



# IOWA ADMINISTRATIVE BULLETIN

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Pages 1713 to 1788

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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  
KATHLEEN BATES, Deputy Editor

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

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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).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

## Schedule for Rule Making 1995

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 2 '94	Dec. 21 '94	Jan. 10	Jan. 25	Jan. 27	Feb. 15	Mar. 22	June 19
Dec. 16 '94	Jan. 4	Jan. 24	Feb. 8	Feb. 10	Mar. 1	Apr. 5	July 3
Dec. 30 '94	Jan. 18	Feb. 7	Feb. 22	Feb. 24	Mar. 15	Apr. 19	July 17
Jan. 13	Feb. 1	Feb. 21	Mar. 8	Mar. 10	Mar. 29	May 3	July 31
Jan. 27	Feb. 15	Mar. 7	Mar. 22	Mar. 24	Apr. 12	May 17	Aug. 14
Feb. 10	Mar. 1	Mar. 21	Apr. 5	Apr. 7	Apr. 26	May 31	Aug. 28
Feb. 24	Mar. 15	Apr. 4	Apr. 19	Apr. 21	May 10	June 14	Sept. 11
Mar. 10	Mar. 29	Apr. 18	May 3	May 5	May 24	June 28	Sept. 25
Mar. 24	Apr. 12	May 2	May 17	May 19	June 7	July 12	Oct. 9
Apr. 7	Apr. 26	May 16	May 31	June 2	June 21	July 26	Oct. 23
Apr. 21	May 10	May 30	June 14	June 16	July 5	Aug. 9	Nov. 6
May 5	May 24	June 13	June 28	June 30	July 19	Aug. 23	Nov. 20
May 19	June 7	June 27	July 12	July 14	Aug. 2	Sept. 6	Dec. 4
June 2	June 21	July 11	July 26	July 28	Aug. 16	Sept. 20	Dec. 18
June 16	July 5	July 25	Aug. 9	Aug. 11	Aug. 30	Oct. 4	Jan. 1 '96
June 30	July 19	Aug. 8	Aug. 23	Aug. 25	Sept. 13	Oct. 18	Jan. 15 '96
July 14	Aug. 2	Aug. 22	Sept. 6	Sept. 8	Sept. 27	Nov. 1	Jan. 29 '96
July 28	Aug. 16	Sept. 5	Sept. 20	Sept. 22	Oct. 11	Nov. 15	Feb. 12 '96
Aug. 11	Aug. 30	Sept. 19	Oct. 4	Oct. 6	Oct. 25	Nov. 29	Feb. 26 '96
Aug. 25	Sept. 13	Oct. 3	Oct. 18	Oct. 20	Nov. 8	Dec. 13	Mar. 11 '96
Sept. 8	Sept. 27	Oct. 17	Nov. 1	Nov. 3	Nov. 22	Dec. 27	Mar. 25 '96
Sept. 22	Oct. 11	Oct. 31	Nov. 15	Nov. 17	Dec. 6	Jan. 10 '96	Apr. 8 '96
Oct. 6	Oct. 25	Nov. 14	Nov. 29	Dec. 1	Dec. 20	Jan. 24 '96	Apr. 22 '96
Oct. 20	Nov. 8	Nov. 28	Dec. 13	Dec. 15	Jan. 3 '96	Feb. 7 '96	May 6 '96
Nov. 3	Nov. 22	Dec. 12	Dec. 27	Dec. 29	Jan. 17 '96	Feb. 21 '96	May 20 '96
Nov. 17	Dec. 6	Dec. 26	Jan. 10 '96	Jan. 12 '96	Jan. 31 '96	Mar. 6 '96	June 3 '96
Dec. 1	Dec. 20	Jan. 9 '96	Jan. 24 '96	Jan. 26 '96	Feb. 14 '96	Mar. 20 '96	June 17 '96
Dec. 15	Jan. 3 '96	Jan. 23 '96	Feb. 7 '96	Feb. 9 '96	Feb. 28 '96	Apr. 3 '96	July 1 '96
Dec. 29	Jan. 17 '96	Feb. 6 '96	Feb. 21 '96	Feb. 23 '96	Mar. 13 '96	Apr. 17 '96	July 15 '96

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

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
26	Friday, June 2, 1995	June 21, 1995
1	Friday, June 16, 1995	July 5, 1995
2	Friday, June 30, 1995	July 19, 1995

**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.

# PUBLICATION PROCEDURES

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:

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Ami Pro Macro	Microsoft Word for Windows	SuperCalc
dBase	1.x, 2.0, 6.0	Symphony Document
DCA/FFT	MultiMate	Wang (IWP)
DCA/RFT	Navy DIF	Windows Write
DIF	Office Writer	Word for Windows 1.x, 2.0, 6.0
Display Write 4	Paradox	WordPerfect 4.2, 5.x, 6.0
Enable 1.x, 2.x, 4.x	Peach Text	WordStar
Excel 3.0, 4.0, 5.0	Professional Write	WordStar 2000 ver 1.0, 3.0
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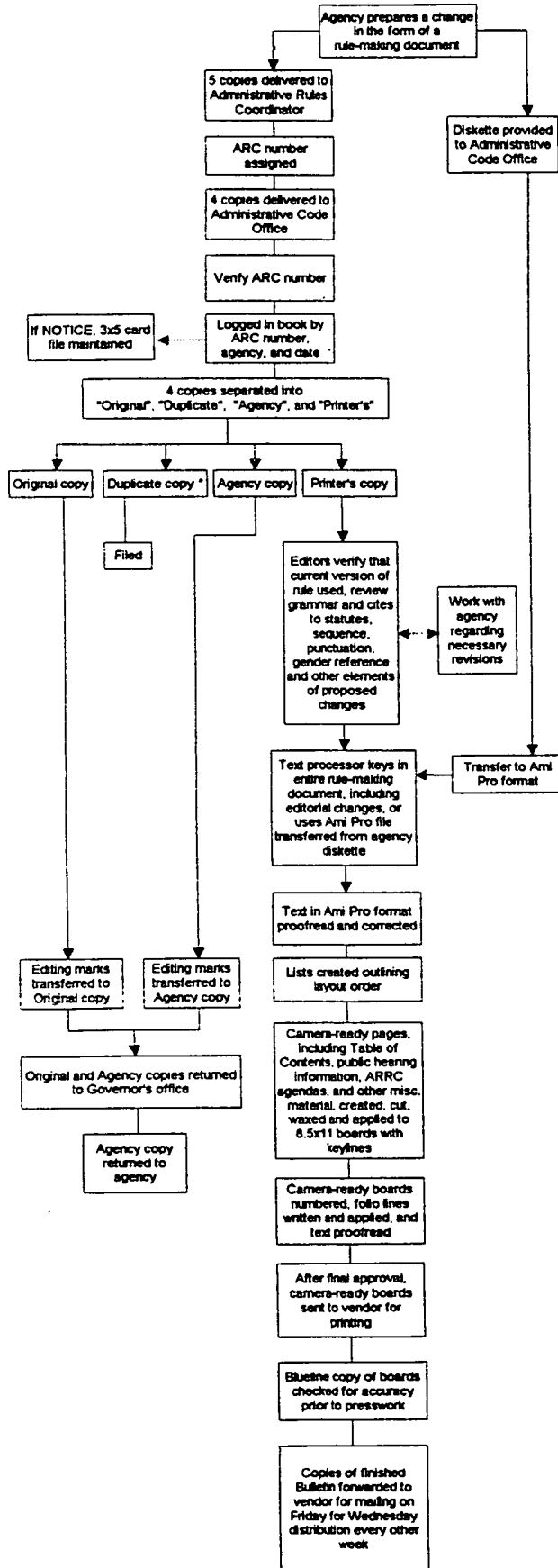
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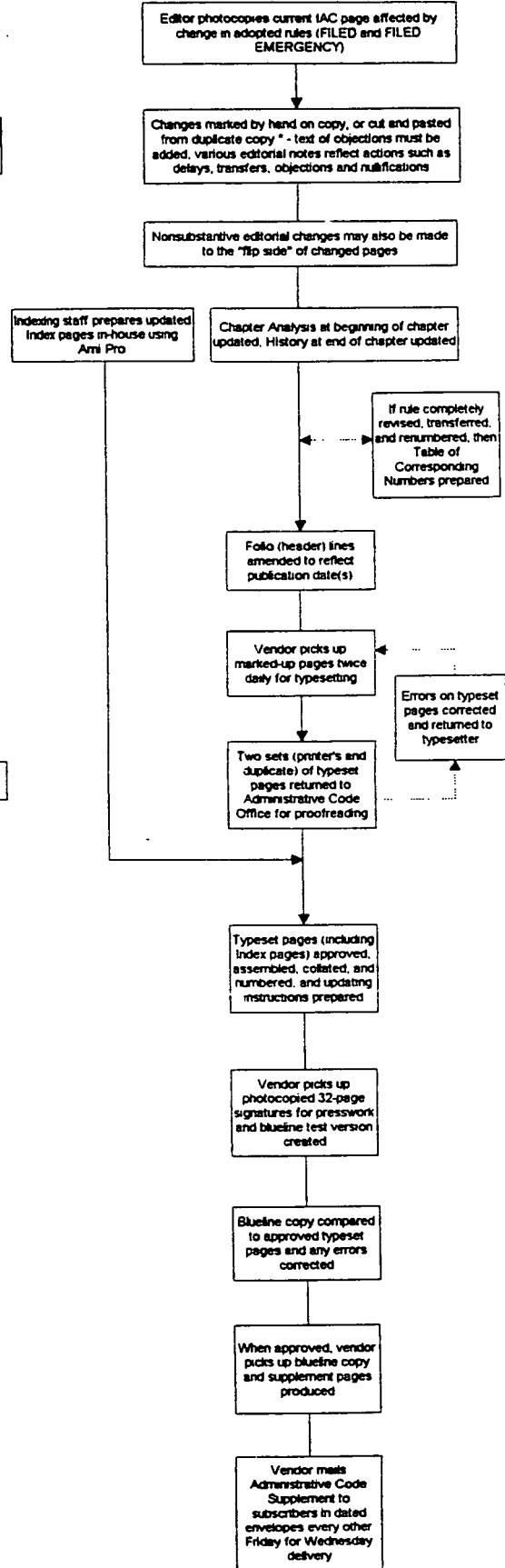
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## IOWA ADMINISTRATIVE BULLETIN (IAB)



## IOWA ADMINISTRATIVE CODE (IAC) SUPPLEMENT



The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, June 13, 1995, at 10 a.m. and Wednesday, June 14, 1995, at 9 a.m. in Senate Committee Room 22, State Capitol. The following rules will be reviewed:

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Public records and fair information practices, correction of Iowa Code references, 6.13(2)"b" and "h," 6.14(2), 6.14(3), 6.14(3)"a" and "b," 6.14(4), 6.14(5), 6.14(10), <u>Filed</u> ARC 5579A .....	5/10/95
Sale of goods and services, 8.2(2)"b," <u>Filed</u> ARC 5583A .....	5/10/95
Supervision of a dental hygienist, 10.2(1), 10.3, 10.3(1), 10.3(2), 10.4, <u>Notice</u> ARC 5577A .....	5/10/95
Examination required for licensure to practice dentistry, 11.1, 11.2(2)"d," <u>Notice</u> ARC 5576A .....	5/10/95
Minimum average grade on examination for dental licensure, 12.1(6), 12.1(7), 12.1(9), 12.2 to 12.5, <u>Filed</u> ARC 5584A .....	5/10/95
Report of continuing education hours by faculty permit holders, 13.2(6), <u>Filed</u> ARC 5582A .....	5/10/95
Exemption for new graduates of a dental assisting program from observation requirement, 22.7(1)"d," <u>Filed</u> ARC 5581A .....	5/10/95
Complaints, correction of Iowa Code references, 31.1, 31.6 to 31.13, <u>Filed</u> ARC 5580A .....	5/10/95
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COMMERCE DEPARTMENT[181]"umbrella"

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**JOB SERVICE DIVISION[345]**

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**LABOR SERVICES DIVISION[345]**

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General industry — occupational exposure to asbestos, 10.20, Notice ARC 5587A ..... 5/10/95

Construction — hazard communication, 26.1, Filed Emergency After Notice ARC 5586A ..... 5/10/95

Construction — occupational exposure to asbestos, 26.1, Notice ARC 5588A ..... 5/10/95

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**MEDICAL EXAMINERS BOARD[653]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

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Financial responsibility — closed tanks, 11.1(3)"b," "p," and "q," Filed ARC 5606A ..... 5/24/95

**PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

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Podiatry — renewal fee for temporary license, 220.3(6), Filed ARC 5567A ..... 5/10/95

**RACING AND GAMING COMMISSION[491]**

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Riverboat operations — payment of jackpot, testing of machines, 25.18(7), Filed Emergency ARC 5597A ..... 5/24/95

**REVENUE AND FINANCE DEPARTMENT[701]**

Resident determination, 38.1(9), 38.17, Filed ARC 5590A ..... 5/10/95

Inheritance tax — fair market value of property, 86.9, 86.12(1), Filed ARC 5608A ..... 5/24/95



**SECRETARY OF STATE[721]**

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**SUBSTANCE ABUSE COMMISSION[643]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

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**TREASURER OF STATE[781]**

Linked investments for tomorrow (LIFT), 4.4(4), Notice ARC 5600A, also Filed Emergency ARC 5601A ..... 5/24/95

**UTILITIES DIVISION[199]**

COMMERCE DEPARTMENT[181]"umbrella"

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Equipment distribution program, ch 37, Filed ARC 5592A ..... 5/10/95

**ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS**

Regulatory statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

**EDITOR'S NOTE: Terms ending April 30, 1995.**

Senator Berl E. Priebe, Co-chair  
2106 100th Avenue  
Algona, Iowa 50511

Representative Janet Metcalf, Co-chair  
12954 NW 29th Drive  
Des Moines, Iowa 50325

Senator H. Kay Hedge  
R.R. 1, Box 39  
Fremont, Iowa 52561

Representative Horace Daggett  
400 N. Bureau  
Creston, Iowa 50801

Senator John P. Kibbie  
R.R. 1, Box 139A  
Emmetsburg, Iowa 50536

Representative Minnette Doderer  
2008 Dunlap Court  
Iowa City, Iowa 52245

Senator William Palmer  
1340 E. 33rd Street  
Des Moines, Iowa 50317

Representative Roger Halvorson  
609 S. Main  
Monona, Iowa 52159

Senator Sheldon Rittmer  
3539 230th Street  
DeWitt, Iowa 52742

Representative Keith Weigel  
315 W. Main, P.O. Box 189  
New Hampton, Iowa 50659

Joseph A. Royce  
**Legal Counsel**  
Capitol, Room 116A  
Des Moines, Iowa 50319  
Telephone (515)281-3084

Paula Dierenfeld  
Administrative Rules Coordinator  
**Governor's Ex Officio Representative**  
Capitol, Room 15  
Des Moines, Iowa 50319  
Telephone (515)281-6331

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
<b>DENTAL EXAMINERS BOARD[650]</b> Supervising a dental hygienist, 10.2(1), 10.3, 10.4 IAB 5/10/95 ARC 5577A	Conference Room — East Side Second Floor Executive Hills West 1209 E. Court Ave. Des Moines, Iowa	June 21, 1995 1 p.m.
Examinations, 11.1, 11.2(2) IAB 5/10/95 ARC 5576A	Conference Room — East Side Second Floor Executive Hills West 1209 E. Court Ave. Des Moines, Iowa	June 21, 1995 1 p.m.
<b>ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]</b> CEBA program, 22.3, 22.10(1) IAB 5/10/95 ARC 5568A	Conference Room Business Finance 200 E. Grand Ave. Des Moines, Iowa	May 30, 1995 10:30 a.m.
<b>EDUCATION DEPARTMENT[281]</b> Extracurricular interscholastic competition, 36.15(7)"a" IAB 5/10/95 ARC 5554A	2 North Conference Room Grimes State Office Bldg. Des Moines, Iowa	May 30, 1995 10 a.m.
<b>EGG COUNCIL, IOWA[301]</b> General, amendments to chs 1 to 4; exhibits 1 to 5 IAB 5/10/95 ARC 5571A (See also ARC 5572A)	Conference Room 535 E. Lincoln Way Ames, Iowa	May 30, 1995 1 p.m.
<b>ENVIRONMENTAL PROTECTION COMMISSION[567]</b> Waste tire facilities, 117.1 to 117.4 IAB 4/12/95 ARC 5539A	Conference Room — 5th Floor Wallace State Office Bldg. Des Moines, Iowa	May 25, 1995 1 p.m.
<b>HUMAN SERVICES DEPARTMENT[441]</b> Child support obligations, 99.61 to 99.71 IAB 5/24/95 ARC 5598A	Conference Room — 6th Floor Iowa Bldg., Suite 600 411 Third St. S.E. Cedar Rapids, Iowa	June 14, 1995 10 a.m.
	Regional Office, Lower Level 417 E. Kaneshville Blvd. Council Bluffs, Iowa	June 14, 1995 10 a.m.
	Conference Room 3 Bicentennial Bldg., Fifth Floor 428 Western Davenport, Iowa	June 16, 1995 10 a.m.
	Conference Room 104 City View Plaza 1200 University Des Moines, Iowa	June 14, 1995 10 a.m.

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

Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	June 15, 1995 10 a.m.
Conference Room 3 120 E. Main Ottumwa, Iowa	June 14, 1995 10 a.m.
Suite 624 507 7th St. Sioux City, Iowa	June 14, 1995 10 a.m.
Conference Room 220 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	June 14, 1995 10 a.m.

## INSPECTIONS AND APPEALS DEPARTMENT[481]

Nursing facilities, rescind chs 58 and 59, new ch 58 IAB 5/10/95 ARC 5570A	Iowa Hall, Amana Room Third Floor (South Entrance) Kirkwood Community College 6301 Kirkwood Blvd. Cedar Rapids, Iowa	June 1, 1995 10 a.m. to 2 p.m.
	Community Room 111 N. Main Denison, Iowa	June 2, 1995 10 a.m. to 2 p.m.
	Classroom A — 3rd Floor New Historical Bldg. 600 E. Locust Des Moines, Iowa	June 14, 1995 10 a.m. to 2 p.m.

## JOB SERVICE DIVISION[345]

Employer's contributions and charges; claims and benefits, amendments to chs 3 and 4 IAB 5/10/95 ARC 5573A	Job Service Division 1000 E. Grand Ave. Des Moines, Iowa	May 30, 1995 9:30 a.m.
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## LABOR SERVICES DIVISION[347]

General industry — asbestos, 10.20 IAB 5/10/95 ARC 5587A	Labor Services Division 1000 E. Grand Ave. Des Moines, Iowa	June 1, 1995 9 a.m. (If requested)
Construction safety — asbestos, 26.1 IAB 5/10/95 ARC 5588A	Labor Services Division 1000 E. Grand Ave. Des Moines, Iowa	June 1, 1995 9 a.m. (If requested)

## LAW ENFORCEMENT ACADEMY[501]

Testing of officers, 2.2(7), 2.2(8) IAB 5/10/95 ARC 5594A (See also ARC 5595A)	Conference Room Camp Dodge Johnston, Iowa	May 30, 1995 10 a.m.
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## LIVESTOCK HEALTH ADVISORY COUNCIL[521]

Recommendations — appropriation, ch 1 IAB 4/26/95 ARC 5552A	Conference Room Iowa Cattlemen's Association Ames, Iowa	June 20, 1995 10 a.m.
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**PERSONNEL DEPARTMENT[581]**

IPERS,  
amendments to ch 21  
IAB 5/10/95 ARC 5564A

IPERS  
600 E. Court Ave.  
Des Moines, Iowa

June 1, 1995  
9 a.m.

**SECRETARY OF STATE[721]**

Voter identification documents,  
change of address at polls, 21.3, 21.4  
IAB 5/24/95 ARC 5607A

Office of Secretary of State  
Second Floor  
Hoover State Office Bldg.  
Des Moines, Iowa

June 13, 1995  
1:30 p.m.

**SUBSTANCE ABUSE COMMISSION[643]**

Treatment programs,  
3.1 to 3.26  
IAB 5/24/95 ARC 5610A

Room 12  
High School  
804 Eighth St.  
Corning, Iowa

June 15, 1995  
10 a.m. to 12 noon

**(ICN Network)**

ICN Room — 2nd Floor  
200 E. Grand Ave.  
Des Moines, Iowa

June 15, 1995  
10 a.m. to 12 noon

Room 107, North Hall  
U. of Iowa  
N. Madison St.  
Iowa City, Iowa

June 15, 1995  
10 a.m. to 12 noon

Room 19  
Iowa Central Comm. College  
916 N. Russell  
Storm Lake, Iowa

June 15, 1995  
10 a.m. to 12 noon

Room 141  
High School  
1400 4th Ave. S.W.  
Waverly, Iowa

June 15, 1995  
10 a.m. to 12 noon

**TRANSPORTATION DEPARTMENT[761]**

Abandoned vehicles,  
480.2, 480.3(2)  
IAB 5/10/95 ARC 5558A

Conference Room  
Motor Vehicle Division  
Park Fair Mall  
100 Euclid Ave.  
Des Moines, Iowa

June 1, 1995  
10 a.m.  
(If requested)

**TREASURER OF STATE[781]**

Linked investments for tomorrow,  
4.4(4)  
IAB 5/24/95 ARC 5600A  
(See also ARC 5601A herein)

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

June 13, 1995  
1 p.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:

### AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural Development Authority[25]  
Soil Conservation Division[27]

### ATTORNEY GENERAL[61]

### AUDITOR OF STATE[81]

BEEF INDUSTRY COUNCIL, IOWA[101]

BLIND, DEPARTMENT FOR THE[111]

CITIZENS' AIDE[141]

CIVIL RIGHTS COMMISSION[161]

### COMMERCE DEPARTMENT[181]

Alcoholic Beverages Division[185]  
Banking Division[187]  
Credit Union Division[189]  
Insurance Division[191]  
Professional Licensing and Regulation Division[193]  
    Accountancy Examining Board[193A]  
    Architectural Examining Board[193B]  
    Engineering and Land Surveying Examining Board[193C]  
    Landscape Architectural Examining Board[193D]  
    Real Estate Commission[193E]  
    Real Estate Appraiser Examining Board[193F]  
Savings and Loan Division[197]  
Utilities Division[199]

### CORRECTIONS DEPARTMENT[201]

Parole Board[205]

### CULTURAL AFFAIRS DEPARTMENT[221]

Arts Division[222]  
Historical Division[223]

### ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

City Development Board[263]  
Iowa Finance Authority[265]  
High Technology Council[267]  
Product Development Corporation[271]

### EDUCATION DEPARTMENT[281]

Educational Examiners Board[282]  
College Student Aid Commission[283]  
Higher Education Loan Authority[284]  
Iowa Advance Funding Authority[285]  
Libraries and Information Services Division[286]  
Public Broadcasting Division[288]  
School Budget Review Committee[289]

EGG COUNCIL[301]

### ELDER AFFAIRS DEPARTMENT[321]

### EMPLOYMENT SERVICES DEPARTMENT[341]

Industrial Services Division[343]  
Job Service Division[345]  
Labor Services Division[347]

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

EXECUTIVE COUNCIL[361]  
 FAIR BOARD[371]  
 GENERAL SERVICES DEPARTMENT[401]  
 HEALTH DATA COMMISSION[411]  
 HUMAN RIGHTS DEPARTMENT[421]  
   Community Action Agencies Division[427]  
   Criminal and Juvenile Justice Planning Division[428]  
   Deaf Services, Division of [429]  
   Persons With Disabilities Division[431]  
   Spanish-Speaking People Division[433]  
   Status of Blacks Division[434]  
   Status of Women Division[435]  
 HUMAN SERVICES DEPARTMENT[441]  
 INSPECTIONS AND APPEALS DEPARTMENT[481]  
   Employment Appeal Board[486]  
   Foster Care Review Board[489]  
   Racing and Gaming Commission[491]  
   State Public Defender[493]  
 INTERNATIONAL NETWORK ON TRADE(INTERNET)[497]  
 LAW ENFORCEMENT ACADEMY[501]  
 LIVESTOCK HEALTH ADVISORY COUNCIL[521]  
 MANAGEMENT DEPARTMENT[541]  
   Appeal Board, State[543]  
   City Finance Committee[545]  
   County Finance Committee[547]  
 NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]  
 NATIONAL AND COMMUNITY SERVICE, IOWA  
 COMMISSION ON[555]  
 NATURAL RESOURCES DEPARTMENT[561]  
   Energy and Geological Resources Division[565]  
   Environmental Protection Commission[567]  
   Natural Resource Commission[571]  
   Preserves, State Advisory Board[575]  
 PERSONNEL DEPARTMENT[581]  
 PETROLEUM UNDERGROUND STORAGE TANK FUND  
 BOARD, IOWA COMPREHENSIVE[591]  
 PREVENTION OF DISABILITIES POLICY COUNCIL[597]  
 PUBLIC DEFENSE DEPARTMENT[601]  
   Emergency Management Division[605]  
   Military Division[611]  
 PUBLIC EMPLOYMENT RELATIONS BOARD[621]  
 PUBLIC HEALTH DEPARTMENT[641]  
   Substance Abuse Commission[643]  
   Professional Licensure Division[645]  
   Dental Examiners Board[650]  
   Medical Examiners Board[653]  
   Nursing Board[655]  
   Pharmacy Examiners Board[657]  
 PUBLIC SAFETY DEPARTMENT[661]  
 REGENTS BOARD[681]  
   Archaeologist[685]  
 REVENUE AND FINANCE DEPARTMENT[701]  
   Lottery Division[705]  
 SECRETARY OF STATE[721]  
 SESQUICENTENNIAL COMMISSION, IOWA STATEHOOD[731]  
 SHEEP AND WOOL PROMOTION BOARD, IOWA[741]  
 TRANSPORTATION DEPARTMENT[761]  
   Railway Finance Authority, Iowa[765]  
 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

The agency listed below is identified in the Iowa Administrative Code with a WHITE TAB\*. This agency has not yet implemented government reorganization.

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 — AGRICULTURAL CREDIT CORPORATION MAXIMUM LOAN RATE

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

March 1, 1994 — March 31, 1994	4.65%
April 1, 1994 — April 30, 1994	5.00%
May 1, 1994 — May 31, 1994	5.15%
June 1, 1994 — June 30, 1994	6.21%
July 1, 1994 — July 31, 1994	5.95%
August 1, 1994 — August 31, 1994	5.95%
September 1, 1994 — September 30, 1994	6.30%
October 1, 1994 — October 31, 1994	6.30%
November 1, 1994 — November 30, 1994	6.50%
December 1, 1994 — December 31, 1994	6.85%
January 1, 1995 — January 31, 1995	7.15%
February 1, 1995 — February 28, 1995	7.55%
March 1, 1995 — March 31, 1995	7.65%
April 1, 1995 — April 30, 1995	7.50%
May 1, 1995 — May 31, 1995	7.45%

### ARC 5602A

## ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

### 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 17A.3 and 68B.32A, the Iowa Ethics and Campaign Disclosure Board proposes to amend Chapter 4, "Reporting Requirements," and Chapter 6, "Civil Penalties," Iowa Administrative Code.

These amendments remove obsolete language and provisions relating to former statutory requirements which have since been stricken from the statute and update references to forms currently in use. Item 1 renumbers Iowa Code references in Chapter 4 from what was previously section 56.29 to section 56.15 to reflect renumbering in the 1991 Iowa Code.

Any interested person may make written comments on these amendments on or before June 13, 1995. Written comments should be addressed to Kay Williams, Execu-

tive Director, Iowa Ethics and Campaign Disclosure Board, 514 E. Locust Street, Suite 104, Des Moines, Iowa 50309.

These amendments are intended to implement Iowa Code sections 56.6 and 56.43.

The following amendments are proposed.

ITEM 1. Amend **351—Chapter 4** by striking references to "Iowa Code section 56.29" and inserting "Iowa Code section 56.15".

ITEM 2. Amend subrules 4.2(3), 4.2(4), and 4.2(9) and the implementation sentence as follows:

**4.2(3)** The disclosure report Forms ~~DR-1E DR-1SC, DR-2E DR-2SC~~ and DR-3 shall be the official forms for use by statewide and general assembly candidates. ~~in years they are standing for election. The letter "E" in this form number stands for "election year."~~

**4.2(4)** The disclosure report Forms ~~DR-1C DR-1CC, DR-2C DR-2CC~~ and DR-3 shall be the official forms for use by county candidates ~~in years they are standing for election. The letter "C" in this form number stands for "county."~~

**4.2(9)** The organization statement of a committee is Form DR-1. The notice of dissolution of a committee is Form DR-3. The periodic full disclosure reports of committees required to file reports under Iowa Code chapter 56 shall consist of a Form DR-2 which is the disclosure summary page of the committee. This disclosure summary page shall be accompanied by the appropriate supporting schedules for the report, which are:

Schedule A — Monetary Receipts

Schedule B — Monetary Expenditures

Schedule C — Sale of Products at Fund-Raising Events

Schedule D — Incurred Indebtedness

Schedule E — In-Kind Contributions

Schedule F — Loans Received and Paid

Schedule G — Consultant Activity

*Schedule H — Campaign Property*

Due to space limitations, copies of the forms will not be printed in this publication. Copies of the forms are available upon request from the Iowa Ethics and Campaign Disclosure Board, 514 E. Locust Street, Suite 104, Des Moines, Iowa 50309.

This rule is intended to implement Iowa Code section 56.6 and 56.43.

ITEM 3. Rescind and reserve subrules **4.2(5)** and **4.2(8)**.

ITEM 4. Amend rule **351—6.1(56)**, first and fourth unnumbered paragraphs, as follows:

Statewide, county and general assembly candidates' committees off-election year reports are delinquent if not received by the twentieth day of January ~~and October~~, or, if mailed, if they do not bear a United States Postal Service postmark dated on or before the nineteenth day of January ~~or October~~.

Municipal and school election candidates' committees and local ballot issue committees are delinquent if reports are not received five days prior to the local election, and on the first day of the month following the election, ~~and on the first day of each month thereafter until dissolved.~~ Postmarks for municipal, school and local ballot issue committees are proof of timely filing if the mark is a United States Postal Service postmark dated the calendar day before the report deadline date.

## ARC 5603A

ETHICS AND CAMPAIGN  
DISCLOSURE BOARD, IOWA[351]

## 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 17A.3 and 68B.32A, the Iowa Ethics and Campaign Disclosure Board proposes to amend Chapter 4, "Reporting Requirements," Iowa Administrative Code.

Items 1 and 3 add a new rule and amend a subrule to clarify the circumstances under which business may make goods and services such as the use of its bulk mail permit available to candidates and political committees. In Item 1, existing rule 351—4.16(56) is renumbered as subrule 4.5(12). Item 2 revises subrule 4.23(2) by adding the requirement that the permission of the renter or lessee be obtained prior to the placement of campaign signs on residential property owned by a corporate entity but occupied by a private individual, and addresses additional circumstances, including family farm corporations, in which yard signs may be posted on corporately owned or occupied premises, in order to be consistent with the statutory change enacted by 1994 Iowa Acts, House File 455. Item 4 adds a recognition that incidental use of corporate facilities by a corporate owner or employee is permissible — the rule closely parallels the federal rule implementing a similar statute (11 CFR § 114.9).

Any interested person may make written comments on these amendments on or before June 13, 1995. Written comments should be addressed to Kay Williams, Executive Director, Iowa Ethics and Campaign Disclosure Board, 514 E. Locust Street, Suite 104, Des Moines, Iowa 50309.

These amendments are intended to implement Iowa Code section 56.15.

The following amendments are proposed.

ITEM 1. Renumber rule 351—4.16(56) as subrule 4.5(12) and adopt a new rule 351—4.16(56) as follows:

**351—4.16(56) Provision of goods or services as reportable or prohibited in-kind contributions.** A person other than a corporate entity which provides goods or services to a committee at no cost or a cost below that available to the general public shall be reported by the committee as a contributor of an in-kind contribution, with the value of the contribution being the difference in value between the cost of the good or service to the general public and the amount paid by the committee. For example, unless the person providing the use of a bulk mail permit is at least in part in the business of providing the use of a bulk mail permit to the general public at the same cost, the value of the use of a bulk mail permit is the difference between the full cost of first-class mail per item and the bulk mail rate per item. However, a corporate entity may not sell or provide goods and services to a

committee unless the corporate entity is at least in part in the business of providing these items or services to the general public at fair market value. A corporate entity which is at least in part in the business of providing the items or services to the general public may sell the goods or services to a committee at fair market value.

This rule is intended to implement Iowa Code sections 56.6 and 56.15.

ITEM 2. Amend subrule 4.23(2) to read as follows:

**4.23(2)** The placement of a yard sign on the lawn or grounds of property belonging to, controlled by, or leased to a corporate entity, unless the property is rented or leased to an individual for residential purposes *and the prior written permission of the renter or lessee is obtained. This subrule does not prohibit the placement of yard signs on agricultural land owned by individuals or by a family farm operation as defined in Iowa Code section 9H.1, subsections 8, 8A, 9, and 10, and does not prohibit the placement of yard signs on property owned by private individuals who have rented or leased the property to a corporation, if the prior written permission of the property owner is obtained.*

ITEM 3. Amend subrule 4.23(3) to read as follows:

**4.23(3)** The use of motor vehicles, telephone equipment, long distance lines, computers, typewriters, office space, duplicating equipment and supplies, stationery, envelopes, labels, postage, postage meters or the distribution or communication systems of corporate entities. *This subrule does not prohibit a corporate entity from providing these items or services to a committee at fair market value if the corporate entity is at least in part in the business of providing these items or services to the general public at fair market value.*

ITEM 4. Amend rule 351—4.23(56) by adding the following new unnumbered paragraph at the end thereof:

However, stockholders and employees of a corporation may, subject to the rules and practices of the corporation, make occasional, isolated, or incidental use of the facilities of a corporation for individual volunteer activity in connection with an election and will be required to reimburse the corporation only to the extent that the overhead or operating costs of the corporation are increased, so long as the name or identity of the corporation is not utilized by the stockholder or employee for the direct or indirect purpose of influencing an election. Reimbursement for increased overhead or operating costs shall be made within a commercially reasonable time. As used in this rule, "occasional, isolated, or incidental use" generally means:

1. When used by employees during working hours, an amount of activity during any particular work period which does not prevent the employee from completing the normal amount of work which that employee usually carries out during such work period; or

2. When used by stockholders other than employees during the working period, such use does not interfere with the corporation in carrying out its normal activities; but

3. Any such activity which does not exceed one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours, shall be considered as occasional, isolated, or incidental use of the corporate facilities.



**ARC 5598A****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 sections 217.6 and 252H.4, the Department of Human Services proposes to amend Chapter 99, "Support Establishment and Enforcement Services," appearing in the Iowa Administrative Code.

These amendments implement federally mandated procedures for review and adjustment of child support obligations and implement procedures to administratively adjust existing support orders, while still providing for availability of the judicial process.

Specifically, the changes:

- Align the state's definition of the best interests of the child with the federal definition.

- Require periodic review of public assistance cases at the initiative of the child support recovery unit no later than 36 months after establishment of the order or the most recent review unless certain conditions are met. Consideration was given to changing the available frequency for a request for review by the parent from two to three years, but the change was not made as the implementation of the change could cause hardship for those persons who experience a significant change in circumstances in less than three years and were barred from using the review and adjustment process due to time limits that could not be met. The two-year allowable frequency will remain until the Department has alternative procedures in place to address extreme circumstances.

- Change the description of the type of obligation appropriate for review to include only those with an ongoing support obligation.

- Include the right to request a court hearing through contact with the child support recovery unit as a method for contesting the outcome of a review.

- Add the requirement that parents provide documentation regarding the availability of health insurance.

- Change reference to deferral of fees to apply to judicial review and adjustment only and to add language that fees are not applicable to recipients of public assistance. With implementation of Iowa Code chapter 252H, the option to defer the payment of fees is not available as the Department lacks statutory authority to continue to allow for deferment. However, the petition filing fee will be eliminated since no petition will be filed.

- Designate the effective date of the adjusted payment amount as the first date that the periodic payment is due under the order being modified after the entry of the adjustment order. Consideration was given to making the effective date of the adjustment retroactive to the date of the notice, but this option was eliminated because it would build in a delinquency or overpayment.

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 June 14, 1995.

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

Cedar Rapids - June 14, 1995 10 a.m.

Cedar Rapids Regional Office  
Sixth Floor Conference Room  
Iowa Building - Suite 600  
411 Third St., S. E.  
Cedar Rapids, Iowa 52401

Council Bluffs - June 14, 1995 10 a.m.

Council Bluffs Regional Office, Lower Level  
417 E. Kaneshville Boulevard  
Council Bluffs, Iowa 51501

Davenport - June 16, 1995 10 a.m.

Davenport Area Office  
Bicentennial Building - Fifth Floor  
Conference Room 3  
428 Western  
Davenport, Iowa 52801

Des Moines - June 14, 1995 10 a.m.

Des Moines Regional Office  
City View Plaza, Conference Room 104  
1200 University  
Des Moines, Iowa 50314

Mason City - June 15, 1995 10 a.m.

Mason City Area Office  
Mohawk Square, Liberty Room  
22 North Georgia Avenue  
Mason City, Iowa 50401

Ottumwa - June 14, 1995 10 a.m.

Ottumwa Area Office  
Conference Room 3  
120 East Main  
Ottumwa, Iowa 52501

Sioux City - June 14, 1995 10 a.m.

Sioux City Regional Office  
Suite 624  
507 7th Street  
Sioux City, Iowa 51101

Waterloo - June 14, 1995 10 a.m.

Waterloo Regional Office  
Pinecrest Office Building, Conference Room 220  
1407 Independence Avenue  
Waterloo, Iowa 50703

These amendments are intended to implement Iowa Code sections 252B.5 to 252B.7, and 598.21(9) and Iowa Code chapter 252H.

The following amendments are proposed.

ITEM 1. Amend rules **441-99.61(252B)** to **441-99.70(252B)**, parenthetical implementation statutes, by adding 252H.

ITEM 2. Amend rule **441-99.61(252B,252H)** by adding the following new definition in alphabetical order:

"Best interests of the child" means that an action can proceed because there has been no finding of good cause for noncooperation with the child support recovery unit

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

pursuant to 441—subrule 41.2(8) or 441—subrule 75.14(1).

ITEM 3. Rescind rule 441—99.62(252B,252H) and insert the following **new** rule in lieu thereof:

**441—99.62(252B,252H) Review of permanent child support obligations.** Permanent child support obligations in effect in the state of Iowa receiving enforcement services by the child support recovery unit for an ongoing support obligation shall be reviewed by the child support recovery unit to determine whether or not to adjust the obligation.

**99.62(1) Periodic review.** A permanent child support obligation being enforced by the child support recovery unit shall be reviewed by the unit no later than 36 months after establishment of the order or the most recent review unless:

a. There is an assignment of support and the state has determined a review would not be in the best interests of the child, as defined in rule 441—99.61(252B,252H), and neither parent has requested review.

b. There is no assignment of support and neither parent has requested review.

c. Rights to medical support only have been assigned, the order requires health insurance coverage, and neither parent has requested review.

**99.62(2) Review by request.** A review shall be conducted upon the request of the child support recovery agency of another state; or upon the written request of either parent subject to the order submitted on Form 470-2749, Request for Review and Adjustment of Child Support. One review may be conducted every two years when the review is being conducted at the request of either parent. The request for review may be no earlier than two years from the entry date of the support order or most recent modification, or last completed review, whichever is later.

**99.62(3) Review initiated.**

a. Procedures to adjust the support obligation shall be initiated only when the verifiable financial and other information available to the child support recovery unit indicates that the:

(1) Present child support obligation varies from the Iowa Supreme Court mandatory child support guidelines by more than 20 percent, or the net monthly income of the parent ordered to pay support does not fall within the income limits of the guidelines, and

(2) Variation is due to a change in financial circumstances which has lasted at least three months and can reasonably be expected to last for an additional three months.

b. Procedures to modify a support order may be initiated when the order does not include provisions for health insurance coverage or other medical support, and health insurance coverage for the children affected by the support order is available at a reasonable cost to the parent required to pay support, and the children are not otherwise adequately covered under a health benefit plan by the custodial parent, excluding coverage under Medicaid. For the purpose of this rule, health insurance is considered reasonable in cost if it is employment-related or other group health insurance as specified in Iowa Code paragraph 598.21(4)"a."

ITEM 4. Rescind rule 441—99.63(252B,252H) and insert the following **new** rule in lieu thereof:

**441—99.63(252B,252H) Notice requirements.** The child support recovery unit shall provide written notification to each parent affected by a permanent child support obligation being enforced by the child support recovery unit as follows:

**99.63(1) Notice of right to request review.** The child support recovery unit shall notify each parent of the right to request review of the order and the appropriate place and manner in which the request should be made. Notification shall be provided on Form 470-0188, Application For Nonassistance Support Services, Form CS-1113, Notice of Continued Support Services, or Form 470-3078, Availability of Review and Adjustment Services.

**99.63(2) Notice of pending review.** The child support recovery unit shall send notice of the pending review and a request for a completed financial affidavit and verification of income to each parent affected by the child support obligation at the parent's last known mailing address at least 30 days before the review is conducted.

**99.63(3) Outcome of review.** After the child support recovery unit completes the review of the child support obligation in accordance with rule 441—99.62(252B, 252H), the child support recovery unit shall send notice to the last known address of each parent stating whether or not an adjustment is appropriate and, if so, of the unit's intent to:

a. File a petition for review and adjustment of the child support obligation in the district court, or

b. Enter an administrative order for adjustment.

**99.63(4) Challenges to outcome of review.** Each parent shall be allowed 30 days to submit a written challenge to this determination to the child support recovery unit. The procedure for challenging the determination is as follows:

a. The parent challenging the determination shall submit the challenge in writing to the child support recovery unit stating the reasons for the challenge and providing written evidence necessary to support the challenge.

b. The child support recovery unit shall review the written evidence submitted with the challenge and all verifiable financial information available to the child support recovery unit and make a determination of one of the following:

(1) To file a petition for review and adjustment of the child support obligation.

(2) To enter an administrative order for adjustment of the obligation.

(3) That adjustment of the child support obligation is inappropriate.

c. Written notice of the determination shall be sent to each parent affected by the child support obligation at the parent's last known mailing address.

d. If either parent disputes this decision, the objecting parent shall have the following recourse:

(1) For cases under administrative review and adjustment pursuant to Iowa Code chapter 252H, if the review resulted in a determination that an adjustment was appropriate, either parent or the unit may request a court hearing within 30 days from the date of issuance of the notice of decision, or within 10 days of the date of issuance of the second notice of decision, whichever is later. If a timely written request is received by the unit, the matter shall be certified, by the unit, to the district court.

(2) In the judicial process, if the review resulted in a determination that an adjustment was appropriate and ei-

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

ther parent disputes this decision, that parent must file an answer in the district court.

(3) In both the judicial and administrative processes, if the review resulted in a determination that an adjustment was not appropriate, the objecting parent may only seek recourse by filing a private petition for modification through the district court.

ITEM 5. Amend rule 441—99.64(252B,252H) by adding the following **new** subrule 99.64(3).

**99.64(3) Availability of medical insurance.** Both parents subject to the order to be reviewed shall provide documentation regarding the availability of health insurance coverage for the children covered under the order, and the cost of the coverage, within ten days of a written request by the child support recovery unit. Verification may include, but not be limited to: a copy of the health benefit plan including the effective date of the plan, a letter from the employer detailing the availability of health insurance, or any other source that will serve to verify health insurance information and the cost of the coverage.

ITEM 6. Amend rule 441—99.65(252B,252H) as follows:

Amend the catchwords as follows:

**441—99.65(252B,252H) ~~Petition for review~~ *Review and adjustment of a child support obligation.***

Amend subrule 99.65(1) as follows:

**99.65(1) ~~Review by attorney~~ *Conducting the review.*** The child support recovery unit *or its attorney* shall review the case ~~and for administrative adjustment of a child support obligation or file a petition for review of a child support obligation~~ on behalf of the state of Iowa unless the ~~child support recovery unit attorney determines it is determined~~ that any of the following exist:

~~a. There is insufficient verifiable financial information available to allow the attorney to determine whether or not there is a variation from the Iowa Supreme Court mandating child support guidelines.~~

~~b a.~~ The location of one or both of the parents is unknown.

~~e b.~~ The variation from the Iowa Supreme Court mandatory child support guidelines is based on any material misrepresentation of fact concerning any financial information submitted to the child support recovery unit.

~~d c.~~ The variation from the Iowa Supreme Court mandatory child support guidelines is due to a voluntary reduction in net monthly income attributable to the actions of the child support obligor.

~~e d.~~ The criteria of rule 441—99.62(252B,252H) are not met.

~~e.~~ *The end date of the order is less than 12 months in the future or the youngest child is 17½ years of age.*

Amend subrule 99.65(3) as follows:

**99.65(3) Private counsel.** After a petition for review and adjustment of a child support obligation is filed, *or the notice of intent to review and adjust has been served*, any party may choose to be represented personally by private counsel. Any party who retains private counsel shall notify the child support recovery unit attorney of this fact in writing.

ITEM 7. Amend rule 441—99.66(252B,252H) as follows:

**441—99.66(252B,252H) Medical support.** The child support recovery unit, *or its attorney*, shall review the

medical support provisions contained in any permanent child support order which is subject to review under rule 441—99.65(252B,252H) and shall include in any ~~petition for review and adjustment a request that the court order provide a provision~~ for an employment-related or other group health benefit plan as defined in Iowa Code chapter ~~252B~~ 252E, and as set forth in 441—Chapter 98, Division I, or other appropriate provisions pertaining to medical support for all children affected directly by the child support order under review.

ITEM 8. Amend subrule 99.67(2) as follows:

**99.67(2) Other documentation.** Supporting financial documentation such as state and federal income tax returns, paycheck stubs, IRS Form W-2, bank statements, and other written evidence of financial status may be disclosed to the court after the petition for review and adjustment has been filed, *or the notice of intent to review and adjust has been served*, unless otherwise prohibited by state or federal law.

ITEM 9. Amend rule 441—99.68(252B,252H) as follows:

**441—99.68(252B,252H) Payment of service fees and other court costs.** Responsibility for payment of fees for *administrative review or service of process* and other court costs associated with the review and adjustment process is the responsibility of the party requesting review unless the court orders otherwise *or the requesting party, as a condition of eligibility for receiving public assistance benefits, has assigned the rights to child or medical support for the order to be modified.* ~~If In a judicial review and adjustment procedure,~~ if the requesting party is indigent or receiving public assistance, deferral of fees and costs may be requested. For the purposes of the division, indigent means that the requesting party's income is 200 percent or less than the poverty level for one person as defined by the United States Office of Management and Budget and revised annually in accordance with Section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

ITEM 10. Amend rule 441—99.69(252B,252H) as follows:

Rescind and reserve subrule **99.69(1)**.

Amend subrules 99.69(2) and 99.69(3) as follows:

**99.69(2)** It has been less than two years since the support order was entered, last modified, or last reviewed for the purpose of ~~modification~~ *adjustment*.

**99.69(3)** The child support recovery unit is not providing enforcement services for *an ongoing support obligation* under the order for which the review has been requested.

ITEM 11. Amend subrule 99.70(1) as follows:

**99.70(1) Best interests of the child.** If the family entitled to support has assigned its rights to child support or medical support as a condition of receiving public assistance benefits under the ~~aid-to-dependent-children family investment program~~, foster care, or Medicaid program, the child support recovery unit shall proceed with the review and adjustment process if it appears that a ~~modification an adjustment~~ to the support order is appropriate pursuant to rule 441—99.62(252B,252H), and such a ~~modification an adjustment~~ would be in the best interests of the children affected by the order, *as defined in rule 441—99.61(252B,252H).* ~~A modification shall be consid-~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~ered to be in the best interests of the children if it would result in:~~

~~a. An increase in the amount of the support obligation;~~

~~or  
b. Provisions for health insurance coverage or other medical support by the parent ordered to pay support when the children are not otherwise adequately covered under a health benefit plan by the custodial parent, excluding coverage under the Medicaid program.~~

ITEM 12. Amend 441—Chapter 99 by adding the following new rule.

**441—99.71(252H) Effective date of adjustment.** Unless subject to court action, the new obligation amount shall be effective on the first date that the periodic payment is due under the order being modified after the entry of the adjustment order.

ITEM 13. Amend **441—Chapter 99, Division IV**, implementation clause to read as follows:

These rules are intended to implement Iowa Code sections 252B.5 to 252B.7 and 598.21(9) and Iowa Code chapter 252H.

## ARC 5611A

### INSURANCE DIVISION[191]

#### Amended Notice of Intended Action

Pursuant to the authority of Iowa Code section 502.607(1), the Iowa Division of Insurance proposes this Amended Notice of Intended Action to amend Chapter 50, "Regulation of Securities Offerings and Those Who Engage in the Securities Business," Iowa Administrative Code.

Notice of Intended Action was published as **ARC 5408A** in the February 15, 1995, issue of the Iowa Administrative Bulletin.

This proposed rule exempts charitable gift annuities from the registration and filing requirements of the Iowa Uniform Securities Act, provided they file a short notice with the administrator, specifying the terms of the offering. Under certain limited circumstances, the proposed rule also exempts agents of charitable gift annuities from the statutory definition of agent. In light of comments received at the public hearing held March 22, 1995, the Amended Notice of Intended Action deletes the requirement for most charitable organizations that they notify the administrator of reserves in a segregated account.

Interested persons may submit written comments on or before June 13, 1995, to Craig A. Goetsch, Superintendent of Securities, Iowa Securities Bureau, Lucas State Office Building, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code section 502.202(9).

The following amendment is proposed.

Adopt new rule 191—50.14(502) as follows:

#### **191—50.14(502) Charitable gift annuity exemption.**

**50.14(1)** A charitable gift annuity is an annuity as that term is defined in Sections 501(m)(5) and 514(c)(5) of the

Internal Revenue Code of 1986, which is issued by organizations described in either Section 501(c)(3) or Section 170(c) of the Internal Revenue Code of 1986 ("charitable organization").

**50.14(2)** Subject to the requirements of subrule 50.14(3), a charitable gift annuity shall be exempt from the registration and filing provisions of Iowa Code sections 502.201 and 502.602.

#### **50.14(3) Notice filing.**

a. Except as otherwise permitted by the administrator, a charitable organization which offers charitable gift annuities will not qualify for the exemption set forth in subrule 50.14(2) unless the organization files a written notice with the administrator specifying the terms of the offering of charitable gift annuities, including the following:

(1) That the charitable organization, including predecessors, has been in continuous operation for not less than ten years prior to the date of the filing;

(2) The schedule of maximum gift annuity rates utilized by the issuer, and whether the gift annuity rates will adhere to the rates recommended by the American Council of Gift Annuities, or will be lower;

(3) Whether reserves are segregated on the books of the organization, pursuant to generally accepted accounting principles;

(4) The net worth of the organization, calculated according to generally accepted accounting principles. The IRS Form 990 must be filed for charitable organizations which make that filing. In other cases, a charitable organization should provide a financial statement (balance sheet), or complete the net worth calculations contained in Form CGA-2;

(5) A copy of the standard gift annuity agreement used by the charitable organization;

(6) A copy of the board resolution authorizing the issuance of charitable gift annuities as set forth in Form CGA-1;

b. A charitable organization may complete and file Form CGA-2 in lieu of providing the information set forth in 50.14(3)"a." The form may be obtained from the Iowa Securities Bureau, Lucas State Office Building, Des Moines, Iowa 50319.

c. A charitable organization shall disclose to the administrator in writing any material changes in the terms of the offer.

**50.14(4)** Except as otherwise permitted by the administrator, a charitable organization which uses annuity rates that are higher than those recommended by the American Council of Gift Annuities will not qualify for the exemption set forth in subrule 50.14(2) unless the organization annually submits to the administrator an opinion, signed by a Fellow of the Society of Actuaries, that its reserves will equal or exceed the sum of the present value of all outstanding annuity agreements, as calculated under the individual annuity reserve requirements applicable to insurance companies under the Iowa Insurance Laws, together with a contingency reserve of 10 percent of such reserve requirements.

**50.14(5)** Agents of charitable organizations offering charitable gift annuities shall be excluded from the definition of agent set forth in Iowa Code section 502.102(3), provided that they receive no commission, finder's fee or other remuneration in connection with the offer or sale of a charitable gift annuity.

**ARC 5609A**  
**MEDICAL EXAMINERS**  
**BOARD[653]**

**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 147.76, the Iowa Board of Medical Examiners hereby gives Notice of Intended Action to amend Chapter 21, "Physician Assistant Supervision," Iowa Administrative Code.

Chapter 21 is being amended to add two new rules which provide for the supervision of physician assistants.

Any interested party may submit comments in written form on the proposed rules on or before June 13, 1995. Such written materials should be directed to Ann M. Martino, Ph.D., Executive Director, Iowa Board of Medical Examiners, 1209 East Court Avenue, Des Moines, Iowa 50309-0180, telephone (515) 281-5171.

These rules are intended to implement Iowa Code chapters 147, 148, 148C, 150 and 150A.

The following rules are proposed.

Amend 653—Chapter 21 by adding the following new rules:

**653—21.1(147,148,148C,150,150A) Purpose.** The supervising physician shall ensure that any medical services delegated to a physician assistant are performed in a safe and healthful manner. The medical services to be delegated by the supervising physician to the physician assistant may vary in accordance with the needs of the patient population served and the type and location of practice providing the following criteria are met:

1. The supervising physician shall delegate only those medical services that the physician assistant is by training and experience properly qualified to provide to patients.

2. The supervising physician shall not delegate any medical services that the board or a medical regulatory body of any other jurisdiction in which the supervising physician is authorized to practice prohibits or otherwise restricts the supervising physician from providing.

**653—21.2(147,148,148C,150,150A) Requirements for supervision.** The relationship between the supervising physician and the physician assistant may also vary in accordance with the needs of the patient population served and the type and location of practice. However, it shall be the responsibility of the supervising physician to provide the physician assistant with adequate supervision in all circumstances. The requirements for adequate supervision include, but are not limited to, compliance with the following:

**21.2(1)** A supervising physician shall supervise no more than two physician assistants at any one time.

**21.2(2)** A supervising physician shall be readily available to respond to the physician assistant in person or, as circumstances warrant, by telephone or other telecommunications devices.

**21.2(3)** A supervising physician shall review patient care with the physician assistant on an ongoing basis to provide medical direction, additional services or consultation in person or, as circumstances warrant, by telephone or other telecommunications devices. At a minimum, the supervising physician shall meet with the physician assistant to review patient care once per week unless otherwise specified in the plan of supervision approved by the board of physician assistant examiners or subrule 21.2(4) pertaining to rural remote clinics.

**21.2(4)** A supervising physician shall visit a rural remote clinic to review patient care with the physician assistant and, as necessary, to provide medical direction, additional services or consultation at least once every two weeks. If emergency or special circumstances prevent the supervising physician from visiting a rural remote clinic once every two weeks, the supervising physician shall notify the board and the board of physician assistant examiners.

**21.2(5)** A supervising physician shall maintain the appropriate level of knowledge about the clinical condition of the patients treated by the physician assistant to provide medical direction and any additional medical services indicated.

**21.2(6)** The supervising physician shall make an effort to sign, in person, every patient chart and review every patient visit unless otherwise specified in the plan of supervision approved by the board of physician assistant examiners. Electronic signatures are allowed under the following circumstances:

a. The signature shall be transcribed by the signer into an electronic record and shall not be the result of electronic regeneration; and

b. The supervising physician shall provide a mechanism to confirm that the signature is not an unauthorized regeneration.

**21.2(7)** A physician who is approved as eligible to serve as a supervisor by the board may provide supervision to a physician assistant in circumstances in which the supervising physician is unavailable. When serving as a supervisor in such circumstances, the supervising physician shall ensure that the physician assistant performs only those medical services which have been properly delegated as is required by rule 653—21.1(147,148,148C,150,150A).

**ARC 5607A**

**SECRETARY OF STATE[721]**

**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 47.1, the Secretary of State gives Notice of Intended Action to amend Chapter 21, "Election Forms and Instructions," Iowa Administrative Code.

## SECRETARY OF STATE[721](cont'd)

Iowa Code section 49.77(3) requires the Secretary of State to prescribe acceptable forms of identification to be used at the polls. These rules describe the circumstances under which a person may be required to provide identification documents. They clarify procedures for precinct election officials to follow in accepting change of address notices from people who are not listed in the election register including permission to use lists of all registered voters in the county to verify the person's registration in the county. These lists were once specifically allowed as a resource for precinct officials, but they are no longer mentioned in the Code. Use of these lists will reduce the possibilities for confusion and potential vote fraud. Precinct officials may also telephone the auditor for verification of registration or use remote computer terminals to check the voter registration files. Precinct officials shall ask a person whose registration cannot be verified to cast a special ballot.

The rules require identification documents to be valid and to include the photograph and signature of the person. Driver's licenses, nonoperator's identification cards and student identification cards are acceptable forms of identification, if they meet the other qualifications. A person who has been asked for identification and who does not provide it must cast a special ballot.

Any interested person may make written suggestions or comments on the proposed rules on or before Tuesday, June 13, 1995. Written comments should be sent to the Director of Elections, Office of the Secretary of State, Second Floor, Hoover State Office Building, Des Moines, Iowa 50319-0138, fax (515)242-5953. Anyone who wishes to comment orally may telephone the Elections Division at (515)281-5865 or visit the office on the second floor of the Hoover Building.

There will be a public hearing Tuesday, June 13, 1995, at 1:30 p.m. at the office of the Secretary of State, Second Floor, Hoover State Office Building. People may comment orally or in writing. Everyone who speaks at the hearing will be asked to give names and addresses for the record, and to confine remarks to the subject of the rule. Anyone who wishes to attend the hearing should contact the Elections Division no later than 4 p.m. Monday, June 12.

These rules are intended to implement Iowa Code section 49.77(3).

The following new rules are proposed.

Amend 721—Chapter 21 by adding the following new rules:

**721—21.3(49) Voter identification documents.**

**21.3(1)** A precinct election official may require identification from any person whom the official does not know.

**21.3(2)** Precinct election officials shall require identification under the following circumstances:

a. From any person offering to vote whose name does not appear on the election register as an active voter.

b. From any person offering to vote whose name is not on the election register and who wants to report a change of address from one precinct to another within the same county.

**21.3(3)** The identification document must currently be valid and must show a color photograph and the signature of the cardholder. Acceptable forms include:

a. Driver's license.

b. Nonoperator's identification card issued by driver services division of the department of transportation.

c. Student identification card.

**21.3(4)** A person who has been requested to provide identification and does not provide it shall vote only by special ballot pursuant to Iowa Code section 49.81.

**721—21.4(49) Changes of address at the polls.** An Iowa voter who has moved from one precinct to another in the county where the person is registered to vote may report a change of address at the polls on election day.

**21.4(1)** To qualify to vote in the election being held that day the voter shall:

a. Go to the polling place for the precinct where the voter lives on election day.

b. Complete a registration by mail form showing the person's current address in the precinct.

c. Present proof of identity as required by rule 21.3(49).

**21.4(2)** The officials shall require a person who is reporting a change of address at the polls to cast a special ballot if the person's registration in the county cannot be verified. Registration may be verified by:

a. Telephoning the office of county commissioner of elections, or

b. Consulting a printed list of all registered voters who are qualified to vote in the county for the election being held that day, or

c. Consulting the county's voter registration records by use of a computer.

This rule is intended to implement Iowa Code section 49.77(3).

## ARC 5610A

### SUBSTANCE ABUSE COMMISSION[643]

#### 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 subsection 125.7(4), the Commission on Substance Abuse gives Notice of Intended Action to amend Chapter 3, "Licensure Standards for Substance Abuse Treatment Programs," Iowa Administrative Code.

These proposed new rules are the result of a comprehensive review and subsequent proposed revisions to reflect editorial changes, changes in definitions of treatment services, treatment modalities and inclusion of criteria for the seven levels of care. These proposed new rules replace the existing rules and more appropriately reflect the current needs of treatment programs and patients/clients

## SUBSTANCE ABUSE COMMISSION[643](cont'd)

in the general areas including: application for licensure; procedures; denial, revocation, suspension and refusal to renew a license; placement screening/levels of care criteria; clinical treatment services; administration; programming and facilities; and quality improvement.

The Commission on Substance Abuse shall hold a public hearing on Thursday, June 15, 1995, from 10 a.m. to 12 p.m. The public hearing will be held over the Iowa Communication Network (ICN), accessing several sites around the state simultaneously. Individuals wishing to participate should contact Sylvia Crook at (515)242-6161 to receive confirmation of ICN availability at the following locations:

Corning High School, 804 Eighth Street/Room 12, Corning;

Department of Economic Development, 200 E. Grand, ICN Room, Second Floor, Des Moines;

University of Iowa, End of N. Madison Street, North Hall/Room 107, Iowa City;

Iowa Central Community College, 916 North Russell/Room 19, Storm Lake;

Waverly-Shell Rock Community High School, 1400 4th Avenue S.W./Room 141, Waverly.

Any interested person or agency may submit written comments on or before June 13, 1995, to Janet Zwick, Division Director, Division of Substance Abuse and Health Promotion, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These rules are intended to implement Iowa Code section 125.13.

The following new rules are proposed.

Rescind rules **643—3.1(125)** to **3.26(125)**, adopt **new** rules **643—3.1(125)** to **3.25(125)**, and reserve **643—3.26** to **3.34** as follows:

**643—3.1(125) Definitions.** Unless otherwise indicated, the following definitions shall apply to the specific terms used in these rules:

"Acute intoxication or withdrawal potential" is a category to be considered in client/patient placement, continued stay, and discharge criteria. This category evaluates patient/client's current status of intoxication and potential for withdrawal complications as it impacts on level of care decision making. Historical information about client/patient's withdrawal patterns may also be considered.

"Administration" means the direct application of a prescription drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by one of the following:

1. A practitioner or the practitioner's authorized agent.

2. The patient or research subject at the direction of a practitioner.

"Admission" means the point in an individual's relationship with the program at which the screening process has been completed and the individual is entitled to receive treatment services.

"Admission criteria" means specific criteria developed by the department to be considered in determining appropriate client/patient placement and resultant referral to a level of care. Criteria vary in intensity and are organized into six categories: acute intoxication or withdrawal potential, biomedical conditions or complications, emotional/behavioral conditions or complications, treatment

resistance/acceptance, relapse potential, and recovery environment.

"Affiliation agreement" means a written agreement between the governing authority of the program and another organization under the terms of which specified services, space or personnel are provided to one organization by the other, but without exchange of moneys.

"Applicant" means any substance abuse treatment program which has applied for a license or renewal thereof.

"Application" means the process through which a substance abuse treatment program applies for a license or renewal as outlined in the application procedures.

"Assessment" means the ongoing process of identifying a diagnosis, ruling out other diagnoses, and determining the level of care needed by the client.

"Biomedical condition or complication" means one category to be considered in client/patient placement, continued stay, and discharge criteria. This category evaluates client/patient's current physical condition as it impacts on level of care decision making. Historical information on client/patient's medical/physical functioning may also be considered.

"Case management" means the process of using predefined criteria to evaluate the necessity and appropriateness of client care.

"Chemical dependency" means alcohol or drug dependence or psychoactive substance use disorder as defined by current diagnostic statistical measurement (DSM) IV criteria or by other standardized and widely accepted criteria.

"Chemical dependency rehabilitation services" means those individual or group services that are directly related to chemical dependency or the individual treatment plan. These services include individual, group and family counseling, educational services, self-help groups and structured recreational activities. They do not include active employment or education courses beyond the secondary level.

"Chemical substance" means alcohol, wine, spirits and beer as defined in Iowa Code chapter 123 and drugs as defined in Iowa Code section 203A.2, subsection 3, which when used improperly could result in chemical dependency or a substance abuse problem.

"Client" means an individual who has a substance abuse problem or is chemically dependent, has been assessed as appropriate for services, and for whom screening procedures have been completed.

"Clinical privileges" means authorization by the governing body to provide specific client care and treatment services in the facility within well-defined limits, based on the individual's license, education, training, experience, competence, and judgment.

"Commission" means the Iowa commission on substance abuse.

"Concerned family member or concerned person" means an individual who is seeking treatment services due to problems arising from the person's involvement or association with a substance abuser or chemically dependent individual or client, and is negatively affected by the behavior of the substance abuser, chemically dependent individual, or client.

"Continued stay criteria" means specific criteria to be considered in determining appropriate client/patient placement for continued stay at a level of care or referral to a more appropriate level of care. Criteria vary in intensity and are organized into six categories: acute intoxication

## SUBSTANCE ABUSE COMMISSION[643](cont'd)

or withdrawal potential; biomedical conditions or complications; emotional/behavioral conditions or complications; treatment resistance/acceptance; relapse potential; and recovery environment.

"Continuing care" means Level I of client/patient placement criteria, which provides a specific period of structured therapeutic involvement designed to enhance, facilitate and promote transition from primary care to ongoing recovery.

"Contract" means a formal legal document adopted by the governing authority of the program and any other organization, agency, or individual that specifies services, personnel or space to be provided to the program as well as the moneys to be expended in the exchange.

"Counselor" means an individual who, by virtue of education, training or experience, provides treatment, which includes advice, opinion, or instruction to an individual or in a group setting to allow an opportunity for a person to explore the person's problems related directly or indirectly to substance abuse or dependence.

"Culturally and environmentally specific" means integrating into the assessment and treatment process the ideas, customs, beliefs, and skills of a given population, as well as an acceptance, awareness, and celebration of diversity regarding conditions, circumstances and influences surrounding and affecting the development of an individual or group.

"Day treatment" is Level IV of client/patient placement criteria substance abuse treatment services provided to nonresidential clients during a day for a minimum of eight hours of chemical dependency rehabilitation services incorporated into an inpatient or residential treatment program in accordance with the program's plan of treatment.

"Department" means the Iowa department of public health.

"Designee" means the staff person or counselor who is delegated tasks, duties and responsibilities normally performed by the treatment supervisor, treatment director or executive director.

"Detoxification" means the process of eliminating the toxic effects of drugs and alcohol from the body. Supervised detoxification methods include social detoxification and medical monitoring or management and are intended to avoid withdrawal complications.

"Director" means the director of the Iowa department of public health.

"Discharge criteria" means specific criteria to be considered in determining appropriate client/patient placement for discharge or referral to a different level of care. Criteria vary in intensity and are organized into six categories: acute intoxication or withdrawal potential; biomedical conditions or complications; emotional/behavioral conditions or complications; treatment resistance/acceptance; relapse potential; and recovery environment.

"Discharge planning" means the process, begun at admission, of determining a client's/patient's continued need for treatment services and of developing a plan to address ongoing client/patient posttreatment needs. Discharge planning may or may not include a document identified as a discharge plan.

"Division" means the division of substance abuse and health promotion.

"Emotional/behavioral conditions or complications" is a category to be considered in client/patient placement criteria. This category evaluates client's/patient's current emotional/behavioral status as it impacts on level of care decision making. Emotional/behavioral status may in-

clude, but is not limited to, anxiety, depression, impulsivity, and guilt and the behavior that accompanies or follows these emotional states. Historical information on client/patient emotional/behavioral functioning may also be considered.

"Emergency admission" means an admission due to an emergency situation with placement screening criteria being applied as soon after admission as possible.

"Evaluation" means the process to evaluate the client's strengths, weaknesses, problems, and needs for the purpose of defining a course of treatment. This includes use of the standardized placement screening format and additional patient/client profile information and development of a comprehensive treatment plan.

"Extended outpatient treatment" means Level III of client/patient placement criteria, which is an organized, nonresidential service. Services usually are provided in regularly scheduled sessions which do not exceed ten treatment hours a week.

"Extended residential program" means one of the two treatment modes described in Level V of client/patient placement criteria, where addiction treatment is provided in a residential setting offering primary treatment followed by a combination of chemical dependency and community ancillary services averaging 30 hours of service per week.

"Facility" means a hospital, detoxification center, institution or program licensed under Iowa Code section 125.13 providing care, maintenance and treatment for substance abusers. Facility also includes the physical areas such as grounds, buildings, or portions thereof under direct administrative control of the program.

"Follow-up" means the process for determining the status of an individual who has been referred to an outside resource for services or who has been discharged from services.

"Governing body" means the individual(s), group, or agency that has ultimate authority and responsibility for the overall operation of the facility.

"Halfway house" means Level II of client/patient placement criteria, which is low-intensity addiction treatment in a supportive living environment to facilitate the individual's reintegration into the community, most often following completion of primary treatment. Clients/patients participate in at least five hours of structured addiction rehabilitation services weekly.

"Inpatient treatment" means Level VII of client/patient placement criteria. See "Medically managed inpatient treatment."

"Intake" means gathering additional assessment information at the time of admission to services.

"Intensive outpatient treatment" means Level IV of client/patient placement criteria, which is an organized, nonresidential outpatient treatment service with scheduled sessions that provide a range of 11 or more treatment hours per week. This level of care may offer outpatient services several times per week or be incorporated into an inpatient or residential treatment program, in which the client/patient participates in treatment services, however, goes home at night.

"Iowa board of substance abuse certification" means the professional certification board that certifies substance abuse counselors and prevention specialists in the state of Iowa.

"Levels of care" is a general term that encompasses the different options for treatment that vary according to the intensity of the services offered. Each treatment option in



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the client/patient placement criteria is a level of care.

"Licensee" means any program licensed by the department.

"Licensure" means the issuance of a license by the department and the substance abuse commission which validates the licensee's compliance with substance abuse program standards and authorizes the licensee to operate a substance abuse treatment program in the state of Iowa.

"Maintenance" means the prolonged scheduled administration of methadone or other approved controlled substances intended as a substitute or antagonist to abused substances in accordance with federal and state regulations.

"May" means a term used in the interpretation of a standard to reflect an acceptable method that is recognized but not necessarily preferred.

"Medically managed detoxification" is the detoxification service offered in Level VII of client/patient placement criteria. This intensity of service is reserved for potentially life-threatening detoxification situations.

"Medically managed inpatient treatment" is Level VII of client/patient placement criteria. Addiction and chemical dependency treatment provided in an acute care hospital setting. Patient's medical condition is such that a physical examination by a physician is required within 24 hours of admission. The setting provides 24-hour medical management of treatment and detoxification services.

"Medically monitored detoxification" means the detoxification service offered in Level VI of client/patient placement criteria. This level of care is appropriate for acute detoxification situations.

"Medically monitored residential treatment" is Level VI of client/patient placement criteria, which is addiction and chemical dependency treatment in a residential or a nonacute care hospital setting. Client's/patient's medical condition is such that a physical examination by a physician is required within 24 hours of admission. The setting provides 24-hour medical monitoring of treatment and detoxification services; and 50 or more hours of service per week are provided. Programs providing this level of care may provide detoxification services or residential dependency treatment services, or both.

"Outpatient treatment" means Levels III and IV of client/patient placement criteria. See "Extended outpatient and intensive outpatient treatment."

"Outreach" means public speaking engagements and other similar activities and functions that inform the public of available programs and services offered by a substance abuse treatment program. In addition, outreach is a process or series of activities that identifies individuals in need of services, engages them and links the individual in need of services with the most appropriate resource or service provider. Such activities may include, but are not limited to, the following: individual client recruitment through street outreach and organized informational sessions at churches, community centers, recreational facilities, and community service agencies.

"Prevention" means a proactive process to eliminate unnecessary disease, disability, and premature death caused by (1) acute disease, (2) chronic disease, (3) intentional or unintentional injury or disease associated with environmental, home and workplace hazards, and (4) controllable risk factors such as poor nutrition; lack of exercise; alcohol, tobacco, and other drug use; inadequate use of preventive health services; and other risk behaviors.

"Primary care modality" means substance abuse treatment component or modality including continuing care, halfway house, extended outpatient treatment, intensive outpatient treatment, primary extended residential treatment, medically monitored residential treatment, and medically managed inpatient treatment services.

"Primary residential program" means one of the two treatment modes described in Level V of client/patient placement criteria, which is addiction treatment provided in a residential setting with 50 or more hours of service per week. A client's/patient's medical condition is such that a physical examination by a physician is required within seven calendar days of admission.

"Prime programming time" means any period of the day when special attention or supervision is necessary, for example, upon awakening in the morning until departure for school, during meals, after school, transition between activities, evenings and bedtime, or weekends and holidays, in order to maintain continuity of program and care. Prime programming time shall be defined by the facility.

"Program" means any individual, partnership, corporation, association, governmental subdivision or public or private organization.

"Protected classes" means classes of people who have required special legislation to ensure equality.

"Quality improvement" means the process of objectively and systematically monitoring and evaluating the quality and appropriateness of client care to improve client care and resolve identified problems.

"Recovery environment" means one category to be considered in client/patient placement, continued stay and discharge criteria. This category evaluates client/patient's current recovery environment as it impacts on level of care decision making. Recovery environment may include, but is not limited to, current relationships and degree of support for recovery, current housing, employment situation, and availability of alternatives. Historical information on client's/patient's recovery environment may also be considered.

"Rehabilitation" means the restoration of a client to the fullest physical, mental, social, vocational, and economic usefulness of which the client is capable. Rehabilitation may include, but is not limited to, medical treatment, psychological therapy, occupational training, job counseling, social and domestic rehabilitation and education.

"Relapse" means progressive irresponsible, inappropriate and dysfunctional behavior patterns that could lead to resumption of alcohol or drug use. "Relapse" also refers to the resumption of alcohol or drug use.

"Relapse potential" means a category to be considered in client/patient placement, continued stay, and discharge criteria. This category evaluates client's/patient's current relapse potential as it impacts on level of care decision making. Relapse potential may include, but is not limited to, current statements by client/patient about relapse potential, reports from others on potential for patient/client relapse, and assessment by clinical staff. Historical information on client's/patient's relapse potential may also be considered.

"Residential detoxification" means the detoxification service offered in Level VI of client/patient placement criteria. This intensity of service is appropriate for substance detoxification situations.

"Residential treatment" is Level V of client/patient placement criteria where addiction and chemical depend-

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ency treatment is provided in a residential setting. Primary residential provides 50 or more hours of service per week. Client's/patient's medical condition is such that a physical examination by a physician is required within seven days of admission. Extended residential treatment combines chemical dependency and community ancillary services averaging 30 hours of service per week.

"Rule" means each statement of general applicability that implements, interprets, or prescribes division law or policy, or that describes the organization procedure or practice requirements of the division. The term includes the amendment or repeal of existing rules as specified in the Iowa Code.

"Screening" means the process by which a client/patient is determined appropriate and eligible for admission to a particular program or level of care. The focus is on the minimum criteria necessary for appropriateness/eligibility.

"Self-administration of medication" means the process where a properly trained staff member observes a patient/client inject, inhale, ingest, or by any other means take, medication which has been prescribed by a licensed physician.

"Shall" means the term used to indicate a mandatory statement, the only acceptable method under the present standards.

"Should" means the term used in the interpretation of a standard to reflect the commonly accepted method, yet allowing for the use of effective alternatives.

"Staff" means any individual who provides services to the program on a regular basis as a paid employee, agent, consultant, or as a volunteer.

"Standards" means specifications representing the minimal characteristics of a substance abuse treatment program which are acceptable for the issuance of a license.

"Substance abuser" means a person who habitually lacks self-control as to the use of chemical substances or uses chemical substances to the extent that the person's health is substantially impaired or endangered or that the person's social or economic function is substantially disrupted.

"Treatment" means the broad range of planned and continuing, inpatient, outpatient, residential care services, including diagnostic evaluation, counseling, medical, psychiatric, psychological, and social service care, which may be extended to substance abusers, concerned persons, concerned family members, or significant others, and which is geared toward influencing the behavior of such individuals to achieve a state of rehabilitation.

"Treatment acceptance/resistance" is a category to be considered in client/patient placement, continued stay, and discharge criteria. This category evaluates client's/patient's current treatment acceptance/resistance as it impacts on level of care decision making. Treatment acceptance/resistance may include, but is not limited to, current statement by client/patient about treatment acceptance/resistance, reports from others on client/patient treatment acceptance/resistance, and assessment by clinical staff on client/patient motivation. Historical information on client/patient may also be considered.

"Treatment days" means days in which the treatment program is open for services or actual working days.

"Treatment planning" means the process by which a counselor and client/patient identify and rank problems, establish agreed-upon goals, and decide on the treatment process and resources to be utilized.

"Treatment supervisor" means an individual who, by virtue of education, training or experience, is capable of assessing the psychosocial history of a substance abuser to determine the treatment plan most appropriate for the client. This person shall be designated by the applicant.

**643—3.2(125) Licensing.** A single license will be issued to each qualifying substance abuse treatment program. The license will delineate one or more categories of services the program is authorized to provide. Although a program may have more than one facility, only one license will be issued to the program. When an aspect of a program is unable to meet the licensing standards, a license may be issued to that program for a specified period citing all areas of noncompliance that have not been recoupled to the commission.

The categories of services for which licenses will be issued are:

1. Inpatient;
  2. Residential;
  3. Halfway house;
  4. Outpatient;
  5. Chemical substitute, antagonist and detoxification;
- and
6. Intake and assessment.

**643—3.3(125) Type of licenses.** Three types of licenses may be issued by the department. A renewal license may be issued for one or two years. Treatment programs applying for their first license may also be issued a license for 270 days. A license issued for 270 days shall not be renewed or extended.

Licenses shall expire one or two calendar years from the date of issue, and a renewal of the license shall be issued only on application, as required herein. The renewal of a one-year license shall be contingent upon demonstration of continued compliance with licensure standards and in accordance with the licensure weighting report criteria. The renewal of a two-year license shall be contingent upon demonstration of substantial continued compliance with licensure standards and in accordance with the licensure weighting report criteria. Failure to apply for and receive renewal of the license prior to the expiration date shall result in immediate termination of license and require reapplication. Following the issuance of a license, the treatment program may be requested by the commission to provide a written plan of corrective action and to bring into compliance all areas found in noncompliance during the on-site visit. The corrective action plan shall be placed in the program's permanent file with the division and used as reference during future on-site inspections. Any program which has been in operation three years or longer shall not be granted consecutive one-year licenses.

**643—3.4(125) Nonassignability.** When a program is discontinued, its current license is void immediately and shall be returned to the department. A discontinued program is one which has terminated its services for which it has been licensed. A license is not transferable. A license issued by the department for the operation of a substance abuse program applies both to the applicant program and the premises upon which the program is to be operated. Any person or other legal entity acquiring a licensed facility for the purpose of operating a substance abuse program shall make an application as provided herein for a new license. Similarly, any person or legal

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entity having acquired a license and desiring to fundamentally alter the treatment philosophy or transfer to different premises must notify the commission 30 days prior to said action in order for the department to review the site change and to determine appropriate action.

A licensee shall, if possible, notify the department of impending closure of the licensed program at least 30 days prior to such closure. The licensee shall be responsible for the removal and placement of patients or clients and for the preservation and delivery of all records to the department upon request by the commission. Upon closing all facilities and terminating all service delivery activities, the licensee shall immediately return the license to the department.

**643—3.5(125) Application procedures.** Applying for a license constitutes the first phase of the licensure process and the applicant may continue to operate until final determination of its licensure status is made by the commission. The department will mail an application form to all applicants for licensure.

**3.5(1) Application information.** An applicant for licensure shall submit at least the following information on forms provided by and available at the Iowa Department of Public Health, Division of Substance Abuse, Lucas State Office Building, Des Moines, Iowa 50319, with a return receipt requested.

a. The name and address of the applicant substance abuse treatment program.

b. The name and address of the executive director of such substance abuse treatment program.

c. The names, titles, dates of employment, education, and years of current job-related experience of staff and a copy of the table of organization. Where multiple components and facilities exist, the relationship between components and facilities must be shown, as well as a description of the screening and training process for volunteer workers.

d. The names and addresses of members of the governing body, sponsors, or advisory boards of such substance abuse treatment program and current articles of incorporation and bylaws.

e. The names and addresses of all physicians, other professionally trained personnel, medical facilities, and other individuals or organizations with whom the substance abuse treatment program has a direct contractual or affiliation agreement.

f. A description of the treatment services provided by the substance abuse treatment program and a description of weekly activities for each treatment modality or component.

g. Copies of reports substantiating compliance with federal, state and local rules and laws for each facility, to include appropriate Iowa department of inspections and appeals rules, state fire marshal's rules and fire ordinances, appropriate local health, fire, occupancy code, and safety regulations.

h. Fiscal management information to include a recent audit or opinion of auditor and board minutes to reflect approval of budget and insurance program.

i. Insurance coverage related to professional and general liability; building; workers' compensation; and fidelity bond.

j. The address and facility code of each office, facility, or program location.

k. The program's current written policies and procedures manual to include the staff development and training

program, and personnel policies. Applications for licensure will not be considered complete until a complete policies and procedures manual has been submitted to the division.

1. The application information for an initial application for licensure shall be complete and shall be reviewed by the department prior to a scheduled on-site inspection.

**3.5(2) Renewal.** An application for renewal shall be made on forms provided by the department at least 90 calendar days before expiration of the current license.

Applications for licensure renewal will not be considered complete until an up-to-date policies and procedures manual has been submitted to the department by the applicant substance abuse treatment program.

**3.5(3) Application update or revision.** The department shall be notified, and a request of an application for licensure for update or revision shall be made, by an existing licensed program 30 days prior to any change(s) of address of offices, facilities, or program locations; or additions or deletions of the type(s) of services or programs provided and licensed. The licensure application form shall be completed to reflect change of address of offices, facilities, or program locations, or additions or deletions of the type(s) of services or program(s) provided or licensed, and returned to the division within 10 working days from the date the forms are received. Within 60 days, upon receipt of an updated or revised application for licensure, the division shall conduct an on-site visit so as to verify information contained in the application and ensure compliance with all laws, rules and regulations. When applicable, as determined by the department, an on-site licensure inspection of a new component, service, program or facility may be conducted by the department within six months, upon receipt of the updated or revised application or during an existing licensed program's scheduled relicensure on-site inspection, whichever occurs first.

**643—3.6(125) Application review.** An applicant for licensure shall submit a completed application to the department within 30 days from the date the forms are received. The department shall review the application for completion and request any additional material as needed.

Applicants failing to return the forms shall be notified by registered mail that all programs must be licensed in order to continue operating.

**643—3.7(125) Inspection of licensees.** The department shall inspect the facilities and review the policies and procedures utilized by each licensed program. The examination and review may include case record audits and interviews with staff and clients, consistent with the confidentiality safeguards of state and federal laws.

**3.7(1) Technical assistance.** All treatment programs applying for an initial license to operate a substance abuse treatment program in the state of Iowa will be visited by the department for the purpose of providing needed technical assistance regarding the licensure criteria and procedures.

a. Following the issuance of a license, the treatment program may request technical assistance from the department so as to bring into conformity areas reported to be in noncompliance to these rules. Such technical assistance shall be scheduled within 30 days of the applicant's request depending on the availability of staff. The department may also request that technical assistance be provided to the program if deficiencies are noted during a site visit.

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b. Reserved.

**3.7(2) On-site visit for licensure.** The on-site visit for licensure constitutes the second phase of the licensure process. A licensure on-site inspection shall be scheduled after the department's receipt of the program's application to operate a substance abuse treatment program. The department shall not be required to provide advance notice to the program of the on-site visit for licensure.

a. The on-site visit team will consist of designated members of the division staff, as approved by the director.

b. The team will inspect the program that has applied for a license in order to verify information contained in the application and ensure compliance with all laws, rules and regulations.

c. The inspection team shall send a written report, return receipt requested, of their findings to the applicant within 20 working days after the completion of the inspection.

**643—3.8(125) Licenses—renewal.** The commission shall meet to consider all cases involving issuance, denial, suspension, or revocation of a license. Upon approval of an application for licensing by the commission, a license shall be issued by the department. Licenses shall be renewed upon timely application made in the same manner as for original issuance of a license unless notice of non-renewal is given to the licensee at least 30 days prior to the expiration of the license. The department shall not charge a fee for licensing or renewal.

**3.8(1) Commission hearing preparation.** The division will prepare all documents with a final recommendation for licensing determination to be presented at a commission meeting within 120 days from the site visit. The division shall send public notice of the date, time, place and name of applicants to be reviewed and processed.

a. The division shall send notice to the program by certified mail, return receipt requested, 30 days prior to the commission meeting notifying the program director and board chairperson of the time, place, and date the commission will review and act upon the application for the program along with the results of the inspection.

b. The division shall mail to all commission members the following information on each application to be processed at the next commission meeting:

(1) Reports of the on-site program licensure inspections; and

(2) A final recommendation for licensing.

**3.8(2) Commission meeting format.**

a. The chairperson or designee shall call the meeting to order at the designated time.

b. The presiding officer will read each application and protocols.

c. Opportunity shall be given all concerned parties to respond, present evidence, and arguments on each application.

d. After all concerned parties are heard, the commission will make a decision as to whether the applicant should be finally approved or initially denied a license to operate a substance abuse treatment program.

**643—3.9(125) Corrective action plan.** Programs approved for a license for 270 days by the commission will submit a corrective action plan to the director no later than 30 days following the licensure hearing. The corrective action plan shall include, but not be limited to:

1. Specific problem areas.

2. A delineation of corrective measures to be taken by the program.

3. A delineation of target dates for completion of corrective measures for each problem area.

4. A follow-up on-site visit will be required to review the implemented corrective action with a subsequent report to the commission.

**643—3.10(125) Grounds for denial of initial license.**

**3.10(1) Denial of application for licensure.** All programs applying for an initial license shall submit complete application information and shall be inspected by the department prior to opening and offering services. A recommendation by the department of a denial of an initial application for licensure to the commission may be made based on the following reasons:

a. The application for licensure is incomplete in accordance with information required as outlined in IAC 643—3.5(125).

b. On-site inspection report results based on the licensure weighting report indicate a score below minimum required for a recommendation of a 270-day license.

c. Permitting, aiding or abetting the commitment of an unlawful act within the facilities maintained by the program or permitting, aiding or abetting the commitment of an unlawful act involving chemical substances within the program.

d. Conduct or practices found by the department to be detrimental to the general health or welfare of a participant in the program or the general community.

e. Deviation by the program from the plan of operation which, in the judgment of the department, adversely affects the character, quality or scope of services intended to be provided to substance abusers within the scope of the program.

**3.10(2) On-site visit for licensure.** The on-site visit for licensure of an initial applicant shall occur prior to the program opening and admitting patients/clients. The department shall not be required to provide advance notice to the program of the on-site visit for licensure.

a. The on-site visit team will consist of designated members of the division staff, as approved by the director.

b. The team will inspect the program that has applied for a license in order to verify information contained in the application, ensure compliance with all laws, rules and regulations.

c. The inspection team shall send a written report, return receipt requested, of their findings to the applicant within 20 working days after the completion of the inspection.

d. The application information for an initial application for licensure shall be complete and shall be reviewed by the department prior to a scheduled on-site inspection.

**3.10(3) Commission action.** The commission shall meet to consider all cases involving issuance of a license. Upon approval of an application for licensure by the commission, a license shall be issued by the department.

a. Commission hearing preparation. The division will prepare all documents with a final recommendation for licensing determination to be presented at a commission meeting within 120 days from the site visit. The division shall send public notice of the date, time, place and name of applicants to be reviewed and processed.

(1) The division shall send notice to the program by certified mail, return receipt requested, 30 days prior to

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the commission meeting notifying the program director and board chairperson of the time, place, and date the commission will review and act upon the application for the program along with the results of the inspection.

(2) The division shall mail to all commission members the following information on each application to be processed at the next commission meeting: reports of the on-site program licensure inspections, and a final recommendation for licensure.

b. Commission meeting format.

(1) The chairperson or designee shall call the meeting to order at the designated time.

(2) The presiding officer or designee shall give summary of each application and protocols.

(3) Opportunity shall be given all concerned parties to respond and present evidence and arguments on each application.

(4) After all concerned parties are heard, the commission will make a decision as to whether the applicant should be finally approved or initially denied a license to operate a substance abuse treatment program.

**643—3.11(125) Suspension, revocation, or refusal to renew a license.** The commission may suspend or revoke a license for any of the following reasons:

1. Violation by the program, its director or staff, of any rule promulgated by the department pertaining to substance abuse treatment programs.

2. Permitting, aiding or abetting the commitment of an unlawful act within the facilities maintained by the program or permitting, aiding or abetting the commitment of an unlawful act involving chemical substances within the program.

3. Conduct or practices found by the department to be detrimental to the general health or welfare of a participant in the program or the general community.

4. Deviation by the program from the plan of operation originally licensed which, in the judgment of the department, adversely affects the character, quality or scope of services intended to be provided to substance abusers within the scope of the program.

5. The application for licensure is incomplete and does not include all necessary and required information for verification.

6. On-site inspection report results based on the licensure weighting report indicate a score below minimum required for a recommendation for a one- or two-year license.

**3.11(1) Initial notice from commission.** When the commission determines that a licensed program has not complied with relicensure application requirements, or attained the minimum required score to review a license; or may have committed an act or engaged in conduct or practices justifying suspension, revocation or refusal to renew a license, the commission shall notify the licensee by certified mail, return receipt requested, of the commission's intent to suspend, revoke, or refuse to renew the license and the changes that must be made in the licensee's operation to avoid such action. The initial notice shall further provide the licensee the opportunity to submit objections or plan of corrections to the department within 30 days from the receipt of notice from the commission.

**3.11(2) Objections or corrections of issues.** Where a licensee submits objections or plan of corrections to the department, the licensee shall have an opportunity to correct and resolve issues provided by the department within

90 days of the department's receipt of objections or plan of corrections.

**3.11(3) Decision of commission.** Where objections or notice of corrections has not been received or a recommendation is made based upon review of information received by the department, the commission shall meet to determine whether the license in question should be suspended, revoked, or not renewed. The licensee shall receive notice of this meeting in the same manner as provided by subrule 3.8(1), paragraph "a."

**3.11(4) Second notice of decision and opportunity for contested case hearing.** A subsequent or second decision of the commission to suspend, revoke, or not renew a license shall become final if the licensee fails to request a contested case hearing within 30 days of the commission's decision. Where the commission proposes to suspend, revoke, or not renew a license, the licensee shall be given written, timely notice by certified mail, return receipt requested, of the facts and the provisions of law relied upon by the commission in reaching its decision. The licensee shall be further notified of the opportunity for a contested case hearing conducted in accordance with the provisions of rule 3.12(125) and the full manner in which a contested case hearing shall be requested. The licensee shall be informed that the proposed decision of the commission becomes final unless a request for a contested case hearing is submitted to the department within 30 days after receipt of the notice.

**3.11(5) Summary suspension.** If the commission finds that the health, safety or welfare of the public is endangered by continued operation of a substance abuse treatment program, summary suspension of a license may be ordered pending proceedings for revocation or other actions. These proceedings shall be promptly instituted and determined.

**643—3.12(125) Contested case hearing.** Programs that wish to contest the denial, suspension, revocation or refusal to renew their license shall be afforded an opportunity for a hearing before the commission.

**3.12(1) Notice of contest.** The notice of contest to the actions of the commission shall be filed in writing at the Iowa Department of Public Health, Division of Substance Abuse and Health Promotion, Lucas State Office Building, Des Moines, Iowa 50319. No particular form shall be required; however, the notice shall state the decision which is being contested and the basis for the contest. This notice shall be received by the department within 30 days after notice of the proposed decision of the commission was received.

**3.12(2) Contested case hearings—notice of hearings.** The chairperson of the commission shall send a written notice of the hearing to all parties by certified mail, return receipt requested, or by personal service as in civil actions, at least 30 days prior to the date of the hearing unless a shorter period of time is agreed upon by all parties. Delivery of this notice shall constitute commencement of the contested case proceeding. The notice shall include the time, place and nature of the hearing, plus a statement of the legal authority and jurisdiction under which the hearing is to be held, a reference to the particular sections of the statutes and rules involved and a short and plain statement of the matters asserted.

**3.12(3) Failure to appear.** If a party fails to appear in a contested case hearing proceeding after proper service of notice, the presiding officer may, if no adjournment is

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granted, proceed with the hearing and make a decision in the absence of the party. The presiding officer may, in such a case, enter a default judgment against the party failing to appear.

**3.12(4) Conduct of hearing.** Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved and to be represented by counsel at their own expense.

a. The hearing shall be informal and all relevant evidence admissible. Effect will be given to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. When the hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

b. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

c. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved and to be represented by counsel at their own expense. Witnesses present at the hearing shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts.

d. The record in a contested case shall include:

- (1) All pleadings, motions and intermediate rulings.
- (2) All evidence received or considered and all other submissions.
- (3) A statement of all matters officially noticed.
- (4) All questions and offers of proof, objections and rulings therein.
- (5) All proposed findings and exceptions.
- (6) Any decision, opinion or report by the officer presiding at the hearing.

e. Oral proceedings shall be open to the public and shall be recorded either by mechanized means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription thereof shall be filed with and maintained by the agency for at least five years from the date of decision.

f. Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record.

**3.12(5) Presiding officer.** The chairperson, a designated member of the commission or a designated member of the Iowa department of public health staff will preside at the hearing; or, at the direction of the commission, an administrative law judge (ALJ) available through the Iowa department of inspections and appeals and pursuant to Iowa Code chapter 17A will preside in lieu of the chairperson or designee.

**3.12(6) Ex parte communications.** The notice required pursuant to Iowa Code section 17A.4 concerning ex parte communications in contested cases shall include the name of the ALJ or presiding officer, the name of the party to whom the communication will occur, the nature of the communication, the place of the communication and the time of the communication. The notice shall be in writing and shall be delivered either by personal service as in civil actions or by certified mail, return receipt requested. The time of the communication must be at least 30 days subsequent to the service of the notice.

a. Administrative law judge (ALJ) or presiding officer. Any individual who is assigned to hear a contested case who communicates, directly or indirectly, in connection with any issue of fact or law in that contested case with any party or the representative of any party to that contested case shall submit the communication if written or a summary of the communication if oral for inclusion in the record of the proceedings. Any party to a contested case or the representative of any party who communicates, directly or indirectly, in connection with any issue of fact or law in that contested case with any person assigned to hear that case without giving the required notice and opportunity to be heard to all parties shall be required to submit the communication if written or a summary of the communication if oral for inclusion in the record of the proceedings.

b. Sanctions—parties. Sanctions against the parties or their representatives who communicate with the hearing officer on any issue of fact or law in a contested case without giving notice and the opportunity to participate to all parties may include a decision against the party on the merits; censure, suspension or revocation of the privilege to practice before the department; or whatever may be just and equitable.

c. Sanctions—ALJ or presiding officer. Sanctions against the individual who was assigned to hear the case and participated in communications with any party or the representative of any party on any issue of fact or law in that contested case without giving notice and the opportunity to participate to all parties may include censure, suspension or dismissal from the department or whatever may be just and equitable.

**3.12(7) Subpoenas—discovery.** After the commencement of a contested case, the presiding officer shall have the authority to administer oaths and to issue subpoenas or subpoenas duces tecum in such cases. Discovery procedures applicable to civil action shall be to all parties in contested cases. Evidence obtained in such discovery may be used in the hearing before the ALJ or presiding officer if that evidence is otherwise admissible in the hearing.

If the commission relies on a witness in a contested case, whether or not a commission member, who has made prior statements or reports with respect to the subject matter of the witness's testimony, the director shall, on request, make such statements or reports available to parties for use on cross-examination, unless those statements or reports are otherwise expressly exempt from disclosure by constitution or statute. Identifiable department records that are relevant to disputed material facts involved in a contested case hearing shall, upon request, promptly be made available to a party unless the requested records are expressly exempt from disclosure from constitution or statute.

**3.12(8) Continuance.** For good cause, the chairperson may continue hearings beyond the time originally scheduled or recessed. Requests for continuance shall be made to the chairperson in writing at least three days prior to the scheduled hearing date.

**3.12(9) Decision.** Findings of fact shall be based solely on the evidence in the record and upon matters officially noticed in the record.

a. The decision of the ALJ or presiding officer shall be the final decision unless there is an appeal to the commission within 20 days of the receipt of the decision.

b. A proposed or final decision or order in a contested case hearing shall be in writing or stated in the record. A

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proposed or final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. Each conclusion of law shall be supported by cited authority or by a reasoned opinion. Parties will be promptly notified of each proposed or final decision or order by the delivery to them of a copy of such decision or order by certified mail, return receipt requested. In the case of a proposed decision, parties shall be notified of the right to appeal the decision to the commission.

**643—3.13(125) Rehearing application.** Any party may file an application for rehearing, stating the specific grounds therefor and the relief sought, within 20 days after the issuance of any final decision by the commission in a contested case. A copy of such application shall be timely mailed by the applicant to all parties of record not joining therein. Such an application for rehearing shall be deemed to have been denied unless the commission grants the application within 20 days after its filing.

**643—3.14(125) Judicial review.** A licensee who is aggrieved or adversely affected by the commission's final decision and who has exhausted all adequate administrative remedies may seek judicial review of the commission's decision pursuant to and in accordance with Iowa Code section 17A.19.

**643—3.15(125) Noncompliance.**

**3.15(1) Ceasing operation.** On any program refusing to cease operation after the aforementioned procedures have been followed, the commission will hold a special hearing where a quorum of five must be present. At said meeting, the commission may refer the matter to the attorney general's office for appropriate action.

**3.15(2) On-site inspection.** On any program that refused to allow an on-site inspection as specified in Iowa Code chapter 125, the commission will hold a special hearing with a quorum of at least five. At said meeting, the commission may decide whether to refer this matter to the attorney general's office for appropriate action.

**643—3.16(125) Reissuance or reinstatement.** After suspension, revocation or refusal to renew a license, the affected licensee shall not have the license reissued or reinstated within one year of the effective date of the suspension, revocation or expiration upon refusal to renew, unless by order of the commission. After that time, proof of compliance with the licensure standards must be presented to the commission prior to reinstatement or reissuance of a license.

**643—3.17(125) Complaints.** Any person may request an inspection of a program licensed pursuant to Iowa Code chapter 125 by filing with the department a complaint of any alleged violation of applicable requirements of the Iowa Code or the rules adopted pursuant to it. The complaint shall state in a specific manner the basis of the complaint and the full name and address of the complainant. The complaint may be delivered personally or by mail to the division director at Lucas State Office Building, Des Moines, Iowa 50319. The executive director and board chairperson of the program involved shall be notified that the department has received a complaint within 48 hours of its receipt by the department. Timely filing is required in order to ensure availability of witnesses and to avoid initiation of an investigation under

conditions which may have been significantly altered during the period of delay.

**3.17(1) Evaluation of complaints.** Upon receipt of a complaint the department shall make a preliminary review of the complaint. Unless the department concludes that the complaint is intended to harass a program, or is without reasonable basis, it shall within 20 working days of receiving the complaint conduct an on-site investigation of the program which is the subject of the complaint. The program complained of may be given an opportunity to informally present a position or defend regarding the allegations of the complaint during the on-site investigation. The complainant shall be properly informed of the results of any action taken by the department in this matter.

**3.17(2) Reports.** A written report shall be submitted by certified mail, return receipt requested, to the executive director of the facility, the chairperson of the governing body, and to the commission within 20 working days after completion of the complaint investigation. This report shall indicate if the complaint was substantiated, the basis for substantiation or nonsubstantiation, the specific statutes or rules violated, a response by the program receiving the complaint, and a recommendation for corrective action with specific time lines. If a recommendation is made to revoke or suspend the program's license, the commission shall proceed as required by rule 3.11(125).

**3.17(3) Response to report.** Within 20 working days after receiving a report substantiating violations, the program shall send a written response to the department acknowledging that the report has been received and stating that the violations will be corrected within the time specified by the department. Failure to respond to this report may constitute the basis for the program's license to be revoked or suspended.

**3.17(4) Informal response.** The program complained of may be given an opportunity to informally present a position or defense in regard to the allegations of the complaint prior to the commencement of a contested case. This position or defense may be submitted in writing or presented in a personal conference with the director or designee.

**3.17(5) Hearing before commission.** The commission shall hear all cases of programs that notify the department within 20 working days after receipt of the inspection report of their desire to protest the results of the inspection. The notice of protest shall be filed in writing at the Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319.

**3.17(6) Confidential records.** Written complaint investigation reports by the department, information provided to or obtained by the department through complaints or investigations concerning any program shall be maintained confidentially and not available to the public as outlined in Iowa Administrative Code 643—paragraph 5.13(2)"b."

**643—3.18(125) Variances.** Variances from these rules may be granted by the director of the department of public health or designee for good and sufficient reason when the need for variance has been established; no danger to the health, safety, or welfare of any resident results; alternate means are employed or compensating circumstances exist and the variance will apply only to an individual program. Variances will be reviewed at the discretion of the director of the department of public health.

**3.18(1) To request a variance, the licensee shall:**

a. Apply for variance in writing on a form provided by the department;

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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 compensating circumstances which justify the variance;

e. Demonstrate that the requested variance will not endanger the health, safety, or welfare of any resident or client.

**3.18(2)** Upon receipt of a request for variance, the director of public health shall proceed as follows:

a. Examine the rule from which variance is requested to determine that the request is necessary and reasonable;

b. If the request meets the above criteria, evaluate the alternate arrangements or compensating circumstances against the requirement of the rules;

c. Examine the effect of the requested variance on the health, safety, or welfare of the residents; and

d. Consult with the applicant if additional information is required.

**3.18(3)** Based upon these studies, approval of the variance will be either granted or denied within 45 days of receipt.

**643—3.19** Reserved.

**643—3.20(125) Funding.** The issuance of the license to any program shall not be construed as a commitment on the part of either the state or federal government to provide funds to such licensed program.

**643—3.21(125) Inspection.** Each applicant or licensee agrees as a condition of said license to permit properly designated representatives of the department to enter into and inspect any and all premises of programs for which a license has been either applied or issued to verify information contained in the application or to ensure compliance with all laws, rules, and regulations relating thereto, during all hours of operation of said facility and at any other reasonable hour. Further, each licensee agrees to permit properly designated representatives of the department to audit and collect statistical data from all records maintained by the licensee. Such right of entry and inspection shall, under due process of law, extend to any premises on which the department has reason to believe a program is being operated in violation of these rules. A facility shall not be licensed which does not permit inspection by the department or examination of all records, including financial records, methods of administration, general and special dietary programs, the disbursement of drugs and methods of supply, and any other records the commission deems relevant to the establishment of such a system.

**643—3.22(125) General standards for all substance abuse treatment programs.** The following standards shall apply to all substance abuse treatment programs in the state of Iowa regardless of the category of treatment services provided by such programs. In situations where differences between general standards for all treatment programs and specific standards occur, both general and specific standards must be met.

**3.22(1) Governing body.** Each program shall have a formally designated governing body that is representative of the community being served, complies with the Iowa Code, and is the ultimate authority for the overall program operations.

a. The governing body shall develop and adopt written bylaws and policies that define the powers and duties of the governing body, its committees, advisory groups, and the executive director. These bylaws shall be reviewed and revised by the governing body as necessary.

b. The bylaws shall minimally specify the following:

(1) The qualifications of the memberships;

(2) The type of membership;

(3) The method of selecting members;

(4) The term of appointment or election of members, officers and chairpersons of committees;

(5) The number of the membership;

(6) The frequency of meetings;

(7) The attendance requirements; and

(8) The quorum necessary to transact business.

c. Minutes of all meetings shall be kept and be available for review by the department and shall include, but not necessarily be limited to:

(1) Date of the meeting;

(2) Names of members attending;

(3) Topics discussed;

(4) Decisions reached and actions taken; and

(5) A summary of all reports presented to the governing body.

d. The duties of the governing body shall include, but not necessarily be limited to, the following:

(1) Appointment of a qualified executive director who shall have the responsibility and authority for the management of the program in accordance with the governing body's established policies;

(2) Establish an effective control which will ensure that quality services are delivered;

(3) Review and approve the program's annual budget; and

(4) Approve all contracts.

e. The governing body shall develop and approve policies for the effective operation of the program.

f. The governing body shall be responsible for all funds, equipment, supplies and the facility in which the program operates. The governing body shall be responsible for the appropriateness and adequacy of services provided by the program.

g. The governing body shall at least annually prepare a report which will include, but not necessarily be limited to, the following items:

(1) The name, address, occupation, and place of employment of each governing body member;

(2) Any family relationships which a member of the governing body may have to a program staff member; and

(3) Where applicable, the name and address of all owners or controlling parties whether they are individuals, partnerships, corporation body, or subdivision of other bodies, such as a public agency, or religious group, fraternity, or other philanthropic organization.

h. The governing body shall assume responsibility in seeing that the program has malpractice and liability insurance and a fidelity bond.

**3.22(2) Executive director.** The governing body shall appoint an executive director whose qualifications, authority, and duties are appropriate to the administrative and treatment requirements of the program. This individual shall have primary responsibility for the overall program operations in accordance with the policies established by the governing body.

a. The duties of the executive director shall include, but not necessarily be limited to, the following:



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(1) The developing and organizing of administrative and procedural functions of the program;

(2) Public relations;

(3) Establishing a formal means of staff accountability;

(4) Control and conservation of the physical and financial assets of the program;

(5) Personnel administration; and

(6) Review of policies on an annual basis and updating as appropriate.

b. The executive director shall assist the governing body in formulating policies and shall prepare, present, and interpret all relevant information as deemed appropriate by the governing body which may include:

(1) Reports describing the program's operation;

(2) Evaluation reports dealing with the efficiency and effectiveness of the program;

(3) Plans based upon the nature and extent of substance abuse problems within the service area, the nature and extent of funding, and other resources available, and federal, state and local developments affecting substance abuse treatment; and

(4) Budget and financial statements.

**3.22(3) Treatment supervisor services.** The program shall have available consultation from a treatment supervisor to ensure quality of clinical services provided to clients/patients. This individual will assist the program in developing policies and procedures relating to the assessment and treatment of psychopathology. The treatment supervisor will assist in the training of the staff and providing assistance to the clinical staff in client treatment. The executive director or designee shall be ultimately responsible for clinical services and implementation of treatment services to clients.

**3.22(4) Staff development and training.** There shall be written policies and procedures that establish a staff development program. The staff development program shall include orientation for entry-level staff, on-the-job training, in-service education, and opportunities for continuing job-related education.

a. Initial training is recommended for all staff, which for each treatment staff member shall include, but not be limited to, structured scheduled orientation relating to the psychosocial, medical, pharmacological, confidentiality, and tuberculosis and blood-borne pathogens; an orientation to the program and community resources; counseling skill development; HIV/AIDS (Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome) information/education; and the attitudes, values and lifestyles of racially diverse cultures, other cultures and special populations. In addition, each treatment staff member shall complete two hours of training relating to the identification and reporting of child abuse and dependent adult abuse within six months of initial employment, and at least two hours of additional training every five years thereafter. Refer to OSHA standards for required training for all staff members.

b. The program shall establish on-site training programs or enter into relationships with outside resources capable of meeting staff training needs.

c. The staff development program shall take steps to ensure that staff members are kept informed of new developments in the field of substance abuse treatment and rehabilitation.

d. In-service training programs shall be instituted when program operations or functions are changed and shall be designed to allow staff members to develop new skills so that they may effectively adapt to such changes.

e. Staff development activities and participation in state, national and regional training shall be planned and scheduled. These activities shall be documented in order to evaluate their scope, effectiveness, attendance, and amount of time spent on such efforts. The written plan for on-site staff development and activities for professional growth and development of personnel shall be based on the annual needs assessment and shall be available to all personnel.

f. Minutes shall be kept of on-site training activities and shall include, but not necessarily be limited to:

(1) Date of the meeting;

(2) Names of persons attending;

(3) Topics discussed, to include name and title of presenters; and

(4) Recommendations made.

g. The individual responsible for supervising staff development activities shall conduct at least an annual needs assessment.

h. The local program shall document staff attendance and participation at local, regional, state and national training opportunities.

**3.22(5) Management information system.** All programs funded by the department shall submit client data to the Iowa Department of Public Health, Division of Substance Abuse and Health Promotion, Lucas State Office Building, Des Moines, Iowa 50319-0075, in accordance with substance abuse reporting system procedures.

**3.22(6) Procedures manual.** All programs shall develop and maintain a procedures manual. This manual shall define the program's policies and procedures to reflect the program's activities. Revisions shall be entered with the date, name and title of the individual making the entries. This manual shall contain all of the required written policies, procedures, definitions, and all other documentation required by these standards in the following areas:

a. Legal authority and organization of the governing body;

b. Fiscal management;

c. Personnel policies;

d. Medical services;

e. Staff training;

f. Treatment planning;

g. Client case records;

h. Supportive and professional services;

i. Follow-up services;

j. Client rights;

k. Confidentiality of client records;

l. Discharge planning;

m. All clinical services, such as placement screening and initial assessment, outpatient services, primary residential treatment, and extended residential treatment;

n. Treatment philosophy;

o. Objectives;

p. Table of organization;

q. The role of the coordinator/director in charge of this service; and

r. Interrelationship with other service components and providers.

**3.22(7) Fiscal management.** The program shall ensure proper fiscal management which shall include the following:

a. The preparation and maintenance of an annual written budget which shall be reviewed and approved by the governing body prior to the beginning of the budget year.

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b. The fiscal management system shall be maintained in accordance with generally accepted accounting principles, including internal controls to reasonably protect the agency assets. This shall be verified by an independent fiscal audit of the center by the state auditor's office or certified public accountant based on an agreement entered into by the governing body.

c. There shall be an insurance program that provides for the protection of the physical and financial resources of the program which provides coverage for all people, buildings, and equipment. The insurance program shall be reviewed annually by the governing body.

**3.22(8) Personnel.** Written personnel policies and procedures shall be developed by all programs.

a. These policies and procedures shall address the following areas:

- (1) Recruitment, selection, and certification of staff members;
- (2) Recruitment and selection of volunteers;
- (3) Wage and salary administration;
- (4) Promotions;
- (5) Employee benefits;
- (6) Working hours;
- (7) Vacation and sick leave;
- (8) Lines of authority;
- (9) Rules of conduct;
- (10) Disciplinary actions and termination of employees;
- (11) Methods for handling cases of inappropriate client care;
- (12) Work performance appraisal;
- (13) Employee accidents and safety;
- (14) Arbitration of employee grievances;
- (15) Policy on staff persons suspected of using or abusing substances.

b. The written personnel policies and practices shall include an equal employment opportunity policy and an affirmative action plan for hiring members of protected classes.

c. There shall be written job descriptions for all positions. Each job description shall identify specifically:

- (1) Job title;
- (2) Tasks and responsibilities of the job;
- (3) The skills, knowledge, training, education and experience required for the job; and
- (4) Lines of authority.

d. Job descriptions shall accurately reflect the actual job situation and shall be reviewed when necessary by the executive director or whenever there is a change in required qualifications or duties.

e. All positions shall have job descriptions included in the personnel section of the procedures manual or personnel record of the staff member.

f. The written personnel policies and practices shall include a mechanism for the evaluating of personnel performance on at least an annual basis. This evaluation shall be in writing. There shall be evidence that this evaluation is reviewed with the employee and that the employee is given the opportunity to respond to this evaluation.

g. Any wages paid to clients engaged in vocational training or work within the program shall be in accord with local, state and federal requirements.

h. There shall be a personnel record kept on each staff member. These records shall contain as applicable:

- (1) The application for employment;

(2) Verification of training, experience, and all professional credentials relevant to the position;

(3) Wage and salary information, including all changes;

(4) Job performance evaluations;

(5) Incident reports;

(6) Disciplinary actions taken; and

(7) Documentation of review and adherence to confidentiality laws and regulations. This review and agreement shall occur prior to assumption of duties.

i. For each employee working within a juvenile service area, these personnel records shall contain:

(1) Documentation of a criminal records check with the Iowa division of criminal investigation on all new applicants for employment asking whether the applicant has been convicted of a crime.

(2) A written, signed, and dated statement furnished by a new applicant for employment which discloses any substantiated reports of child abuse, neglect, or sexual abuse that may exist on the applicant.

(3) Documentation of a check after hiring on probationary or temporary status, but prior to permanently employing the individual with the Iowa central child abuse registry for any substantiated reports of child abuse, neglect, or sexual abuse.

(4) A person who has a record of a criminal conviction or founded child abuse report shall not be employed, unless an evaluation of the crime or founded child abuse has been made by the department which concludes that the crime or founded child abuse does not merit prohibition of employment. If a record of criminal conviction or founded child abuse exists, the person shall be offered the opportunity to complete and submit Form 470-2310, Record Check Evaluation. In its evaluation, the department shall consider the nature and seriousness of the crime or founded abuse in relation to the position sought, the time elapsed since the commission of the crime or founded abuse, the circumstances under which the crime or founded abuse was committed, the degree of rehabilitation, and the number of crimes or founded abuses committed by the person involved.

j. There shall be written policies and procedures designed to ensure confidentiality of personnel records and a delineation of authorized personnel who have access to various types of personnel information.

k. Personnel providing treatment shall be certified through the Iowa board of substance abuse certification, or be eligible for certification and have education, training, or experience in the substance abuse field.

l. There shall be written policies related to the prohibition of sexual harassment.

m. There shall be written policies related to the implementation of the Americans with Disabilities Act.

**3.22(9) Child abuse.** Written policies and procedures shall prohibit mistreatment, neglect, or abuse of children and specify reporting and enforcement procedures for the program. Alleged violation shall be reported immediately to the director of the facility and appropriate department of human services personnel. Written policies and procedures on reporting alleged violations shall be in compliance with DHHS, 42 CFR, Part 2, Regulations on Confidentiality of Alcohol and Drug Abuse Client Records. Any employee found to be in violation of Iowa Code chapter 232, division III, part 2, as substantiated by the department of human services' investigation shall be subject to the agency's policies concerning dismissal.

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**3.22(10)** Client case record maintenance. There shall be written policies and procedures governing the compilation, storage and dissemination of individual client case records.

a. These policies and procedures shall ensure that:

(1) The program exercises its responsibility for safeguarding and protecting the client case record against loss, tampering, or unauthorized disclosure of information;

(2) Content and format of client records are kept uniform; and

(3) Entries in the client case record are signed and dated.

b. The program shall provide adequate physical facilities for the storage, processing, and handling of client case records. These facilities shall include suitably locked, secured rooms or file cabinets.

c. Appropriate records shall be readily accessible to those staff members providing services directly to the client and other individuals specifically authorized by program policy. Records should be kept in proximity to the area in which the client normally receives services.

d. There shall be a written policy governing the disposal and maintenance of client case records. Client case records shall be maintained for not less than five years from the date they are officially closed.

e. Each file cabinet or storage area containing client/patient case records shall be locked.

f. The governing body shall establish policies that specify the conditions under which information on applicants or clients may be released and the procedures to be followed for releasing such information. Even if a program is not federally funded, all such policies and procedures shall be in accordance with applicable provisions of Section 408 of Public Law 92-255, as amended, the federal confidentiality regulations issued, and state confidentiality laws and regulations.

g. Confidentiality of alcohol and drug abuse patient records. The confidentiality of alcohol and drug abuse patient records maintained by a program is protected by the "Confidentiality of Alcohol and Drug Abuse Patient Records" regulations, 42 CFR, Part 2, effective June 9, 1987, which implement federal statutory provisions, 42 U.S.C. 290dd-3 applicable to alcohol abuse patient records, and 42 U.S.C. 290ee-3 applicable to drug abuse patient records.

**3.22(11)** Placement screening, admission, and assessment. There shall be clearly stated written criteria for determining the eligibility of individuals for placement and admission.

a. The program shall have written policies and procedures governing a uniform process that defines:

(1) The types of information to be gathered on all individuals upon admission;

(2) Procedures to be followed when accepting referrals from outside agencies or organizations;

(3) The types of records to be kept on all individuals applying for services.

b. The client assessment (psychosocial history) shall be an analysis and synthesis of the client's status, and shall address the client's strengths, problems, and areas of clinical concern. It shall be developed within the period of time between admission and the first review date specified for that particular level of care within the continued stay review process. This initial assessment upon admission to treatment services is an expansion of information on the six categories contained within the placement screening document.

c. When an individual refuses to divulge information or to follow the recommended course of treatment, this refusal shall be noted in the case record.

d. At the time of admission, documentation shall be made that the individual has been informed of:

(1) General nature and goals of the program;

(2) Rules governing client conduct and infractions that can lead to disciplinary action or discharge from the program;

(3) In a nonresidential program, the hours during which services are available;

(4) Treatment costs to be borne by the client, if any;

(5) Client's rights and responsibilities; and

(6) Confidentiality laws, rules and regulations.

e. Sufficient information shall be collected during the admission process so that the assessment process allows for the development of a complete assessment of the client's status and a comprehensive plan of treatment can be developed.

f. The results of the screening and admission process shall be clearly explained to the client and to the client's family when appropriate. This shall be documented in the client record.

**3.22(12)** Treatment plans. Based upon the initial assessment, an individualized written treatment plan shall be developed and recorded in the client's case record.

a. A treatment plan shall be developed as soon after the client's admission as is clinically feasible and within the period of time between admission and the next review date specified for that particular level of care within the continued stay reviews.

b. The individualized treatment plan shall minimally contain:

(1) A clear and concise statement of client's current strengths and needs;

(2) Clear and concise statements of the short- and long-term goals the client will be attempting to achieve;

(3) Type and frequency of therapeutic activities in which the client will be participating;

(4) The staff person(s) to be responsible for the client's treatment;

(5) The specific criteria to be met for successful completion of treatment; and

(6) Treatment plans shall be culturally and environmentally specific so as to meet the needs of the client. Treatment plans shall be written in a manner readily understandable to the client, with assistance if necessary.

c. Treatment plans shall be developed in partnership with the client and shall be reviewed by the primary counselor and the client as often as necessary and in accordance with the time frames specified within the continued stay reviews.

d. The reviews shall consist of: a reassessment of the client's current status in conjunction with the continued stay review criteria, accomplishments and needs, and a redefining of treatment goals when appropriate. The date of the review, any changes, as well as the individuals involved in the review shall also be recorded in the continued stay review process.

e. The use of abstract terms, technical jargon, or slang should be avoided in the treatment plan. The program should provide the client with copies of all treatment plans upon request.

**3.22(13)** Progress notes. A client's progress and current status in meeting the goals set in the treatment plan shall be recorded in the client's case record. Information will be noted following each individual counseling session

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and a summary of group counseling services shall be documented at least weekly.

a. Entries shall be filed in chronological order and shall include the date services were provided or observations made, the date the entry was made, the signature or initials and staff title of the individual rendering the services. All progress notes shall be entered into the client case record in permanent pen, typewriter, or by computer. In those instances where records are maintained electronically, a staff identification code number authorizing access shall be accepted in lieu of a signature.

b. All entries that involve subjective interpretations of a client's progress should be supplemented with a description of the actual behavioral observations which were the basis for the interpretation.

c. The use of abstract terms, technical jargon, or slang should be avoided in progress notes.

d. The program shall develop a uniform progress note format to be used by all clinical staff.

**3.22(14) Client case record contents.** There shall be a case record for each client that contains:

a. Results of all examinations, tests, and screening and admissions information;

b. Reports from referring sources;

c. Treatment plans;

d. Continued stay and discharge reviews;

e. Medication records, which shall allow for the monitoring of all medications administered and self-administered and the detection of adverse drug reactions. All medication orders in the client case records shall define at least the name of the medication, dose, route of administration, frequency of administration, the name of the physician who prescribed the medication, and the name of the person administering or dispensing the medication;

f. Reports from outside resources shall be dated and include the name of the resource, which shall include the name of the resource and the date of the report. These reports shall be signed by the person making the report or by the program staff member receiving the report;

g. Multidisciplinary case conference and consultation notes, including the date of the conference or consultation, recommendations made, actions taken, and individuals involved;

h. Correspondence related to the client, including all letters and dated notations of telephone conversations relevant to the client's treatment;

i. Treatment consent forms, if applicable;

j. Information release forms;

k. Progress notes;

l. Record of services provided;

m. Discharge summaries of services provided shall be sufficiently detailed to identify the types of services the client has received and action taken to address specific problems identified. General terms such as "counseling" or "activities" shall be avoided in describing services; and

n. Management information system or other appropriate data forms.

**3.22(15) Urinalysis.** All programs serving clients who are receiving treatment for use or abuse of a controlled substance shall establish policies and procedures, if applicable, for the collection of urine specimens and utilization of urinalysis results.

a. Urine specimens obtained from clients shall be collected under direct supervision and analyzed as indicated by the program.

b. Any laboratory used by the program for urine testing and analysis shall comply, if applicable, with all federal and state proficiency testing programs.

c. Any program conducting on-site urine testing shall comply with the Clinical Laboratory Improvement Act regulations.

d. Client records shall reflect the manner in which urine test results are utilized in treatment.

e. For programs with a urinalysis service, policies shall be developed concerning measures to be employed when urine specimens of clients are found to contain substances.

**3.22(16) Medical services.** The applicant shall have policies and procedures developed in conjunction with a physician to examine and evaluate substance abusers/concerned persons seeking or undergoing treatment or rehabilitation. Individuals who enter an inpatient, residential, halfway house facility, chemotherapy or emergency care facility shall undergo a medical history and physical examination. Laboratory examinations may be performed as deemed necessary by the physician. The medical history, physical examination, and necessary laboratory examinations shall be performed as soon as possible, however minimally, as follows:

◦ Inpatient and medically monitored residential treatment services (Levels VI & VII) within 24 hours of admission;

◦ Primary residential treatment and extended residential treatment (Level V) within seven calendar days of admission; and

◦ Halfway house services (Level II) within 21 calendar days of admission.

A program may accept medical history and physical examination results from referral sources which were conducted no more than 90 days prior to admission. All residential and halfway house residents are required to receive tuberculosis testing within five calendar days of admission, and all identified high-risk outpatient clients are required to receive testing within 14 calendar days. On individuals who enter a Level I program or any outpatient program, a medical history shall be obtained upon admission.

**3.22(17) Emergency medical services.** The program shall ensure, by affiliation agreement, or contract, that emergency medical services at a general hospital are available on a 24-hour basis.

a. The program will maintain emergency medical service coverage on a 24-hour, seven days a week, basis.

b. The program shall ensure that all community service providers, medical facilities, law enforcement agencies; and other appropriate personnel are informed of the 24-hour emergency services and treatment available.

**3.22(18) Medication control.** Policies and procedures shall be developed to ensure that prescription and over-the-counter drugs are administered or self-administered safely and properly in accordance with federal, state and local laws and regulations. The written policies and procedures shall include, but not be limited to, the following:

a. Authorized personnel who administer medications shall be qualified and an updated list of such personnel

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shall be maintained. Only the following are designated by 657—10.16(124) as qualified individuals to whom a physician can delegate the administration of controlled substances:

(1) Persons who have successfully completed a medication administration course reviewed by the board of pharmacy examiners.

(2) Advanced emergency medical technicians and paramedics.

(3) Licensed physician assistants.

(4) Licensed pharmacists.

(5) Nurse, intern or other qualified individual delegated the responsibility to administer a prescription drug by a practitioner, licensed by the appropriate state board, to administer drugs to patients, in accordance with Iowa Code section 155A.4(2)"c."

b. Medications shall be administered only in accordance with the instructions of the attending physician. The type and amount of the medication, the time and date, and the staff member administering the medication shall be documented in the patient's/client's record.

c. Self-administration of prescription medication shall be observed by a staff member who has been oriented to the program's policies and procedures on self-administration. Self-administration of prescription medications shall be permitted only when the client's medication is clearly labeled. There shall be written policies and procedures relative to self-administration of prescription medications by patients/clients and only when:

(1) Medications are prescribed by a physician.

(2) The physician agrees that the patient/client can self-administer the drug.

(3) What is taken, how, and when, are documented in the record of the patient/client.

d. Drugs/medications shall be prescribed by a physician licensed to practice in the state of Iowa or the state in which the physician is currently practicing and may be prescribed only for use in accordance with dosage ranges and indications approved by the U.S. Food and Drug Administration.

e. Prescription drugs shall not be administered or self-administered to a client without a written order signed by a licensed physician. All prescribed medications shall be clearly labeled indicating the patient's/client's full name, physician's name, prescription number, name and strength of the drug, dosage, directions for use, date of issue; and name, address and telephone number of the pharmacy or physician issuing the drug. Medications shall be packaged and labeled according to state and federal guidelines.

f. If the medications the client brings to the program are not to be used, they shall be packaged, sealed and stored. The sealed packages of drugs shall be returned to the client, family or significant others at the time of discharge.

g. Accountability and control of medications.

(1) There shall be a specific routine for drug administration, indicating dose schedules and standardization of abbreviations.

(2) There shall be specific methods for control and accountability of drug products throughout the program.

(3) The staff member in charge of medications shall provide for monthly inspection of all storage units.

(4) Medication containers having soiled, damaged, illegible, or makeshift labels shall be returned to the issuing

pharmacist, pharmacy, or physician for relabeling or disposal.

(5) Unused prescription drugs prescribed for residents who have left the facility without their medication shall be destroyed by the person in charge with a witness and notation made on the resident's record. When a resident is discharged or leaves the facility, medications currently being administered shall be sent, in the original container, with the resident or with a responsible agent, and with the approval of the physician.

h. Drug storage shall be maintained in accordance with the security requirements of federal, state and local laws.

(1) All drugs shall be maintained in locked storage. Controlled substances shall be maintained in a locked box within the locked cabinet.

(2) Medications requiring refrigeration shall be kept in a refrigerator and separated from food and other items.

(3) Disinfectants and drugs for external use are stored separately from internal and injectable medications.

(4) The medication for each client shall be stored in the original containers.

(5) All potent poisonous or caustic drugs shall be plainly labeled, stored separately from other drugs in a specific well-illuminated cabinet, closet, or storeroom, and made accessible only to authorized persons.

i. Dispensed from a licensed pharmacy. Drugs provided to patients/clients shall be dispensed only from a licensed pharmacy in the state of Iowa in accordance with the pharmacy laws in the Code of Iowa, or from a licensed pharmacy in another state according to the laws of that state, or by a licensed physician.

j. Use of medications. No prescription medications prescribed for one resident may be administered to or allowed in the possession of another resident.

k. Patient reaction. Any unusual patient reaction to a drug shall be documented in the patient's/client's record and reported to the attending physician immediately.

l. Dilution or reconstitution of drugs. Dilution or reconstitution of drugs and their labeling shall be done only by a licensed pharmacist.

**3.22(19) Managed care.** The program shall ensure appropriate level of care utilization by implementing and maintaining the written placement screening, continued stay, and discharge criteria process developed by the department. The programs shall also address underutilization, overutilization, and the effective use of levels of care available.

The discharge planning process shall begin at admission, determining a client's/patient's continued need for treatment services and developing a plan to address ongoing client/patient needs posttreatment. Discharge planning may or may not include a document identified as a discharge plan.

**3.22(20) Quality improvement.** The program shall have an ongoing quality improvement program designed to objectively and systematically monitor and evaluate the quality and appropriateness of client care, pursue opportunities to improve client care, and resolve identified problems. Quality improvement efforts shall be facilitywide in scope and include review of clinical, professional, and administrative services.

a. There shall be a written plan for a quality improvement program that describes the objectives, organization,

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scope, and mechanisms for overseeing the effectiveness of monitoring, evaluation, and problem-solving activities.

b. The program shall develop and implement a plan to put into operation outcome measures or performance indicators, as determined by the department.

c. Relevant findings from the quality improvement activities (as defined by program) may be considered as part of the performance evaluations for all professional, clinical, and administrative staff members.

d. The program shall establish written policies and procedures to both describe and document the quality improvement of the program's monitoring and evaluation activities. The policies and procedures shall ensure that:

(1) Information is collected or screened by a designated individual, individuals, or committee. Quality improvement activities may be contracted through all outside resources;

(2) Objective criteria shall be utilized in the development and application of criteria relating to the care or service it provides; and

(3) Objective criteria shall be utilized in the evaluation of the information collected in order to identify important problems in, or opportunities to improve, client care and clinical performance.

e. The program shall document that the quality of client care is improved and identified problems are resolved through actions taken as appropriate by the program's administrative and supervisory staffs and through professional staff functions, which may include, but not be limited to:

(1) Activities of the governing body;

(2) Activities of the program, program component, modality, or service;

(3) Revisions to written policies and procedures for program and professional services and staff composition.

f. The findings, conclusions, recommendations, actions taken, and results of actions taken shall be documented and reported through processes established by the program.

g. Necessary information shall be communicated among program components, modalities, or services when problems or opportunities to improve client care involve more than one program component or service.

h. The program shall ensure that the status of identified problems is tracked to ensure improvement or resolution.

i. Information from program components or services and the findings of discrete quality improvement activities are used to detect trends, patterns of performance, or potential problems that affect more than one program component or service.

j. The objectives, scope, organization, and effectiveness of the quality improvement program are evaluated at least annually and revised as necessary.

**3.22(21) Building construction and safety.** All buildings in which clients receive treatment are designed, constructed, equipped, and maintained in a manner that is designed to provide for the physical safety of clients, personnel, and visitors.

a. If required by local jurisdiction, all programs shall maintain a certification of occupancy.

b. During all phases of construction or alterations of buildings, the level of life safety shall not be diminished in any occupied area. The construction shall be in compliance with all applicable federal, state, and local codes.

c. New construction shall comply with Iowa Code chapter 104A and all applicable federal and local codes and provide for safe and convenient use by disabled individuals.

**3.22(22) Facility grounds.** All programs shall maintain facility grounds in a manner that is designed to provide safe access to and a safe environment for clients, personnel, and visitors.

a. The program shall have written policies and procedures for the maintenance, supervision, and safe use of all its grounds and equipment, including special activity areas such as swimming pools, tennis courts, and gymnasiums.

b. Safe access and a safe environment shall be maintained during phases of construction or alterations of the grounds.

c. New construction shall provide for safe and convenient use of the grounds by disabled individuals and comply with Iowa Code chapter 104A, federal and local codes.

**3.22(23) General safety.** All programs shall have written policies and procedures to provide a safe environment for clients, personnel, and visitors and to monitor that environment. The written policies and procedures shall include, but not be limited to, the following:

a. The process for the identification, development, implementation, and review of safety policies and procedures for all departments or services.

b. The promotion and maintenance of an ongoing, facilitywide hazard surveillance program to detect and report all safety hazards related to clients, visitors, and personnel.

c. The process by which the staff is to dispose of bio-hazardous waste within the clinical service areas.

d. All programs/services areas.

(1) Stairways, halls, and aisles shall be of substantial nonslippery material, shall be maintained in a good state of repair, shall be adequately lighted and shall be kept free from obstructions at all times. All stairways shall have handrails.

(2) Radiators, registers, and steam and hot water pipes shall have protective covering or insulation. Electrical outlets and switches shall have wall plates.

(3) For juvenile facilities, fuse boxes shall be under lock and key or six feet above the floor.

(4) Facilities shall have written procedures for the handling and storage of hazardous materials.

(5) Firearms and ammunition shall not be kept on premises.

(6) All swimming pools shall conform to state and local health and safety regulations. Adult supervision shall be provided at all times when children are using the pool.

(7) The facility shall have policies regarding fishing ponds, lakes, or any bodies of water located on or near the program and accessible to the children.

**3.22(24) Safety education.** All programs shall have an organized safety education program.

a. The safety education program shall include, but not be limited to, orientation of new employees to general facilitywide safety practices and orientation and continuing education regarding safety practices specific to individual departments or services at least annually.

b. The orientation and in-service education programs shall utilize findings of the quality improvement function and other appropriate standing committees, if applicable.

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**643—3.23(125) Inpatient, residential and halfway house services safety.** Specific safety standards for inpatient, residential and halfway house services.

**3.23(1) Health and fire safety inspections.** Inpatient, residential service and halfway house substance abuse treatment facilities shall comply with appropriate department of inspections and appeals rules, state fire marshal's rules and fire ordinances, and appropriate local health, fire, occupancy code, and safety regulations. The program shall maintain documentation of such compliance.

a. Inpatient, residential and halfway house substance abuse treatment facilities required to be licensed by the Iowa department of public health shall comply with standards for food service sanitation in accordance with rules promulgated by the department of inspections and appeals pursuant to 481—Chapter 32 of the Iowa Administrative Code.

b. Food service operations in substance abuse inpatient, residential, and halfway house treatment facilities shall be inspected on an annual basis by the department of inspections and appeals or appropriate local boards of health having agreements with the department of inspections and appeals to conduct such inspections.

c. The use of door locks or closed sections shall be approved by the fire marshal, professional staff and governing body.

d. Staff shall respect a client's right to privacy by knocking on the door of a client's room before entering.

**3.23(2) Emergency preparedness.** The inpatient, residential and halfway house programs shall have an emergency preparedness program designed to provide for the effective utilization of available resources so that client care can be continued during a disaster.

a. The emergency preparedness plans shall provide for the effective activation of community resources to prevent or minimize the consequences of a disaster.

b. The emergency preparedness plans shall be pertinent to a variety of disasters and be based on the program's capability and limitations.

c. The emergency preparedness program shall address, but not be limited to, the following:

(1) Staff preparedness, including staff requirements and the designation of roles and functions, particularly in terms of capabilities and limitations;

(2) Client management, including modified schedules, criteria for the cessation of nonessential services and client transfer determinations, particularly in terms of discharge and relocation; and

(3) A fire plan, which shall address the use and function of fire alarm and detection systems, containment, and the protection of lives, including transfer to areas of refuge, evacuation plans, and fire extinguishment.

1. The fire plan shall be implemented at least quarterly for each work shift of facility personnel in each client-occupied building.

2. Documentation of the implementation of the plan shall include, at a minimum, problems identified during implementation, corrective actions taken, and staff participation.

d. Facility employees and staff shall be provided with appropriate education and training in elements of the emergency preparedness program and in elements of the fire plan.

e. The emergency preparedness program shall be evaluated annually and is updated as needed.

**643—3.24(125) Specific standards for inpatient, residential, and halfway house program per established definitions.** An inpatient, residential, and halfway house program shall be designed to provide comprehensive diagnostic, treatment and rehabilitation services on a scheduled or nonscheduled basis in a 24-hour therapeutic setting.

**3.24(1) Hours of operation.** An inpatient, residential, and halfway house program shall operate no less than seven days per week, for no less than 24 hours a day.

**3.24(2) Use of chemical substances.** An inpatient, residential, and halfway house program shall have written policies regarding the use of chemical substances in the facility.

**3.24(3) Program participation.** All residents of the inpatient, residential and halfway house program shall be active participants in the therapeutic program.

**3.24(4) Meals.** Inpatient and residential programs shall provide a minimum of three meals per day to each client enrolled in the program. Inpatient, residential, and other programs where clients are not present during mealtime, shall make provisions to make available the necessary meals. Menus shall be prepared in consultation with a registered dietitian. If clients are allowed to prepare meals, the program shall document conformity with all commonly accepted policies and procedures of state health regulations and food hygiene.

**3.24(5) Consultation with counsel.** An inpatient, residential, and halfway house program shall have policies and procedures which will ensure that all clients in a facility have opportunity for and access to consultation with legal counsel at any reasonable time.

**3.24(6) Visitation with family and friends.** An inpatient, residential, and halfway house program shall have policies and procedures which will ensure opportunities for continuing contact with family and friends. If such visiting opportunities are clinically contraindicated, they shall be approved on an individual basis by the treatment supervisor and subject to review by the executive director. The justification for restrictions shall be documented in the client record. If clinical indications require restrictions on visitation, such restrictions shall be evaluated for continuing therapeutic effectiveness every seven days by the treatment supervisor and primary counselor.

The program shall establish visiting hours which will be conspicuously displayed at the facility and in such a manner to be visible to those entering the facility.

**3.24(7) Telephone use.** An inpatient, residential, and halfway house program shall have policies and procedures which allow clients to conduct private telephone conversations with family and friends at the facility. If such are clinically contraindicated, they shall be approved on an individual basis by the treatment supervisor and subject to review by the executive director. The justification for restrictions shall be documented in the client record. If clinical indications require restrictions, such shall be evaluated for continuing therapeutic effectiveness every seven days by the treatment supervisor and primary counselor. Access to the telephone shall be available during reasonable hours as defined by the program in written policies and procedures except for emergency calls which may be received at the time of the call, or made when necessary.

**3.24(8) Written communication.** An inpatient, residential, and halfway house program shall have policies and

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procedures which ensure that neither mail nor other communications to or from a client in a facility may be intercepted, read, or censored.

**3.24(9)** Inpatient, residential, and halfway house facility. An inpatient, residential, and halfway house facility shall be safe, clean, well-ventilated, properly heated, in good repair, and free from vermin and rodents to ensure the well-being of residents.

a. Client bedrooms shall include:

- (1) A sturdily constructed bed;
- (2) A clean mattress protected with a clean mattress pad;
- (3) A designated space for personal possessions and for hanging clothing in proximity to the sleeping area; and
- (4) Windows in bedrooms shall have curtains or window blinds.

b. Sleeping areas shall include:

- (1) Doors for privacy;
- (2) Partitioning or placement of furniture to provide privacy for all clients;
- (3) The number of clients in a room shall be appropriate to the goals of the facility and to the ages, developmental levels, and clinical needs of the clients;
- (4) Clients will be allowed to keep and display personal belongings and add personal touches to the decoration of their rooms in accordance with program policy.

c. Clean linen, towels and washcloths shall be available minimally on a weekly basis and more often as needed.

d. Bathrooms shall provide residents with facilities necessary for personal hygiene and personal privacy, including:

- (1) A safe supply of hot and cold running water which is potable;
- (2) Clean towels, electric hand dryers or paper towel dispensers, and an available supply of toilet paper and soap;
- (3) Natural or mechanical ventilation capable of removing odors;
- (4) Tubs or showers shall have slip-proof surfaces;
- (5) Partitions with doors which provide privacy if a bathroom has multiple toilet stools;
- (6) Toilets, wash basins, and other plumbing or sanitary facilities shall at all times be maintained in good operating condition; and
- (7) The ratio of bathroom facilities to residents shall be one tub or shower head per 12 residents, one wash basin per 12 residents and one toilet per 8 residents.

(8) If the facility is coeducational, the program shall designate and so identify separate bathrooms for male and female clients.

e. There shall be a written plan outlining procedures to be followed in the event of fire or tornado. These plans shall be conspicuously displayed on each floor or dormitory area that clients, residents, or visitors occupy at the facility and shall be explained to all inpatient, residential, and halfway house clients as a part of their orientation to the program. Fire drills shall be conducted at least monthly and tornado drills conducted during the tornado season from April through October. Fire and tornado drills shall be conducted randomly during all three work shifts.

f. Written reports of annual inspections by state or local fire safety officials shall be maintained with records of corrective action taken by the program on recommendations articulated in such reports.

g. Smoking shall not be permitted in bedrooms. Smoking will be allowed only in designated areas. A program or person shall not sell, give, or otherwise supply any tobacco, tobacco products, or cigarettes to any person under 18 years of age and a person under 18 years of age shall not smoke, use, purchase, or attempt to purchase, any tobacco, tobacco products, or cigarettes.

h. Every facility shall have an adequate water supply from an approved source. A municipal water system shall be considered as meeting this requirement. Private water sources shall be tested annually.

i. The inpatient, residential, or halfway house facility shall allow for a full range of social activities from individual to group activities which shall include, but not necessarily be limited to:

- (1) Areas in which a client may be alone when appropriate;
- (2) Areas for private conversations with other clients or family members;
- (3) Appropriate furnishings and equipment which are clean and in good repair shall be available; and
- (4) Dining areas shall be comfortable, attractive, and conducive to pleasant dining.

j. Articles of grooming and personal hygiene that are appropriate to the client's age, developmental level, and clinical state shall be readily available in a space reserved near the client's sleeping area. If clinically indicated as determined by the treatment supervisor, a client's personal articles may be kept under lock and key by staff. If access to potentially dangerous grooming aids or other personal articles is contraindicated for clinical reasons, a member of the professional staff shall explain to the client the conditions under which the articles may be used; and the clinical rationale for these conditions shall be documented in the client's case record.

k. Housekeeping. If clients take responsibility for maintaining their own living quarters and for day-to-day housekeeping activities of the program, these responsibilities shall be clearly defined in writing and be a part of the client's orientation program. Staff assistance and equipment shall be provided as needed.

l. Clothing. Clients shall be allowed to wear their own clothing in accordance with program rules. If clothing is provided by programs, it shall be suited to the climate and appropriate. In addition, a laundry room shall be accessible so clients may wash their clothing.

m. Noise-producing equipment. The program shall ensure that the use and location of noise-producing equipment and appliances, such as television sets, radios, and record players, do not interfere with clinical and therapeutic activities.

n. Recreation and outdoor activities. The program shall provide recreation and outdoor activities, unless contraindicated for therapeutic reasons. Clients' need to be outdoors may be met through the use of nearby parks and playgrounds, adjacent countryside, and facility grounds.

**3.24(10)** Outpatient facility. The outpatient facility shall be safe, clean, well-ventilated, properly heated and in good repair.

a. The facility shall be appropriate for providing services available from the program and for protecting client confidentiality.

b. Furniture shall be clean and in good repair.

c. Written reports of annual inspections by state or local fire safety officials shall be maintained with records of



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corrective action taken by the program on recommendations articulated in such reports.

d. There shall be a written plan outlining procedures to be followed in the event of fire or tornado. This plan shall be conspicuously displayed at the facility.

**3.24(11) Therapeutic environment.** All programs shall establish an environment that enhances the positive self-image of clients and preserves their human dignity. The grounds of the program shall have adequate space for the program to carry out its stated goals. When client needs or program goals involve outdoor activities, these activities and programs shall be appropriate to the ages and clinical needs of the client.

a. All services shall be accessible to people with disabilities, or the program shall have written policies and procedures that describe how people with disabilities can gain access to the facility for necessary services.

b. The waiting or reception areas shall be of adequate size, have appropriate furniture, and be located so as to ensure confidentiality of clients in session or receiving services.

c. Program staff shall be available in waiting or reception areas so as to address the needs of clients and visitors.

d. The program may designate and identify with signs specific smoking areas, which shall allow smoking only in such designated areas.

**3.24(12) Religion-culture.** The inpatient, residential, and halfway house program shall have a written description of its religious orientation, particular religious practices that are observed, and any religious restrictions. This description shall be provided to the parent(s) or guardian, and the placing agency at the time of admission in compliance with DHHS, 42 CFR, Part 2, Regulations on Confidentiality of Alcohol and Drug Abuse Client Records. This information shall also be available to adults during orientation. Children shall have the opportunity to participate in religious activities and services in accordance with the patient's own faith or that of a minor patient's parent(s) or guardian. The facility shall, when necessary and reasonable, arrange transportation for religious activities. Wherever feasible, children shall be permitted to attend religious activities and services in the community.

**3.24(13) Client rights.** The program shall maintain written policies and procedures that ensure that the legal and human rights of clients participating in the program shall be observed and protected.

a. There shall be procedures to inform all clients of their legal and human rights at the time of admission into the program or when the client is deemed competent to receive them.

b. There shall be documentation of the implementation of these procedures.

c. There shall be written policies and procedures for reviewing and responding to clients' communications, e.g., opinions, recommendations, and client grievances, with a mechanism for redress.

d. There shall be procedures designed to protect the clients' rights and privacy with respect to facility visitors, e.g., educational or other individual or group visitations at the program.

**643—3.25(125) Specific standards for inpatient, residential, and halfway house substance abuse program admitting juveniles.** An inpatient, residential, and halfway house program that houses one or more juveniles un-

der the age of 18 must also comply with the following standards.

**3.25(1) Personal possessions.** The inpatient, residential, and halfway house program shall allow a child to bring personal belongings. However, the inpatient, residential, and halfway house program shall, as necessary, limit or supervise the use of these items. In addition, the program shall ensure that each child has adequate, clean, well-fitting, attractive, and seasonable clothing as required for health, comfort, and physical well-being. The clothes should be appropriate to age, sex and individual needs.

**3.25(2) Family involvement.** There shall be written policies and procedures for family involvement that shall encourage continued involvement of the family.

**3.25(3) Children's money.** Money earned or received as a gift or as an allowance by a child in care shall be deemed to be that child's personal property. The program shall have a written policy on the child's use of funds. The program shall maintain a separate accounting system for children's money.

**3.25(4) Discipline.** The inpatient, residential, and halfway house program shall have written policies and procedures regarding methods used for control and discipline of children which shall be available to all staff and to the child's family. Agency staff shall be in control of and responsible for discipline at all times. Discipline shall not include the withholding of basic necessities such as food, clothing, or sleep.

a. The program shall have a policy that clearly prohibits staff or the children from utilizing corporal punishment as a method of disciplining or correcting children. This policy is to be communicated, in writing, to all staff of the facility.

b. Behavior expectations. The program shall make available to the child and the child's parents or guardian written policies regarding the following areas:

(1) The general expectations of behavior including the program's rules and practices.

(2) The range of reasonable consequences that may be used to deal with inappropriate behavior.

**3.25(5) Restraints.** Use of physical restraint shall be employed only to prevent behavior extremely disruptive to others or to prevent the child from injury to self, to others, or to property. The rationale and authorization for the use of restraint and staff action and procedures carried out to protect the child's rights and to ensure safety shall be set forth clearly in written policies and procedures and documented in the child's record by responsible professional staff.

a. Use of physical restraints and a control room are permitted in nonsecure facilities. Secure facilities may use physical restraints, a control room, locked cottages, mechanical restraints, and chemical restraints.

b. A facility which uses restraints shall have a written policy on their use. This policy shall include:

(1) A statement specifically identifying each form of restraint in use at the facility;

(2) Criteria for use of each form of restraint;

(3) Identification of staff authorized to approve and use each form of restraint;

(4) Requirement for documentation in the child's individual case file;

(5) Procedures for application or administration of each form of restraint; and

(6) Maximum time limit for use of restraints.

c. Use of restraints.

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(1) A facility shall not use, apply, or administer restraint in any manner which causes physical injury.

(2) A facility shall not use restraint as a disciplinary or punitive measure, for staff convenience, or as a substitute for programming.

(3) A secure facility which uses any form of restraint other than physical restraint shall ensure that all direct service staff are adequately trained in the following areas:

- The appropriate use and application or administration of each approved form of restraint.
- The facility's policies and procedures related to restraint.
- Crisis management techniques.

d. A secure facility shall continually review any placement of a child in any form of restraint other than physical restraint. The facility shall release the child from restraint immediately when the situation precipitating restraint no longer exists.

**3.25(6) Control room.** The control room shall be used for treatment purposes only. A program shall be approved by the licensing authority as meeting the requirements of this subrule regarding control rooms before controls can be utilized.

a. Written policies and procedures. An inpatient, residential, and halfway house program that uses a control room as part of its treatment program shall have written policies and procedures regarding its use. The written policies and procedures shall address the following:

(1) Specify the types of behavior which may result in control room placement.

(2) Delineate the staff members who may authorize its use as well as procedures for notification of supervisory personnel.

(3) Require documentation in writing of the types of behaviors leading to control room placement and conditions that will allow the child to return to the living unit. The child shall be informed of these conditions.

(4) Limit the utilization of the control room to one of the following two circumstances:

- The child's care plan includes and explains how this use of the control room fits into the treatment plan for the child.

- A one-time placement in an emergency without a care plan outlining the rationale for its use. This treatment shall be included in the care plan for a second placement of a child in the control room.

b. Physical requirements. The control room shall be designed to ensure a physically safe environment with:

(1) All switches controlling lights and ventilation outside the room.

(2) Allowance for observation of the child at all times.

(3) Protected recessed ceiling light.

(4) No electrical outlets in the room.

(5) Proper heating, cooling, and ventilation.

(6) Any window secured and protected in a manner to prevent harm to the child.

(7) A minimum of 54 square feet in floor space with at least a seven-foot ceiling.

c. Use of control room. The control room shall be used only when a less restrictive alternative to quiet or allow the child to gain control has failed and when it is in the care plan. The following policies shall apply to the use of the control room:

(1) No more than one child shall be in a control room at any time.

(2) There shall be provisions for visual observation of the child at all times, regardless of the child's position in the room.

(3) The control room shall be checked thoroughly for safety and the absence of contraband prior to placing the child in the room.

(4) The child shall be thoroughly checked before placement in the control room and all potentially injurious objects removed including shoes, belts, and pocket items. The staff member placing the child in the control room shall document each check.

(5) In no case shall all clothing or underwear be removed, and the child shall be provided sufficient clothing to meet seasonal needs.

(6) A staff member shall always be within hearing distance of the control room. The child shall be visually checked by the staff at least every 15 minutes, and each check shall be recorded.

(7) The child shall remain in the control room longer than one hour only with consultation and approval from the supervisor. Documentation in the child's case record shall include the time in the control room, the reasons for the control, and the reasons for the extension of time. Use of the control room for a total of more than 12 hours in any 24-hour period shall occur only after authorization of the medical director or upon court order. In no case shall a child be in a control room for a period longer than 24 hours.

(8) The child's parents or guardian and the referring worker shall be aware of the control room as a part of the treatment program.

**3.25(7) Number of staff.** The program shall have 7-day per week, 24-hour per day coverage. The number and qualifications of the staff will vary depending on the needs of the children.

a. Inpatient, residential, halfway house programs, and community residential facilities as defined in 441—Chapter 114, shall have an on-call system operational 24 hours a day to provide supervisory consultation. The program shall have a written plan documenting this system. During prime programming time, there shall be at least a one-to-eight staff to client ratio.

b. Comprehensive residential facilities as defined in 441—Chapter 115 shall have at least a one-to-five staff to client ratio during prime programming time. A staff person shall be in each living unit at all times when children are in residence and there shall be a minimum of three nighttime checks between the hours of 12 midnight and 6 a.m. These checks shall be logged. Policies for nighttime checks shall be in writing.

c. The program's prime programming time shall be defined in writing.

**3.25(8) Illness, accident, death, or absence from the inpatient, residential, and halfway house program.** The program shall notify the child's parent(s), guardian, and responsible agency of any serious illnesses, incidents involving serious bodily injury, or circumstances causing removal of the child from the facility in compliance with DHHS, 42 CFR, Part 2, Regulations on Confidentiality of Alcohol and Drug Abuse Client Records. In the event of the death of a child, a facility shall notify immediately the physician, the child's parent(s) or guardian, the placing agency, and the appropriate state authority. The agency shall cooperate in arrangements made for examination, autopsy, and burial.

## SUBSTANCE ABUSE COMMISSION[643](cont'd)

**3.25(9) Educational services.** An educational program shall be available for each child in accordance with abilities and needs. The educational and teaching standards established by the state department of public instruction shall be met.

**3.25(10) Needs of the juvenile.** Program services and rules shall be designed to meet individual needs of the juvenile.

These rules are intended to implement Iowa Code section 125.13.

**ARC 5600A****TREASURER OF STATE[781]****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 12.34(2), 12.40(2), 12.43 and 12.51, the Treasurer of State hereby gives Notice of Intended Action to amend Chapter 4, "Linked Investments for Tomorrow (LIFT)," Iowa Administrative Code.

The purpose of this amendment is to ease and speed the administration of and compliance with the program titled "Linked Investments for Tomorrow" by allowing Iowa financial institutions to make principal payments to the Treasurer of State upon maturity of the certificate of deposit instead of anytime a borrower makes a principal payment on their LIFT loan.

Any interested person may make written or oral suggestions or comments on this proposed amendment on or before June 13, 1995. Comments should be directed to

Deputy Treasurer Stefanie Devin, Treasurer of State, Hoover State Office Building, Des Moines, Iowa 50319, telephone (515)281-5957.

Also, there will be a public hearing on June 13, 1995, at 1 p.m. in the Conference Room, First Floor North, Hoover State Office Building, 1305 E. Walnut, Des Moines, Iowa. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact Deputy Treasurer Stefanie Devin, Treasurer of State, at least one day prior to the date of the public hearing.

This amendment is intended to implement Iowa Code section 12.36.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 5601A**. The content of that submission is incorporated by reference.

**NOTICE — USURY**

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

May 1, 1994 — May 31, 1994	8.50%
June 1, 1994 — June 30, 1994	9.00%
July 1, 1994 — July 31, 1994	9.25%
August 1, 1994 — August 31, 1994	9.00%
September 1, 1994 — September 30, 1994	9.25%
October 1, 1994 — October 31, 1994	9.25%
November 1, 1994 — November 30, 1994	9.50%
December 1, 1994 — December 31, 1994	9.75%
January 1, 1995 — January 31, 1995	10.00%
February 1, 1995 — February 28, 1995	9.75%
March 1, 1995 — March 31, 1995	9.75%
April 1, 1995 — April 30, 1995	9.50%
May 1, 1995 — May 31, 1995	9.50%
June 1, 1995 — June 30, 1995	9.00%

## ARC 5597A

RACING AND GAMING  
COMMISSION[491]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 99F.4, the Iowa Racing and Gaming Commission hereby adopts an amendment to Chapter 25, "Riverboat Operations," Iowa Administrative Code.

The proposed amendment increases the value of a jackpot from \$10,000 to \$50,000 before the machine needs to be tested by the Commission.

In compliance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are contrary to the public interest in that this amendment allows the public to be paid a jackpot in a more timely manner. However, this amendment was published under Notice of Intended Action as ARC 5503A in the March 29, 1995, Iowa Administrative Bulletin. A public hearing was held on April 18 and the Commission received no comments.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of the amendment should be waived and the amendment made effective upon filing with the Administrative Rules Coordinator. This rule change will benefit the licensees and the public in not having to wait to have a jackpot paid.

This amendment is intended to implement Iowa Code chapter 99F.

This amendment became effective April 27, 1995.

The following amendment is adopted.

Amend subrule 25.18(7) as follows:

**25.18(7)** Conduct an investigation, to include a signature check of all electronic chips, on all slot machines or video games of chance jackpots that are ~~\$10,000 or greater~~ *more than \$50,000*, and have the authority to withhold or require the award of any slot machine jackpot, in writing, when conditions indicate that action is warranted.

[Filed Emergency 4/27/95, effective 4/27/95]  
[Published 5/24/95]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/24/95.

## ARC 5601A

## TREASURER OF STATE[781]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 12.34(2), 12.40(2), 12.43 and 12.51, the Treasurer of State hereby adopts an amendment to Chapter 4, "Linked Investments for Tomorrow (LIFT)," Iowa Administrative Code.

The purpose of this amendment is to ease and speed the administration of and compliance with the program titled "Linked Investments for Tomorrow" by allowing Iowa financial institutions to make principal payments to the Treasurer of State upon maturity of the certificate of deposit instead of anytime a borrower makes a principal payment on their LIFT loan.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable because this amendment does not impact current or potential LIFT borrowers and will simplify repayments for all financial institutions and the Treasurer of State.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and this amendment should be made effective upon filing with the Administrative Rules Coordinator on May 5, 1995, on the grounds the filing confers a benefit on the public as it relieves the Treasurer of State of hiring additional staff to process principal payments by allowing all payments, principal and interest, to be made upon maturity of the LIFT CD.

This amendment is also published herein under Notice of Intended Action as ARC 5600A to allow for public comment. This emergency filing permits the Department to simplify and streamline the repayments of LIFT loans.

This amendment is intended to implement Iowa Code section 12.36.

Amend subrule 4.4(4) as follows:

**4.4(4)** ~~The principle repayment schedule for the certificate should conform to the principal repayment schedule for the loan, except for installment loans. A principal repayment is due to the treasurer the day after a loan principal repayment is made to the lender. In the event that loan repayments are by monthly installment, the lender may remit to the treasurer at the end of the quarter. Principal payments made by the borrower to the lender shall be remitted to the treasurer at the time the certificate of deposit matures.~~

[Filed Emergency 5/4/95, effective 5/5/95]  
[Published 5/24/95]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/24/95.

## ARC 5599A

HUMAN SERVICES  
DEPARTMENT[441]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 225C.6, the Department of Human Services hereby amends Chapter 39, "Mental Health, Mental Retardation and Developmental Disabilities Special Services Fund," appearing in the Iowa Administrative Code.

The Mental Health and Developmental Disabilities Commission adopted these amendments May 2, 1995. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on March 1, 1995, as **ARC 5441A**.

These amendments revise policy governing the special services fund as follows:

1. Division I of the rules is rescinded. Policy in this Division provided supplemental per diems for residential services in community-based residential care facilities and other community living arrangements. This program is being deleted because the funds previously appropriated for this program are no longer available.

2. Division II of the rules is revised to better reflect the direction and intent of the program. Policy in this Division provides funds for construction and start-up costs to develop community living arrangements to provide for persons who are homeless and have a mental illness. The definition of "start-up" costs is amended to clarify specific, yet flexible, uses of funds. These changes will help to stimulate development of less restrictive and individual living opportunities which are integrated into communities as opposed to shared and clustered living opportunities.

3. Policy is revised to make the state grant part of these rules more consistent with the federal grant part of the rules, describing similar funding opportunities for either program.

4. Terminology and organizational references are updated to be consistent with legislative changes.

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

These amendments are intended to implement Iowa Code chapter 225C.

These amendments shall become effective July 1, 1995. The following amendments are adopted.

ITEM 1. Amend the title to **441—Chapter 39** as follows:

~~MENTAL HEALTH, MENTAL RETARDATION  
AND DEVELOPMENTAL DISABILITIES  
ILLNESS SPECIAL SERVICES FUND~~

ITEM 2. Amend **441—Chapter 39**, Preamble, as follows:

PREAMBLE

These rules define the methods to be used to disburse the ~~mental health, mental retardation, and developmental disabilities (MH/MR/DD) illness~~ special services fund. The special services fund shall: ~~(1) Provide supplemental per diems for residential services in community-based residential care facilities and other community living arrangements. Nursing facilities and intermediate care facilities for the mentally retarded are not included in the definition of community living arrangements for the pur-~~

~~poses of this program. The per diem is restricted to persons placed from the state hospital schools and persons averted from placement into a state hospital school; and (2) Provide provide funds for construction and start-up costs to develop community living arrangements to provide for persons who are homeless and have a mental illness. The department will implement the programs as set forth in these rules beginning on the date the rules take effect.~~ Authority to utilize funds for the purposes expressed herein shall begin on the date these rules take effect and be available during this or subsequent state fiscal years for which funding is appropriated.

ITEM 3. Rescind and reserve **441—Chapter 39, Division I**, rules **441—39.1** to **39.12**.

ITEM 4. Amend rule **441—39.21(225C)**, introductory paragraph and the definitions of "Administrator," "Applicant," "Commission," "Community living arrangements," "Construction and start-up costs," "Division," "Mental illness," "Planning council," and "Recipient," as follows:

**441—39.21(225C) Definitions.** When funds appropriated for construction and start-up costs are used to match federal Stewart B. McKinney Homeless Assistance Act funds, federal definitions *and program guidelines* shall supersede definitions *and program guidelines* set forth in this rule.

"Administrator" means the administrator of the division of mental health, ~~mental retardation~~, and developmental disabilities.

"Applicant" means a county board of supervisors from a single county or combination of counties or a person or ~~agency other entity~~ approved in writing by a county or multicounty board of supervisors.

"Commission" means the mental health and ~~mental retardation developmental disabilities (MH/MR) (MH/DD)~~ commission.

"Community living arrangements" means an array of *new* living environments found in the community that provide varying levels of support which are determined based on an individual's level of need *and personal choice*. ~~Congregate living arrangements that receive funds under this program shall not exceed five beds.~~

"Construction and start-up costs" includes costs associated with rehabilitation or renovation of an existing structure to meet the intent and purpose of this program. It also includes the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights, and interests required for acquisition, construction, or both. Cost also means the cost of engineering, legal expenses incidental to determining the feasibility or practicability of acquiring or constructing a project. It also means other expenses incidental to the acquisition or construction of a project, the financing or the acquisition or construction, including the amount authorized in the special services fund for the purposes of this program and the financing of the placing of a project in operation, and the expense of other eligible project activities including initial staffing costs. *Initial staffing costs are limited to a maximum of 60 days. Start-up costs may also include: rental assistance per usage permitted under the McKinney Act (39.29(7)f); security, damage, and rental deposits; utility deposits; or similar costs associated with procuring a living arrangement from a private landlord. Limitations for the usage of funds to pay for these start-up activities will be defined for fund recipients by the division in order to best meet the intentions of the program.*

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

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

"Mental illness" means ~~Mental~~ mental illness" as defined under "Persons with mental illness" in rule 441—22.1(225C) and chronic mental illness as defined under "Persons with chronic mental illness" in rule 441—22.1(225C).

"Planning council" refers to the ~~county or multicounty mental illness, mental retardation, developmental disabilities, and brain injury (MI/MR/DD/BI) mental health and developmental disabilities regional planning council councils established by a county board or boards of supervisors to develop a plan for services for persons with MI/MR/DD/BI in the planning council area defined in Iowa Code section 225C.18.~~

"Recipient" means a county, group of counties, agency ~~or person or other entity that has received a construction and start-up grant special services funds.~~

ITEM 5. Amend rule 441—39.22(225C) as follows:

**441—39.22(225C) Distribution of funds.** During any state fiscal year for which funds are appropriated, the department may use the funds to match federal Stewart B. McKinney Homeless Assistance Act funds. This Act authorizes funds to develop housing and support services for homeless persons with mental illness. This program shall be administered in accordance with federal regulations at Title 24, Part 578, as amended to March 15, 1993. The process to determine the distribution of state funds to meet the matching fund requirements of the Stewart B. McKinney program is described in rule 441—39.29(225C). If the appropriated state funds are not used to match these federal dollars, the ~~commission administrator~~ shall award state grants from the special services fund for the purposes of construction and start-up of new community living arrangements for adults who are homeless and have a mental illness. The department shall administer the funds to eligible recipients during any year in which funds are available for the purposes of this program. The amount allocated to each recipient shall be contingent upon the funds available. The department reserves the right to provide less than the amount of the funds appropriated if there is an insufficient number of acceptable grant proposals submitted to adequately achieve the purposes of the special services fund ~~and the department may retain appropriated funds for future funding activities if applications for the state grants do not appear to meet the intent or do not follow the development principles of this program. Funds that are unobligated, unspent, or refunded to the division by a fund recipient shall be retained by the division and used for the same intended purpose of this program in future funding activities.~~

ITEM 6. Amend rule 441—39.23(225C) as follows:

Amend subrules 39.23(1) and 39.23(3) as follows:

**39.23(1) Grant cycle.** The administrator will announce through public notice the opening of an application period. Applicants for grants shall submit first a letter of intent and then a grant proposal by the deadlines specified in the ~~announcement~~ public notice.

**39.23(3) Review of letters of intent.** Only letters of intent received by the deadline specified in the public notice will be considered. *Facsimile submittals will not be considered.* Applicants shall be given a written acknowledg-

ment of the letter of intent which may include comments on the project if the intent shows a lack of understanding of application program requirements. The ~~commission administrator~~ shall have the discretion to amend the letter of intent content requirements for any given grant application period.

Amend subrule 39.23(4), introductory paragraph and paragraphs "g" and "h," as follows:

**39.23(4) State grant proposal.** Applicants for the construction and start-up ~~portion of the special services fund funds~~ shall submit the proposal to the administrator on Form 470-2773, Application for Construction and Start-Up Funds. If a proposal does not contain all the information specified in the application package including the original application and the required number of copies of the application or if it is ~~late received after the submittal deadline,~~ the proposal shall be ~~disapproved~~ denied for review. The application content length shall not exceed 15 pages excluding appendices. *Proposals that exceed these page limitations shall be denied for review. Facsimile submittals shall be denied for review.* The ~~commission administrator~~ shall have the discretion to amend the grant proposal content requirements for any given grant application period. Applications shall contain the following information:

g. A letter of endorsement from the planning council of the county or counties in which the project will occur. This letter shall nominate the project for construction and start-up funding. For a statewide project, a letter is required only from the planning council of the county of the applicant agency.

h. Six letters of support from agencies or individuals stating familiarity with the proposed project and substantiating the experience of the applicant to conduct the proposed project. These letters should be authored by a diverse group including professional or service provider organizations, local government and housing officials, advocates for ~~the population group persons to be served by the project,~~ and service consumers and their family members. A minimum of one letter each must be from: individuals or organizations that represent Iowa consumers of mental health services and individuals or organizations that represent family members of persons with mental illness.

Further amend subrule 39.23(4) by adding the following ~~new~~ paragraph "p":

p. A letter from a single county board of supervisors or from a combination of counties if the applicant is a person or entity other than a county or multicounty board of supervisors. This letter shall state approval for the applicant to seek funds under this program. This written approval is not a substitute for the letter of endorsement that is required from the planning council.

Amend subrule 39.23(5), introductory paragraph and paragraphs "a," "c," and "d," as follows:

**39.23(5) Project review.** All proposals meeting the minimum criteria above will be evaluated by members of ~~the~~ a review committee established by the administrator. The review committee will comprise, ~~in addition to the commission itself,~~ staff of the division, and others from the public and private sectors. The review committee shall make recommendations of approval or disapproval to the ~~commission administrator.~~ The review criteria and the weighted value of each section of the application are contained in the application package, Form 470-2773, as indicated in subrule 39.23(4). The ~~commission administrator~~ shall award all grants. ~~The To help in determining~~

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

how well a proposal meets the intentions and development principles of the program, the following sections of the application and their weighted values will be considered in selecting proposals for funding:

a. Introduction (6 21 points)—describing the *project and the experience, expertise, and community linkages* of the applicant.

c. Project goals and objectives (9 6 points)—measurability and indicators of anticipated outcomes and their relationship to the identified needs.

d. Methods (24 15 points)—describing the project design and the ways in which the project will be implemented.

ITEM 7. Amend rule 441—39.25(225C) as follows:

**441—39.25(225C) Records.** Recipients shall keep statistical and financial records of all grant activities provided and any other records as required by the ~~director~~ *department* and specified in the contract.

ITEM 8. Amend rule 441—39.27(225C), introductory paragraph, as follows:

**441—39.27(225C) Conflict of interest.** Pursuant to Iowa Code section 225C.5, the members of the commission are appointed on the basis of interest and experience in the ~~field~~ *fields* of mental health, ~~and mental retardation, or other developmental disabilities, and brain injury~~ and include: members of county boards of supervisors, ~~mental health, mental retardation, and developmental disabilities coordinating boards members of a mental health and developmental disabilities regional planning council, board members of a community mental health centers center or the Iowa mental health association a statewide association of persons with mental illness or of family members of persons with mental illness, board members of an agency serving persons with mental retardation or of a statewide association for persons with mental retardation, community mental retardation agency or the Iowa association for retarded citizens members of a statewide organization for persons with developmental disabilities other than mental retardation, and members of a statewide organization for persons with brain injury.~~ These requirements create potential for conflict of interest, but are critical to ensuring the desired experience, expertise and interest on the commission. To protect against conflict of interest in application reviews the following guidelines shall be observed by the commission and by members of other groups assisting the ~~commission administrator~~ with application ~~review~~ *reviews*:

ITEM 9. Amend rule 441—39.28(225C) as follows:

**441—39.28(225C) Appeals.** Applicants dissatisfied with the ~~commission's administrator's~~ decision on an application for special services fund ~~construction and start-up~~ *grant* funds may file an appeal with the director. A letter of appeal must be submitted within ten working days of the date of the notice of decision and must include a request for the director to review the decision and the reasons for dissatisfaction. Within ten working days of the receipt of the appeal the director will review both the appeal request and evidence provided by the administrator and will issue a final decision.

ITEM 10. Amend rule 441—39.29(225C), introductory paragraph and subrule 39.29(1), as follows:

**441—39.29(225C) Stewart B. McKinney application process.** This rule describes the process to determine state endorsement of applications and the distribution of dollars which may be used to match the federal Stewart B. McKinney Homeless Assistance Act funds. *Funds that are unobligated, unspent, or refunded to the division by a fund recipient shall be retained by the division and used for the same intended purpose of this program in future funding activities.*

**39.29(1)** Applicants for the Stewart B. McKinney funds. The applicants for the Stewart B. McKinney Homeless Assistance Act funds include states, Indian tribes, metropolitan cities, public housing agencies, counties, governmental agencies, private nonprofit organizations, or community mental health organizations that are public nonprofit organizations. The United States Department of Housing and Urban Development (HUD) defines the requirements of all applications. In order to ensure that applicants that wish to use state funds to meet *McKinney* application match requirements meet the HUD and state criteria, the division ~~and the commission~~ shall screen all applications before endorsing them. Federal regulations and other state criteria pertaining to Stewart B. McKinney programs shall be the bases for the state's screening process.

[Filed 5/3/95, effective 7/1/95]  
[Published 5/24/95]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/24/95.

**ARC 5604A**

## **INSURANCE DIVISION[191]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 505.21, 513B.14, and 17A.4(1)"b," the Iowa Division of Insurance adopts amendments to Chapter 9, "Reporting Requirements on Licenses," and Chapter 71, "Small Group Health Benefit Plans," Iowa Administrative Code.

Chapter 9 sets forth requirements for an insurer to file a licensee report with the Commission concerning a claim of legal liability. The proposed language will remove the requirement that a copy of the claim notice be maintained by the Insurance Division. The claim form is a confidential document in the possession of the licensing board but not when held by the Division. Based upon counsel advice, the Division should not maintain a copy of the claim form.

Chapter 71 sets forth the policy dealing with small group health benefit plans. The proposed amendments include the following changes: (1) An increase in the number of eligible employees from 25 to 50 pursuant to legislative change. (2) An explanation that the 60-day waiting period for a new entrant does not affect an employer's ability to provide a probationary period for new employ-

## INSURANCE DIVISION[191](cont'd)

ees. (3) A rule disallowing gender and industry as rating factors without prior approval of the commissioner. The amendments set forth the policy form levels for the basic health benefit plan and standard health benefit plan as determined by the small employer carrier reinsurance board and the commissioner.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 1, 1995, as ARC 5388A. A public hearing was held February 21, 1995. Written and oral comments were received. The comments included historical information on the initial basic and standard group health benefit rules. There were also comments in regard to therapeutic nutritional services and providing that such services be added to the basic and standard plans. While many plans provide for coverage of therapeutic nutrition services, the basic and standard are less comprehensive in the services offered in keeping with the intent of a minimal set of benefits at a cost-effective and affordable price. To add the treatment would be contra to this policy.

Several changes were made, however. A clarification was made to the exclusion of individual health insurance policies from the small group rules. When a group wishing a group health plan does not meet the small group carrier's minimum participation or contribution standards, a subsequent plan covering the employees is not subject to the small group rules. A clarification was also made as to worker's compensation exclusion under a basic or standard plan.

These amendments will become effective July 1, 1995.

These amendments are intended to implement Iowa Code chapters 272C and 513B.

The following amendments are adopted.

ITEM 1. Amend 191—Chapter 9 by striking all references to "258A" and inserting "272C" to reflect renumbering of the 1993 Iowa Code.

ITEM 2. Amend rule 191—9.2(272C) to read as follows:

**191—9.2(272C) Insurer's duties.** Insurers are required to file with the commissioner, ~~in duplicate~~, a report describing each incident occurring on or after January 1, 1978. This provision may be complied with by filing a form containing information substantially similar to that required by the report. Such report shall be filed within ~~thirty~~(30) days after the claim is reported to the insurer.

ITEM 3. Amend rule 191—9.3(272C) to read as follows:

**191—9.3(272C) Commissioner's duties.**

9.3(1) The commissioner shall immediately forward to the indicated licensing board ~~one (1) copy~~ of every such report received from an insurer.

9.3(2) The commissioner shall ~~maintain one (1) copy of every such report and shall record the fact of its receipt and forwarding a report was received and was forwarded to the indicated licensing board.~~

ITEM 4. Amend subrule 71.3(4) as follows:

71.3(4) An individual health insurance policy shall not be subject to 513B and this chapter solely because the policyholder elects a business expense deduction under Section 162(1) of the Internal Revenue Code, the health benefit plan is treated as part of a plan or program for purposes of Section 125 of the Internal Revenue Code for which the employee makes all the contributions, ~~or~~ the

employer provides payroll deduction of health insurance premiums on behalf of an employee *if the health benefit plan covers employees where the employer has applied for group health benefits and has received written notification that the group did not meet the small group carrier's minimum participation or contribution standards. The individual health insurance carrier shall maintain a copy of the employer's notification from the small group carrier for insurance division audit purposes.*

ITEM 5. Amend 71.3(5)"a" as follows:

71.3(5)a. If a small employer is issued a health benefit plan under the terms of 513B, the provisions of 513B and this chapter shall continue to apply to the health benefit plan in the case that the small employer subsequently employs more than 25 50 eligible employees. A carrier providing coverage to such an employer shall, within 60 days of becoming aware that the employer has more than 25 50 eligible employees but no later than the anniversary date of the employer's health benefit plan, notify the employer that the protections provided under 513B and this chapter shall cease to apply to the employer if such employer fails to renew its current health benefit plan or elects to enroll in a different health benefit plan. It is the responsibility of the employer to notify the carrier of changes in employment levels which could change the employer's status as a small employer for the purposes of this chapter.

ITEM 6. Amend 71.3(5)"b"(2) as follows:

(2) A carrier providing coverage to an employer described in subparagraph "b"(1) shall, within 60 days of becoming aware that the employer has 25 50 or fewer eligible employees, notify the employer of the options and protections available to the employer under 513B, including the employer's option to purchase a small employer health benefit plan from any small employer carrier. It is the responsibility of the employer to notify the carrier of changes in employment levels which could change the employer's status as a small employer for the purposes of this chapter.

ITEM 7. Amend paragraph 71.7(3)"b" as follows:

b. A small employer carrier shall not apply a waiting period, elimination period or other similar limitation of coverage (other than an exclusion for preexisting medical conditions consistent with 513B.10(3)), with respect to a new entrant that is longer than 60 days. *This subrule does not affect an employer's ability to determine an employee's probationary period of work prior to the commencement of benefits.*

ITEM 8. Rescind rule 191—71.8(513B) and insert in lieu thereof the following new rule:

**191—71.8(513B) Case characteristics.**

71.8(1) A small employer carrier may use age, geographic area, family composition, and group size in establishing premium rates, subject to Iowa Code section 513B.4(2).

71.8(2) Additional rating factors are not allowed without the prior approval of the commissioner.

ITEM 9. Amend 191—Chapter 71 by adding the following new rule:

**191—71.14(513B) Basic health benefit plan and standard health plan policy forms.**

71.14(1) The form and level of coverage of the basic health benefit plan and the standard health benefit plan are



## INSURANCE DIVISION[191](cont'd)

contained in this rule. This rule provides the minimum benefit levels allowed and does not prevent carriers from voluntarily providing additional services to the basic health benefit plan or the standard health benefit plan.

**71.14(2)** The matrix and acceptable exclusions following this chapter are a guideline for the minimum benefit levels in a basic and standard health policy form.

**71.14(3)** Termination of pregnancy is to be covered in both policy forms when performed for therapeutic reasons. Elective termination of pregnancy is not to be covered in either the basic or standard form.

**71.14(4)** No coverage is to be provided in the basic plan for the treatment of human ailments by the adjustment of the neuromuscular skeletal structures irrespective of and disregarding variances in terminology employed by the various licensed professions in describing the human

ailment, its diagnosis or treatment. Coverage is to be included in the standard plan.

**71.14(5)** Prosthetic devices are covered when medically necessary.

**71.14(6)** Oral contraceptives are to be covered in both policy forms. Coverage for alternative forms of contraception is to be reviewed based on medical necessity.

**71.14(7)** Both policy forms shall cover well baby care consistent with Iowa Administrative Code 191—Chapter 80.

**71.14(8)** The Division has available "safe harbor" policy forms for the basic and standard health insurance plans required pursuant to Iowa Code chapter 513B. These are model forms approved by the division as meeting the minimum requirements of a basic and a standard policy.

## SMALL EMPLOYER PRODUCTS

	MANDATED INDEMNITY		MANDATED HMOs	
	BASIC	STANDARD	BASIC	STANDARD
Calendar Year Deductibles (S/F)	\$500 x 3	\$500 x 2		
E.R. Copayment	\$50 (waived if admitted)	\$50 (waived if admitted)	\$50 (waived if admitted)	\$50 (waived if admitted)
Coinsurance	60%	80%	60%	80%
Out-of-pocket per insured/ family maximum	\$4,800/ \$14,400	\$2,000/ \$4,000	\$4,000/ \$8,000 (excludes deductibles and copays)	\$2,000/ \$4,000 (excludes deductibles and copays)
Annual Maximum				
Lifetime Maximum	\$250,000	\$1,000,000	\$250,000	\$1,000,000
Pre-Existing	513B.10(3)	513B.10(3)	513B.10(3)	513B.10(3)
Late Entrant	513B.2(12)	513B.2(12)	513B.2(12)	513B.2(12)
Wellness	100% first \$100 60% over \$100	100% first \$150 80% over \$150	100% after \$20 copay per visit	100% after \$15 copay per visit
Maternity	60% Enrollee or Spouse Only	80% Enrollee or Spouse	60%	80%

## SMALL EMPLOYER PRODUCTS (cont'd)

PHYSICIAN SERVICES	MANDATED INDEMNITY		MANDATED HMOs	
	BASIC	STANDARD	BASIC HMO	STANDARD HMO
Office Visits	60% <sup>(1)</sup>	80% <sup>(2)</sup>	\$20 copay per office visit	\$15 copay per office visit
Urgent Care	60%	80%	60%	80%
Inpatient	60%	80%	60%	80%
Outpatient	60% <sup>(1)</sup>	80% <sup>(2)</sup>	60%	80%
Vision Screening				
Vision Examinations				
Immunizations	60% <sup>(1)</sup>	80% <sup>(2)</sup>	60%	80%
Well Child	60% <sup>(1)</sup> (deductible does not apply)	80% <sup>(2)</sup> (deductible does not apply)	100% after \$20 copay/visit	100% after \$15 copay/visit
Pre-Natal/Post-Natal Outpatient Visits	60% <sup>(1)</sup>	80% <sup>(2)</sup>	100% after \$50 copay/pregnancy	100% after \$50 copay/pregnancy

<sup>(1)</sup>For wellness services, covered 100% first \$100 and 60% over \$100

<sup>(2)</sup>For wellness services, covered 100% first \$150 and 80% over \$150

HOSPITAL SERVICES	MANDATED INDEMNITY		MANDATED HMOs	
	BASIC	STANDARD	BASIC HMO	STANDARD HMO
Inpatient	60%	80%	60% \$400/admit	80% \$200/admit
Prostheses	60%	80%	60%	80%
DME—including medical supplies	60%	80%	60%	80%
Ambulance-Emergency	60%	80%	60%	80%
Hospice	60%	80%	60%	80%
Home Health and Physician House Calls	60%	80%	60%	80%

ALCOHOLISM/ SUBSTANCE ABUSE	MANDATED INDEMNITY		MANDATED HMOs	
	BASIC	STANDARD	BASIC HMO	STANDARD HMO
Inpatient		80% <sup>(3)</sup>		80% <sup>(3)</sup>
Outpatient		80% <sup>(3)</sup> (\$50 max. eligible fee)		80% <sup>(3)</sup> (\$50 max. eligible fee)

<sup>(3)</sup>\$10,000 lifetime max.

INSURANCE DIVISION[191](cont'd)

## SMALL EMPLOYER PRODUCTS (cont'd)

MENTAL HEALTH	MANDATED INDEMNITY		MANDATED HMOs	
	BASIC	STANDARD	BASIC HMO	STANDARD HMO
Inpatient		80% <sup>(3)</sup>		80% <sup>(3)</sup>
Outpatient		80% <sup>(3)</sup> (\$50 max. eligible fee)		80% <sup>(3)</sup> (\$50 max. eligible fee)
RX	60%	80%	Copayment < of \$15 or 25%	Copayment < of \$10 or 25%
Transplants		80% \$100,000 Lifetime Max.		80% \$100,000 Lifetime Max.

<sup>(3)</sup>\$10,000 lifetime max.

## ACCEPTABLE EXCLUSIONS FOR USE IN BASIC AND STANDARD POLICIES

Except as specifically provided for, no benefits will be provided for services, supplies or charges:

1. Which are not prescribed by, performed by, or upon the direction of a provider;
2. Which are not medically necessary;
3. Rendered by other than a hospital or a provider;
4. Which are investigational in nature; including any service, procedure, or treatment directly related to an investigational treatment;
5. For any condition, disease, illness, or bodily injury which occurs in the course of employment if benefits or compensation is carried or required, in whole or in part, under the provisions of any legislation or governmental unit. This exclusion applies whether or not the Insured claims the benefits or compensation;
6. To the extent benefits are provided by any governmental unit except as required by federal law for the treatment of veterans in Veterans Administration or armed forces facilities for non-service-related medical conditions;
7. For any illness or injury suffered as a result of any act of war or while in the military service;
8. For which the Insured would have no legal obligation to pay in the absence of this or any similar coverage;
9. Received from a dental or medical department maintained by or on behalf of an employer, a mutual benefit association, labor union, trust, or similar person or group;
10. Surgery and any related services intended solely to improve appearance including but not limited to the restoration of hair and appearance of skin. This does not include those services or surgeries that restore bodily function or correct deformity resulting from disease, trauma, congenital or developmental anomalies of a newborn;
11. Rendered by a provider that is a member of the Insured's immediate family;
12. Incurred prior to the effective date or during an inpatient admission that commenced prior to the Insured's effective date of coverage;
13. Incurred after the date of termination of the Insured's coverage;

## INSURANCE DIVISION[191](cont'd)

14. For personal hygiene and convenience items such as, but not limited to, air conditioners, humidifiers, or physical fitness equipment;
15. For telephone consultations, charges for failure to keep scheduled appointments, charges for completion of any form or charges for medical information;
16. For inpatient admissions which are primarily for diagnostic studies or physical therapy;
17. For whole blood, blood components and blood derivatives which are not classified as drugs in the official formularies;
18. For custodial care, domiciliary care or rest cures;
19. For treatment in a facility, or part of a facility, that is mainly a place for: (a) rest; (b) convalescence; (c) custodial care; (d) the aged; (e) the care or treatment of alcoholism or drug addiction; (f) rehabilitation; or (g) training, schooling or occupational therapy;
20. For screening examinations including X-ray examinations made without film;
21. For sterilization or reversal of sterilizations, or both;
22. For dental work or treatment except for removal of malignant tumors and cysts or accidental injury (eating and chewing mishaps are not accidental injuries for the purposes of this policy) to natural teeth, if the accident occurs while the person is insured and the treatment is received within 12 months after the accident;
23. For treatment of weak, strained or flat feet, including orthopedic shoes or other supportive devices, or for cutting, removal or treatment of corns, callouses or nails, other than with corrective surgery, or for metabolic or peripheral vascular disease;
24. For eyeglasses or contact lenses and the visual examination for prescribing or fitting eyeglasses or contact lenses (except for aphasic patients and soft lenses or sclera shells intended for use in the treatment of disease or injury);
25. For radial keratotomy, myopic keratomileusis and any surgery which involves corneal tissue for the purpose of altering, modifying or correcting myopia, hyperopia or stigmatic error;
26. For hearing aids and supplies, tinnitus maskers, or examinations for the prescription or fitting of hearing aids;
27. For any treatment leading to or in connection with transsexualism, sex changes or modifications, including but not limited to surgery or the treatment of sexual dysfunction not related to organic disease;
28. For any treatment or regimen, medical or surgical, for the purpose of reducing or controlling the Insured's weight or for the treatment of obesity;
29. For conditions related to autistic disease of childhood, hyperkinetic syndromes, learning disabilities, behavioral problems, or for inpatient confinement for environmental change;
30. For services and supplies for and related to fertility testing, treatment of infertility and conception by artificial means, including but not limited to: artificial insemination, in vitro fertilization, ovum or embryo placement or transfer, gamete intra-fallopian tube transfer, or cryogenic or other preservation techniques used in such or similar procedures;
31. For travel whether or not recommended by a physician;
32. For complications or side effects arising from services, procedures, or treatments excluded by this policy;
33. For maternity care of dependent children except for complications of pregnancy which is covered as any other illness;

INSURANCE DIVISION[191](cont'd)

34. For services to the extent that those services are covered by Medicare;
35. For or related to organ transplants (unless a benefit is specifically provided and then only to the limits provided);
36. For or related to the transplantation of animal or artificial organs or tissues;
37. For the care or treatment of any injury that is intentionally self-inflicted, while sane or insane;
38. For the care or treatment of any injury incurred during the commission of, or an attempt to commit, a felony or any injury or sickness incurred while engaging in an illegal act or occupation or participation in a riot;
39. For lifestyle improvements including smoking cessation, nutrition counseling or physical fitness programs;
40. For the purchase of wigs or cranial prosthesis;
41. For weekend admission charges, except for emergencies and nonscheduled maternity admissions;
42. For orthomolecular therapy including nutrients, vitamins and food supplements;
43. For speech therapy, except to restore speech abilities which were lost due to sickness or injury.

[Filed 5/4/95, effective 7/1/95]

[Published 5/24/95]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/24/95.

**ARC 5605A****PETROLEUM UNDERGROUND  
STORAGE TANK FUND BOARD,  
IOWA COMPREHENSIVE[591]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455G.4(3) and 455G.11, the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board ("Board") amends Chapter 10, "Eligibility for Insurance," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 15, 1995, as **ARC 5495A**. A public hearing was held April 4, 1995, and no comments were received. These amendments are identical to the amendments published under Notice of Intended Action.

There are situations where a site is eligible for remedial account benefits under Iowa Code section 455G.9 and all or part of the contamination is from a release not eligible for remedial account benefits. The amendments allow the owner/operator to be eligible for insurance under Iowa Code section 455G.11 if the owner/operator executes the certification required by 10.1(1)"d," 10.1(3) or 10.1(4) or complies with the eligibility requirements for remedial account benefits set forth in 11.1(3)"p," which is Adopted and Filed and published herein as **ARC 5606A**.

In addition, currently upon approval by the Administrator an applicant for insurance under Iowa Code section

455G.11 who has not had financial responsibility coverage or who has allowed financial responsibility coverage to lapse at some time since October 26, 1990, has been allowed to have insurance coverage backdated so that there is no lapse in financial responsibility since October 26, 1990. The amendments prohibit backdating of insurance on any insurance applications after July 1, 1995.

These amendments were adopted by the Board on May 2, 1995.

These amendments are intended to implement Iowa Code section 455G.11.

These amendments shall become effective June 28, 1995.

The following amendments are adopted.

ITEM 1. Amend subrule **10.1(1)** by adding the following new paragraph "e":

e. Contaminated sites which are eligible for benefits under Iowa Code section 455G.9 may be insured if the existing contamination is the result of tanks for which that section provides benefits. If the existing contamination is in whole or part related to a release for which benefits under 455G.9 are not available, then the owner/operator must comply with paragraph "d" or subrule 10.1(3) or 10.1(4), for that portion of the release which is not eligible for benefits, unless the requirements of 11.1(3)"p" have been documented.

ITEM 2. Amend subrule **10.1(2)** by adding the following new paragraph "i":

i. If there has been a failure to demonstrate financial responsibility coverage or if there has been a lapse in fi-

## PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591](cont'd)

financial responsibility coverage since October 26, 1990, any application for financial responsibility coverage after July 1, 1995, acceptable to the UST board or its representative will result in financial responsibility coverage which begins on the date the policy is issued. There shall be no backdating of financial responsibility coverage for such applications.

[Filed 5/4/95, effective 6/28/95]  
[Published 5/24/95]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/24/95.

## ARC 5606A

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

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 455G.4(3), 455G.6(15) and 455G.9, the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board amends Chapter 11, "Remedial or Insurance Claims," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 15, 1995, as **ARC 5501A**. A public hearing was held April 4, 1995, and no comments were received. These amendments are identical to the amendments published under Notice of Intended Action.

Paragraph 11.1(3)"b" currently requires any owner or operator to have demonstrated financial responsibility no later than October 26, 1990, as a condition of eligibility for remedial account benefits. The amendments provide that owners and operators will no longer be eligible for remedial account benefits if they have active tanks during any period of time after October 26, 1990, when they did not also have financial responsibility coverage unless the tanks were temporarily closed pursuant to 11.1(3)"o."

Tanks taken out of use before January 1, 1974, or closed or removed before July 1, 1985, are not eligible for remedial account benefits. The amendments allow remedial account benefits for releases from such tanks if those tanks are at a site which has or had tanks which are eligible for remedial account benefits and the contamination is commingled with the eligible release as long as the site has been used continuously from the date of the noneligible release until the date of the fund-eligible release when the claimant certifies the tanks will be permanently closed within 90 days and complies with the terms of the certification and all other eligibility requirements are met.

There are situations where an owner/operator is eligible for remedial account benefits but discovers a tank on the eligible site after October 26, 1990. The amendments allow the claimant to remain eligible for remedial account benefits even if there has not been continuous financial responsibility for the site since October 26, 1990. How-

ever, to remain eligible, the amendments require that the discovered tank has been empty and has not been operated since discovery, the tank is properly registered and contained only petroleum when it was used. The amendments require the discovered tank be closed the later of July 1, 1995, or 90 days after discovery.

These amendments were adopted by the Board on May 2, 1995.

These amendments are intended to implement Iowa Code section 455G.9.

The amendments shall become effective June 28, 1995. The following amendments are adopted.

ITEM 1. Amend subrule **11.1(3)**, paragraph "b," to read as follows:

b. To be eligible for benefits under Iowa Code Supplement section 455G.9, any owner or operator applying for such benefits shall demonstrate financial responsibility coverage using a method provided for under 567— Chapter 136 no later than October 26, 1990. *If an owner or operator is unable to demonstrate financial responsibility coverage, or there is a lapse in the financial responsibility coverage for any period after October 26, 1990, the owner/operator will no longer be eligible for benefits if the site for which benefits are being requested has active tanks during the time the owner/operator was unable to demonstrate financial responsibility or if there is a lapse of financial responsibility coverage. The financial responsibility coverage requirement shall not be required on tanks which are temporarily closed consistent with 11.1(3)"o."*

ITEM 2. Amend subrule **11.1(3)** by adding the following new paragraphs "p" and "q":

p. The board may reimburse expenses associated with tank systems identified in 11.1(3)"a"(1) to (3) when all of the following conditions have been documented:

(1) The release for which benefits are being requested is from tanks operated on a site which is otherwise eligible for benefits under Iowa Code section 455G.9(1);

(2) The release for which benefits are being requested is commingled with an on-site release which is eligible for benefits under Iowa Code chapter 455G;

(3) The site has had active underground storage tanks continuously from the date of the release for which benefits are being requested until the date at which a release for which the site is currently eligible for benefits was reported to the department;

(4) The claimant certifies that the tanks for which benefits are being requested will be permanently closed within 90 days of notification of the eligibility and does permanently close the tanks in compliance with rule 567—135.9(455B) within the 90 days;

(5) All other eligibility requirements have been met.

q. An owner/operator of a site which is eligible for benefits under section 455G.9 who discovered a tank on the site after October 26, 1990, shall maintain eligibility for benefits even if that tank does not meet the financial responsibility requirements continuous since October 26, 1990, if all of the following conditions have been met:

(1) The tank was discovered after October 26, 1990;

(2) The tank has not been operated since the discovery and has never been operated by the claimant;

(3) The tank has been empty of all product since it was discovered;

(4) The tank was properly registered with the department when discovered;

## PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591](cont'd)

(5) The tank is a regulated tank which previously contained only petroleum products as defined in this chapter;

(6) The tank is permanently closed within 90 days of discovery, or by July 1, 1995, whichever date is later.

[Filed 5/4/95, effective 6/28/95]

[Published 5/24/95]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/24/95.

## ARC 5608A

### REVENUE AND FINANCE DEPARTMENT[701]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 421.14, the Iowa Department of Revenue and Finance hereby adopts amendments to Chapter 86, "Inheritance Tax," Iowa Administrative Code.

Notice of Intended Action was published in IAB, volume XVII, number 20 on March 29, 1995, page 1518 as **ARC 5514A**.

The amendments provide that the Department will use the fair market value of property for inheritance tax purposes as established by the Internal Revenue Service where a federal estate tax return is filed unless a separate agreement is negotiated with the Department. The appraising process need not be followed in estates where a federal estate tax return is filed unless it can be shown that the value for state tax purposes is significantly different. It further provides that any inheritance tax clearance granted by the Department is subject to revision if the value is changed by the Internal Revenue Service.

These amendments are identical to those published under Notice of Intended Action. These amendments will become effective June 28, 1995, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapter 450.

The following amendments are adopted.

ITEM 1. Amend rule **701—86.9(450)**, introductory paragraph, as follows:

**701—86.9(450) Market value in the ordinary course of trade.** *The fair market value established between the taxpayer and the Internal Revenue Service will be presumed to be the fair market value for Iowa inheritance tax in all cases where a federal estate tax return is filed with the Internal Revenue Service unless a separate agreement is negotiated with the department under Iowa Code section 450.37(2). In cases where no separate agreement is made, the valuation used for the federal estate tax will be carried over to become the basis of property for income tax purposes. The procedure set forth in Iowa Code section 450.37 for appraising real property need not be followed in estates where a federal estate tax return will be filed unless the taxpayer can show that the value for state tax purposes is significantly different. Any inheritance tax clearance granted by the department is subject to revision based on federal audit adjustments.*

ITEM 2. Amend subrule 86.12(1) as follows:

**86.12(1)** In general. The inheritance tax clearance is a written certificate of the department documenting the satisfaction of the inheritance tax obligation of the persons succeeding to the property included in the gross estate and the personal representative of the estate and, also the obligation of the qualified heir, in case special use valuation is elected under Iowa Code chapter 450B. The clearance is either in the form of a full payment tax receipt or a statement that no tax is due on the shares of the estate. *Even though the department of revenue and finance has issued an inheritance tax clearance, the tax is always subject to change as a result of any federal estate tax changes affecting the Iowa inheritance tax. ~~The clearance fulfills the statutory requirements of Iowa Code sections 450.58, 450B.2, 633.477, and 633.479.~~*

[Filed 5/5/95, effective 6/28/95]

[Published 5/24/95]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/24/95.

**FAIR BOARD[371]**

At its meeting held August 1, 1981, the Administrative Rules Review Committee voted to object to rule 430—4.8(173) [renumbered in May 1988 as 371—4.8(173)] relative to liens on property located on the fairgrounds. The Committee reviewed this rule and reinstated the objection at its meeting held May 9, 1995.



AGENCY	RULE	DELAY
Industrial Services Division[343]	343—8.9(85,86), second unnumbered paragraph [IAB 2/1/95, <b>ARC 5385A</b> ]	Effective date of March 8, 1995, delayed 70 days by the Administrative Rules Review Committee at its meeting held February 13, 1995. [Pursuant to §17A.4(5)]  Delay lifted by the Committee at its meeting held May 9, 1995, effective May 10, 1995.
Professional Licensure Division[645]	100.1(4)"a"; 100.1(5)"c"; 100.1(8)"a"; 100.6(135,144); 100.7(135,144); 101.3(147,156); 101.98(3); 101.212(16) [IAB 2/15/95, <b>ARC 5414A</b> ]	Effective date of March 20, 1995, delayed 70 days by the Administrative Rules Review Committee at its meeting held March 13, 1995. [Pursuant to §17A 4(5)]  Delay lifted by the Committee at its meeting held May 9, 1995, effective May 10, 1995.

## \*SUMMARY OF DECISIONS

THE SUPREME COURT OF IOWA  
FILED APRIL 26, 1995

*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.

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**No. 94-430.      STROUP v. RENO.**

Appeal from the Iowa District Court for Polk County, Dale B. Hagen, Judge. **AFFIRMED.** Considered en banc. Opinion by McGiverin, C.J. Dissent by Ternus, J. (14 pages \$5.60)

Bernard Stroup was injured and suffered permanent disability while employed as a farm worker by Roy and Sandra Reno. Renos did not have workers' compensation liability insurance in violation of Iowa Code section 87.1. Pursuant to section 87.21 Stroup, instead of filing a workers' compensation claim, chose to file an action for tort damages against Renos. Stroup lost. Stroup then filed a workers' compensation claim but his claim was denied. The industrial commissioner held that under section 87.21, Stroup was foreclosed from seeking workers' compensation benefits because he had chosen to pursue damages in tort. The district court affirmed. Stroup appeals. **OPINION HOLDS:** I. Under section 87.21, an uninsured employer may subject itself to a workers' compensation proceeding for limited statutory benefits. Alternatively, an uninsured employer, unlike an insured employer, may be obliged to defend a tort action in which the uninsured employer is not only at a substantial disadvantage concerning the statutory presumption of negligence and proximate cause and the inability to assert defenses, but also is subject to unlimited damages. Based on the clean language of the statute, we conclude that once an employee has chosen to pursue one of these two methods of recovery, the statute forecloses subsequent pursuit of the alternate method, in this case a workers' compensation claim. We affirm. **DISSENT ASSERTS:** Considering the legislative intent to penalize the uninsured employer along with the intent to benefit the worker, I believe it is inappropriate to consider section 87.21 as containing an election provision which limits the employee to pursuing one remedy when that remedy is not achieved. I would hold that if an employee, such as Stroup, has been unsuccessful in a damages suit brought under section 87.21, the employee is not barred from then filing a claim for workers' compensation benefits. I would reverse the district court judgment and remand to the agency for a determination of Stroup's claim.

**No. 94-1965. IOWA SUPREME COURT BOARD OF PROFESSIONAL ETHICS AND CONDUCT v. CLAUSS.**

On review of the report of the Grievance Commission. **LICENSE SUSPENDED.** Considered by McGiverin, C.J., and Harris, Larson, Snell, and Ternus, JJ. Opinion by Harris, J. (5 pages \$2.00)

There are several counts in this attorney discipline case, most of which arose from Robert J. Clauss, Jr.'s dealings with a highly controversial client, Tri-State Debt Collection, Inc., an enterprise owned and operated by Robert Hurlbutt. The arrangement was confused and, to put it mildly, not one which would invoke admiration. The first count originally involved a claimed conflict of interest that illuminated another, far more serious, breach. Clauss sued Brenda Pollard for legal services he had performed. In his suit against Pollard, Clauss signed his wife's name to the return of service, stating that she had served the original notice on Pollard. Incredibly, Clauss then notarized the false signature. At a subsequent hearing, Clauss falsely stated under oath that his wife had signed the return in his presence. Counts II through V involve settlement agreements Clauss reached with Tri-State defendants and thereafter failed to report either to the court or to Tri-State. Default judgments were entered against defendants after settlements had been recorded. At the conclusion of their relationship, Clauss had a fee dispute with Tri-State. Clauss withdrew his claimed fee from Tri-State's trust account. The grievance commission found Clauss violated numerous disciplinary rules and recommended a one-year suspension. **OPINION HOLDS:** I. We agree that Clauss committed serious ethical violations. On review though, we are convinced a three-year suspension is mandated. If Clauss applies for readmission he should be prepared to convince us he will pose no threat to the public or to the reputation of the legal profession. Costs are taxed against Clauss.

**No. 94-384. LOEB v. EMPLOYMENT APPEAL BOARD.**

Appeal from the Iowa District Court for Black Hawk County, James C. Bauch, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Harris, Larson, Snell, and Ternus, JJ. Opinion by Harris, J. (5 pages \$2.00)

The claimant, David Loeb, had worked since 1988 as a "long-haul" truck driver for Bertch Cabinet, Inc. He quit that job on November 6, 1992, to work for another employer. He was fired from his new job three days later. Loeb's application for unemployment benefits was denied by the administrative law judge and, on appeal, by the employment appeal board. The matter is before us on the appeal from the district court's reversal of the denial. **OPINION HOLDS:** I. Under Iowa code section 96.5(1) an employee who voluntarily quits a job without "good cause" is generally disqualified from unemployment benefits. Loeb contends, however, he falls under a special exception specified in the last sentence of section 96.5(1)(a), which provides that coverage protection is accorded under two circumstances when the quit was in good faith for the purpose of taking "better" employment. The employee may be eligible for benefits if (1) the employee is terminated by the employer during the first six weeks of employment, or (2) if the employee is laid off by the employer after one week. Contrary to Bertch's contention, the one-week threshold requirement, applies only to the second—laid-off—circumstance. II. Loeb was terminated from his new job prior

**No. 94-384. LOEB v. EMPLOYMENT APPEAL BOARD (continued).**

to the expiration of the six-week period. The dispute thus turns on whether Loeb's new job was a "better" one. The district court concluded it was, based on a finding that earnings in the former positions were partly derived from illegal activity. There was ample evidence, however, to support the administrative finding that any falsifying of travel records was Loeb's own doing, not Bertch's, and was for the selfish purpose of raising Loeb's own income. We do not believe Loeb's contention—that his new job would allow him to spend more time with his family—is sufficient to qualify the new employment as "better" as a matter of law. The district court therefore erred in reversing the findings of the administrative law judge. The case must be reversed and remanded for entry of a judgment in accordance with this opinion.

**No. 94-819. IOWA DEPARTMENT OF TRANSPORTATION v. IOWA DISTRICT COURT.**

Certiorari to the Iowa District Court for Poweshiek County, Dan F. Morrison, Judge. **WRIT SUSTAINED.** Considered by McGiverin, C.J., and Harris, Neuman, Snell, and Ternus, JJ. Per curiam. (6 pages \$2.40)

Pursuant to a stipulation by the county attorney and Dale Bahrenfuss, the district court adjudicated Bahrenfuss an habitual traffic offender under Iowa Code section 321.555(2) (1993) even though he also met the requirements for an habitual offender under section 321.555(1). The court ordered the department of transportation to issue Bahrenfuss a temporary restricted license pursuant to Iowa Code section 321.215(2). The department brought this certiorari action challenging the district court's habitual offender determination and the order to issue a temporary restricted license. The department's petition for writ of certiorari was granted. **OPINION HOLDS:** The district court is required to adjudicate a person an habitual offender under section 321.555(1) if the person meets the statute's requirements. We find the statutory provisions mandatory in nature and not subject to a construction which would authorize county attorney discretion. Because the district court did not have authority to adjudicate Bahrenfuss an habitual offender under section 321.555(2), we sustain the writ and vacate that adjudication and its order to the department to issue a temporary restricted license to Bahrenfuss.

**No. 94-1542. IN RE MARRIAGE OF MITCHELL.**

Appeal from the Iowa District Court for Adams County, Dale B. Hagen, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Snell, and Ternus, JJ. Per curiam. (4 pages \$1.60)

Intervenors Lloyd and Karen Mitchell appeal from the dismissal of their petition to modify their son's dissolution decree. They requested custody of their two minor grandchildren or, in the alternative, grandparent visitation. The question presented is whether grandparents have standing to initiate a modification of dissolution decree proceeding. **OPINION HOLDS:** There is no

**No. 94-1542. IN RE MARRIAGE OF MITCHELL (continued).**

real disagreement that grandparents are permitted to intervene in an ongoing dissolution proceeding on the issue of child custody. However, the custody aspects of the Mitchell dissolution decree were finally litigated and do not now present a legal controversy subject to intervention. Furthermore, grandparents do not have standing to initiate a modification proceeding because they do not have a "specific, personal, and legal interest" in the dissolution proceeding. There are other forums in which these grandparents may pursue their grandchildren's protection.

**No. 94-665. STATE v. LANGFORD.**

Appeal from the Iowa District Court for Woodbury County, Terry L. Huitink, Judge. **AFFIRMED.** Considered by Larson, P.J., and Carter, Lavorato, Neuman, and Andreasen, JJ. Per curiam. (5 pages \$2.00)

Acting pursuant to a search warrant, Sioux City police entered a house shared by Jeffrey Langford and Jeffrey DeGroot to conduct a search for drugs and guns. Inside police found marijuana on a plate and in a tin in the living room, four bags of marijuana in a vinyl duffel bag also located in the living room, and in the headboard and drawer of the bed in DeGroot's bedroom. A notebook belonging to Langford was also found in the headboard of DeGroot's bed. In total, the police recovered 36.9 grams of marijuana, 14.9 grams of which were found in DeGroot's bedroom. Langford was charged with possession of marijuana with intent to deliver. At trial to the court, Officer Cassens testified that Langford stated at the time of the search that his roommate was seldom in the house. Langford testified that he was not the owner of the marijuana found in DeGroot's bedroom. He further stated that he did not use DeGroot's bedroom and that during the two weeks prior to the search DeGroot had been staying in the house more frequently than usual. The court found Langford guilty as charged. On appeal Langford argues that the State failed to show that he possessed one or more ounces of marijuana. Langford asserts the State failed to prove his actual or constructive possession of the 14.9 grams found in DeGroot's bedroom. He therefore claims he is only guilty of an accommodation offense. **OPINION HOLDS:** We conclude there is sufficient evidence to support the district court's finding that Langford had constructive possession of the marijuana found in DeGroot's bedroom. Langford's convictions are therefore affirmed.

**No. 94-465. STATE v. FUNKE.**

Appeal from the Iowa District Court for Adair County, Dale E. Hagen, Judge. **AFFIRMED.** Considered by Larson, P.J., and Carter, Lavorato, Neuman, and Andreasen, JJ. Opinion by Neuman, J. (6 pages \$2.40)

Joseph Eric Funke had his license suspended for 150 days pursuant to Iowa Code section 321.210 and 761 Iowa Administrative Code 615.13(1). The suspension period corresponded to that authorized for an accumulation of five convictions in a twelve-month period. Before he completed his suspension he was

**No. 94-465. STATE v. FUNKE (continued).**

cited for driving under suspension. Following his suspension, Funke purchased the required insurance and his license was reinstated. Shortly thereafter, however, the State commenced this action to bar him from driving for another year under the habitual violator statute, Iowa Code sections 321.555(2) to 321.562. During the habitual violator proceedings Funke argued for dismissal because the action duplicated the punishment he previously received under section 321.210 and because the State's action violates the doctrine of election of remedies. The district court rejected these arguments and ordered Funke's license suspended pursuant to section 321.560. Funke appeals. **OPINION HOLDS:** I. We are not persuaded by Funke's double jeopardy claim to depart from our historic characterization of the habitual offender statute as primarily remedial, rather than punitive, in nature. We also discern a clear legislative intent to make wayward drivers accountable with increasingly severe sanctions. The State's response to Funke's driving record merely advances this legislative purpose. Consequently, we find no double jeopardy violation. II. The doctrine of election of remedies has no application here. Funke does not come to the court with "clean hands" and his suspensions are not inconsistent. The decision of the district court adjudicating Funke an habitual offender under section 321.555(2) must be affirmed.

**No. 93-1568. TACKER v. AMERICAN FAMILY MUTUAL INS. CO.**

Appeal from the Iowa District Court for Webster County, Mark S. Cady, Judge. **AFFIRMED.** Considered by Carter, P.J., and Lavorato, Neuman, Snell, and Andreasen, JJ. Opinion by Neuman, J. (7 pages \$2.80)

Kevin Duffy owned a home at 630 Second Street, N.W., in Fort Dodge, Iowa. In November 1978, he remodeled the home's family room. The remodeling project included the wiring and installation of a new electrical outlet. Charlotte Tacker, and her husband Philip, purchased the home from Duffy in July 1984. On June 17, 1990, Philip was electrocuted while using a "wet vac" in the family room. Charlotte brought suit, claiming Philip's death resulted from negligent electrical work performed by Duffy when he remodeled the room twelve years before. Duffy was insured by American Family under a homeowner's policy covering the period July 13, 1989, to July 13, 1990. The residence insured under the policy was his new home at 1315 North Nineteenth Street, Fort Dodge. The policy provided personal liability coverage for bodily injury occurring during the policy period, but excluded from coverage any bodily injury or property damage "arising out of the ownership or rental to any insured of any premises other than an insured premise." Charlotte brought this declaratory judgment action to determine the scope of the policy's coverage. The district court resolved the controversy in her favor and American Family appeals. **OPINION HOLDS:** Duffy's insurance contract is an occurrence, not claims made, policy. The general liability provisions of his homeowner's policy provide insurance against liability stemming from his tortious personal conduct which may occur at any place on or off the insured premises. Tacker's claim against Duffy has nothing to do with his former ownership of her home. The district court correctly refused to apply the "other premises" exclusion clause to deny coverage to Tacker under the unique facts of this case. We affirm.

**No. 94-82. CITY OF CLINTON v. SHERIDAN.**

Appeal from the Iowa District Court for Clinton County, David E. Schoenthaler, Judge. **REVERSED AND REMANDED.** Considered en banc. Opinion by Andreasen, J. Dissent by Ternus, J. (13 pages \$5.20)

The electors of Clinton, Iowa adopted a home rule charter in 1987. All powers of the city were vested in the city council, except as otherwise provided by the laws of Iowa and the provisions of the charter. The charter included initiative and referendum provisions for adoption, amendment, or repeal of ordinances by voters at an election. Based on opinions from the Office of the Iowa Attorney General that initiative and referendum elections are not authorized, and the County Auditor refused to place a referendum issue on the ballot at the 1993 city election. The city then commenced a declaratory judgment action asking the court to declare that the initiative and referendum provisions of its charter are constitutional and not inconsistent with state law and that the Auditor be required to submit the referendum issue on the ballot at a municipal election. The court ruled that the initiative and referendum provisions were inconsistent with state law and dismissed the petition. The city appeals. **OPINION HOLDS:** Although the council is the governing body under the City Code of Iowa, it is not inconsistent to permit, as the city charter does, ordinances by initiative and referendum vote. We find no irreconcilable conflict between the provisions of the City Code of Iowa and the initiative and referendum provisions of the Clinton home rule charter. To require specific statutory authority to permit an initiative or referendum vote is contrary to the intent of the home rule constitutional amendment that rejected the *Dillon* rule. (The *Dillon* rule provided cities have only those powers granted by the legislature). We find no irreconcilable conflict between the election laws and the initiative and referendum provision of the Clinton home rule charter. We reverse and remand for entry of judgment in accordance with this decision. **DISSENT ASSERTS:** I respectfully dissent. Although I agree with the majority's underlying premise that a city may exercise any power not inconsistent with state law, I disagree with its conclusion that the initiative and referendum provision of the Clinton city charter does not conflict with the City Code of Iowa. Clinton's initiative and referendum provision conflicts with an express statutory limitation vesting the power to enact ordinances in the city council because it allows the electorate to exercise a city power by enacting an ordinance. I would affirm the district court's declaratory ruling.

**No. 93-1529. MATLOCK v. WEETS.**

Appeal from the Iowa District Court for Scott County, James E. Kelly, Judge. **AFFIRMED ON APPEAL AND WRIT ANNULLED.** Considered by Larson, P.J., and Carter, Lavorato, Neuman, and Andreasen, JJ. Opinion by Andreasen, J. (11 pages \$4.40)

Seventeen months after Robin Matlock terminated her relationship with Jon Weets, Robin petitioned for an injunction to enjoin Jon from following her, being in the vicinity of her home or her place of employment, or from contacting her in any manner. Submitted with the petition was a sixteen-page affidavit detailing Jon's intrusive and threatening actions since the breakup. In this consolidated appeal, Jon appeals the issuance of the injunctions, the terms of the injunctions, and the judgment of contempt. Although the issuance of a temporary

**No. 93-1529. MATLOCK v. WEETS. (continued)**

injunction generally merges into the permanent injunction and becomes moot, we will examine the issuance of each injunction separately because the contempt citation was based only on violations of the temporary injunction. **OPINION HOLDS:** I. A. The court granted the temporary injunction based on the affidavit Robin submitted with her petition. In her affidavit, Robin states she fears for her own safety and the safety of her mother, that she has sought the assistance of a mental health counselor, and that her constant fear for her personal safety has been a detriment to her mental health. Jon's actions have interfered with many aspects of Robin's life. Under the circumstances, we find the temporary injunction issued by the court was warranted. B. After a hearing, the court granted a permanent injunction. The district court found Jon's actions are psychologically harassing to Robin and determined that his obsessive behaviors appear dangerous to a reasonable person. Based on our de novo review, we agree with the court's findings and conclusions. II. Jon contends both injunctions, which are substantially similar, are vague and overbroad. We believe the language of the injunctions clearly conveys to Jon what he cannot do. He is supposed to stay away from Robin, her home, and her place of employment. The language is not vague. The injunction is drawn narrowly enough to address the harm sought to be redressed. It prohibits only intentional acts by Jon such as approaching, following, and harassing Robin. Also, it does not prevent Jon from going about his daily business. III. We find substantial evidence supports the court's finding that Jon willfully and intentionally violated the terms of the temporary injunction.

**No. 93-1963. BURTON v. DES MOINES METROPOLITAN TRANSIT AUTHORITY.**

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge. **AFFIRMED.** Considered en banc. Opinion by Snell, J. Dissent by Larson, J. (14 pages \$5.60)

Ten-year-old Shumaine Burton was struck by a car, suffering serious injuries, after alighting from a bus operated by the Des Moines Metropolitan Transit Authority (MTA). Shumaine's mother and Shumaine's co-conservators (Shumaine) brought suit against the MTA, claiming it was negligent in, among other things, allowing Shumaine to alight at an unsafe location. The district court granted the MTA's motion for summary judgment, finding the MTA's duty to exercise care for Shumaine terminated when he safely alighted from the bus. It also found the bus stop location was safe and that, in any event, no actions of the MTA were a proximate cause of Shumaine's injuries. Shumaine appeals. **OPINION HOLDS:** I. We agree with the district court that the MTA's duty toward Shumaine terminated when he safely alighted from the bus, notwithstanding his age. We refuse to extend the special duty of school bus drivers to public transportation operators. II. We also agree with the district court that there was a lack of proximate cause between any alleged negligence and the injury to Shumaine. The trial court properly granted the MTA's motion for summary judgment. **DISSENT ASSERTS:** I believe the grant of summary judgment was erroneous because there were genuine issues of fact on the allegation that the defendant's selection of the bus stop was negligent.



**No. 93-1028. STATE v. LANGE.**

Appeal from the Iowa District Court for Black Hawk County, L.D. Lybbert, George L. Stigler, and James C. Bauch, Judges. **AFFIRMED.** Considered by Larson, P.J., and Carter, Lavorato, Neuman, and Andreasen, JJ. Opinion by Lavorato, J. (19 pages \$7.60)

In a bench trial, the district court found Brian Joseph Lange guilty of violating Iowa Code section 421A.12 (1991) (failure to affix a drug tax stamp to marijuana). On appeal, Lange first contends the district court violated his due process rights when it denied his motion to dismiss based upon prosecutorial delay. Second, he believes the court erred by twice refusing to allow him to make offers of proof. Third, he argues the court's entry of judgment on the drug tax stamp conviction constituted double punishment in violation of his right against double jeopardy because he was previously assessed and had paid all drug stamp tax assessments. Last, he argues that we should overrule *State v. Lange*, 495 N.W.2d 105 (Iowa 1992) (*Lange I*). He asserts that in *Lange I*, we erroneously held that he waived his double jeopardy claim when he resisted consolidation of the drug tax stamp charge with his prosecution for manufacture of a controlled substance involving the same marijuana. **OPINION HOLDS:** I. The prosecutorial delay in filing the drug tax stamp charge did not violate Lange's due process rights. The district court correctly denied Lange's motion to dismiss based upon this delay. II. The district court's refusal to permit Lange's offers of proof did not amount to reversible error. III. We conclude the Iowa drug tax stamp statute is not a criminal penalty. Because it is not a criminal penalty, the sentence on the drug tax stamp conviction did not constitute a second punishment violative of Lange's right against double jeopardy. IV. We refuse to overrule *Lange I* because Lange waived the arguments he now raises. We affirm.

**No. 93-1923. ROUSE v. UNION TOWNSHIP.**

Appeal from the Iowa District Court for Appanoose County, James D. Jenkins, Judge. **AFFIRMED.** Considered by Larson, P.J., and Carter, Lavorato, Neuman, and Andreasen, JJ. Opinion by Lavorato, J. (9 pages \$3.60)

Following a bench trial, the district court originally ordered that a small parcel of land known as Fairview school revert to Carl and Linda Rouse under the provisions of Iowa Code section 297.15 (1989), upon their payment of the value of the school to the district. The Rouses appeal from the court's order on a rule 179(b) motion quieting title to the school in Union township. On appeal, the Rouses contend that the township's rule 179(b) motion raised a new legal theory with the court, which the rule prohibits. Second, they urge that the court erroneously interpreted Iowa Code section 297.22 to strip the Rouses of what they claim is their vested reversionary interest in the school. Last, the Rouses allege their vested reversionary interest invalidates that part of the court's rule 179(b) order quieting title to the school in the township. **OPINION HOLDS:** We believe there is a different basis in the record supporting the district court's decision quieting title to the school in the township. We conclude that only the party who owned the tract at the end of the two-year period during which the schoolhouse site was not used for any school purpose has the reversionary interest under section 297.15. Here the two-year nonuse period ended in 1960. For twenty-five years the "then owner" of the tract of land had the opportunity to exercise his reversionary right to the school and chose not to do so. When he died in 1985, his reversionary interest died with him. The Rouses never had any

**No. 93-1923. ROUSE v. UNION TOWNSHIP** (continued).

reversionary interest under section 297.15 because they were not the “then owners” of the tract in 1960. When the district quit-claimed its interest in the school to the township, the township acquired such interest free of any section 297.15 reversionary interest. Accordingly, the district court correctly quieted title in the school to the township. We affirm.

**No. 94-372. STATE V. GILLESPIE.**

Appeal from the Iowa District Court for Polk County, Glenn E. Pille and Joel D. Novak, Judges. **REVERSED AND REMANDED.** Considered by Larson, P.J., and Lavorato, Neuman, Snell, and Ternus, JJ. Opinion by Lavorato, J. (7 pages \$2.80)

The decisive issue in this criminal case is whether Iowa Code sections 808.3 and 808.4 (1991)—Iowa’s search and seizure statutes—allow anticipatory search warrants. The district court thought so and overruled defendant Jerry Gillespie’s motion to suppress. **OPINION HOLDS:** The plain meaning of these statutes is that probable cause must exist at the time the warrant is *issued* and *not at some future time when the warrant is executed*. The statutes do not contemplate future acts or events as constituting probable cause. The district court committed reversible error when it overruled Gillespie’s motion to suppress. Evidence that should have been suppressed was used to convict him. Therefore, Gillespie’s conviction must be reversed and the case remanded for new trial.

**No. 93-1912. HAMEED v. BROWN.**

Appeal from the Iowa District Court for Webster County, Allan L. Goode and Louie F. Beisser, Judges. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.** Considered by Larson, P.J., and Lavorato, Neuman, Snell, and Ternus, JJ. Opinion by Lavorato, J. (10 pages \$4.00)

In one count of her final pleading, Mary Hameed alleged that Willie Smith and Charlie Mae Brown were partners doing business as Charlie Brown’s Cafe and that they were negligent in failing to protect her as a business invitee from harm caused by the foreseeable misconduct of William Roby. In three separate counts, Hameed alleged the city and the two named police officers were negligent in failing to (1) prevent the attack by Roby when they knew or should have known that such an attack was imminent, (2) provide adequate security for city residents, (3) enforce the closing hours required by the Iowa Alcoholic Beverage Control Act, administrative rules of the Iowa liquor control commission, and an order in effect between the cafe and the Iowa department of commerce, and (4) arrest Roby before the attack. In each of these three counts, Hameed coupled these allegations of negligence with an allegation of a special relationship between the city and her. The city moved for summary judgment on two grounds. First, the city contended that it owed Hameed no duty because it was not in a “special relationship” with her. Second, the city contended that Iowa Code section 613A.4(10) immunized it from any liability arising from any harm caused by Roby. The district court granted the motion on the first ground. Later the judge entered a nunc pro tunc order extending his summary judgment ruling to include the two named officers. The case proceeded to trial on the negligence claims

**No. 93-1912. HAMEED v. BROWN** (continued).

against Smith and Brown. The district court granted Brown's motion for directed verdict at the close of Hameed's case on the ground that Brown was not Smith's partner. The jury returned a substantial verdict against Smith as owner of the cafe and for Hameed. Hameed appeals. **OPINION HOLDS:** I. Under Iowa Code section 613A.4(10) liability can attach to the municipality only if the third party caused damage (1) while the municipality was overseeing the third party's conduct with the power to direct and decide the implementation of the third party's intentions, or (2) while the municipality was exercising restraining influence over the third party. Roby was not under the supervision or control of the city when he did damage to Hameed. The city is therefore immune from liability. We affirm the district court's order sustaining the city's motion for summary judgment. II. We find substantial evidence in the record to generate a fact question on whether Brown was a partner in the cafe to submit the issue to the jury. The district court erred when it granted Brown's motion for directed verdict. We reverse and remand for a new trial against Brown only on the question whether she is Smith's partner in Charlie Brown's Cafe. If the jury finds that there was such a partnership, the district court shall vacate the judgment against Smith and enter a new judgment against Smith and Brown, jointly and severally, in the amount originally entered against Brown together with interest and costs.

**No. 94-169. IN RE B.W.**

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Fayette County, Alan D. Allbee, Associate Juvenile Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Snell, and Ternus, JJ. Per curiam. (9 pages \$3.60)

Both parents' rights to B.W. and J.W. were terminated. They appealed and the court of appeals reversed that portion of the juvenile court's decree that terminated the father's parental rights. We granted further review to the State and the mother. **OPINION HOLDS:** I. The mother was given more than an ample opportunity to improve her parenting skills and failed to do so. The children cannot be returned to her custody without risk to their emotional and physical health. II. The father's recent efforts to show an interest in his children, more than two years after the children were removed from his custody, come too late. It is clear in the record that the father is not capable of being the primary caretaker of the children. We are also not convinced that the paternal grandparents should be the children's primary caretakers: the children had once before been removed from this placement and the grandparents expressed no interest in obtaining custody until the petition to terminate had been filed. III. We are not persuaded by the parents' arguments that their rights should not be terminated due to the closeness of the parent-child relationship. We agree with the district court that the best interest of the children will be promoted by terminating both parents' rights.

**No. 94-326. COLLECTION SPECIALISTS v. MILLER.**

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge. **AFFIRMED.** Considered by Larson, P.J., and Carter, Lavorato, Neuman, and Andreasen, JJ. Per curiam. (4 pages \$1.60)

The plaintiff filed a petition seeking recovery for two dishonored checks. The district court awarded a judgment of three times the amount of the checks plus the cost of certified notice and a ten-dollar-per-check surcharge. This court granted plaintiff's application for discretionary review to consider plaintiff's claim that pursuant to Iowa Code section 554.3806(1) the enhanced recovery of three times the amount of the check should be in addition to the principal sum owed.

**OPINION HOLDS:** In Iowa Code section 554.3806(1) (subject to repeal on July 1, 1995), the legislature has chosen to use the phrase "damages triple the amount for which the dishonored check, draft or order is drawn." The language is a limitation on the total amount to be recovered. The amount of the unpaid principal and accrued interest on the dishonored check, draft or order represents the unenhanced portion of the damages sought to be recovered in the action. Consequently, the maximum amount to be awarded is triple that sum. We affirm the district court judgment.

**No. 93-1649. MEWES v. STATE FARM AUTOMOBILE INSURANCE CO.**

Appeal from the Iowa District Court for Cerro Gordo County, Jon Stuart Scoles, Judge. **AFFIRMED.** Considered by Carter, P.J., and Lavorato, Neuman, Snell, and Ternus, JJ. Opinion by Snell, J. (13 pages \$5.20)

Jane and Jack Mewes appeal a district court decision which granted summary judgment in favor of State Farm Automobile Insurance Company. At issue is a State Farm policy provision limiting underinsured motorist coverage to the extent its policies' highest limit exceeded underinsured motorist benefits paid by the primary insurer. Because the highest limit of the State Farm policies equaled the amount paid by the primary insurer, the district court held State Farm was not responsible for additional amounts. On appeal, the Mewes contend: (1) Iowa Code section 516A.2 (1993) does not prohibit payment by both the primary insurer and State Farm because the section's antistacking provisions do not apply to policies which contain both uninsured and underinsured motor vehicle coverage; (2) the district court's ruling violates the purpose of underinsured motorist coverage which is to provide full compensation to victims; and (3) interpolicy stacking is only prohibited when the different policies at issue are all written by the same insurer. **OPINION HOLDS:** I. The legislature did not intend to exclude from the antistacking provisions all policies which contain both underinsured and uninsured motorist coverage. II. Section 516A.2 evidences a clear intent on the part of the legislature to limit underinsured motorist benefits. III. We disagree with the Mewes' contention that the legislature merely intended to disallow policy stacking where a single insurer wrote all the policies in question. We also disagree that section 516A.2 does not apply to a policy purchased by parties unrelated to the injured party. The district court properly gave effect to the antistacking provisions of the applicable policies and properly granted State Farm's motion for summary judgment.

**No. 94-974. STATE v. LOYD.**

Appeal from the Iowa District Court for Des Moines County, Gary L. Snyder, District Associate Judge. **AFFIRMED.** Considered by Larson, P.J., and Carter, Lavorato, Neuman, and Andreasen, JJ. Opinion by Andreasen, J. (9 pages \$3.60)

Sue Anne Loyd was charged and convicted of operating while intoxicated. Loyd was arrested after she was stopped at a roadblock on Highway 34 on the outskirts of Burlington. She asserts the true purpose of the roadblock was to apprehend drunk drivers, which she claims is not a statutorily permissible purpose, and that the roadblock violated her constitutional rights. **OPINION HOLDS:** I. Our holding in *State v. Day*, \_\_\_ N.W.2d \_\_\_, \_\_\_ (Iowa 1995), involving the same roadblock, is dispositive of Loyd's statutory challenge. II. We reject Loyd's claim that the State failed to prove that the roadblock plan was created by "policy-making administrative officers of the law enforcement agency." All the requirements to ensure that the roadblock was operated safely, in a manner to minimize intrusion of the motorists, and to limit the discretion of the field officers were clearly met. III. Loyd argues the roadblock was not established based on neutral criteria. We do not believe empirical data or a written plan is required to prove the roadblock advances the public interest. We find Iowa Code section 321K.1 constitutes a policy which is sufficiently detailed to render a roadblock conducted in accordance with it constitutionally reasonable. We therefore conclude the roadblock was not unconstitutional under either the United States or Iowa Constitutions. IV. We find no abuse of discretion exercised by the court in sentencing Loyd.

**No. 94-360. IN RE ESTATE OF DEBLOIS.**

Appeal from the Iowa District Court for Scott County, James R. Havercamp, Judge. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.** Considered by Larson, P.J., and Carter, Lavorato, Neuman, and Andreasen, JJ. Opinion by Andreasen, J. (9 pages \$3.60)

In a declaratory judgment action, the district court ruled life insurance proceeds payable to the surviving spouse are subject to a tax lien if the survivor is jointly and severally liable for the tax, subject to a statutory exemption of \$15,000. This case requires us to consider if the exemption of Iowa Code subsection 627.6(6) (1991) relating to life insurance proceeds, applies to taxes collectable under Iowa Code section 422.26. **OPINION HOLDS:** Under section 422.26, the legislature clearly intended to deny an exemption when executing on a taxpayer's property to collect state income taxes. The district court correctly concluded that neither Joseph nor the executor of his estate can claim exemption from Iowa income tax assessments. The district court was mistaken, however, in declaring Barbara, if a taxpayer, may be able to claim \$15,000 as exempt from execution of the state tax claim as a surviving spouse. We affirm in part, reverse in part, and remand for entry of a declaratory judgment consistent with this opinion.

**No. 93-1858. IN RE ESTATE OF KOKJOHN.**

Appeal from the Iowa District Court for Lee County, John C. Miller, Judge.  
**AFFIRMED.** Considered en banc. Per curiam. (7 pages \$ 2.80)

The beneficiaries of decedent's will challenge a declaratory ruling finding a golden passbook account was not part of decedent's estate because it was held in joint tenancy by the decedent, Paul A. Kokjohn, and his sister, Marguerite Harrington. They contend: (1) the "time deposit, open account agreement" is not incorporated by reference on the signature card; (2) the parol evidence rule does not apply to exclude consideration of evidence extrinsic to the signature card and the "time deposit, open account agreement"; (3) decedent did not intend to create a joint tenancy account; and (4) if there was a contract, it is void due to mistake. **OPINION HOLDS:** I. The signature card's reference to the open account agreement in this case is sufficiently clear and specific to allow incorporation by reference. II. The issue of the ownership interest that resulted following Marguerite's name being added to the signature card is sufficiently vague that it is appropriate to consider extrinsic evidence concerning the intent of the parties. Perhaps the strongest extrinsic evidence concerning the nature of the interest created by the depositor's agreement is the recital in Paul's will that the account was held in "joint ownership." III. Although it appeared to be Paul's belief that he could undo the transaction creating that joint ownership by testamentary disposition, that course of action was not available to him. Property held in joint tenancy is not devisable by will. IV. Any mistake that may have occurred related to legal consequences, which cannot serve as a basis for equitable relief. We have considered all issues presented, and for the reasons given, conclude that the judgment of the district court should be affirmed.

**No. 90-1628. ESTATE OF MORGAN v. NORTH STAR STEEL CO.**

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Muscatine County, Max R. Werling, Judge. **COURT OF APPEALS DECISION AND JUDGMENT OF DISTRICT COURT AFFIRMED.** Considered by Larson, P.J., and Carter, Lavorato, Neuman, and Andreasen, JJ. Opinion by Larson, J.

(5 pages \$ 2.00)

The issue in the present case is whether North Star discharged Morgan in violation of the disability discrimination provisions of Iowa Code section 601A.6(1)(a). The district court concluded that North Star had terminated Morgan due to his disability but that it had a legitimate nondiscriminatory reason for the layoff. In particular, the district court found that there were no jobs available that Morgan could perform in view of his permanent restrictions. The district court dismissed the petition and Morgan appeals. **OPINION HOLDS:** We conclude that Morgan failed to establish he was qualified to perform the essential duties of a millwright, even with reasonable accommodation. The district court was correct in dismissing the petition. The court of appeals decision and the district court judgment are affirmed.

**No. 93-1201. STATE v. CASLAVKA.**

Appeal from the Iowa District Court for Tama County, August F. Honsell, Judge. **REVERSED.** Considered by Harris, P.J., and Larson, Carter, Lavorato, and Snell, JJ. Opinion by Carter, J. (10 pages \$4.00)

Defendant, Lon Michael Caslavka, owned and operated Cas Feed Store in Traer, Iowa. It had long been the practice of this business to accept prepayments from farmers to purchase products to be delivered at a later date. In the fall of 1991 and the winter of 1991-92, Caslavka accepted prepayments of approximately \$320,500 from twenty-three area farmers for various agricultural products. These advances were tendered for purposes of securing the delivery of chemicals the following spring. All of the prepaying buyers experienced difficulty in obtaining their products when demanded. Ultimately, Lon Caslavka d/b/a Cas Feed Store became insolvent. As a result, these twenty-three farmers collectively sustained losses of approximately \$180,000 because they did not receive all of the agricultural supplies that had been ordered. Cas Feed Store maintained both a checking account and a savings account at the Farmer's Savings Bank. Approximately \$308,500 received from farmers as prepayment for agricultural products was deposited in the Cas Feed Store savings account. Thereafter, the Farmer's Savings Bank exercised a right of setoff against all of the funds in the Cas Feed Store savings account, which at that time totaled \$128,000. A receivership for the business was established, and the business was leased to a cooperative. Defendant was ultimately tried for the offense of theft by misappropriation based on the premise that defendant held the monies that the farmers had prepaid as a trustee. The State contended that, prior to funds being removed from the Cas Feed Store savings account by the bank, defendant also had removed substantial funds from that account and applied them to personal uses. The jury found defendant guilty. On appeal, defendant contends that the State's evidence was insufficient as a matter of law to permit a trier of fact to find that a trust arrangement existed with respect to the funds that had been prepaid for future delivery of agricultural products. **OPINION HOLDS:** I. A trust agreement may not be inferred in the absence of some proof of the requisite manifestation of intention. We find no objective manifestation of intent to create a trust. Absent some manifestation of that intention by either defendant or his customers, it is not a reasonable assumption within the commercial realities of the transaction that a duty would be imposed on him to deal with the funds as a trustee. II. We reject the State's contention that the defendant conceded the existence of a trust relationship by proposing jury instructions concerning his duty as a trustee. Having received an erroneous ruling on his motion for judgment of acquittal, he was entitled to make the best of a bad situation. The judgment is reversed and the matter remanded to that court for entry of a judgment of acquittal.

**93-1382. STATE v. HEPPERLE.**

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge. **DECISION OF COURT OF APPEALS VACATED; JUDGMENT OF DISTRICT COURT AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Snell and Ternus, JJ. Opinion by McGiverin, C.J. (13 pages \$5.20)

Defendant Kenneth Hepperle appeals his conviction of assault with intent to commit sexual abuse with no injury resulting. Hepperle asserts that the crime of which he was convicted was improperly submitted to the jury as an included offense in the original charge of second-degree sexual abuse. In the alternative, he contends his trial attorney rendered ineffective assistance of counsel by failing to properly object to that submission. The court of appeals reversed Hepperle's conviction and remanded the case with directions to dismiss all charges against him. We granted further review. **OPINION HOLDS:** I. Hepperle's general objections to the instructions on lesser included offenses failed to preserve error on his present claim. II. We do not fault Hepperle's trial attorney for failing to predict our later ruling that assault with intent to commit sexual abuse is not a lesser included offense of second-degree sexual abuse of a child. Counsel did not render ineffective assistance. III. The trial court's instruction on assault with intent to commit sexual abuse became the law of this case, and the court was vested with authority to render judgment on Hepperle's conviction of this offense. We vacate the decision of the court of appeals and affirm the district court judgment.

**No. 94-386. STATE v. COOK.**

Appeal from the Iowa District Court for Webster County, Fredrick E. Breen, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Snell, and Ternus, JJ. Opinion by McGiverin, C.J. (10 pages \$4.00)

Cook appeals from his conviction for possession of methamphetamine. He contends the district court erred in denying his motion to suppress drugs allegedly found during an impermissible search. The drugs were seized after a trooper searched Cook incident to giving him a citation for failure to wear a safety belt. **OPINION HOLDS:** Iowa Code section 805.1(4) has extended the broad search incident to arrest exception by creating a search incident to issuance of a citation exception to the search warrant requirement. Therefore the search in this case needed no further justification than issuance of the citation.



**No. 94-17. SQUEALER FEEDS v. PICKERING.**

Appeal from the Iowa District Court for Polk County, George Bergeson, Judge. **REVERSED AND REMANDED.** Considered en banc. Opinion by Ternus, J. (22 pages \$8.80)

Workers' compensation claimant, Robert Pickering, seeks penalty benefits from his employer's insurer, Liberty Mutual Insurance Company. He wants to examine the insurer's entire claim file. Liberty Mutual has produced all documents prepared up to and including the date it denied Pickering's claim for workers' compensation benefits. It resists discovery of that portion of its file postdating the denial. Liberty Mutual contends that those materials are irrelevant and are protected by the work product doctrine and the attorney-client privilege. Pickering says that the file is relevant and is discoverable under Iowa Rule of Civil Procedure 125(a)(1)(C), allowing discovery of an expert's opinions and facts known to the expert, because Liberty Mutual designated its prior attorney, Greg Egbers, as an expert witness. The deputy industrial commissioner ordered Liberty Mutual to produce its entire file. The industrial commissioner and the district court rejected the insurer's request for review on the basis that the appeal was interlocutory. **OPINION HOLDS:** I. Under the specific facts of this case, the district court erred in refusing to review the deputy industrial commissioner's interlocutory order. II. The deputy industrial commissioner abused his discretion in ordering the production of Liberty Mutual's entire file prepared after Pickering's claim was denied. Any documents in the file prepared after the claim for penalty benefits was filed need not be produced, unless relevant and discoverable under rule 125(a). III. The deputy also abused his discretion in allowing discovery of documents compiled after Pickering's claim for workers' compensation benefits was denied without a showing of substantial need and undue hardship as required by rule 122(c). IV. Liberty Mutual impliedly waived the attorney-client privilege as to Egbers (its prior attorney) by designating him as an expert witness. However, the deputy industrial commissioner abused his discretion in concluding that this waiver made Liberty Mutual's entire file subject to discovery. On remand, the deputy industrial commissioner should review Liberty Mutual's claim file to decide whether any of the documents (1) contain Egbers' mental impressions or opinions concerning the reasonableness of Liberty Mutual's denial or (2) contain facts made known to Egbers that relate to the reasonableness of the denial. Any such documents must be produced. However, rule 125(a) does not require the production of that part of a document that contains information that does not fall within those two categories. That material may be redacted.

No. 94-601. **WIEBENGA v. IOWA DEPARTMENT OF TRANSPORTATION.**

Appeal from the Iowa District Court for Jones County, Larry J. Conmey, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Harris, Larson, Snell, and Ternus, JJ. Opinion by Ternus, J. (6 pages \$2.40)

Steven Wiebenga was arrested and charged with operating a motor vehicle while intoxicated under Iowa Code section 321J.2 (1993). At the time of his arrest, Wiebenga was operating a commercial motor vehicle and had a valid license to do so. Wiebenga consented to take a breath test which showed an alcohol concentration of 0.141. Because this result was more than the 0.04 level that triggers disqualification for a commercial motor vehicle license under Iowa Code section 321.208, the arresting officer immediately took possession of Wiebenga's commercial license. The district court dismissed the criminal OWI action against Wiebenga, concluding the arresting officer did not have reasonable grounds to believe a violation of section 321J.2 had occurred. After these events, the Iowa Department of Transportation used the breath test results to disqualify Wiebenga from operating a commercial motor vehicle for one year. Based on the criminal dismissal, Wiebenga petitioned the Department under section 321J.13(4) to reopen his disqualification proceeding and rescind the commercial license disqualification. The Department denied Wiebenga's request. On judicial review, the district court reversed and ordered that the Department rescind its disqualification decision. The Department appeals. **OPINION HOLDS:** We think two conditions are required before section 321J.13(4) applies. First a person's motor vehicle license must be revoked under section 321J.9 or 321J.12 and second, the criminal action filed as a result of the same circumstances must result in a decision that the chemical test for blood alcohol was inadmissible or invalid. Here, Wiebenga's commercial license was revoked under section 321.208. Thus, Wiebenga does not satisfy the first requirement of section 321J.13(4), and the statute allowing reopening of a revocation hearing does not apply. The Department was correct in its interpretation of section 321J.13(4). Therefore, we reverse and remand with directions to the district court to enter an order reinstating Wiebenga's revocation.



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