of garbage and refuse in accordance with local requirements. (I, II, III)

481—58.34(135C) Physician services. An admission to the nursing facility shall be based on a physician's written order certifying that the individual being admitted requires no greater degree of nursing care than the facility is licensed to provide and is capable of providing. (II, III)

58.34(1) Physician supervision. The facility shall ensure that the medical care of each resident is supervised by a physician. (I, II, III)

58.34(2) Hospice. Professional management of a resident's care shall be the responsibility of the hospice program when:

a. The resident is terminally ill;

b. The resident has elected to receive hospice services under the federal Medicare program from a Medicare-certified hospice program; and

c. The facility and the hospice program have entered into a written agreement under which the hospice program takes full responsibility for the provisional management of hospice care. (I, II, III)

58.34(3) Physician care in absence of attending physician. Another physician shall supervise the medical care of residents when the attending physician is unavailable. (I, II, III)

58.34(4) Physician visits. The physician shall:

a. Review the resident's total program of care, including medications and treatments, at each required visit; (II, III)

b. Write, sign, and date progress notes at each visit; (III) and

c. Sign and date all orders. (III)

58.34(5) Frequency of physician visits. Residents shall be seen by their physician at least twice per year or more frequently if the resident's condition warrants. At the option of the physician, residents may be seen by a physician assistant, nurse practitioner or clinical nurse specialist. (II, III)

58.34(6) Availability of physicians for emergency care. The facility shall arrange for the provision of physician services 24 hours a day in the case of an emergency. (I, II, III)

481—58.35(135C) Specialized rehabilitative services. A facility shall arrange for rehabilitative services, such as physical therapy, speech-language therapy, occupational therapy, and mental health rehabilitative services for mental illness and mental retardation to every resident needing these services as identified by the plan of care. (II, III)

58.35(1) Specialized rehabilitative services shall be provided by qualified personnel. (II, III)

58.35(2) The facility shall require that therapists who provide services record each visit and progress. (III)

58.35(3) The facility shall assist the residents by making appointments and arranging for transportation to and from appointments for supportive devices such as prostheses, glasses, or hearing aids. (III)

481—58.36(135C) Dental services. The facility shall assist residents in obtaining routine and 24-hour emergency dental care. (II, III) The facility shall, if necessary, assist the resident:

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1. In making appointments; (III) and
2. By arranging for transportation to and from the dentist's office; (III) and

3. By referring residents with lost or damaged dentures to a dentist. (III)

58.36(1) Inform physician. The resident's physician shall be advised of dental problems which result in a change of condition and when a medication is prescribed by a dentist. (I, II, III)

58.36(2) Progress notes. The facility shall ensure that the dentist who provides services signs a progress note in the resident's record for each visit. (II, III)

481—58.37(135C) Pharmacy services. The facility shall provide routine and emergency drugs and biologicals to its residents, or obtain them under an agreement. (I, II, III)

58.37(1) Procedures. A facility shall provide pharmaceutical services (including procedures that ensure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident. (I, II, III)

58.37(2) Service consultation. The facility shall employ or obtain the services of a licensed pharmacist who:

a. Provides consultation on all aspects of the provision of pharmacy services in the facility; (II, III) and

b. Establishes a system of records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate reconciliation and determines that drug records are in order and that an account of all controlled drugs is maintained and periodically reconciled. (II)

58.37(3) Drug regimen review.

a. The drug regimen of each resident shall be reviewed at least once per month by a licensed pharmacist. (II, III)

b. The pharmacist shall report any irregularities to the attending physician and the director of nursing and these reports shall be acted upon. (I, II, III)

58.37(4) Labeling of drugs and biologicals. The facility shall ensure drugs and biologicals are labeled in accord with the Iowa board of pharmacy examiners. Labels shall include the appropriate accessory and cautionary instructions, and the expiration date if applicable. All labels on medications shall be legible. (I, II, III)

58.37(5) Storage of drugs and biologicals. In accordance with state and federal laws, the facility shall store all drugs and biologicals in locked compartments under proper temperature controls, and permit only authorized personnel to have access to the keys. (I, II, III)

a. Residents capable of taking their own medications may keep these medications in their rooms. Individually locked storage shall be provided. (I, II, III)

b. Medications for external use shall be stored separately from medications for internal use. (I, II, III)

c. Eye drops and ear drops shall be separated from each other as well as from other internal and external medications. (II, III)

d. Potent, poisonous, or caustic materials shall be stored separately from drugs. They shall be plainly labeled and stored in a specific, well-illuminated cabinet, closet, or storeroom and made accessible only to authorized persons. (I, II, III)

e. The facility shall ensure there are no expired or deteriorated drugs, drugs for which there are no current orders, and no improperly stored drugs. (II, III)

f. Drugs for each resident shall be kept or stored in the container originally dispensed by the pharmacist. (III)

g. The facility shall have a written and implemented policy for disposition of discontinued, outdated and unused drugs. (III)

58.37(6) Storage of controlled drugs. The facility shall provide separately locked, permanently affixed compartments for storage of controlled drugs listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1976 and other drugs subject to abuse, except when the facility uses a single unit package drug distribution system in which the quantity stored is minimal and a missing dose can be readily detected. (I, II, III)

58.37(7) Emergency pharmaceutical supplies container. The pharmacy provides emergency pharmaceutical supplies to the facility. The facility shall ensure that emergency pharmaceutical supplies are readily available. (I, II, III)

58.37(8) Administration of medication.

a. Medications and treatments shall be prescribed on an individual basis by a person authorized by Iowa law to prescribe. (I, II, III)

b. Prescribed medication and treatments may be administered to a resident only with a written order signed by a physician or a person authorized by Iowa law to prescribe. (I, II, III)

c. Medication and treatment orders shall be correctly implemented by qualified personnel. (I, II, III)

d. A policy shall be established by the facility in conjunction with a licensed pharmacist to govern the distribution of prescribed medications to residents who are on leave from the facility. (II, III)

481—58.38(135C) Infection control. The facility shall establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection. This program shall be in accord with Centers for Disease Control (CDC) guidelines for handwashing (1985), handling of body fluids (1987), use and disposal of needles, syringes and other sharp instruments (1987), resident care procedures (1987), and communicable disease guidelines PN 85-923401-LL (1983).

58.38(1) Infection control program. The facility must establish and implement an infection control program under which it:

a. Investigates, controls, and prevents infections in the facility; (I, II, III)

b. Decides what procedures, such as isolation, should be applied to an individual resident; (I, II, III) and

c. Maintains a record of incidents and corrective actions related to infections. (II, III)

58.38(2) Preventing spread of infection.

a. When the infection control program determines that a resident needs isolation to prevent the spread of infection, the facility must isolate the resident. (I, II, III)

b. The facility must prohibit employees with a communicable disease or infected skin lesions from direct contact with residents or their food, if direct contact will transmit the disease. (I, II, III)

c. The facility must require staff to wash their hands after each direct resident contact for which handwashing is indicated by accepted professional practice. (I, II, III)

58.38(3) Linens. Personnel must handle, store, process, and transport linens so as to prevent the spread of infection. (III)

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58.38(4) Notification of infection when body is transported. Prior to the removal of a deceased person from a facility, the funeral director or person responsible for transporting the body shall be notified by the facility staff of any special precautions that were followed by the facility having to do with the mode of transmission of a known or suspected communicable disease. (II, III)

481—58.39(135C) Physical environment. The facility shall be designed, constructed, equipped, and maintained to protect the health and safety of residents, personnel, and the public. All odors shall be kept under control by cleanliness and proper ventilation. (III)

58.39(1) Fire safety. All facilities shall meet the fire safety rules promulgated by the state fire marshal. (I, II, III)

58.39(2) Emergency power. When life support systems are used, the facility shall provide emergency electrical power with an emergency generator (as defined in NFPA 99, health care facilities) that is located on the premises. (I, II, III)

58.39(3) Sufficient equipment. The facility shall provide sufficient equipment in dining, health services, recreation, and program areas to enable staff to provide residents with needed services as required by these rules and as identified in each resident's plan of care. (II, III)

58.39(4) Safe operating condition. The facility shall maintain all essential mechanical, electrical, and patient care equipment in safe operating condition. (II, III)

58.39(5) Resident rooms. All resident rooms shall be designed in accordance with 481--Chapter 61, and equipped for nursing care, comfort, and privacy of residents. (III)

58.39(6) Furnishings in resident rooms. The facility shall provide each resident with:

a. A separate bed of proper size and height for the convenience of the resident; (III)

b. A clean, comfortable mattress which is in good repair; (III) and

c. Functional furniture appropriate to the resident's needs. (III)

58.39(7) Dining and activity area furnishings. Dining and resident activity rooms shall meet the requirements of 481--Chapter 61 and be adequately furnished. (III)

58.39(8) Water. The facility shall establish procedures to ensure that water is available to essential areas when there is a loss of normal water supply. (II, III)

58.39(9) Pest control. The facility shall maintain an effective pest control program so the facility is free of pests and rodents. (III)

481—58.40(135C) Smoking.

58.40(1) Smoking by residents considered to be careless shall be prohibited except when the resident is under direct supervision. (I, II, III)

58.40(2) Smoking is prohibited in all rooms where oxygen is being administered, or in rooms where oxygen is stored. (I, II, III)

58.40(3) Smoking shall be permitted only in posted areas. (III)

481—58.41(135C) Administration. A facility shall be administered in a manner that enables it to use its resources effectively and efficiently to attain and maintain the highest practicable physical, mental, and psychosocial well-being of each resident. (III)

58.41(1) More than one facility. An administrator may not be responsible for more than two licensed health

care facilities. When two facilities have the same administrator, a full-time assistant administrator shall be hired for each facility. (III)

58.41(2) Administrator. Each nursing facility shall have one person in charge, duly licensed under Iowa Code chapter 155, as a nursing home administrator or acting in a provisional capacity, in accordance with the laws of the state of Iowa and the rules of the Iowa board of examiners for nursing home administrators. (III)

58.41(3) Responsibility of licensee. The licensee shall:

a. Assume responsibility for the overall operation of the nursing facility; (III)

b. Be responsible for compliance with all applicable laws and with the rules of the department; (III)

c. Be responsible for the selection and direction of competent personnel to provide services for the resident care program; (III)

d. Be responsible for compliance with federal, state, and local laws, and professional standards; (III)

e. Ensure that services meet accepted standards and principles that apply to professionals providing services in a facility; (I, II, III) and

f. Ensure that the director is notified within 24 hours, by the most expeditious means available, of any accident causing major injury or death, and any fire or natural or other disaster occurring in a nursing facility. (I, II, III)

481—58.42(135C) Required training of nurse aides. Nurse aides shall successfully complete a 75-hour educational program and competency test or competency test approved by the department or have been deemed to be competent by Iowa or another state. (II, III)

58.42(1) Time limit for completion. This program shall be completed before employment or within four months of beginning employment. The nurse aide must be enrolled in the nurse aide training program upon hire by the facility. (III)

58.42(2) On-the-job training. A nurse aide shall not perform any task unsupervised without a prior demonstration of competency to a qualified nurse. This competency shall be documented by the nurse.

58.42(3) Certified medication aide qualifications. The facility may permit a medication aide to administer drugs under the general supervision of a licensed nurse. (I, II, III) To become a certified medication aide a person shall:

a. Be a certified nurse aide; (III)

b. Have been employed for at least six months, which cannot be waived, in the nursing department of the facility they are working in when they enroll in the certified medication aide course; (III)

c. Have a letter from the facility in which they have been employed for the last six months which states that the nurse aide is recommended as appropriate for the medication aide course; (III)

d. Successfully complete a state-approved medication aide course. (III)

481—58.43(135C) Performance review and in-service education. The facility shall complete a performance review of every nurse aide at least once every 12 months and shall provide regular in-service education based on the outcome of these reviews. (III) The in-service training shall:

58.43(1) Be sufficient to ensure the continuing competence of nurse aides, but no less than 12 hours per calendar year; (III)

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58.43(2) Address areas of weakness as determined in nurse aides' performance reviews and may address the special needs of residents as determined by facility staff; (III) and

58.43(3) For nurse aides providing services to individuals with cognitive impairments, also address the care of the cognitively impaired. (III)

481—58.44(135C) Laboratory and radiology services. The facility shall provide or obtain clinical laboratory and radiology services to meet the needs of the residents. The facility is responsible for the quality and timeliness of the services. (I, II, III)

58.44(1) Laboratory services. The facility shall:

a. Arrange for laboratory services only when ordered by the attending physician; (III)

b. Promptly notify the attending physician of the findings; (I, II, III)

c. Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; (III)

d. File in the resident's clinical record signed and dated reports of clinical laboratory services, which contain the name of the issuing laboratory. (III)

58.44(2) Radiology and other diagnostic services. The facility shall:

a. Arrange for radiology and other diagnostic services only when ordered by the attending physician; (I, II, III)

b. Promptly notify the attending physician of the findings; (I, II, III)

c. Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; (III) and

d. File in the resident's clinical record signed and dated reports of X-ray, and other diagnostic services. (III)

481—58.45(135C) Clinical records. The facility shall maintain clinical records on each resident in accordance with accepted professional standards and practices that are:

1. Complete; (III)

2. Accurately documented; (III)

3. Readily accessible; (III)

4. Systematically organized; (III) and

5. Current, dated, and signed. (III)

58.45(1) Required information. The following information shall be kept in a clinical record for each resident. Admission information shall include the resident's:

a. Name; (III)

b. Birth date, sex, social security number, marital status; (III) and

c. The name, address and telephone number for the:

(1) Next of kin or legal representative, (III)

(2) Person to notify in emergency, (III)

(3) Physician. (III)

58.45(2) Retention of records. Clinical records shall be retained for:

a. Five years from the date of discharge or death. If ownership of a facility changes, the records shall remain in the facility. (III)

b. Three years after a resident reaches legal age under state law. (III)

c. When a facility ceases to operate, each resident's record shall be released to the facility to which the resident is transferred. If there is no transfer, the record shall be released to the individual. (III)

58.45(3) Safeguarding records. The facility shall safeguard clinical record information against loss, destruction, or unauthorized use. (III)

58.45(4) Confidentiality. The facility shall keep confidential all information contained in the resident's records, regardless of the form or storage method of the records. (II)

481—58.46(135C) Disaster and emergency preparedness.

58.46(1) Written plans and procedures. The facility shall have detailed written plans and procedures to meet all potential emergencies and disasters, such as fire, severe weather, and missing residents. (III)

58.46(2) Training of staff. The facility shall train all employees in emergency procedures when they begin to work in the facility, periodically review the procedures with existing staff, and carry out unannounced staff drills using those procedures. (I, II, III)

481—58.47(135C) Transfer agreement. The facility shall have in effect a written transfer agreement with one or more hospitals that reasonably ensures: (III)

58.47(1) Transfer ensured. Residents will be transferred from the facility to the hospital and ensured of timely admission to the hospital when transfer is medically appropriate as determined by the attending physician. (III)

58.47(2) Exchange of information. Medical and other information needed for care and treatment of residents will be exchanged between institutions. (III)

481—58.48(135C) Admission of children with approval. Infants and children under the age of 16 shall not be admitted to a nursing facility for adults unless given prior written approval by the department. A distinct part of a nursing facility, segregated from the adult section, may be established for children, based on a program of care submitted by the licensee or applicant, which is commensurate with the needs of the residents of the nursing facility and has received the department's review and approval. (II, III)

481—58.49(135C) Personnel.

58.49(1) Prohibitions. No person under the influence of alcohol or intoxicating drugs shall be permitted to provide services in a nursing facility. (II, III)

58.49(2) Orientation for personnel. Orientation for all personnel shall be required.

a. New employees shall be instructed in at least the following:

(1) Policies and procedures, (III) and

(2) Responsibilities which relate to their position.

(III)

b. Temporary nursing personnel shall be instructed in at least the following:

(1) The usual routine in the facility during the shift or shifts the person will work; (III)

(2) Specific duties required; (III)

(3) Emergency safety procedures; (III)

(4) Layout of the facility; (III)

(5) Method used to identify residents; (III) and

(6) A means for contacting the director of nursing or another licensed nurse employed by the facility. (III)

58.49(3) Personnel records. A personnel record shall be kept and made available for review by the department. (III)

58.49(4) Continuing education requirements.

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a. All certified medication aides shall attend six contact hours of continuing education programs per year. These shall be department-approved and shall relate to medication or medication administration and training needs identified by the medication aide's annual evaluation. (III)

b. If a facility uses restraints, the facility shall provide ongoing education programs in the use of restraints. The correct use of restraining devices shall be taught before anyone will be allowed to apply restraints or monitor their use.

481—58.50(135C) Care review committee. Each facility shall have a care review committee, in accordance with Iowa Code section 135C.25, which shall operate within the scope of the rules for care review committees promulgated by the department of elder affairs. (II)

58.50(1) Department interaction with care review committee in complaint investigations.

a. The department may refer complaints to the care review committee for initial evaluations and investigation by the committee pursuant to rules promulgated by the department of elder affairs.

b. When the department investigates a complaint, upon conclusion of its investigation, it shall notify the care review committee and the department of elder affairs of its findings, including any citations and fines issued.

c. Results of all complaint investigations addressed by the care review committee shall be forwarded to the department within ten days of completion of the investigation.

58.50(2) Monitoring correction. The care review committee shall, upon department request, be responsible for monitoring correction of substantiated complaints.

58.50(3) Family member information. When requested, names, addresses and telephone numbers of family members shall be given to the care review committee, unless the family refuses. The facility shall provide a form on which a family member may indicate refusal to have their name, address or telephone number given to the care review committee. (II)

This rule is intended to implement Iowa Code section 135C.25.

481—58.51(135C) License. Each facility shall obtain a license from the department. (II, III)

58.51(1) Posting. The license shall be current and be posted in each facility so the public can easily see it. (III)

58.51(2) Valid for premises and person. The license is valid for no more than the premises and person named on the license and is not transferrable. (III)

58.51(3) Valid for number of beds. The license is valid for no more than the number of beds approved by the health facilities council and the department. (III)

58.51(4) Not currently licensed as a nursing facility. To obtain a nursing facility license for a facility not currently licensed as a nursing facility, the applicant shall:

a. Meet all of the requirements contained in IAC 481—Chapters 58 and 61.

b. Submit a letter of intent and a resumé of care which is a written description of programs and services to be provided. Directions for preparing a resumé of care can be obtained by writing the department.

c. Submit a floor plan on 8 1/2 × 11-inch paper which accurately reflects the current status of the building. The floor plan shall show:

(1) Room areas in proportion;

(2) Room dimensions;

(3) Numbers for all bedrooms;

(4) Bathrooms;

(5) Window and door locations;

(6) The use of each room; and

(7) Number of beds per bedroom.

d. Submit a photograph of the front and side elevations of the facility.

e. Submit the license fee required by statute.

f. Comply with state and local statutes and ordinances applicable at the time of licensure.

g. Have on record a certificate signed by the state fire marshal or deputy state fire marshal which states that fire safety requirements have been met.

h. Submit a report of the most recent approved water test as required by the department of natural resources, if the water supply is from a private source.

58.51(5) To renew a license. To renew a license, the licensee shall:

a. Meet requirements set out in subrule 58.51(4), paragraphs "e," "g," and "h";

b. Submit a description of any proposed changes in the program and the services to be provided; and

c. Submit an application to the department 30 days before the renewal date.

58.51(6) To obtain a distinct part license. To obtain a separate license for a distinct part of a facility, the distinct part shall:

a. Be clearly identifiable;

b. Contain contiguous rooms in a separate wing or floor of the facility;

c. Serve only residents who require no higher category of care and services than the facility is licensed to provide within that part; (II, III)

d. Meet all requirements pertaining to the category for which a license is being sought; (II, III)

e. Have separately assigned nursing staff for each category of care, or total staffing which must meet the requirements for the highest category of care the facility is licensed to provide; (II, III) and

f. Be allowed to have some services such as rehabilitation, management, building maintenance, laundry, and food service in common.

481—58.52(135C) Variances. A variance from these rules may be granted by the director of the department. The following criteria shall be met.

58.52(1) To request a variance. To request a variance the licensee shall:

a. Apply in writing;

b. Cite the rule or rules from which a variance is desired;

c. State why compliance with the rule or rules cannot be accomplished;

d. Explain alternate arrangements or circumstances which justify the variance; and

e. Demonstrate that the requested variance will not endanger the health, safety, or welfare of any resident.

58.52(2) Director's responsibility. Upon receipt of a request for a variance, the director shall:

a. Evaluate the alternate arrangements or circumstances which are presented;

b. Study the probable effect of the requested variance on the health, safety, or welfare of the residents; and

c. Consult with the applicant if additional information is required.

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58.52(3) Time allowed for approval. Based on these factors, the variance shall be either granted or denied within 45 days of receipt of the request. The approved variance shall remain in effect as long as alternate arrangements or circumstances continue to maintain the health, welfare, and safety of the residents, or the variance is revoked at the discretion of the director.

481—58.53(135C) Change of ownership or management. When a facility is to be sold, transferred, assigned, or leased, the licensee shall notify the department of the pending action. (III)

58.53(1) Responsibility to inform the department. The licensee shall inform the department of the name and address of the purchaser, transferee, assignee, or lessee at least 30 days before the action is to be taken; (III) and

58.53(2) Submission of authorization to release information. The licensee shall submit a written authorization for the department to release requested information, except that which identifies individual residents, to the prospective purchaser, transferee, assignee, or lessee. (III)

58.53(3) Release of information by the department. When a facility is to be sold, transferred, assigned, or leased, the department shall, with authorization of the licensee, release requested information regarding the facility.

a. Information released shall not include identification of individual residents; and

b. The purchaser may be obligated to pay for copies of documents.

58.53(4) To obtain a license when ownership of licensed facility changes. To obtain a license when the ownership of a currently licensed facility changes, the new applicant shall:

a. Meet all requirements of subrule 58.51(4), paragraphs "a" through "h"; and

b. Submit application to the department 30 days prior to the planned change of ownership.

481—58.54(135C) Contracts. Each contract shall:

58.54(1) State the base rate per day or per month, the services included, and the method of payment; (III)

58.54(2) Contain a complete schedule of all offered services for which a fee may be charged in addition to the base rate. Furthermore, the contract shall: (III)

a. Stipulate that no further additional fees shall be charged for items not contained in the contract; (III)

b. State the method of payment of additional charges; (III)

c. Contain an explanation of the method of assessment of additional charges and an explanation of the method of periodic reassessment, if any, resulting in changing additional charges; (III)

d. State that additional fees may be charged to the resident for nonprescription drugs, other personal supplies, and services by a barber, beautician, etc.; (III)

58.54(3) Contain an itemized list of those services, with the specific fee the resident will be charged and method of payment, as related to his or her current condition, based on the nursing assessment at the time of admission, which is determined in consultation with the administrator; (III)

58.54(4) Include the total fee to be charged initially to the specific resident; (III)

58.54(5) State the conditions whereby the facility may make adjustments to their overall fees for resident care as

a result of changing costs. (III) Furthermore, the contract shall provide that the facility shall give:

a. Written notification to the resident, or the resident's legal representative when appropriate, of changes in the overall rates of both base and additional charges at least 30 days prior to the effective date of the changes; (III)

b. Notification to the resident, or the resident's legal representative when appropriate, of changes in additional charges, based on a change in the resident's condition. Notification must occur prior to the date the revised additional charges begin. If notification is given orally, subsequent written notification must also be given within a reasonable time, not to exceed one week, listing specifically the adjustments made; (III)

58.54(6) State the terms of agreement in regard to refund of all advance payments in the event of transfer, death, voluntary or involuntary discharge; (III)

58.54(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.

58.54(8) State the conditions under which the involuntary discharge or transfer of a resident would be effected; (III)

58.54(9) State the conditions of voluntary discharge or transfer; (III)

58.54(10) Set forth any other matters deemed appropriate by the parties to the contract. No contract or any provision thereof shall be drawn or construed so as to relieve any nursing facility of any requirement or obligation imposed upon it by this chapter or any standards or rules in force pursuant to this chapter; (III)

58.54(11) Each party shall receive a copy of the signed contract. (III)

481—58.55(135C) County care facilities. In addition to licensure rules in this chapter, county care facilities licensed as nursing facilities shall also comply with department of human services rules, Iowa Administrative Code 441—Chapter 37. Violation of any standard established by the department of human services is a Class II violation pursuant to 481—56.2(135C).

481—58.56(135C) Special unit or facility dedicated to the care of persons with chronic confusion or a dementing illness (CCDI unit or facility). A nursing facility which chooses to provide care, in a distinct part, for residents with chronic confusion or a dementing illness shall obtain a license for a CCDI unit or facility. In the case of a distinct part, this license will be in addition to its nursing facility license. (II, III)

58.56(1) License to state number of beds. The unit or facility shall not contain more beds than the number of beds stated on the license. (III)

58.56(2) Application submitted on a form. Application for a CCDI license shall be submitted on a form provided by the department. (III)

58.56(3) Plans to modify physical environment. Plans to modify the physical environment shall be submitted to the department and approved prior to the beginning of construction. The plans shall be reviewed based on the requirements of 481—Chapter 61. (III)

58.56(4) Statement of philosophy. A statement of philosophy shall be developed for each unit or facility which states the beliefs upon which decisions will be

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made regarding the CCDI unit or facility. Objectives shall be developed for each CCDI unit or facility as a whole. The objectives shall be stated in terms of expected results. (II, III)

58.56(5) Resumé of program of care. A resumé of the program of care shall be submitted to the department for approval at least 60 days before a separate CCDI unit or facility is opened. A new resumé of the program of care shall be submitted when services are substantially changed. (II, III)

The resumé of the program of care shall:

- a. Describe the population to be served; (II, III)
- b. State philosophy and objectives; (II, III)
- c. List admission and discharge criteria; (II, III)
- d. Include a copy of the floor plan; (II, III)
- e. List the titles of policies and procedures developed for the unit or facility; (II, III)
- f. Propose a staffing pattern; (II, III)
- g. Set out a plan for specialized staff training; (II, III)
- h. State visitor, volunteer, and safety policies; (II, III)
- i. Describe programs for activities, social services and families; (II, III) and
- j. Describe the interdisciplinary care planning team. (II, III)

58.56(6) Policies and procedures. Separate written policies and procedures shall be implemented in each CCDI unit or facility. There shall be:

a. Admission and discharge policies and procedures which state the criteria to be used to admit residents and the evaluation process which will be used. These policies shall require a statement from the attending physician agreeing to the placement before a resident can be moved into a CCDI unit or facility. (II, III)

b. Safety policies and procedures which state the actions to be taken by staff in the event of a fire, natural disaster, emergency medical, or catastrophic event. Safety procedures shall also explain steps to be taken when a resident is discovered to be missing from the unit or facility, and when hazardous cleaning materials or potentially dangerous mechanical equipment is being used in the unit or facility. The facility shall identify its method of security for the unit or facility and the manner in which the effectiveness of the security system will be monitored. (II, III)

c. Program and service policies and procedures which explain programs and services offered in the unit or facility including the rationale. (III)

d. Policies and procedures concerning staff which state minimum numbers, types and qualifications of staff in the unit or facility. (II, III)

e. Policies about visiting which suggest times and ensure the residents' rights to free access to visitors. (II, III)

f. Quality assurance policies and procedures which list the process and criteria which will be used to monitor and to respond to risks specific to the residents. This shall include, but not be limited to, drug use, restraint use, infections, incidents and acute behavioral events. (II, III)

58.56(7) Preadmission assessment. Preadmission assessment of physical, mental, social, and behavioral status shall be completed to determine whether the applicant meets admission criteria. This assessment shall be completed by a registered nurse and a staff social worker or social work consultant and shall become part of the permanent record upon admission of the resident. (II, III)

58.56(8) Training of staff. All staff working in a CCDI unit or facility shall have training appropriate to the needs of the residents. (II, III)

a. Upon assignment to the unit or facility, everyone working in the unit or facility shall be oriented to the needs of people with chronic confusion or dementing illnesses. They shall have special training appropriate to their job description within 30 days of assignment to the unit or facility. (II, III) The orientation shall be at least six hours. The following topics shall be covered:

- (1) Explanation of the disease or disorder; (II, III)
- (2) Symptoms and behaviors of memory impaired people; (II, III)
- (3) Progression of the disease; (II, III)
- (4) Communication with CCDI residents; (II, III)
- (5) Adjustment to residency in the unit or facility by the CCDI residents and their families; (II, III)
- (6) Inappropriate and problem behavior of CCDI unit or facility residents and how to deal with it; (II, III)
- (7) Activities of daily living for CCDI residents; (II, III)
- (8) Handling combative behavior; (II, III) and
- (9) Stress reduction for staff and residents. (II, III)

b. Licensed nurses, certified aides, certified medication aides, social services personnel, housekeeping and activity personnel working on the unit or in the facility shall have a minimum of six hours of in-service training annually. This training shall be related to the needs of CCDI residents and training needs identified by nurse aides' annual evaluations. The six-hour training shall count toward required 12 hours of annual in-service training. (II, III)

58.56(9) At least one nursing staff person on unit. There shall be at least one nursing staff person on a CCDI unit at all times. (I, II, III)

58.56(10) License may be revoked separately. The CCDI unit or facility license may be revoked, suspended, or denied pursuant to Iowa Code chapter 135C and Iowa Administrative Code 481—Chapter 50.

This rule is intended to implement 1990 Iowa Acts, chapter 1016.

481—58.57(135C) Another business or activity in a facility. Another business or activity shall not be carried on in a nursing facility or in the same physical structure with a nursing facility unless:

1. The business or activity is under the control of and is directly related to and incidental to the operation of the nursing facility; or

2. The business or activity is approved by the department and the state fire marshal. (I, II, III)

58.57(1) The following factors will be considered by the department in determining whether a business or activity will interfere with the use of the facility by residents, interfere with services provided to residents, or be disturbing to residents:

- a. Health and safety risks for residents;
- b. Compatibility of the proposed business or activity with the facility program;
- c. Noise created by the proposed business or activity;
- d. Odors created by the proposed business or activity;
- e. Use of entrances and exits for the business or activity in regard to safety and disturbance of residents and interference with delivery of services;
- f. Use of the facility's corridors or rooms as thoroughfares to the business or activity in regard to safety

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

and disturbance of residents and interference with delivery of services;

- g. Proposed staffing for the business or activity;
- h. Sharing of services and staff between the proposed business or activity and the facility;
- i. Facility layout and design; and
- j. Parking area utilized by the business or activity.

58.57(2) Approval of the state fire marshal shall be obtained before approval of the department will be considered.

58.57(3) A business or activity conducted in a nursing facility or in the same physical structure as a nursing facility shall not reduce space, services or staff available to residents below minimums required in these rules and 481—Chapter 61. (I, II, III)

These rules are intended to implement Iowa Code sections 10A.202, 10A.402, 135C.6(1), 135C.14, 135C.14(3), 135C.14(5), 135C.14(8), 135C.25, 135C.32, 135C.36 and 227.4 and 1990 Iowa Acts, chapter 1016.

ARC 4250A**PERSONNEL DEPARTMENT[581]****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 97B.4, the Iowa Department of Personnel proposes to amend Chapter 21, "Iowa Public Employees' Retirement System," Iowa Administrative Code.

Revisions to Chapter 21 provide the following:

1. Change the time during which IPERS coverage decisions may be made.
2. Change the quorum of the IPERS Investment Board.
3. Implement the State's policy with respect to investments in South Africa.

Interested persons may submit written comments on these proposed amendments through October 5, 1993, to the Assistant to the Director, Iowa Department of Personnel, Grimes State Office Building, Des Moines, Iowa 50319-0150.

There will be a public hearing on Wednesday, October 6, 1993, at 10 a.m. in the Director's Conference Room, Grimes State Office Building, East 14th Street at Grand Avenue, Des Moines, Iowa. Persons who wish to make oral presentations at the public hearing must contact the Assistant to the Director by 4:30 p.m. at least one day prior to the date of the public hearing in order to be scheduled for an appearance.

These amendments are intended to implement Iowa Code chapter 97B.

ITEM 1. Amend paragraph **21.1(5)"f"** as follows:

f. Quorum. ~~Six~~ Five members eligible to vote shall constitute a quorum. A simple majority vote of the members present shall be the vote of the board.

ITEM 2. Amend paragraph **21.5(1)"c"** as follows:

c. *Effective July 1, 1993, Employees employees* who are allowed by law or rule to elect coverage may exercise this option ~~within one year of~~ *at any time after* commencing permanent covered employment. Such elections become effective when approved by IPERS and shall not be applied retroactively. This ~~subrule paragraph~~ shall not apply to members of the general assembly.

ITEM 3. Add new rule 581—21.25(97B) as follows:

581—21.25(97B) South Africa restrictions.

1. Trust fund moneys shall not be invested in violation of Iowa Code chapter 12A. Funds shall not be invested in companies that are included on the treasurer of state's list of unacceptable companies.

2. Companies placed on the treasurer of state's list of unacceptable companies may present evidence of eligibility to the treasurer of state's office pursuant to Iowa Code subsection 12A.5(2) and IAC 781—11.8(12A).

3. Any company found by the treasurer of state to be guilty of knowingly filing false or misleading information with the treasurer of state in order to deceive the treasurer of state and thereby gain a change in the status of a company shall pay \$5,000 to the state general fund for each such finding.

This rule is intended to implement Iowa Code chapter 97B.

ARC 4268A**REVENUE AND FINANCE DEPARTMENT[701]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 16, "Taxable Sales," and Chapter 17, "Exempt Sales," Iowa Administrative Code.

The proposed amendments provide implementation of Iowa Code section 422.43(1) as amended by 1993 Iowa Acts, Senate File 410, regarding sales tax on entry fees to amusements and Iowa Code section 422.45(3) as amended by 1993 Iowa Acts, Senate File 410, regarding sales tax on educational, religious or charitable activities when the entire proceeds are not expended for educational, religious or charitable purposes. In addition, rules 701—16.27(422), 701—16.28(422) and 701—16.31(422) are rescinded and the substance of these rules has been incorporated into one rule 701—16.26(422) which provides a more compact and useful rule.

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

The Department has determined the proposed amendments will not have an impact on small business as defined in Iowa Code section 17A.31(1).

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

Any interested person may make written suggestions or comments on these proposed amendments on or before October 8, 1993. Such written comments should be directed to the Policy Section, Technical Services Division, Iowa Department of Revenue and Finance, Hoover State Office Building, Post Office Box 10457, Des Moines, Iowa 50306.

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

Requests for a public hearing must be received by October 1, 1993.

These amendments are intended to implement Iowa Code section 422.45(3) as amended by 1993 Iowa Acts, Senate File 410.

The following amendments are proposed.

ITEM 1. Rescind rule **701—16.26(422)** and insert the following **new** rule in lieu thereof:

701—16.26(422) Admissions to amusements, athletic events, commercial amusement enterprises, fairs, and games.

16.26(1) Taxable admissions. The gross receipts from amusements of every kind and character and from games of every kind and character shall be taxable, unless exempt under rule 16.26(422), 16.39(422) or 17.1(422).

a. Taxable amusement shall include but not be limited to the following:

- (1) Fortune telling, fortune tellers, and psychics.
- (2) Concessions at a fair, carnival, or like place when the charge is made or a voluntary contribution taken by the person operating the concession.
- (3) Games of skill, games of chance, raffles, and bingo.
- (4) Activities operated by private entities.
- (5) Admissions to a fair not operated by a county or city.
- (6) Athletic events occurring in Iowa sponsored by educational institutions except when sponsored by elementary and secondary educational institutions.

b. Tax shall apply to both legal and illegal amusements. The collection of tax or the issuance of a permit shall not be construed to condone or legalize any games of skill or chance or slot-operated device prohibited by law.

c. Gross receipts shall include all money taken in by the operator of any amusement, game, or device in the state of Iowa.

16.26(2) Nontaxable amusements. The following is a nonexclusive list of amusements, the gross receipts which are exempt from sales tax:

- a. Amusements, fairs, and athletic events of elementary and secondary educational institutions.
- b. Certain fees paid to a city or county for participating in an athletic sport. See rule 701—18.39(422,423).
- c. Admissions to a fair operated by a county or a city.

16.26(3) Fees for participation in games or other amusements.

Beginning July 1, 1993, an entry fee at a place of amusement, fair, or athletic event is not subject to tax when the sales of tickets or admission charges for observing the activity are taxable. If there is no admission but only an entry fee, the entry fee is subject to sales tax whether or not the entry fee is used for prizes. A fee

shall mean and include, but not be limited to, entry fees, registration fees, or other charges made by the operator or sponsor of a game or other form of amusement for the right to participate in such game or amusement. Game or other form of amusement shall mean and include, but not be limited to, such events as golf tournaments, bowling tournaments, car races, motorcycle races, bridge tournaments, rodeos, animal shows, fishing contests, balloon races, and trap shoots.

Prior to July 1, 1993, fees which are specifically designated as prize money, whether or not paid to the operator or sponsor of the game or other form of amusement, and which are in fact returned to the participants in the form of cash for merchandise prizes, are not subject to tax if the amount or percentage designated as prize money is separately stated to the participant at the time the participation fee is established and if sales or use tax is paid on the merchandise prizes to be distributed to the participants. If the amount designated as prize money is not separately stated to the participant, the tax shall apply to the total fee, even though some of the fee may be used for prizes. The tax applies whether the fee is to cover a single event or numerous events.

Educational, religious, and charitable organizations may be exempt from the tax on the receipts from the fees charged for participation in any game or other form of amusement if exempt pursuant to Iowa Code section 422.45(3) and rule 701—17.1(422).

This rule is intended to implement Iowa Code sections 422.42, 422.43, and 422.45(3) as amended by 1993 Iowa Acts, Senate File 410.

ITEM 2. Rescind rules **701—16.27(422)**, **701—16.28(422)** and **701—16.31(422)**.

ITEM 3. Amend subrule **17.1(2)** by adding the following **new** unnumbered paragraphs:

For sales made on or after July 1, 1993, an exemption from sales tax shall be allowed even though the entire proceeds are not used for educational, religious, or charitable purposes. The exemption shall apply only to that portion of the proceeds used for educational, religious, or charitable purposes.

At the time of selling event a presumption is made that sales tax will not be charged and collected from the consumer on the property or service sold. This particular exemption is dependent upon how the entire proceeds from the sale are expended, which follows the selling event. If after the event a portion of the proceeds are expended for a noneducational, nonreligious, or noncharitable purpose, tax is due on that portion of the proceeds in the quarterly period in which they were expended.

ITEM 4. Amend rule **701—17.1(422,423)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 422.45(3), as amended by 1993 Iowa Acts, Senate File 410, 422.45(5), 422.45(8), and 423.1.

ARC 4264A

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.

Pursuant to Iowa Code sections 17A.4, 476.2, and 476.6(16), the Utilities Board (Board) gives notice that on August 26, 1993, the Board issued an order in Docket No. RMU-93-9, In Re: Clean Air Act Amendments—Allowance Transactions, "Order Commencing Rule Making," to consider the adoption of amendments to 199 IAC 20.1, 20.9, 20.13, and 20.17. The proposed amendments address the rate treatment to be accorded allowance transactions established as part of the Clean Air Act Amendments of 1990 (CAAA).

Title IV of the CAAA calls for a phased-in reduction in utility emissions of sulfur dioxide (SO₂). The resulting level of emissions is permanent, meaning that all new generating units cannot emit any SO₂ unless the owner acquires emissions, in the form of emission allowances, from another polluting source or the Environmental Protection Agency (EPA). An emission allowance is essentially an EPA-issued license to emit one annual ton of SO₂. Once issued, allowances can be used to cover the source's annual emissions, "banked" by the source to use in future years, or sold. This rule making addresses the rate-making treatment of revenues generated through the sale or the costs associated with the purchase of these allowances.

The rules propose that allowance expenses incurred for compliance with the CAAA be passed through to ratepayers through the existing energy adjustment clause (EAC) using a new tracking mechanism. The Board proposes this method of rate recovery for several reasons. The allowances are required for use of any sulfur-bearing fuel and are a cost of using that fuel. Revenue adjustment from the sale of freed-up allowances will flow through the EAC to offset the compliance costs related to fuel switching. Recovery through the EAC will help offset the risk associated with an uncertain market and place allowance transactions on a closer footing with other compliance options. Finally, this recovery is the only incentive offered for increasing market liquidity.

Both gains and losses from the transactions will be passed through to ratepayers through the EAC. Gains or losses are defined as the difference between the weighted average cost of inventoried allowances and the sale price. The prudence of allowance transactions will be evaluated in the annual electric energy supply and cost review held pursuant to Iowa Code section 476.6(16) to review procurement and contracting practices. The specific filing requirements are outlined in the rules.

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," all interested persons may file written comments on the proposed new rules no later than October 8, 1993, by filing an original and ten copies of the comments substantially complying with the form prescribed in 199 IAC

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 Utilities Board, Lucas State Office Building, Des Moines, Iowa 50319.

An oral presentation is scheduled for 10 a.m., October 20, 1993, in the Utilities Board's First Floor Hearing Room, Lucas State Office Building, Des Moines, Iowa. Pursuant to 199 IAC 3.7(17A,474), all interested persons may participate in this proceeding. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

These rules are intended to implement Iowa Code sections 476.2 and 476.6(16).

The following amendments are proposed.

ITEM 1. Amend subrule 20.1(3) by adding the following new definition in alphabetical order:

"Compliance plan" means the document submitted for an affected source to the Environmental Protection Agency which specifies the methods by which each affected unit at the source will meet the applicable emissions limitation and emissions reduction requirements.

ITEM 2. Amend subrule 20.9(2), paragraph "b," as follows:

b. The estimated energy cost (EC₀ + EC₁) shall be the estimated cost associated with EQ₀ and EQ₁ determined as the cost of:

(1) Fossil and nuclear fuel consumed in the utility's own plants; and the utility's share of fossil and nuclear fuel consumed in jointly owned or leased plants. Fossil fuel shall include natural gas used for electric generation and the cost of fossil fuel transferred from account 151 to account 501 or 547 of the Uniform System of Accounts for Electric Utilities. Nuclear fuel shall be that shown in account 518 of the Uniform System of Accounts except that if account 518 contains any expense for fossil fuel which has already been included in the cost of fossil fuel, it shall be deducted from the account. (Paragraph C of account 518 includes the cost of other fuels used for ancillary steam facilities).

(2) The cost of steam purchased, or transferred from another department of the utility or from others under a joint facility operating agreement, for use in prime movers producing electric energy (accounts 503 and 521).

(3) A deduction shall be made of the expenses of producing steam chargeable to others, to other utility departments under a joint operating agreement; or ~~for~~ to other electric accounts outside the steam generation group of accounts (accounts 504 and 522).

(4) The cost of water used for hydraulic power generation. Water cost shall be limited to items of account 536 of the Uniform System of Accounts. For pumped storage projects the energy cost of pumping is included. Pumping energy cost shall be determined from the applicable costs of subparagraphs of paragraph 20.9(2)"b."

(5) The energy costs paid for energy purchased under arrangements or contracts for firm power, operational control energy, outage energy, participation power, peaking power, and economy energy, as entered into account 555 of the Uniform System of Accounts, less the energy revenues to be recovered from corresponding sales, as entered in account 447 of the Uniform System of Accounts.

UTILITIES DIVISION[199](cont'd)

(6) Purchases of energy and capacity from qualifying alternate energy production facilities and qualifying small hydro facilities, at rates required under rule 15.12(476).

(7) *The weighted average cost of inventoried allowances used in generating electricity.*

(8) *The gains and losses from allowance sales occurring during the month.*

ITEM 3. Amend subrule 20.9(2) by adding the following new paragraph "e" and relettering existing paragraph "e" as "f":

e. A rate-regulated utility desiring to collect expensed allowance costs and the gains and losses from allowance transactions through the energy adjustment must file with the board monthly reports including:

(1) The number and weighted average unit cost of allowances used during the month to offset sulfur dioxide emissions from the utility's affected units;

(2) The number and unit price of allowances purchased during the month;

(3) The number and unit price of allowances sold during the month;

(4) The weighted average unit cost of allowances remaining in inventory;

(5) The dollar amount of any gain from an allowance sale occurring during the month;

(6) The dollar amount of any loss from an allowance sale occurring during the month; and

(7) Certifiable documentation of any gain or loss from an allowance sale occurring during the month.

ITEM 4. Amend subrule 20.13(1) by amending existing paragraphs "d," "e," "f," and "g" and adding new paragraphs "d," "g," and "j."

d. *Allowance contracts and arrangements.* A utility's annual procurement plan shall include detailed summaries of the following types of contracts and arrangements:

(1) *All contracts and arrangements for purchasing or selling allowances entered into or exercised during the previous 12-month period, and all contracts or arrangements which will be entered into or exercised by the utility during the prospective 12-month period.*

(2) *All allowance futures contracts entered into or exercised during the previous 12-month period or which will be entered into or exercised by the utility during the prospective 12-month period.*

(3) *A list of contracts which are subject to renegotiation, extension, or termination within five years.*

(4) *Annual updates to any price adjustment affecting any of the filed contracts or arrangements.*

d. e. Other contract offers. The procurement plan shall include a list and description of those types of contracts and arrangements listed in subrule 20.13(1)"c" and "d" offered to the utility during the previous ~~twelve~~ (12)-month period into which the utility did not enter. In addition, the procurement plan shall include a list of those types of contracts and arrangements listed in subrule 20.13(1)"c" and "d" which were offered to the utility for the prospective ~~twelve~~ (12)-month period and into which the utility did not enter.

e. f. Studies or investigation reports. Initial procurement plans shall include all studies or investigation reports considered by the utility in deciding whether to enter into any of those types of contracts or arrangements listed in subrule 20.13(1)"c," ~~and~~ "d," and "e" in the previous

~~twelve~~ (12) months. In addition, the initial and subsequent procurement plans shall include all studies or investigation reports which have been considered by the utility in deciding whether to enter into any of those types of contracts or arrangements listed in subrule 20.13(1) "c," ~~and~~ "d," and "e" which will be exercised or entered into during the prospective ~~twelve~~ (12)-month period.

g. *Price hedge justification.* *The procurement plan shall justify purchasing allowance futures contracts as a hedge against future price changes in the market rather than for speculation.*

f. h. Actual and projected costs. The procurement plan shall include an accounting of the actual costs incurred in the purchase and transportation of fuel *and the purchase of allowances* for use in generating electricity associated with each contract or arrangement filed in accordance with subrule 20.13(1)"c" and "d" for the previous ~~twelve~~ (12)-month period.

The procurement plan also shall include an accounting of all costs projected to be incurred by the utility in the purchase and transportation of fuel *and the purchase of allowances* for use in generating electricity associated with each contract or arrangement filed in accordance with subrule 20.13(1)"c" and "d" in the prospective ~~twelve~~ (12)-month period.

If applicable, the reporting of transportation costs in the procurement plan shall include all known liabilities, including all unit train costs.

g. i. Costs directly related to the purchase of fuel. The utility shall provide a list and description of all other costs directly related to the purchase of fuels for use in generating electricity not required to be reported by paragraph "f h."

j. *Compliance plans.* *Beginning with the 1993 procurement plan, each utility shall file its compliance plan as submitted to the EPA. Revisions to the compliance plan shall be filed with each subsequent procurement plan.*

h. k. Evidence submitted. Each utility shall submit all factual evidence and written argument in support of its evaluation of the reasonableness and prudence of the utility's procurement practice decisions in the manner described in its procurement plan. The utility shall file data sufficient to forecast fuel consumption at each generating unit or power plant for the prospective ~~twelve~~ (12)-month period. The board may require the submission of machine-readable data for selected computer codes or models.

ITEM 5. Amend subrule 20.13(2) as follows:

20.13(2) Annual review proceeding. The board shall annually conduct a proceeding to evaluate the reasonableness and prudence of a rate-regulated utility's procurement practices. *The prudence review of allowance transactions and accompanying compliance plans shall be determined on information available at the time the options or plans were developed.* The board shall docket the matter as a contested case within ~~thirty~~ (30) days of the utility's filing of its procurement plan in accordance with subrule 20.13(1).

ITEM 6. Amend rule 199—20.17(476) by adding the following new subrules and renumbering existing subrules accordingly.

20.17(8) Expense recognition and recovery of allowance costs.

UTILITIES DIVISION[199](cont'd)

a. Expense recognition. Electric utilities shall charge allowances (including fractional amounts) to expense in the month in which related sulfur dioxide emissions occur.

b. Expense recovery. The expense associated with allowances used for compliance shall be passed through the energy adjustment as specified in rule 20.9(476).

c. Allowance inventory shortage. If a utility emits more sulfur dioxide in a month than it has allowances in inventory, the utility shall pass the estimated cost of acquiring the needed allowances through the energy adjustment. When the needed allowances are acquired, any difference between the estimated and actual cost of the allowances shall be passed through the energy adjustment as specified in rule 20.9(476).

20.17(9) Gains/losses from allowance transactions. The gains and losses from allowance transactions shall be

passed through the energy adjustment as specified in rule 20.9(476).

20.17(13) Prudence of allowance transactions. The prudence of allowance transactions shall be determined by the board in the annual electric energy supply and cost review. The prudence review of allowance transactions and accompanying compliance plans shall be based on information available at the time the options or plans were developed. Costs recovered from ratepayers through the energy adjustment that are deemed imprudent by the board shall be refunded with interest to ratepayers through the energy adjustment as specified in rule 20.9(476).

ITEM 7. Amend subrule **20.17(7)** by adding new paragraph "c":

c. Allowances transferred from a utility to an affiliated utility. Allowances shall be transferred at fair market value.

ARC 4254A

ECONOMIC DEVELOPMENT,
IOWA DEPARTMENT OF[261]

Adopted and Filed Emergency

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

On August 19, 1993, the Iowa Department of Economic Development Board adopted these amendments.

The emergency adopted and implemented amendments provide the establishment and operation of the Flood Recovery Fund under the Community Development Block Grant Nonentitlement Program. These amendments outline the parameters of the program as well as application and review procedures.

In accordance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary, impracticable, and contrary to the public interest. The amendments make federal resources available as soon as possible to address the pressing needs created by flooding.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment, 35 days after publication, should be waived and the amendments made effective on August 20, 1993, upon filing with the Administrative Rules Coordinator. The Department finds that the amendments confer a benefit by making federal resources available in the most timely manner possible to local governments in Iowa.

These amendments are also published herein as Notice of Intended Action, **ARC 4253A**.

These amendments became effective on August 20, 1993.

These amendments are intended to implement Iowa Code section 15.108.

The following amendments are adopted.

ITEM 1. Amend rule 261—23.6(15) by adding a **new** subrule 23.6(8) and renumbering accordingly:

23.6(8) Use of funds returned or recaptured from the flood recovery fund. Any funds returned or recaptured from grants out of the flood recovery fund will be returned to the program component funding category from which originally allocated. All supplemental funding received from HUD will remain in the flood recovery fund until expended.

ITEM 2. Amend 261—Chapter 23 by adding the following **new** rule:

261—23.16(15) Flood recovery fund.

23.16(1) Purpose. The flood recovery fund is reserved for communities which are experiencing an imminent threat to public health, safety or welfare which necessitates prompt corrective action.

23.16(2) Source of funds. The flood recovery fund will be comprised of the following sources of funds, to the extent they are available: FY 93 imminent threat contingency fund, supplemental appropriation from the U.S. Department of Housing and Urban Development for flood disaster relief efforts, voluntarily redirected funds from existing grantees, voluntarily deobligated funding from existing grantees, unobligated funds redirected at the

discretion of the director of IDED, and interim float awards from unexpended block grant commitments.

23.16(3) Restrictions on applicants.

a. No local effort is required. However, infusion of other local, state or federal resources may be necessary to complete a project.

b. All projects must be otherwise eligible under the CDBG program as described in 261—23.4(15) and be the direct result of the flooding disaster.

23.16(4) Application procedures. Communities in need of these funds must submit a written request to the Flood Recovery Fund, Division of Community and Rural Development, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309. The request must include a description of the community's problem, the amount of funding requested, projected use of funds, and why the problem cannot be remedied through normal CDBG funding procedures.

Upon receipt of a request for imminent threat funding, IDED will make a determination as to whether the community and the project are eligible for funding. This determination will be made by IDED, after consultation with appropriate federal, state, or local agencies. A project will be considered eligible for funding only if it meets all of the following criteria:

1. The proposed project must be an eligible project;
2. An immediate threat must exist to health, safety, or community welfare that requires immediate action;
3. The threat must be the result of unforeseeable and unavoidable circumstances or events;
4. No known alternative project or action would be more feasible than the proposed project;
5. Sufficient other local, state, or federal funds (including the competitive CDBG program) either are not available, or cannot be obtained within the time frame required.

IDED will coordinate the request for funds with other public agencies, such as the office of disaster services, as appropriate. If IDED determines that the community and the proposed activity are eligible for funding, it shall notify the applicant of its determination.

23.16(5) Compliance with federal and state regulation. Any community receiving funds under this flood recovery fund must comply with all laws, rules, and regulations applicable to the CDBG nonentitlement program, except those waived by HUD as a result of federal action in conjunction with the flood disaster and those state administrative rules that the department may choose to waive that are not required by federal law.

The state will make available a listing of all applicable federal regulations and disaster-related waivers granted by Congress and relevant federal agencies to all applicants for assistance.

[Filed Emergency 8/20/93, effective 8/20/93]
[Published 9/15/93]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/15/93.

ARC 4252A**ECONOMIC DEVELOPMENT,
IOWA DEPARTMENT OF[261]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby amends Chapter 25, "HOME Investment Partnership Program," Iowa Administrative Code.

The emergency adopted and implemented amendments allow for the rapid implementation of flood recovery activities under the HOME Program made possible through a supplemental allocation of funds from the Department of Housing and Urban Development.

In accordance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary, impracticable, and contrary to the public interest. The amendments make additional sources of funds available in the most timely manner possible.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments, 35 days after publication, should be waived and the amendments made effective on August 20, 1993, upon filing with the Administrative Rules Coordinator. The Department finds that the amendments confer a benefit by making funds available to local recipients as soon as practicable.

These amendments are also published herein as Notice of Intended Action, **ARC 4251A**.

On August 19, 1993, the IDED Board adopted these amendments.

These amendments became effective on August 20, 1993.

These amendments are intended to implement Iowa Code section 15.108.

The following amendments are adopted.

ITEM 1. Amend rule 261—25.9(15) by adding the following **new** subrule:

25.9(6) Supplemental flood recovery appropriation. Funds received from HUD as a supplemental appropriation to the HOME program to aid in flood recovery efforts shall be distributed in the manner established in this rule.

ITEM 2. Amend 261—Chapter 25 by adding a **new** rule 261—25.12(15) as follows:

261—25.12(15) Flood recovery supplemental appropriation program guidelines.

1. Supplemental flood disaster recovery allocations received from the Department of Housing and Urban Development by the state will be used for all eligible activities of the HOME program.

2. Eligible applicants are those listed in rule 25.3(15). Priority will be given those applicants directly impacted by damage caused by flooding.

3. Any funds received through this supplemental appropriation will be distributed through the Housing Fund through the application process prescribed by IDED. IDED will provide application forms and instructional materials upon request to potential applicants.

4. All program requirements listed herein shall apply to projects funded with supplemental flood recovery funds, except those specifically waived by HUD. IDED

will provide a list of any changes in program requirements to eligible applicants upon request.

[Filed Emergency 8/20/93, effective 8/20/93]
[Published 9/15/93]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/15/93.

ARC 4267A**SOIL CONSERVATION
DIVISION[27]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 161A.4(1), the Division of Soil Conservation hereby adopts a new Chapter 13, "Organic Nutrient Management Program," Iowa Administrative Code.

The new chapter establishes procedures and standards to be followed by the Division to implement an organic nutrient management program created in 1993 Iowa Acts, House File 623, section 14. The rules also provide for the terms of application agreements with cooperators, cost-share rates, specifications for eligible waste management practices, and a requirement for maintenance agreements.

Notice of Intended Action regarding this new chapter was published in the Iowa Administrative Bulletin on July 21, 1993, as **ARC 4121A**.

The Division adopted these rules on August 25, 1993, and is requesting emergency implementation pursuant to Iowa Code section 17A.5(2)"b"(2). Emergency implementation is beneficial to the public to the extent that funds made available by the General Assembly may be utilized immediately for installation of waste management systems approved as part of the organic nutrient management program.

Changes were made subsequent to Notice of Intended Action to clarify the definition of "Actively engaged in farming," to clarify the specification for an "Animal waste management system," and to make minor corrections for grammar and punctuation.

These rules implement Iowa Code chapter 161C and 1993 Iowa Acts, House File 623, section 14.

This new chapter became effective August 25, 1993, upon filing with the Administrative Rules Coordinator.

The following **new** chapter is adopted:

CHAPTER 13**ORGANIC NUTRIENT MANAGEMENT PROGRAM****PART 1**

27—13.1 to 13.9 Reserved.

27—13.10(161C) Authority and scope. This chapter establishes procedures and standards to be followed by the division of soil conservation, Iowa department of agriculture and land stewardship, in accordance with the policies of the state soil conservation committee in implementing an organic nutrient management program created in 1993 Iowa Acts, House File 623, section 14. This fund shall be used to establish and administer an organic nutrient

SOIL CONSERVATION DIVISION[27](cont'd)

management program to provide for the allocation of cost-share moneys as financial incentives to eligible persons applying to participate in the program. It also establishes standards and guidelines to which the soil and water conservation districts shall conform in fulfilling their responsibilities under this program.

27—13.11(161C) Rules are severable. If any provision of a rule or subrule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or subrule which can be given effect without invalid provision or application, and to this end the provisions of these rules or subrules are severable.

27—13.12 to 13.19 Reserved.

PART 2

27—13.20(161C) Definition of terms. In addition to the terms defined herein, definitions in 27—10.20(161A) shall apply.

"Actively engaged in farming" means a person who:

1. Inspects the production activities periodically and furnishes at least half of the value of the tools and pays at least half the direct cost of production; or

2. Regularly and frequently makes or takes an important part in making management decisions substantially contributing to or affecting the success of the farm operation; or

3. Performs physical work which significantly contributes to crop or livestock production.

"Family farm corporation" means a corporation:

1. Founded for the purpose of farming and the ownership of agricultural land in which the majority of the voting stock is held by and the majority of the stockholders are persons related to each other as spouse, parent, grandparent, lineal ascendants of grandparents or their spouses and other lineal descendants of the grandparents or their spouses, or persons acting in a fiduciary capacity for persons so related;

2. All of its stockholders are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons or family trusts as defined in Iowa Code section 9H.1(10); and

3. Sixty percent of the gross revenues of the corporation over the last consecutive three-year period comes from farming.

"Family farm limited partnership" means a limited partnership which meets all of the following conditions:

1. The limited partnership is formed for the purpose of farming and the ownership of agricultural land in which the general partner and a majority of the partnership interest is held by and the majority of limited partners are persons related to each other as spouse, parent, grandparent, lineal ascendants of grandparents or their spouses and other lineal descendants of the grandparents or their spouses, or persons acting in a fiduciary capacity for persons so related.

2. The general partner manages and supervises the day-to-day farming operation on the agricultural land.

3. All of the limited partners are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons or family trusts.

4. Sixty percent of the gross revenues of the partnership over the last consecutive three-year period comes from farming.

"Family trust" means a trust:

1. In which a majority interest in the trust is held by and the majority of the beneficiaries are persons related to each other as spouse, parent, grandparent, lineal ascendants of grandparents or their spouses and other lineal descendants of the grandparents or their spouses, or persons acting in a fiduciary capacity for persons so related; and

2. In which all the beneficiaries are natural persons, who are not acting as a trustee or in a similar capacity for a trust, as defined in Iowa Code section 9H.1(10), or persons acting in a fiduciary capacity, or nonprofit corporations; and

3. If the trust is established on or after July 1, 1988, the trust must be established for the purpose of farming and 60 percent of the gross revenues of the trust over the last consecutive three-year period must come from farming.

27—13.21 to 13.29 Reserved.

PART 3

27—13.30(161C) Compliance, refund, reviews and appeals. Rule 27—10.30(161A) shall apply.

27—13.31 to 13.39 Reserved.

PART 4

27—13.40(161C) Appropriations. Organic nutrient management program funds are appropriated to the division of soil conservation and deposited in the organic nutrient management account of the water protection fund. The funds are not to be used in conjunction with water protection projects and practices established pursuant to Iowa Code section 161C.2. These funds shall not revert to the general fund.

27—13.41 to 13.49 Reserved.

PART 5

27—13.50(161C) Allocations to soil and water conservation districts.

13.50(1) Allocation of funds. On August 25, 1993, and each succeeding July 1, the division will allocate funds recalled according to 13.50(3) and 96 percent of appropriated funds equally among the 100 soil and water conservation districts. Two percent of the appropriated funds will be used to administer the program and 2 percent will be held in reserve funds according to 13.50(5).

13.50(2) Recall of funds not obligated. Effective December 31, 1994, any funds allocated to a district that have not been obligated for projects on December 31 will be recalled by the division and reallocated according to 13.50(4).

13.50(3) Recall of funds where construction has not commenced. Any funds allocated to a district that were unobligated or obligated for projects for which construction has not commenced on May 31 will be recalled by the division and reallocated according to 13.50(1).

13.50(4) Supplemental allocation of recalled funds. Effective January 31, 1995, districts shall submit requests identifying valid applications and cost estimates to the division annually, by January 31. The supplemental allocation to any district will be the lesser amount of:

a. The amount of remaining funds divided by the number of districts applying for a supplemental allocation.

b. The amount requested.

SOIL CONSERVATION DIVISION[27](cont'd)

13.50(5) Reserve funds. The division shall administer a reserve fund for the program consisting of 2 percent of each year's appropriated funds. The reserve fund will be set aside and used only to fund contingencies that occur in the districts or within the division. The division may phase out the reserve fund by reallocating these funds under 13.50(4) or 13.50(6).

13.50(6) Recall and reallocation of funds by division director. When the unspent balance of funds in the program is less than \$30,000, the division director may recall these unspent funds and reallocate them to a district or districts that demonstrate valid applications and cost estimates.

27—13.51 to 13.59 Reserved.

PART 6

27—13.60(161C) Applications and agreements. The purpose of this part is to identify and define procedures to be followed in applying for and entering agreements for receiving organic nutrient management program funds.

27—13.61(161C) Applications submitted to soil and water conservation district. Landowners or farm operators seeking organic nutrient management program funds shall complete necessary applications as specified in this part. Application and agreement forms referenced in this chapter are those described in rule 27—10.95(161A,312). All application forms and agreements for organic nutrient management program funds are available from and shall be submitted to the district office located in the county where such practices are proposed. If an applicant's land is in more than one district, the respective district commissioners will review the application and agree to obligate all funds from one district or prorate the funding between districts.

27—13.62(161C) Application sign-up.

13.62(1) Signatures by landowner(s) and qualified farm operator(s). All applications and agreements shall be signed by the landowner. For a farm operator to qualify for payment, both landowner and farm operator must sign the application.

13.62(2) Land being bought under contract. All applications and agreements concerning land being purchased under contract shall be signed by both the contract seller and the contract buyer. If the farm operator is applying, the contract buyer, the contract seller, and the farm operator must sign.

13.62(3) Power of attorney. Applications and agreements may be signed by any person designated to represent the landowner or farm operator, provided the appropriate power of attorney has been filed with the district office. The power of attorney requirement can be met by submitting a completed Power of Attorney, Form SCD-2, or other properly notarized full power of attorney statement to the district office. In the case of estates and trusts, court documents designating the responsible person or administrator may be submitted to the district in lieu of the power of attorney.

27—13.63(161C) Eligibility for financial incentives.

13.63(1) District cooperator. Financial incentives will not be available for land not covered under a cooperator agreement. Application for district cooperator shall be made by submitting a completed Cooperator Agreement, Form SCD-1, to the district office. The district shall approve or deny the application and notify the applicant of

the action within 60 days of receipt of the completed cooperator agreement.

13.63(2) Ineligible lands or persons.

a. Organic nutrient management program funds shall not be used to reimburse other units of government for implementing organic nutrient management practices.

b. Privately owned land not used for agricultural production shall not qualify for organic nutrient management program funds.

c. A person is not eligible to participate unless actively engaged in farming or is a family farm corporation, family farm limited partnership, or family farm trust.

13.63(3) District priorities. Each application for organic nutrient management program shall be evaluated under the priority system adopted by the district for disbursement of allocated funds. The priority system adopted by the district shall be made available for review at the district office.

27—13.64 to 13.69 Reserved.

PART 7

27—13.70(161C) General conditions, eligible practices, specifications and cost-share rates. The purpose of this part is to establish the general conditions, eligible practices, specifications, and cost-share rates for the installation of organic nutrient management systems authorized in 1993 Iowa Acts, House File 623, section 14.

27—13.71(161C) General conditions. The following general conditions shall be met.

13.71(1) Technician certification. The designated organic nutrient management systems shall not be funded unless the technician has inspected the site and has determined that such system(s) is needed to protect the water resources of the state from livestock waste runoff.

13.71(2) Limitation of reimbursable cost of practices. Overbuilding or other practice modifications which exceed the minimum requirements of the specification shall be permitted, if approved by the technician. Any additional costs resulting from such overbuilding or exceeding of the minimum specifications shall not be cost-shared by the state.

13.71(3) Materials. Projects funded with organic nutrient management program funds will utilize only new materials or used materials that meet or exceed design standards and have a life expectancy of 20 years.

13.71(4) Repair or maintenance. Repair or maintenance of existing practices is not eligible for funding.

13.71(5) Maintenance agreements.

a. Maintenance agreement required. As a condition for receipt of any organic nutrient management program funds, the owner of the land on which the practices have been installed shall agree to maintain those practices for a minimum of 20 years after the date of the agreement.

b. Maintenance agreement form. Agreement to maintain practices for which organic nutrient management program funds are being paid shall be by completing and signing Maintenance Agreement, Form IP-4. Specific conditions of the maintenance agreement are detailed on the form. Completion of the form and signature of the landowner are required prior to transfer of the payment from the district to the recipient(s).

27—13.72(161C) Eligible practices. Practices listed in this rule are eligible for organic nutrient management program fund reimbursement.

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13.72(1) Animal waste management system. A planned system in which all necessary components are installed for managing liquid and solid waste, including runoff from concentrated waste areas, in a manner that does not degrade soil or water resources.

Cost-sharing under this practice is only authorized for the following components.

- a. Sediment basins.
- b. Diversions.
- c. Filter strips.
- d. Pond sealing or linings.
- e. Waste storage ponds.
- f. Waste storage structures.
- g. Waste treatment lagoons.

13.72(2) Waste management system plan. A waste management system plan shall be developed by the landowner before cost-share will be authorized.

27—13.73(161C) Standards and construction specifications.

13.73(1) The standards and construction specifications listed in these rules and general conditions shall be met in all cases. The USDA-Soil Conservation Service standards and construction specifications in force on the date indicated in these rules shall be used. To the extent of any inconsistency between the general conditions and the standards and construction specifications, the general conditions shall control.

13.73(2) Waste management systems. USDA-SCS-IOWA, Iowa Field Office Technical Guide, Section IV, Code No. 312, August 1992.

27—13.74(161C) Cost-share rates. The following cost-share rates shall apply for the eligible practices designated in 13.72(1). The use of state cost-share funds alone or in combination with other public funds shall not exceed the limits established by these rules. The cost-share rate for the practice designated in 13.72(1) shall be 50 percent of the actual or estimated cost of installation, whichever is less, not to exceed \$7500.

27—13.75 to 13.79 Reserved.

PART 8

27—13.80(161C) Reporting and accounting. Reports will be prepared in the same manner as provided in 27—10.91(161A,312).

These rules are intended to implement Iowa Code chapter 161C and 1993 Iowa Acts, House File 623, section 14.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/15/93.

ARC 4249A

COLLEGE STUDENT AID
COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code section 261.37, the College Student Aid Commission rescinds Chapter 10, "Iowa Stafford Loan Program," and adopts a new Chapter 10, "Federal Family Education Loan Programs," Iowa Administrative Code.

This chapter updates the Commission's rules to current federal requirements, with noted exceptions. The 1992 Code of Federal Regulations (CFR) is adopted by reference as the administrative foundation for the Iowa program.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 14, 1993, as ARC 3897A. This chapter is identical to that published under Notice with two exceptions, retention of EFT documentation in 10.2(2) and use of "administrative law judge," that reflect the Commission's original intention at the time of Notice.

The chapter was adopted in final form on August 19, 1993, and will become effective on October 20, 1993.

These rules are intended to implement Iowa Code section 261.37.

Rescind 283—Chapter 10 and adopt a new Chapter 10 as follows:

CHAPTER 10

FEDERAL FAMILY EDUCATION
LOAN PROGRAMS

283—10.1(261) Authority and scope. The following sets forth the rules and procedures through which the college student aid commission ("commission" or "ICSAC") will administer the Federal Family Education Loan Programs (FFELP).

10.1(1) Federal regulations. The federal regulations of the U.S. Department of Education (DE), promulgated pursuant to the Higher Education Act of 1965 (Public Law 89-329), as amended, are incorporated by reference as rules of the commission, with noted exceptions. Rules incorporated by reference are the Code of Federal Regulations (34 CFR), as in effect on February 1, 1993.

10.1(2) Administration of program. The commission will distribute to lender and school personnel a policy and procedures manual detailing the processes necessary to administer the program on an institutional level.

283—10.2(261) Exceptions. The following are additions to the federal regulations:

10.2(1) Eligibility.

a. Borrower. To be eligible for a Federal Family Education Loan a borrower must be:

(1) Eligible based on the criteria outlined in the Code of Federal Regulations;

(2) A resident of the state of Iowa, a student attending an approved educational institution in Iowa, or a resident of another state borrowing from an eligible Iowa-based lender; and

(3) Free of the obligation to repay overpayments on Iowa education grants.

b. Lender.

(1) General. Banks, savings and loan associations, credit unions, pension funds, insurance companies, and schools that meet the requirements outlined in 34 CFR 682.200 are eligible to be lenders for the FFELP administered by the commission. A single agency of the state of Iowa or a single nonprofit, private agency designated by the state of Iowa also qualifies.

(2) Secondary markets. For the purposes of purchasing, holding, and consolidating loans made by other lenders under the program, the Student Loan Marketing Association and the Iowa Student Loan Liquidity Corporation are also considered lenders. The Iowa Student Loan Liquidity Corporation is also considered a lender only for the purpose of originating federal PLUS and SLS loans for borrowers who have obtained prior federal PLUS and SLS loans which are held by the Iowa Student Loan Liquidity Corporation.

(3) Agreements. A lender may participate in the FFELP administered by the commission by executing the Agreement to Guarantee Loans which establishes the rights and duties of the lender and the Iowa college student aid commission (ICSAC). (This form is available from the ICSAC office.) Both the lender and the commission retain an original copy of this document.

(4) Restrictions. A lender is not required to make any quota of loans nor to commit any specific amount of funds to the program unless its agreement includes a lender of last resort provision. Iowa-based lenders may make ICSAC guaranteed FFELP loans to otherwise eligible students who are neither Iowa residents nor attending an Iowa educational institution as long as no more than 10 percent of the institution's annual loan volume is provided to these students.

(5) Lender of last resort. A lender of last resort agrees to make loans to all applicants who submit properly completed applications and qualify to receive interest benefits. The agreement may be terminated upon 60-day notice by the lender or the ICSAC or as provided through limitation, suspension, or termination proceedings.

(6) Limitation, suspension, termination. The commission reserves the right to limit, suspend, or terminate the participation of a lender under terms consistent with the Agreement to Guarantee Loans and applicable state and federal law.

c. School and course of study.

(1) General. Institutions of higher education and vocational schools that are approved by the U.S. Department of Education for participation in the FFELP are eligible to participate in the program administered by ICSAC.

(2) Correspondence. An institution offering primarily home-study or correspondence courses is not eligible for participation.

(3) Limitation, suspension, and termination. The commission reserves the right to limit, suspend, or terminate the participation of a school under terms consistent with applicable state and federal laws.

10.2(2) Electronic disbursement.

a. General. Electronic funds transfer (EFT) is a method of disbursing loan proceeds to a school through electronic transmittal. EFT transactions replace checks as the disbursement instrument.

b. Letter of understanding. A lender or school may participate in EFT by executing an ICSAC Letter of Understanding which establishes the responsibilities of the lender, the school, and the commission. Participation is

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voluntary and may be for federal Stafford loans, federal SLS loans, or federal PLUS loans guaranteed by ICSAC. There is no participation fee.

c. Lender responsibilities.

(1) Transmit loan proceeds to the account designated by the borrower's school and submit the following information to the school on a loan transmittal roster: lender name and code number; funds transfer date (disbursement date); borrower's name; borrower's social security number; program type of loan(s); disbursement number; gross amount of the loan disbursement; net dollar amount of the funds transferred on behalf of the borrower after fees are deducted; itemization of fees; and summary totals of number of disbursements and dollar amounts included in the transfer.

(2) Notify the borrower, prior to the sending of the first disbursement to the borrower's school, that the loan disbursement is being made through a wire transfer. This may be done in conjunction with other disclosure requirements.

(3) Retain a copy of the signed release of loan proceeds form(s) in the borrower's file for five years beyond the paid-in-full date of the loan. In the event a loan defaults, documentation of the EFT transaction must be included in the claim packet when submitted to the commission.

d. School responsibilities.

(1) Establish a restricted account to receive student loan disbursements.

(2) Support student financial aid needs at the institution with interest earned on the funds prior to release to the student.

(3) Provide confirmation to the disbursing lender of receipt of each EFT within 24 hours of receipt. Automated Clearing House (ACH) confirmation is acceptable documentation.

(4) Obtain, after the loan has been guaranteed and no earlier than 30 days prior to the first day of classes of the period of enrollment for which the loan is intended and no later than the release of the first disbursement, a written authorization from the student for the release of the funds from the school's restricted account to the student. This form must contain the following information: borrower name and social security number; lender name and city; type of loan; interest rate; disbursement date; net proceeds for disbursement; and disbursement number. A separate authorization is required for each Stafford, SLS, or PLUS disbursement, and the original must be retained in the student's file.

(5) Deliver, after obtaining the student's written authorization for release of funds, loan proceeds to the student within 45 days of receiving transmittal of funds. Delivery of loan funds means the release of funds from the school's EFT account to the student's school account or delivered directly to the student.

(6) Credit funds to the student's account no earlier than three weeks before the first day of classes of the period of enrollment for which the loan is intended if the student is preregistered and has signed the authorization form.

(7) Return to the lender, within 3 days after delivery of all funds identified on a single transmittal roster or within 48 days of the transfer, whichever is first, a copy of the student's written authorization to release funds.

(8) Return the proceeds to the lender within 45 days of transmittal if the student fails to provide written authorization required to release funds.

(9) Return proceeds to the lender within 30 days of transmittal if the student fails to enroll in classes.

e. Restrictions.

(1) Schools with an ICSAC or DE cohort default rate of 20 percent or less are eligible to participate in EFT.

(2) Neither the school nor lender will be allowed to obtain the borrower's power of attorney or authorization to approve the release of funds from the restricted account.

(3) Lenders and schools may not charge the borrower a fee for disbursing loan proceeds electronically, nor may the lender charge a fee to the borrower's school for this service.

(4) Students may not receive loan funds delivered via EFT if they are on a leave of absence.

f. Liability.

(1) A school is subject to penalties if it improperly delivers or applies loan funds or fails to return loan funds to the lender in a timely manner.

(2) The EFT process is subject to program review for either schools or lenders.

10.2(3) Guarantee fee.

a. General. The ICSAC guarantee fee is an amount a borrower pays to the commission for guaranteeing repayment of a loan. The rate is determined by the commission with consideration given to the ICSAC reserve fund and the requirements of the U.S. Department of Education regulations.

b. Fee structure. The guarantee fee for a Federal Family Education Loan is one-half of 1 percent (.5%) of the loan amount. The amount of the guarantee fee is computed by the commission and reported to a lender on the Notice of Loan Guarantee and Disclosure Statement. Assistance with calculation of guarantee fees is available from the commission office.

10.2(4) Due diligence in collection.

a. General. Lenders are required to follow all federal collection provisions for the FFELP.

b. Iowa notice to cure. While performing collection due diligence, a lender is not required to send the borrower an Iowa notice to cure. However, lenders are encouraged to use this collection device when possible.

c. Lender request for assistance (LRA). An LRA may be sent no earlier than the eightieth day and no later than the one hundredth day of delinquency unless a borrower cannot be located through normal skip-tracing procedures, in which case an LRA may be sent before the eightieth day of delinquency.

10.2(5) Offset against state income tax refund or rebate.

a. General. A claim against a defaulted borrower's state income tax refund or rebate will be made to receive payment against the individual's outstanding defaulted student loan.

b. Certification. The ICSAC shall submit to the department of revenue and finance a list of defaulted borrowers to certify for offset.

c. Borrower notification. The ICSAC shall mail a preoffset notice to a defaulted borrower when:

(1) The ICSAC is notified by the department of revenue and finance that the defaulted borrower is entitled to a state income tax refund or rebate; and

(2) The ICSAC makes claim to the defaulted borrower's state income tax refund or rebate.

The preoffset notice will inform the defaulted borrower of the amount the ICSAC intends to claim and apply to the outstanding defaulted student loan.

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d. Challenge of offset. When the defaulted borrower wishes to contest a claim, a written request shall be submitted to the ICSAC within 15 calendar days after the preoffset notice is mailed. When the request is received within the 15-day limit, a hearing shall be granted pursuant to 283—10.91(261).

e. Spousal share. The spouse's proportionate share of a joint return filed with a defaulted borrower, as determined by the department of revenue and finance, shall be released by the department of revenue and finance unless other claims are made on that portion of the joint income tax refund. The request for release of the spouse's proportionate share shall be in writing and received by the ICSAC within 15 calendar days after the mailing date of the preoffset notice.

f. Claim of offset. The ICSAC may make claim to a defaulted borrower's state income tax refund or rebate when the defaulted borrower has not made a voluntary payment which has been posted to the borrower's account during the 120 days preceding the day an offset tape match is run. A voluntary payment toward a defaulted loan is defined as making a monthly payment of at least \$50 through a means other than by offset or garnishment.

g. Defaulted accounts only. The ICSAC shall notify a defaulted borrower of the final decision regarding the claim against the tax refund or rebate by mailing a final disposition of offset claim notice to the defaulted borrower.

h. When offset is used. Offsets shall be applied to outstanding defaulted student loan accounts only.

10.2(6) Appeals.

a. General. Borrowers with defaulted student loans may appeal commission decisions to offset their state tax refunds or rebates pursuant to the procedures provided in this rule.

b. Procedures. If a defaulted borrower wishes to contest a claim, written appeal shall be presented to the state offset coordinator of the commission, setting forth reasons for disagreement. The evidence must be presented within 15 calendar days after notification of the proposed offset, and the appellant may request a hearing.

(1) If no hearing is requested, the state offset coordinator will consider all evidence provided and will notify the appellant within 30 calendar days whether the decision is retracted, modified, or upheld. The appellant will be advised of the appellant's right to carry the appeal to an administrative law judge.

(2) If a hearing is requested, the state offset coordinator will set a date for the hearing no later than 30 calendar days from the date that the request was received.

(3) An administrative law judge will preside at the hearing and will consider any written material presented before the hearing as well as other evidence presented during the course of the hearing.

(4) After considering all evidence presented, the administrative law judge will notify the appellant in writing as to the decision on the appeal, advising the appellant of the appellant's right to carry the appeal to a full meeting of the commission or to its appointed appeals panel.

c. Additional provisions. Except as specially provided in this rule, administrative hearings will be governed by 283—Chapter 5.

10.2(7) Offset against federal income tax refund or rebate—general. The ICSAC annually assigns all right, title and interest to certain defaulted reinsured student loans to the U.S. Department of Education for offset against federal income tax refunds or rebates. This offset

procedure is conducted by the U.S. Department of Education under regulations promulgated by the U.S. Department of Education.

[Filed 8/20/93, effective 10/20/93]

[Published 9/15/93]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/15/93.

ARC 4255A**EDUCATIONAL EXAMINERS
BOARD[282]****Adopted and Filed Without Notice**

Pursuant to the authority of Iowa Code sections 272.2(2) and 272.10, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 16, "Occupational and Postsecondary Endorsements and Licenses," Iowa Administrative Code.

These amendments strike all references to "260" and insert "272" to reflect renumbering of the 1993 Iowa Code, and remove the rules that require practitioners to complete a state or nationally recognized vocational competency test, since the options for this test are no longer available within the state of Iowa.

In compliance with Iowa Code section 17A.4(2), the Board finds that notice and public participation are impracticable and contrary to the public interest because the test has not been available for over a year within the state, so it will confer a benefit on practitioners to remove the requirement from the rules.

The Board of Educational Examiners adopted the amendments on July 12, 1992. These amendments are also published herein under Notice of Intended Action as **ARC 4256A**.

These amendments are intended to implement Iowa Code chapter 272.

These amendments will become effective October 20, 1993.

The following amendments are adopted:

ITEM 1. Amend **282—Chapter 16** by striking all references to "260" and inserting "272" to reflect renumbering of the 1993 Iowa Code.

ITEM 2. Amend paragraph **16.2(1)"c"** to read as follows:

c. ~~Recent 6,000 Six thousand hours of recent and relevant occupational experience in the teaching endorsement area sought and completion of a state or nationally recognized competency examination in the occupational area to be taught. Unless previously completed, the examination shall be completed during the first year of certificate validity.~~

~~In those subject areas where state or national examinations do not exist, 6,000 hours of recent, relevant, part-time or full-time experience in the teaching endorsement area is required.~~

In those subjects, occupational areas or endorsement areas which require state registration, certification or licensure, each applicant must hold the appropriate license, registration or certificate before the issuance of the provisional or the occupational license.

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ITEM 3. Amend subparagraph 16.5(1)"a"(3) to read as follows:

(3) ~~Recent 6,000 Six thousand hours of recent and relevant occupational experience in the teaching endorsement area sought and completion of a state or nationally recognized competency examination in the occupational area to be taught. Unless previously completed, the examination shall be completed during the first year of certificate validity.~~

~~In those subject areas where state or national examinations do not exist, 6,000 hours of recent, relevant, part-time or full-time experience in the teaching endorsement area is required.~~

In those subjects, occupational areas or endorsement areas which require state registration, certification or licensure, each applicant must hold the appropriate license, registration or certificate before the issuance of the provisional or the occupational license.

ITEM 4. Amend subrule 16.9(2), paragraphs "a" and "b," to read as follows:

a. ~~Preparatory vocational/adjunct completion of a state or nationally recognized examination or 6,000 hours of recent, relevant, part-time or full-time experience in the occupational area to be taught.~~

b. ~~Preparatory vocational/part-time completion of a state or nationally recognized examination or 6,000 hours of recent, relevant, part-time or full-time experience in the occupational area to be taught.~~

[Filed Without Notice 8/25/93, effective 10/20/93]
[Published 9/15/93]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/15/93.

ARC 4276A

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed Without Notice

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 60, "Scope of Title—Definitions—Forms—Rules of Practice," and Chapter 62, "Effluent and Pretreatment Standards: Other Effluent Limits or Prohibitions," Iowa Administrative Code.

The change to rule 60.2(455B) is to update the definition of "Act" to include amendments to the Water Pollution Control Act through July 1, 1993. References in rules 62.4(455B) and 62.5(455B) to federal effluent and pretreatment standards found in 40 Code of Federal Regulations (CFR) are changed due to federal amendments and revisions to 40 CFR.

In accordance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are unnecessary. Under rule 62.2(455B) the Commission has determined previously that good cause exists for exempting from the notice and public participation requirements of Iowa Code section 17A.4(1) the adoption by reference of certain federal effluent and pretreatment standards. The Commission found that public participation is unnecessary since the Commission must adopt effluent and pretreat-

ment standards at least as stringent as the enumerated promulgated federal standards in order to have continued approval by the federal Environmental Protection Agency of the Department's NPDES program. Iowa Code section 455B.173(3) requires that the effluent and pretreatment standards adopted by the Commission not be more stringent than the enumerated promulgated federal standards.

The Commission adopted these amendments on August 16, 1993.

The amendments will become effective on October 20, 1993.

These amendments may have an impact upon small businesses.

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

The following amendments are adopted.

ITEM 1. Amend rule 567—60.2(455B), introductory paragraph and definition of "Act," to read as follows:

567—60.2(455B) Definitions. The following definitions apply to this title, unless otherwise specified in the particular chapter of this title:

"Act" means the Federal Water Pollution Control Act as amended through July 1, 1992 July 1, 1993, 33 U.S.C. §1251 et seq.

ITEM 2. Amend rule 567—62.4(455B), introductory paragraph, to read as follows:

567—62.4(455B) Federal effluent and pretreatment standards. The federal standards, 40 Code of Federal Regulations (CFR), revised as of July 1, 1992 1993, are applicable to the following categories:

ITEM 3. Amend rule 567—62.5(455B) to read as follows:

567—62.5(455B) Federal toxic effluent standards. The following is adopted by reference: 40 CFR part 129, revised as of July 1, 1992 1993.

[Filed Without Notice 8/27/93, effective 10/20/93]
[Published 9/15/93]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/15/93.

ARC 4278A

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.474, the Environmental Protection Commission hereby amends Chapter 136, "Financial Responsibility for Underground Storage Tanks," Iowa Administrative Code.

The amendments were published as a Notice of Intended Action, **ARC 4032A**, in the June 9, 1993, Iowa Administrative Bulletin. The Notice of Intended Action solicited public comment and a public hearing was held July 7, 1993. Only one comment was submitted and it supported adoption of the amendments.

The amendments contain four new mechanisms that local governments can use to show financial responsibility

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

for taking corrective action and compensating third parties for bodily injury and property damage caused by releases of petroleum from their underground storage tanks. The amendments adopt changes made in the federal underground storage tank regulations published in the Thursday, February 18, 1993, Federal Register.

The purpose of the amendments is to give local government entities methods of self-insuring. The new mechanisms are a local government bond rating test, local government financial test, local government guarantee, and local government fund.

Changes have been made to the Notice of Intended Action as follows:

Subrule 136.2(5) has been changed to give an actual date all local governments have to comply with financial responsibility requirements. Previously, only the federal regulations were referenced.

~~136.2(5) All local government entities; February 18, 1994. one year from the date federal rules are promulgated with additional mechanisms for local government entities to comply with financial responsibility requirements for underground storage tanks containing petroleum.~~

Subrule 136.23(5) has been amended by adding the phrase "within ten days" at the end of the subrule.

These amendments are intended to implement Iowa Code section 455B.474.

These amendments will become effective October 20, 1993.

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 [amendments to Ch 136] is being omitted. With the exception of the changes noted above, these rules are identical to those published under Notice as ARC 4032A, IAB 6/9/93.

[Filed 8/27/93, effective 10/20/93]
[Published 9/15/93]

[For replacement pages for IAC, see IAC Supplement 9/15/93.]

ARC 4270A

PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF MORTUARY SCIENCE EXAMINERS

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Mortuary Science Examiners hereby amends Chapter 101, "Board of Mortuary Science Examiners," Iowa Administrative Code.

The adopted amendments clarify educational requirements, add acceptance of national examination passing scores for the embalming and funeral directing examination as allowed at Iowa Code section 156.13, clarify passing score for the practical examination, clarify application fee and continuing education requirements and add intern registration to license denial.

There are no changes from the Notice of Intended Action which was published in the Iowa Administrative Bulletin on May 26, 1993, as ARC 3978A.

The adopted amendments are intended to implement Iowa Code chapters 147, 256 and 272C.

These amendments shall become effective October 20, 1993.

ITEM 1. Amend **645—Chapter 101** by striking all references to "258A" and inserting "272C" to reflect renumbering of the 1993 Iowa Code.

ITEM 2. Amend subrule 101.1(3), introductory paragraph, as follows:

101.1(3) College educational requirements. An applicant shall have completed two academic years of 36 weeks each or a minimum of 64 semester hours in a regionally accredited college or university. *These 64 semester hours shall not include any technical or vocational courses.* College credits required are as follows:

ITEM 3. Amend subrule 101.2(5) as follows:

Amend 101.2(5), introductory paragraph, as follows:

101.2(5) The embalming *and funeral directing* examination shall consist of three sections.

Rescind **101.2(5)**, paragraphs "a" and "b," and insert the following *new* paragraphs:

a. The board of mortuary science examiners shall accept a certificate of examination issued by the National Conference of Funeral Service Examining Boards indicating a passing score for the written and oral sections of the examination as prescribed at Iowa Code sections 156.4(4) and 156.13.

b. Applicants will be required to pass an examination covering the mortuary science board rules and state laws prior to being licensed in Iowa. A 75 percent score shall be required for passing of this examination.

Amend paragraph **101.2(5)"c"** as follows:

c. Practical examination, which shall consist of demonstration ~~and operative of embalming~~ technique, as ~~directed~~. ~~Restoration~~ *restoration*, cosmetic effect, lighting, casketing, and such other procedures as members of the board of mortuary science examiners may feel necessary. *A 75 percent score will be required for passing of the practical examination.*

ITEM 4. Rescind and reserve subrules **101.2(6)**, **101.2(7)**, **101.2(8)** and **101.2(11)**.

ITEM 5. Rescind subrules **101.98(1)** and **101.98(2)** and insert the following *new* language:

101.98(1) The application fee for a license to practice mortuary science issued upon the basis of examination or endorsement is \$50.

ITEM 6. Amend subrule 101.102(4) as follows:

101.102(4) Except as may be allowed pursuant to rule 645—101.107(272C) no licensee shall receive credit exceeding 10 percent of the ~~annual~~ total *biennium* required *continuing education* hours ~~for~~ *in the form of* self-study, including television viewing, video or sound-recorded programs, or correspondence work, or by other similar means as authorized by the board.

ITEM 7. Amend rule 645—101.205(272C) as follows:

645—101.205(272C) License *and intern registration denial*. Any request for a hearing before the board concerning the denial of a license *or intern registration* shall be submitted by the applicant in writing to the board at the

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

address in rule 101.201(272C) by certified mail, return receipt requested, within 30 days of the mailing of a notice of denial of license or intern registration.

[Filed 8/27/93, effective 10/20/93]
[Published 9/15/93]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/15/93.

ARC 4269A**REVENUE AND FINANCE
DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue and Finance hereby amends Chapter 48, "Composite Returns," Iowa Administrative Code.

Notice of Intended Action was published in IAB, Volume XVI, Number 2, on July 21, 1993, page 114, as **ARC 4107A**.

The amendment increases the minimum amount of income from Iowa sources before a nonresident is required to be included in a composite return. 1993 Iowa Acts, House File 666, increased the minimum Iowa source income before a nonresident must file a return from \$500 to \$1,000.

Also, the amendment eases the burden of determining which nonresident partners, shareholders or beneficiaries must be included in the Iowa composite return. Currently, it is necessary to compute the amount of income attributable to Iowa sources for each nonresident and then prorate the composite tax to each nonresident in order to determine the amount of personal exemption which may be deducted. By establishing a minimum dollar amount of income attributable to Iowa sources which will create a tax liability for a nonresident member of a composite return, filing of a composite return is simplified.

This amendment is identical to that published under Notice of Intended Action.

This amendment will become effective October 20, 1993, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

The amendment is intended to implement Iowa Code chapter 422.

The following amendment is adopted.

Amend rule **701—48.3(422)**, paragraph "1," as follows:

1. The composite return must include all nonresident partners, shareholders, or beneficiaries unless the taxpayer can demonstrate which nonresident partners, shareholders, or beneficiaries are filing separate income tax returns because the partner, shareholder, or beneficiary has other Iowa source income, or has elected to file an Iowa individual income tax return. Nonresident partners, shareholders, or beneficiaries ~~are~~ shall not ~~required~~ to be included in a composite return if the nonresident has less than \$500 the minimum statutory filing amount. For example, for 1993 the minimum income from Iowa sources before a nonresident is required to file an Iowa individual income tax return is \$1,000 of income attributed to Iowa

sources as determined by applying the allocation and apportionment provisions of 701—Chapter 54 to the nonresident's prorated share of the entity's income. In addition, nonresident partners, shareholders, or beneficiaries shall not be included in a composite return if the nonresident does not have more income from Iowa sources than the amount of one standard deduction for a single taxpayer plus an amount of income necessary to create a tax liability at the effective tax rate on the composite return sufficient to offset one personal exemption. For example, for 1993 a standard deduction for a single individual is \$1,330 and at the maximum tax rate of 9.98 percent, \$200 of income is required to offset the \$20 personal exemption, while at a 5 percent tax rate \$400 income is required. The taxpayer must include a list of all nonresident partners, shareholders, or beneficiaries who are filing separate income tax returns. The list must also include the address and social security number or federal identification number of the nonresident partners, shareholders, or beneficiaries. Requesting permission to file a composite return is an election which may not be withdrawn after the due date of the return (considering any extension of time to file), but the nonresidents may, as an individual or as a group, withdraw their election at any time prior to the due date (considering any extension of time to file).

[Filed 8/27/93, effective 10/20/93]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/15/93.

ARC 4263A**UTILITIES DIVISION[199]****Adopted and Filed**

Pursuant to Iowa Code sections 17A.4(1) and 476.2, the Utilities Board (Board) gives notice that on August 18, 1993, the Board issued an order in Docket No. RMU-92-15, In Re: Filing of Revised Revenue Requirement in Proposed Settlements, "Order Adopting Rule Making."

Notice of Intended Action was published in the IAB Vol. XV, No. 14 (1/6/93) p. 1360, **ARC 3678A**. The rule making was commenced to consider the amendment of 199 IAC 7.2(11)"a." The purpose of the amendment is to specify filing requirements for proposed settlements. After receiving oral and written comments from interested parties, the Board altered the language of the paragraph as it was originally proposed and issued a second notice on May 26, 1993, published in IAB Vol. XV, No. 24 (5/26/93) p. 2342, **ARC 4013A**, in order to receive further comment.

Comments to the amended notice were filed by United Cities Gas Company, U S West Communications, Inc., the Consumer Advocate Division of the Department of Justice, Midwest Power Systems Inc., Iowa-Illinois Gas and Electric Company, Vista Telephone Company, and Peoples Natural Gas Company. Nearly all of the commenters support the proposed rule. Some of the utilities are concerned that the filing requirements will discourage settlements. The parties should be assured that the Board

UTILITIES DIVISION[199](cont'd)

does not intend to discourage settlements, but only seeks to have the information necessary to evaluate the reasonableness of a proposed settlement. The Board will adopt the rule making.

Because no changes were made to the rule as noticed, the Board does not believe additional comment is necessary. The rule will become effective on October 20, 1993.

This amendment is intended to implement Iowa Code sections 17A.4, 17A.7, 17A.10, 476.1, 476.2, and 476.8. The following amendment is adopted.

Amend subrule 7.2(11), paragraph "a," as follows:

a. Proposal of settlements. Two or more parties may by written motion propose settlements for adoption by the board. The motion shall contain a statement adequate to advise the board and parties not expressly joining the proposal of its scope and of the grounds on which adoption is urged. Parties may propose a settlement for adoption by the board (1) anytime after docketing and (2) within 30 days after the last day of hearing. *In proposed settlements which resolve all revenue requirement issues in a rate case proceeding, parties to the settlement shall jointly file*

the revenue requirement calculations reflecting the adjustments proposed to be settled. In proposed settlements which resolve some revenue requirement issues in a rate case proceeding and retain some issues for litigation, each party to the settlement who has previously filed a complete revenue requirement calculation shall file its revenue requirement calculation reflecting the adjustments proposed to be settled and any remaining issues to be litigated. In proposed settlements which produce an agreed upon revenue requirement as a mutually acceptable outcome to the proceeding without an agreement on each revenue requirement issue, parties to the settlement shall jointly file schedules reflecting the specific adjustments for which the parties reached agreement. For those issues included in the proposed settlement which were not specifically resolved, the schedules should identify the range between the positions of the parties.

[Filed 8/27/93, effective 10/20/93]

[Published 9/15/93]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/15/93.

* SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWAFILED AUGUST 25, 1993

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. 92-346. IN THE INTEREST OF T.A.L.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Woodbury County, Cameron C. Arnold, District Associate Judge. **DECISION OF COURT OF APPEALS VACATED IN PART; DISTRICT COURT JUDGMENT AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Carter, and Lavorato, JJ. Opinion by McGiverin, C.J.

(13 pages \$5.20)

Wesley H. appeals the district court order terminating his parental rights to his daughter, Mikeal. The court of appeals reversed the termination of Wesley's rights because it found that DHS had not provided him with the services he needed to comply with the case plan and that there was no evidence Wesley had not maintained adequate visitation with Mikeal. We granted the State's application for further review. **OPINION HOLDS:** I. We believe the record shows Wesley did maintain adequate visitation with Mikeal as required under the case plan. We conclude Wesley's rights should not have been terminated for failure to maintain "meaningful contact" under Iowa Code section 232.116(1)(d). II. The State next contends Wesley's rights may be terminated under section 232.116(1)(c) because Wesley did not utilize the services and counseling DHS offered him to improve his parenting skills. We believe the record shows Wesley was advised of his responsibilities under the case plan and was offered adequate services to enable him to perform those responsibilities. We conclude clear and convincing evidence exists in the record to terminate Wesley's parental rights under section 232.116(1)(c). III. The State also contends that Wesley's rights also may be terminated under section 232.116(1)(g) because, in any event, Mikeal could not be immediately returned to Wesley's care. The record here indicates that nothing about Wesley's parenting skills has changed, nor has he made a serious effort to change them. We conclude Wesley's parental rights should also be terminated pursuant to section 232.116(1)(g). The court of appeals decision is affirmed in part as to terminating the mother's parental rights and is vacated in part as to Wesley's parental rights concerning Mikeal. The judgment of the district court is affirmed.

*Reproduced as submitted by the Court

No. 91-1517. DAVIS v. KWIK-SHOP, INC.

Appeal from the Iowa District Court for Scott County, Edward B. de Silva, Jr., Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Schultz, Lavorato, Neuman, and Andreasen, JJ. Opinion by Schultz, J. (7 pages \$2.80)

In this appeal from a tort action, we must consider whether a grocery store owner owes a duty to plaintiff for injuries suffered on an adjoining business' property at the hands of assailants who had earlier been on the grocery store's premises. Plaintiff Tom E. Davis was never on the premises of defendant Hy-Vee Food Stores, but was stabbed by one of the assailants while on the defendant Kwik-Shop, Inc.'s premises. In response to Hy-Vee's motion for summary judgment, the district court dismissed all actions against Hy-Vee arising out of plaintiff's injury. Davis has appealed. **OPINION HOLDS:** I. Plaintiffs argue that because assailants were invitees on Hy-Vee's property, Hy-Vee had a duty to control them and protect Davis from harm. We cannot accept plaintiffs' assessment that a special relation existed between Hy-Vee and the assailants. If the assailants were Hy-Vee's invitees at one time, they ceased to be invitees when they left the Hy-Vee employee's parking lot and entered on to Kwik-Shop premises. Hy-Vee had no duty to protect Davis. II. Because we hold that Hy-Vee had no duty to protect Davis, we need not determine whether a fact issue existed.

No. 93-14. SCHAFFER v. COCKLIN.

Appeal from the Iowa District Court for Louisa County, William L. Dowell and D. B. Hendrickson, Judges. **AFFIRMED.** Considered by Harris, P.J., and Schultz, Neuman, Snell, and Andreasen, JJ. Opinion by Schultz, J. (4 pages \$1.60)

This appeal involves the question of whether a condemner, acting pursuant to Iowa Code section 471.4(2) (1991), is required to fence a public way through a condemnee's unfenced land. In an equity action, plaintiffs Schaffer sought judgment requiring defendant Cocklin to fence both sides of a public way through plaintiffs' property. After a trial on stipulated facts, the district court denied plaintiffs' petition. Plaintiffs appeal. Plaintiffs argue that section 471.4(2) requires that defendant fence both sides of a public way upon their request. Defendant argues that the statute requires a condemner to fence both sides of a public way only when it passes through "enclosed lands." **OPINION HOLDS:** Because we believe "enclosed lands" means surrounded by fences or other obstructions signifying boundaries protecting the land, we hold that a condemner is not required under section 471.4(2) to fence both sides of a public way through a condemnee's land unless the condemnee's land was "enclosed." Because plaintiffs' land was not enclosed, defendant is not required to fence it. We affirm the district court's ruling.

No. 92-1227. STATE v. BRANDAU.

Appeal from the Iowa District Court for Mitchell County, Jon Stuart Scoles, Judge. REVERSED AND REMANDED. Considered en banc. Opinion by Schultz, J. Dissent by Neuman, J. (14 pages \$5.60)

Brandau helped his wife baby-sit three of her grandchildren, including then seven-year-old, T.W. T.W. stated that when she was alone with defendant, he made her sit on his lap and then he started kissing her on the mouth. He then lay down on the couch on his back and made her lay on top of him. She testified that both were fully clothed, but defendant pressed his "front private part" against her "front private part" and identified the "private parts" as his penis and her vagina. After awhile defendant let her go and told her not to tell anyone. Defendant testified that the alleged incident never took place. The jury convicted defendant of sexual abuse in the second degree. Defendant was sentenced to prison for an indeterminate term not to exceed twenty-five years. Defendant appeals. **OPINION HOLDS:** The fighting issue is whether under our statute, a "sex act" takes place between two fully clothed individuals when the defendant holds the alleged victim so that their genital areas are tightly pressed against each other. Because our legislature never specified touching clothing as a method of committing a sex act under section 702.17, we conclude it never intended such a result. On the other hand, we agree that to narrowly construe the statute to require skin-to-skin contact to meet the definition of a "sex act" would violate the spirit of the statute. We conclude our answer lies between defendant's claim that skin-to-skin contact is required and the State's position that it is unimportant whether or not the touching occurred through clothes. The plain meaning of "contact," when used to describe a nonconsensual sexual incident, is a touching that violates the victim. When clothing or other material prevents actual skin-to-skin contact, we conclude the definition of a "sex act" requires that the victim perceive by the sense of feeling that such body parts have touched. We find that T.W. did not feel defendant's genitalia touch her genitalia. We hold the trial court erred when it failed to sustain defendant's motion for a directed verdict. **DISSENT ASSERTS:** Unless this court is willing to overrule State v. Phipps, 442 N.W.2d 611 (Iowa App. 1984) and depart from the sensible majority rule that sexual contact includes indirect contact through clothing as well as skin-to-skin contact, the district court's refusal to direct a verdict for Brandau should be affirmed.

No. 92-1036. IN RE MARRIAGE OF CLARK.

Appeal from the Iowa District Court for Linn County, Lynne E. Brady and Thomas L. Koehler, Judges. **AFFIRMED.** Considered by Harris, P.J., and Schultz, Neuman, Snell, and Andreasen, JJ. Per curiam. (4 pages \$1.60)

The Linn County Friend of Court, on behalf of Susan D. Clark, commenced garnishment proceedings and secured a mandatory wage withholding order to collect over \$13,000 in unpaid child support owed by Thomas E. Clark. Thomas moved to quash both actions, claiming his former wife had removed their minor child from the State of Iowa without the court's permission, thereby breaching a stipulation incorporated into the parties' dissolution decree. He claimed that her failure to abide by the decree renders his child support obligation unenforceable. The district court denied the motions to quash. Thomas has appealed. **OPINION HOLDS:** I. An enforcement action brought under the Uniform Support of Dependents Act is not the proper forum to litigate issues of custody and visitation. The court could not have exonerated him from liability for any arrearage that had accrued under the child support provisions of the parties' dissolution decree. Each installment became a final judgment when due. II. Thomas's claim that the remedies of garnishment and wage assignment are inequitable is similarly without merit. The district court correctly denied the motions to quash.

**No. 93-720. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT
v. MORRIS.**

On review from the report of the Grievance Commission. **ATTORNEY REPRIMANDED.** Considered by Harris, P.J., and Schultz, Neuman, Snell, and Andreasen, JJ. Opinion by Neuman, J. (6 pages \$2.40)

The Committee on Professional Ethics and Conduct charged attorney James B. Morris III of Des Moines, Iowa, with neglect and mismanagement in the handling of a trust, and failure to maintain adequate trust account records. A division of the grievance commission found the charges substantiated and recommended a public reprimand. **OPINION HOLDS:** Upon consideration of the record, we concur in the commission's findings and recommended sanction. Accordingly we publicly reprimand Morris for departing from the code of professional responsibility. We direct that an audit of his trust account be performed by an agent of the client security and disciplinary commission and the cost thereof, and of these proceedings, shall be taxed to the respondent.

No. 92-1317. LIHS v. LIHS.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Carter, and Lavorato, JJ. Opinion by McGiverin, C.J. (8 pages \$3.20)

Kimberly Lihs appeals from a summary judgment ruling in favor of her deceased husband's first wife, Monica Lihs, denying visitation between Kimberly's children and Monica's child, who are half-siblings to each other. **OPINION HOLDS:** A custodial parent has a common law veto power over visitation between the child and all others except the noncustodial parent. The legislature made a statutory exception to this common law rule by enacting Iowa Code section 598.35, which allows grandparents of a minor child to petition for visitation under specified circumstances. We see no reason to stray from the clear course, set down by the common law and the legislature, of limiting visitation with third parties, other than the noncustodial parent, to a child's grandparents. Kimberly's children have no common law or statutory right to visitation with their half-sibling, Jason.

No. 92-1289. DES MOINES METROPOLITAN AREA SOLID WASTE AGENCY v. BRANSTAD.

Appeal from the Iowa District Court for Polk County, Harry Perkins, Senior Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Schultz, Lavorato, Neuman, and Andreasen, JJ. Opinion by Schultz, J. (6 pages \$2.40)

Plaintiffs, solid waste agencies and commissions created pursuant to Iowa Code chapter 28E (1991), commenced a declaratory judgment action against certain defendants, including Governor Terry E. Branstad. Plaintiffs alleged that legislation allowing the transfer of money from a ground water fund to the State's general fund was illegal and unconstitutional. The district court sustained defendants' motion for summary judgment, finding that plaintiffs lacked standing and that the legislature had the power and authority to transfer the funds. Plaintiffs appeal. **OPINION HOLDS:** We conclude that the legislature's transfer of the ground water protection funds to the general fund was not in conflict with any constitutional provision and did not violate any contractual relationship. Consequently, we hold that the legislature had the authority to transfer these funds to the general fund. We affirm the district court's ruling.

No. 91-1795. **IN RE MARRIAGE OF MCGEE.**

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Scott County, Edward B. deSilva, Judge. **DECISION OF COURT OF APPEALS VACATED, JUDGMENT OF DISTRICT COURT MODIFIED AND AFFIRMED.** Considered by Harris, P.J., and Schultz, Neuman, Snell, and Andreasen, JJ. Per curiam. (3 pages \$1.20)

The narrow unresolved issue in the present case is whether the husband's incentive pay should be included as part of his gross income for purposes of child support, alimony, and property division determinations. **OPINION HOLDS:** In State ex rel. Department of Human Services v. Burge, ___ N.W.2d ___, ___ (Iowa 1993), a case decided after submission of this appeal on further review, we held that incentive pay to a wage earner is to be included as a part of gross income. We agree with the trial court's determination that the respondent father's income, exclusive of his incentive pay, was \$68,000 per year. With the incentive pay included, the gross average income amounts to \$119,503, and the annual net average income is \$83,988. Based on a net monthly income of \$6999, we think support should be ordered at \$1,250 per month. We agree with the trial court's determinations with regard to alimony and property division, since incentive pay was included in those calculations. The case must however be remanded to district court for entry of an order with regard to child support in accordance with this opinion.

No. 92-939. **STATE v. BELT.**

Appeal from the Iowa District Court for Mills County, Charles L. Smith III, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Carter, Neuman, and Snell, JJ. Opinion by Neuman, J. (8 pages \$3.20)

Belt was tried on charges of second-degree theft for exercising control over stolen K Mart merchandise (count I); third-degree theft for stealing from the Food Mart (count II); and second-degree burglary for breaking into the Food Mart (count III). On count I, the jury returned a guilty verdict on the lesser included offense of third-degree theft. It also convicted the defendant as charged on counts II and III. These verdicts were set aside, however, and a new trial was granted. On retrial, the court instructed the jury as originally charged. Belt's counsel did not object. After the jury returned verdicts for guilty as charged on all three counts, Belt's counsel moved for new trial on double jeopardy grounds. The court sustained the motion as to count I, but denied the motion as to counts II and III. Belt now appeals his conviction on counts II and III and the State cross-appeals from the order granting new trial on count I. **OPINION HOLDS:** I. It was reversible error to resubmit second-degree theft at the second trial. We reject the

No. 92-939. **STATE v. BELT** (continued).

State's claim that Belt waived the double jeopardy defense by failing to raise it before trial. Belt is entitled to relief because he suffered prejudice through counsel's ineffective assistance in failing to argue double jeopardy. The State next asserts that under Morris v. Mathews, 475 U.S. 237, 246-47, 106 S. Ct. 1032, _____, 89 L. Ed. 2d 187, 197 (1986), entry of judgment on a lesser offense--not retrial--is the proper remedy. We are not convinced that Morris controls our decision. Unlike the statutory scheme in Morris, our rules of criminal procedure do not authorize the remedy urged by the State. Therefore the district court properly granted a new trial on count I. II. Belt alleges he was denied a fair trial on counts II and III. Belt's claim that he was prejudiced by prosecutorial misconduct rests entirely on references to the second-degree theft charge in unreported arguments. No ground for reversal appears because we have no record. We will not predicate error on speculation. We are equally unpersuaded by Belt's claim that the court's error on count I worked to his substantial disadvantage in the jury's consideration of counts II and III. No presumption of prejudice automatically follows from one double jeopardy violation where there are multiple convictions. We affirm defendant's convictions subject to his right to renew ineffective assistance of counsel arguments in an application for postconviction relief.

No. 92-761. **IN RE NAME CHANGE OF QUIRK.**

Appeal from the Iowa District Court for Scott County, James R. Havercamp, Judge. **REVERSED WITH INSTRUCTIONS.** Considered en banc. Opinion by Neuman, J. Special concurrence by Carter, J. Dissent by Snell, J.

(14 pages \$5.60)

Lori Quirk and Kirk Edwards were married in June 1990. They separated shortly thereafter. Less than a month after filing for dissolution, Lori gave birth to the parties' son. Although she had been using the hyphenated surname "Quirk-Edwards," Lori signed the birth certificate "Lori Ann Quirk," and named the child Bryce Jerrun Quirk. In the subsequent dissolution proceedings, Kirk asked the court (Judge John Nahra, presiding) to change Bryce's last name from Quirk to Edwards. The court ruled that it had no authority to do so under Iowa Code chapter 598. Expressing concern, however, about Lori's failure to use her "proper married name" on Bryce's birth certificate, the judge directed Kirk to institute a change-of-name action. The court then placed Bryce in the parties' joint custody, giving Lori responsibility for his primary care. Kirk petitioned under the name-change statute, Iowa Code chapter 674. Lori filed a written resistance, refusing to consent to the change. Upon reviewing the dissolution decree Judge

No. 92-761. IN RE NAME CHANGE OF QUIRK (continued).

Havercamp noted the concerns expressed by Judge Nahra and concluded that a fact determination had already been made on the name change issue. He then signed a decree changing Bryce's surname from Quirk to Edwards. Lori appeals.

OPINION HOLDS: Judge Havercamp apparently believed that principles of res judicata prevented Lori from successfully contesting Kirk's name-change petition. A review of the dissolution decree reveals that Judge Nahra specifically disclaimed any authority to adjudicate the name-change issue. Because the matter had not been resolved in the dissolution proceeding, Judge Havercamp erred in his finding that Lori was precluded from contesting it here. Iowa Code section 674.6 limits the authority of the district court to change the name of a minor child. The district court made no findings in accordance with section 674.6 because it believed, erroneously, that principles of res judicata rendered the findings unnecessary. Our de novo review of the record makes plain, however, that Lori should have prevailed on the merits. The court was without statutory authority to make the change Kirk requested. However, we cannot escape the fact that much--if not all--of Kirk's current predicament stems from misguided advice from judicial officers. In order to do equity, Kirk may seek a modification of the dissolution decree on the name change issue without necessity of first showing a substantial change in circumstances. **SPECIAL CONCURRENCE**

ASSERTS: This is not a name change case, but a challenge to the legitimacy of the name placed on the child's birth certificate in the first instance. In re Marriage of Gulsvig, 498 N.W.2d 725 (Iowa 1993) authorized this type of challenge to be raised in a pending dissolution-of-marriage action, but conceded that there is no express grant of authority to do that in chapter 598. I submit the authority of a court to referee disputes over the initial naming of a child is found among the court's general equity powers. Kirk is entitled to bring an original action in the district court to determine the initial name of the child. I would disavow a false signal in Gulsvig that dissolution of marriage proceedings may be used by those seeking to change a child's name when the name was determined by agreement of both parents. **DISSENT ASSERTS:** This was never a true chapter 674 case nor was it intended to be. Judge Nahra directed Kirk Edwards to file the petition under chapter 674 in order to correct the false certificate of birth by which Lori named the child. Judge Nahra thought this was the only procedural vehicle available to effect the equitable remedy of correcting the child's name. The argument made on appeal by Lori that the statutory requirements of chapter 674 were not met completely ignores the reality of what Judge Nahra and Judge Havercamp were seeking to provide--a fair and legal forum for determining the child's name.

No. 93-691. **COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT
v. HUTCHESON.**

On review of the report of the Grievance Commission. **LICENSE SUSPENDED.** Considered by Harris, P.J., and Schultz, Neuman, Snell, and Andreasen, JJ. Opinion by Harris, J. (5 pages \$2.00)

The grievance commission recommended suspension of Kent Hutcheson's law license for not less than one year. The present grievance is derived from Hutcheson's representation of the estate of Daniel Borrego Jr. Hutcheson, as notary public, falsely certified that several documents in the estate were subscribed and sworn to in his presence. Hutcheson also obtained an ex parte order fixing fees in excess of those permitted by law. Hutcheson finally ignored the interest of two of Borrego's heirs and mishandled two settlement checks. The matter is now before us on review of the commission's report and recommendation. **OPINION HOLDS:** Hutcheson's mishandling of the probate matters violated DR 1-102(A)(1), DR 2-106(A), and EC 9-6 of the code of professional responsibility. We agree with the commission that a one-year suspension, in addition to Hutcheson's existing suspension, is warranted. Upon any future application for readmission the burden will be on Hutcheson to demonstrate he is fit to reenter the practice. We direct that Hutcheson's license to practice law in the courts of this state, as that term is defined in Iowa supreme court rule 118.12, be suspended indefinitely, with no possibility for reinstatement for one year from the date of this opinion. We further order that the costs of this action be assessed against the respondent in accordance with Iowa supreme court rule 118.22..

No. 92-1608. **IOWA DEPARTMENT OF TRANSPORTATION v.
IOWA DISTRICT COURT.**

Certiorari to the Iowa District Court for Buchanan County, William C. Klotzbach, Judge. **WRIT SUSTAINED.** Considered by Harris, P.J., and Schultz, Neuman, Snell, and Andreasen, JJ. Per curiam. (4 pages \$1.60)

The Iowa Department of Transportation (DOT) has brought a certiorari action that challenges the district court's order in a criminal proceeding directing the DOT to remove from the defendant's driving record a 1982 conviction for operating a motor vehicle while intoxicated. **OPINION HOLDS:** There is no statute permitting the court in the criminal case to direct the DOT to remove the conviction from the defendant's driving record. Moreover, we can glean no legislative intent in chapter 321J permitting such judicial interference with the DOT's mandatory record keeping functions. We conclude that the district court exceeded its authority in requiring the DOT to remove the conviction from the defendant's driving record.

No. 92-900. **EMPLOYERS REINSURANCE CORP. v. BEATY.**

Appeal from the Iowa District Court for Des Moines County, John C. Miller, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Carter, and Lavorato, JJ. Opinion by Harris, J. (9 pages \$3.60)

R. Leon Beaty appeals from a judgment declaring that Employers Reinsurance Company has no duty to defend or indemnify Beaty in a suit brought against him by Mutual Medical Plans, Inc. The underlying suit sought damages from Beaty and others for claimed tortious interference with contract and tortious interference with a prospective advantage. The trial court found that the policy provided no duty to defend and indemnify. The question is whether an "errors and omissions" policy provided liability coverage for Beaty. **OPINION HOLDS:** The policy's coverage provision provides that the corporation will pay on behalf of the named insured such loss sustained by the insured by reason of liability imposed by law for damages caused by any negligent act, error or omission of the insured arising out of the conduct of the business of the insured. There is no claim in the underlying suit that Beaty did any negligent act. Thus any claim of coverage must be derived from the independent words "error" or "omission." According to their dictionary and ordinary meanings, neither the words "error" nor "omission" can correctly be used to describe the conduct alleged in the underlying suit. In short, the suit alleges deliberate, not negligent, acts, and the acts alleged cannot be contemplated within the meaning of error or omission. We affirm.

No. 92-1196. **STATE v. SMITH.**

Appeal from the Iowa District Court for Black Hawk County, Robert E. Mahan, Judge. **AFFIRMED.** Considered by Harris, P.J., and Schultz, Neuman, Snell, and Andreasen, JJ. Per curiam. (4 pages \$1.60)

The defendant appeals from his conviction of first-degree theft in violation of Iowa Code sections 714.1 and 714.2(2) (1991). The defendant claims that his counsel was ineffective by failing to object to the State's use of defendant's juvenile adjudications involving thefts and burglaries to impeach his testimony regarding his lack of a criminal record. **OPINION HOLDS:** We do not need to determine whether the evidence was inadmissible because we conclude there was no prejudice. In view of the strong identification testimony against the defendant, we conclude that there is not a reasonable probability that the result would have been different if counsel had challenged the admission of the juvenile adjudications. Consequently, the defendant has not established his claim of ineffective assistance of counsel.

NO. 92-1534. LIFELINE AMBULANCE v. IOWA INS. DIV.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge. **REVERSED.** Considered by Harris, P.J., and Larson, Carter, Neuman, and Snell, JJ. Opinion by Carter, J. (12 pages \$5.20)

University Health Care Plan of Iowa (the HMO), a health maintenance organization organized under Iowa Code chapter 514B, notified Lifeline Ambulance that because of a default in the payment of premium its group contract was canceled retroactive to the date to which premiums were last paid. The HMO gave no notice to the individual employee enrollees under the group contract that their health care benefits were being terminated. Lifeline Ambulance challenged the retroactive termination of its group health insurance plan. The Iowa Insurance Commissioner upheld the termination and the district court upheld the agency decision. **OPINION HOLDS:** I. We believe the termination of the employer's group contract with the HMO and termination of the coverage for individual employees enrolled under the group plan are inseparable. Lifeline Ambulance has standing to argue that its employees were entitled to notice of termination of benefits under section 514B.17. II. The group contract between Lifeline Ambulance and the HMO provides that it may be canceled by the latter if Lifeline Ambulance fails to prepay the applicable premium for a period of thirty days. We agree that the group contract was properly terminated by the HMO in accordance with its terms. Termination of the group contract, however, although a ground for termination of the rights of the individual employee-enrollees, may not automatically work a termination of those rights. We must also consider the applicability of statutory notice requirements to the employee-enrollees. III. Iowa Code section 514B.17 (1987) sets out requirements a health maintenance organization must follow before canceling the coverage of an "enrollee," including a thirty-day period between giving the enrollee notice of cancellation and the effective date of cancellation. Lifeline Ambulance's employees are "enrollees" of the HMO. We are unable to conclude that the notice requirement of section 514B.17 is somehow nullified by section 509B.5(2). We hold that the absence of the thirty-day notice to the individual enrollees by the HMO leaves the enrollees' rights in force. IV. The group contract provides that, if the applicable premium is not paid "for a period exceeding thirty days, the individual subscribers and members shall be liable for payment of any services received during the thirty-day period." This clause is inoperative, overridden by the statutory requirements for termination of benefits. We hold that the contractual rights of the individual enrollees to benefits under the group contract were not terminated in the manner required by law. We reverse.

No. 92-459. STATE v. CONSTABLE.

Appeal from the Iowa District Court for Webster County, Mark S. Cady, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Carter, Neuman, Snell, and Andreasen, JJ. Opinion by Snell, J. (17 pages \$6.80)

Constable was staying at his friend J.W.'s house. When J.W. went to get cigarettes, Constable was alone with J.W.'s eight-year-old daughter S.W. and her seven-year-old friend J.H. J.W. returned after having been gone no more than five or ten minutes and found Constable upstairs in a bedroom with the girls. She contacted the police. After a jury trial, Constable was found guilty as charged of five counts of sexual abuse in the second degree: count I--contact between Constable's mouth and S.W.'s genitals; count II--contact between S.W.'s mouth and Constable's genitals; count III--contact between Constable's finger and J.H.'s genitals; count IV--contact between Constable's mouth and J.H.'s genitals; and count V--contact between J.H.'s mouth and Constable's genitals. Constable was sentenced to a term of incarceration not to exceed twenty-five years on each of the five counts. The sentences on count I, corresponding to contact with S.W., and count III, corresponding to contact with J.H., were to run consecutively and the remaining three sentences were to run concurrently. Constable appeals. **OPINION HOLDS:** I. Constable argues the trial court erred in failing to instruct on third-degree sexual abuse, assault with intent to commit sexual abuse, and simple assault as lesser included offenses of second-degree sexual abuse. When the State charges an individual with second-degree sexual abuse and finds that charge on the age of the child, third-degree sexual abuse based upon whether the act is done by force or against the will of the victim is not a lesser included offense. Similarly, our analysis leads us to conclude that assault with intent to commit sexual abuse and simple assault require proof of specific intent and are not lesser included offenses of second-degree sexual abuse as charged in this case. II. Constable argues that he should only have been charged and tried for two counts of sexual abuse in the second degree--one count for each victim. The language of our definitional statute and chapter 709 express legislative intent that any physical contact described in section 702.17 is a sex act sufficient to complete a sexual abuse crime when other proscribed circumstances exist. Constable engaged in five distinct acts of physical contact; each contact alone met the definition of "sex act" and each contact alone would be sufficient to charge Constable with one count of sexual abuse. It follows logically that Constable committed five counts of sexual abuse. We hold double jeopardy has not been violated. III. We find that the evidence is sufficient to support guilty verdicts on all five counts.

No. 92-1876. STATE v. MORET.

Appeal from the Iowa District Court for Sioux County, Dewie J. Gaul, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Carter, and Lavorato, JJ. Opinion by Lavorato, J. (4 pages \$1.60)

The issue here is whether--in habitual violator proceedings--we should allow laches as a complete defense. The district court did not and barred the defendant from operating a motor vehicle for two years. Moret appeals. **OPINION HOLDS:** We conclude that laches is a partial, not a complete, defense. We hold that the district court may, in fixing the period of revocation, consider the lapse of time between the date the habitual violator proceedings could have been instituted and the date they were in fact instituted. Here the district court found that the State could have instituted the habitual violator proceedings some two years earlier than it did. The court took this fact into consideration in fixing the period of revocation at the minimum: two years. We affirm.

No. 93-749. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT v. PRACHT.

On review of the report of the Grievance Commission. **ATTORNEY REPRIMANDED.** Considered by McGiverin, C.J., and Harris, Larson, Carter, and Lavorato, JJ. Opinion by Lavorato, J. (10 pages \$4.00)

The Committee on Professional Ethics and Conduct charged attorney Michael T. (Mick) Pracht of Davenport, Iowa, with several violations of the Iowa Code of Professional Responsibility for Lawyers because he allegedly (1) undertook probate matters he was not competent to handle, (2) neglected these matters, and (3) failed to fully cooperate with the committee in its investigation. The grievance commission found that the committee had established that Pracht had violated multiple disciplinary rules and ethical considerations. Four of the commission members recommended that Pracht receive a public reprimand. The remaining commission member recommended a suspension for three months. This matter is now before us on review of the grievance commission's report and recommendation. **OPINION HOLDS:** I. We agree that Pracht's actions in handling the probate matters and failing to cooperate with the committee violated multiple disciplinary rules and ethical considerations. II. We also agree with the commission's recommendation of public reprimand. We therefore reprimand Pracht. We further agree that Pracht should hire competent probate counsel at his own expense to close any of these estates that remain open on the date this opinion is filed. We also require Pracht to file a statement certifying certain matters as outlined in our opinion. Costs are assessed to Pracht.

No. 92-51. HUNTER v. UNION STATE BANK.

Appeal from the Iowa District Court for Adair County, James W. Brown, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Schultz, Lavorato, Neuman, and Andreasen, JJ. Opinion by Lavorato, J. (15 pages \$6.00)

Following the Hunters' loss of 360 acres of farmland to Union State Bank through foreclosure, the bank accepted offers of purchase on four separate parcels of the land from four different buyers. All of the offers were subject to the Hunters' right to repurchase under Iowa Code section 524.910(2) (1987). The bank gave notice to the Hunters of these purchase offers and of their repurchase rights under section 524.910(2). When the Hunters failed to respond to the notices by exercising their right to repurchase, the bank completed the sales to the third parties. The Hunters then sued the bank and its president. After the case was tried but before a ruling was issued, the presiding judge died. A successor judge ruled in favor of the bank. On appeal, we vacated the ruling and remanded the case to the district court to consider the various options under Iowa Rule of Civil Procedure 367(b) in making a final ruling. On remand, a different judge opted to make a decision based on the transcript of the original trial and dismissed the Hunters' petition. The Hunters have appealed. **OPINION HOLDS:** I. The district court on remand properly decided the merits through a review of the transcripts, briefs, and upon hearing oral arguments. There was therefore no abuse of discretion in following this option under Iowa Rule of Civil Procedure 367(b). II. Each of the notices the bank sent the Hunters adequately apprised them of the information required under Iowa Code section 524.910(2). Because the notices complied with the law, no procedural due process was violated. III. There was no express or implied in fact agreement between the parties requiring the bank to offer the Hunters the land in one parcel. Section 524.910(2) did not create a quasi-contractual agreement to do so. IV. Because the bank and Kniep fully complied with section 524.910(2), they did not violate the Hunters' civil rights under 42 U.S.C. section 1983.

No. 92-1339. STATE v. COFFIN.

Appeal from the Iowa District Court for Marshall County, Carl D. Baker, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Schultz, Lavorato, Neuman, and Andreasen, JJ. Opinion by Lavorato, J. (9 pages \$3.60)

Coffin was charged with second-degree robbery. Coffin's lawyer asked the district court to submit extortion to the jury as a lesser included offense of second-degree robbery. The court denied the request. Coffin was convicted of second-degree robbery. Coffin appealed, claiming the district court erred when it refused

No. 92-1339. STATE v. COFFIN (continued).

to submit extortion as a lesser included offense. OPINION HOLDS: We conclude that under the marshaling instruction for second-degree robbery as given here, all of the elements of robbery coincide with all of the elements of extortion. Under this instruction, it is not possible to commit that offense without also committing extortion. However, our legal or elements test requires that the lesser offense be composed solely of some but not all of the elements of the greater offense. Here we have no dissimilar element in the greater offense. So the district court correctly refused to submit extortion as a lesser included offense. We affirm.

NO. 92-1532. STATE v. WITCHER.

Appeal from the Iowa District Court for Dubuque County, James L. Beeghly, Judge. AFFIRMED. Considered by McGiverin, C.J., and Harris, Larson, Carter, and Lavorato, JJ. Per curiam. (3 pages \$1.20)

Witcher was ordered to contribute twenty percent of his prison wages toward a restitution plan formulated by the department of corrections. Witcher brought this action to "enjoin" the deduction of this amount from his wages. We consider that petition as an application to modify the plan of restitution. The district court denied the relief requested, and Witcher has appealed. He contends that a twenty percent deduction from his present wages of seventeen cents per day is unreasonable under Iowa Code section 910.2 (1991). OPINION HOLDS: Witcher's complaint is that the department did not give individual attention to his needs, but merely adopted the twenty percent deduction that is the standard for restitution orders in general. However, Witcher has failed to show what his individual needs are, and even if we were to require the department to individualize its withholding orders, we have no facts to go on in this case. The trial court properly denied his petition.

No. 92-1504. STATE v. BUTLER.

Appeal from the Iowa District Court for Johnson County, Larry J. Conmey, Judge. **AFFIRMED.** Considered by Harris, P.J., and Schultz, Neuman, Snell, and Andreasen, JJ. Opinion by Andreasen, J. (13 pages \$5.20)

Tommy Lewis Butler was charged in one trial information with one count of possession with intent to deliver a schedule I controlled substance, marijuana, and one count of failure to affix a drug tax stamp. Following arraignment Butler filed a motion to sever the two counts. The court granted Butler's motion and ordered the State to proceed to trial on the charge of possession with intent to deliver. The jury found Butler not guilty of possession with intent to deliver marijuana and not guilty of the lesser included offense of possession of marijuana. Later, Butler moved to dismiss the remaining drug tax stamp charge asserting the State's prosecution of the second count was barred on double jeopardy and collateral estoppel grounds. The district court granted Butler's motion to dismiss. The State appealed. **OPINION HOLDS:** I. Applying the same-conduct test for double jeopardy protection purposes, the charge of possession with intent to deliver and the charge of failure to affix a drug tax stamp would be considered the same offense. Under this analysis, the second trial against Butler would be barred unless Butler has waived his double jeopardy protection. Because Butler moved to sever the charges, he should not be entitled to use the Double Jeopardy Clause to prevent the State from completing its prosecution on the remaining count. Likewise, the constitutional double jeopardy protection does not extend to Butler if only the same-elements test is employed because the charged crimes included different elements. We conclude Butler has failed to establish his right to dismissal of the drug tax stamp charge upon double jeopardy grounds. II. Butler also argues the doctrine of collateral estoppel prevents the State from prosecuting him on the remaining count. In finding the State failed to prove Butler guilty of possession of marijuana, the jury must have grounded its verdict upon the very issue essential in the drug tax stamp count. Under these circumstances, collateral estoppel will bar a trial on the drug tax stamp charge. Although Butler certainly waived his right to protest a second prosecution under double jeopardy, we find no reason to conclude collateral estoppel is likewise waived. We believe the State had a full and fair opportunity to try the possession charges. Therefore, the State is estopped from proceeding to trial on the second count.

No. 92-337. PORTER v. GOOD EAVESPOUTING.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Marshall County, Carl D. Baker, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED IN PART, REVERSED IN PART.** Considered by Harris, P.J., and Schultz, Neuman, Snell, and Andreasen, JJ. Opinion by Andreasen, J. (10 pages \$4.00)

David Porter filed suit against Good Eavespouting d/b/a Good Construction Company just before the statute of limitations period expired. The defendant filed an answer which included the affirmative defense that the defendant was not a legal entity. The defendant also filed a motion for summary judgment which urged the defendant was not a legal entity and the action should be dismissed. In an attached affidavit, Larry Good stated he conducts businesses known as Good's Construction Co., Good's Eavespouting, Co., and Good's L-S Storage Rental. He further stated there is no corporation known as Good Construction Company, nor had he ever done business as Good Eavespouting or Good Construction Company. Porter filed a resistance to the summary judgment motion and a motion for leave to amend his petition. The proposed amendment would add Larry Good and Sandra Good, individually, as defendants. The district court denied the motion for leave to amend, granted the defendant's motion for summary judgment and dismissed the action. The Iowa Court of Appeals affirmed the district court. We granted Porter's application for further review. **OPINION HOLDS:** I. We conclude the proposed amendment would add new parties, and Porter failed to satisfy the notice requirement of Iowa Rule of Civil Procedure 89. We therefore affirm the district court's denial of his motion for leave to amend. II. We find the defendant did not raise the statute of limitations defense in its pleadings. Because the limitations defense was not raised, the defendant waived it. We further find the names of the named defendant and Good's actual businesses are so similar as to create no confusion as to the identity of the defendant. As such, the business or trade name is a legal entity in Iowa. The defendant was not entitled to a judgment as a matter of law. We vacate the court of appeals decision. We affirm the district court ruling upon the motion for leave to amend; we reverse the court's summary judgment for the defendant and its dismissal of the case.

NO. 92-644. MOYER v. CITY OF DES MOINES.

Appeal from the Iowa District Court for Polk County, Gene L. Needles, Judge. **REVERSED IN PART, VACATED IN PART, AND REMANDED.** Considered by Harris, P.J., and Larson, Carter, Neuman, and Snell, JJ. Opinion by Carter, J.

(7 pages \$2.80)

Residential developer Donald Moyer appeals from judgments dismissing his petition against the City of Des Moines and individual city council members. The action sought damages against the defendants for alleged willful actions to preclude the building of a proposed condominium development. The action also sought a writ of mandamus to compel a site approval for an eleven-unit condominium project. The district court granted defendants' motion to dismiss the count seeking money damages on the ground that the petition alleged a failure to perform a discretionary function, thus rendering the defendants immune from suit under Iowa Code section 613A.4(3) (1989). On the mandamus count, the district court granted summary judgment on the theory that the City's actions were discretionary and, consequently, did not involve conduct that could be compelled under a writ of mandamus. **OPINION HOLDS:** I. We conclude that the petition's allegations on the damages count had to be accepted as true by the district court in ruling on the motion to dismiss. If the immunity claim under section 613A.4(3) is a matter of subject matter jurisdiction, it is still necessary to establish the facts upon which that claim may be predicated. Moreover, we do not believe that the determination of statutory immunity for certain acts or omissions of municipal corporations or their employees under section 613A.4 is really an issue of subject matter jurisdiction. We now conclude that section 613A.4 issues are more properly characterized as substantive rules of law affecting the municipal corporation's liability on the merits. The district courts do have subject matter jurisdiction to hear claims involving these rules of law and to issue judgments on the merits for or against the municipal corporation based on these statutes. We reverse the order sustaining the motion to dismiss and remand the case for further proceedings on the damages count. II. We must conclude that summary judgment on the mandamus count was inappropriate on the ground given by the district court. However, it appears that the mandamus issue is now moot. Moyer's option to build on the property has expired. Consequently, we vacate the district court's ruling on the mandamus issues and remand the case to that court for an order dismissing those issues as moot.

NO. 92-1462. MILLER v. BEHR.

Appeal from the Iowa District Court for Dubuque County, Roger Peterson, Judge. REVERSED AND REMANDED. Considered by McGiverin, C.J., and Harris, Larson, Carter, and Lavorato, JJ. Per curiam. (5 pages \$2.00)

The plaintiff commenced a forcible entry and detainer action seeking defendant's removal from property that he leased from plaintiff. Joined with that claim was an action for unpaid rent. Subsequently, the district court dismissed the forcible entry count in plaintiff's petition. After that dismissal and before trial of the rent claim, defendant filed a counterclaim against plaintiff asserting that she had been negligent in protecting his personal property during the period of time that possession of the leased premises was in dispute. The plaintiff was later declared to be in default on the counterclaim. The case was set for trial on plaintiff's action for unpaid rent and for proof of damages on defendant's counterclaim. After trial but before any verdict, findings, or decision was entered, plaintiff filed a motion to set aside the default and for a new trial. The district court granted the motion for new trial on the basis that, under Iowa Code section 648.19 (1991), defendant's counterclaim was improper in an action for forcible entry and detainer. The defendant appeals. OPINION HOLDS: Defendant argues that a motion for new trial was not available to plaintiff under Iowa Rule of Civil Procedure 244 until such time as there had been a verdict or findings of fact filed by the trial court. Although defendant's argument is technically correct, we believe that the district court could properly consider the motion as a motion for mistrial. Notwithstanding this conclusion, the ground on which the motion was granted was not valid. At the time defendant's counterclaim was filed, the forcible entry action had been removed from the case. The counterclaim was properly brought with respect to an action for unpaid rent. We reverse the district court's order. We remand the case to the district court for a ruling on the other grounds of plaintiff's motion, a ruling on plaintiff's motion to set aside the default, and such other proceedings as may be required by those rulings.

No. 92-1274. DANIELS v. HI-WAY TRUCK EQUIPMENT.

Appeal from the Iowa District Court for Franklin County, Paul W. Riffel, Judge. **AFFIRMED.** Considered by Harris, P.J., and Schultz, Neuman, Snell, and Andreasen, JJ. Opinion by Andreasen, J. (12 pages \$4.80)

Daniels and Feldhoff were killed in the course of their employment with Franklin County. The workers' compensation carrier, Iowa Small Business Employers, Inc., paid transportation and burial expenses for both men. Because neither Daniels nor Feldhoff had dependents, the insurer also paid a total of \$30,000 to the Second Injury Fund (Fund), pursuant to Iowa Code section 85.65. Administrators of the decedents' estates subsequently filed wrongful death actions against Hi-Way Truck Equipment, Inc., and others. Franklin County and Iowa Small Business Employers, Inc. filed a petition of intervention and a notice of workers' compensation lien. The court concluded that any right to indemnification under section 85.22(1) did not include the \$30,000 paid to the Fund under section 85.65 and found no basis for indemnification on equitable principles. The intervenors appealed. **OPINION HOLDS:** I. The district court correctly found the payments for the decedents' transportation and burial expenses were encompassed by the lien provision of section 85.22 and indemnifiable. II. The intervenors claim that payments made to the Fund are "compensation" within the meaning of chapter 85 of the workers' compensation act. Although we construe the term "compensation" broadly, we believe the district court correctly reasoned that compensation under section 85.22 does not extend to include payments to the Fund under section 85.65. We find the language and structure of the Second Injury Compensation Act evinces a clear intent that payments to the Fund are a separate and distinct class not recoverable under section 85.22. III. The second question presented is whether intervenors have a right of indemnification based on equitable principles. The district court determined intervenors had no cause of action for indemnity independent of their rights under section 85.22. We agree and affirm the district court judgment.

NO. 92-1388. STERNER v. FISCHER.

Appeal from the Iowa District Court for Muscatine County, Max R. Werling and J.L. Burns, Judges. **APPEAL DISMISSED.** Considered by McGiverin, C.J., and Harris, Larson, Carter, and Lavorato, JJ. Opinion by Larson, J.

(4 pages \$1.60)

Kerri G. Sterner filed suit against Robert C. Fischer for damages arising out of an automobile accident. Attorney David Scieszinski represented the plaintiff. The seventh judicial district has a rule, No. 7.1, that requires the personal attendance of parties, as well as their lawyers, at any settlement conferences unless excused by the settlement conference judge. Scieszinski did not secure the plaintiff's attendance at the settlement conference in this case. The settlement conference was unproductive. The defendant claimed this was due in part to Scieszinski's failure to secure his client's attendance in order to authorize a compromise. The defendant requested sanctions against Scieszinski for violating rule 7.1 and causing additional expenses to the defendant in the form of attorney fees. The court agreed and entered an order on August 21, 1991, assessing attorney fees of \$249.28 against Scieszinski. No sanction was ordered against the plaintiff. The case proceeded to trial, and a judgment was entered on July 29, 1992. The defendant did not appeal from that judgment; however, Scieszinski appealed the sanction order that had been entered approximately eleven months earlier. **OPINION HOLDS:** When an attorney is sanctioned for violation of Iowa Rule of Civil Procedure 80(a), we have held that the remedy is certiorari, not appeal. We apply the same rule in this case, even though the sanction was not under rule 80(a). Accordingly, we consider the notice of appeal as a petition for a writ of certiorari. We conclude Scieszinski's challenge to the sanction is not timely because his "notice of appeal" was not filed within thirty days of the sanction order. We therefore have no jurisdiction to consider it.

1993 CODE OF IOWA

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