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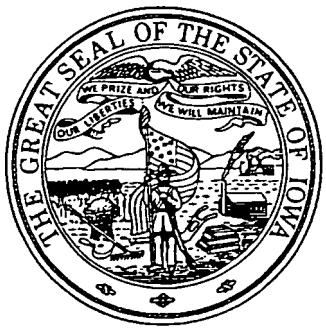

IOWA ADMINISTRATIVE BULLETIN

Published Biweekly VOLUME XVIII NUMBER 3
August 2, 1995 Pages 117 to 204

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PREFACE

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

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

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

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

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

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

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

SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

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

First quarter	July 1, 1995, to June 30, 1996	$228.00 plus $11.40 sales tax
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Iowa Administrative Code

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

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

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(Price includes 22 volumes of rules and index, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin. **Additional** or replacement **binders** can be purchased for $9.50 plus $0.48 tax.)

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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

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
5	**Friday, August 11, 1995**	**August 30, 1995**
6	**Friday, August 25, 1995**	**September 13, 1995**
7	**Friday, September 8, 1995**	**September 27, 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:

1. We use a Windows environment with Lotus Ami Professional 3.1 as our word processing system and can import directly from any of the following:

Ami Pro	Microsoft Word	SmartWare
Ami Pro Macro	Microsoft Word for Windows	SuperCalc
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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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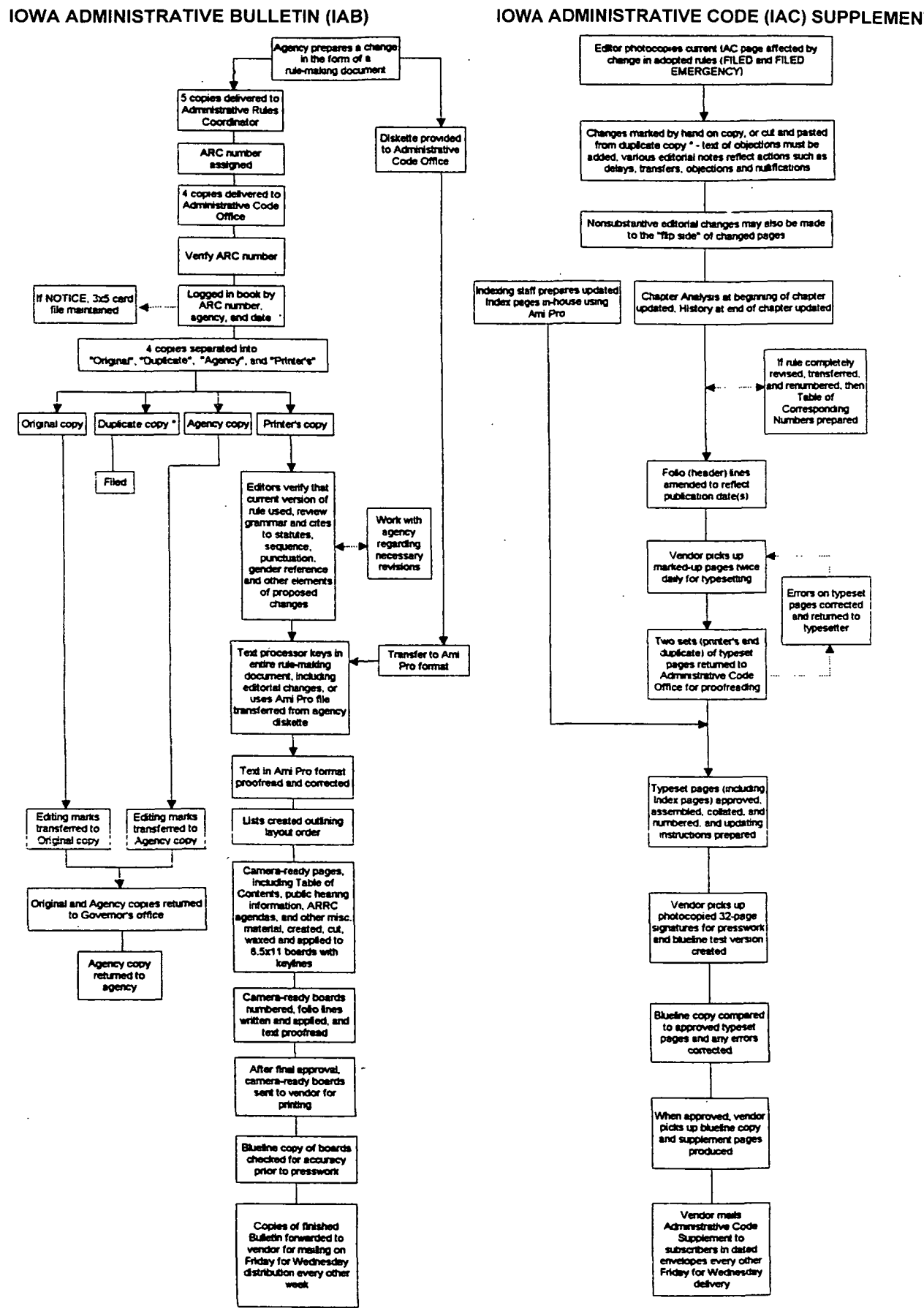
4. **Deliver this diskette to the Administrative Code Division, 4th Floor, Lucas Building, when documents are submitted to the Governor's Administrative Rules Coordinator.**

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

Your cooperation helps us to print the Bulletin more quickly and cost-effectively than was previously possible and is greatly appreciated.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The Administrative Rules Review Committee will hold a special meeting on Tuesday, August 15, 1995, at 10 a.m. and Wednesday, August 16, 1995, at 9 a.m. in Senate Committee Room 22, State Capitol. This meeting will be in lieu of the regular, statutory date. The following rules will be reviewed:

NOTE: See also Agenda published in the July 19, 1995, Iowa Administrative Bulletin.

Bulletin

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
Pesticides, wood-destroying insects, 45.1(1), 45.22(2)"d," Notice **ARC 5758A** 8/2/95
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CORRECTIONS DEPARTMENT[201]
Inmate telephone commissions, 20.20, Notice **ARC 5773A**, also Filed Emergency **ARC 5774A** 8/2/95

EDUCATION DEPARTMENT[281]
Community colleges — apprenticeship program, 21.72 to 21.74, Filed **ARC 5748A** 8/2/95

HUMAN SERVICES DEPARTMENT[441]
FIP eligibility — paternity, 41.8(1)"a"(2), 41.28(1)"a"(2), Filed **ARC 5753A** 8/2/95
HCBS ill and handicapped, elderly, MR and AIDS/HIV waiver programs, 77.30, 77.30(3), 77.30(4), 77.30(6), 77.33, 77.33(4), 77.33(8)"f" and "g," 77.34, 77.34(6), 78.34, 78.34(1), 78.34(4), 78.34(5)"c" and "d," 78.34(6), 78.37, 78.37(1), 78.37(8), 78.38, 78.38(1), 78.38(2), 78.38(4), 78.38(6), 79.1(2), 79.14(1)"e," "f" and "g," ch 83 preamble, ch 83 division I title, 83.1, 83.2(1)"a" and "e," 83.2(2)"a," 83.3(1) to 83.3(4), 83.4 to 83.7, 83.10, ch 83 division II title, 83.22(2)"a," 83.23(1), 83.23(2), ch 83 division III title, 83.41, 83.42(1)"f," 83.42(2)"a," 83.43(1) to 83.43(3), 83.43(4)"a," "b" and "d," 83.44 to 83.47, Notice **ARC 5751A** 8/2/95
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INDUSTRIAL SERVICES DIVISION[343]
EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"
Payroll tax tables, 8.8, Filed Emergency **ARC 5747A** 8/2/95

LABOR SERVICES DIVISION[347]
EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"
General industry — occupational exposure to asbestos, 10.20, Filed Emergency After Notice **ARC 5776A** 8/2/95
Construction — occupational exposure to asbestos, 26.1, Filed Emergency After Notice **ARC 5777A** 8/2/95

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]
Professional Licensing and Regulation Division[193]
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Handicapped parking, 18.3(4), 18.5, Notice **ARC 5749A** 8/2/95

REVENUE AND FINANCE DEPARTMENT[701]

Taxation of compensation of nonresident professional athletic team member, 40.46, 45.4, 46.1(1)"g," 48.1 to 48.4, 48.6, 48.7, Filed **ARC 5772A** 8/2/95

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, 1999.**

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Algona, Iowa 50511

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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
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]		
Wood-destroying insects, 45.1(1), 45.22(2)"d" IAB 8/2/95 **ARC 5758A**	Conference Room — 1st Floor Wallace State Office Bldg. Des Moines, Iowa	August 22, 1995 1:30 p.m.
Pesticide application, 45.50 IAB 8/2/95 **ARC 5759A**	Conference Room — 1st Floor Wallace State Office Bldg. Des Moines, Iowa	August 22, 1995 10 a.m.
BANKING DIVISION[187]		
General definition of bank, 8.9 IAB 7/19/95 **ARC 5740A**	Conference Room Suite 300 200 E. Grand Ave. Des Moines, Iowa	August 8, 1995 2 p.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
High technology apprenticeship program, 17.2 to 17.7 IAB 7/19/95 **ARC 5731A**	Workforce Development Administrative Center Room 136 150 Des Moines St. Des Moines, Iowa	November 20, 1995 1:30 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Emissions from air contaminant sources, 22.9 IAB 7/19/95 **ARC 5746A**	Conference Room — 5th Floor West Half Henry A. Wallace Bldg. Des Moines, Iowa	August 18, 1995 10 a.m.
HUMAN SERVICES DEPARTMENT[441]		
Shelter care, 156.11 IAB 8/2/95 **ARC 5756A** (See also **ARC 5757A** herein)	Conference Room 100 City View Plaza 1200 University Des Moines, Iowa	August 23, 1995 1 p.m.
NATURAL RESOURCE COMMISSION[571]		
Canada goose hunting, 91.5 IAB 7/5/95 **ARC 5715A**	Lost Island Prairie Wetland Nature Center Palo Alto County Conservation Board Headquarters Ruthven, Iowa	August 16, 1995 7 p.m.
PETROLEUM UST FUND BOARD, IOWA COMPREHENSIVE[591]		
Financial responsibility coverage, 10.1(2)"i," 10.1(6) IAB 7/19/95 **ARC 5737A** (See also **ARC 5738A**)	Conference Room — 6th Floor Lucas State Office Bldg. Des Moines, Iowa	August 8, 1995 10 a.m.
PROFESSIONAL LICENSURE DIVISION[645]		
Chiropractic examiners, 40.62, 40.70(2)"b," 40.73(1)"d" IAB 7/19/95 **ARC 5743A**	Conference Room Fourth Floor, Side 1 Lucas State Office Bldg. Des Moines, Iowa	August 8, 1995 9 to 11 a.m.

PROFESSIONAL LICENSURE DIVISION[645](*cont'd*)

Athletic trainers, chs 350, 355 to 358 IAB 8/2/95 **ARC 5770A**	Conference Room Fourth Floor, Side 1 Lucas State Office Bldg. Des Moines, Iowa	August 22, 1995 9 to 11 a.m.

PUBLIC HEALTH DEPARTMENT[641]

State plumbing code, ch 25 IAB 7/19/95 **ARC 5741A**	Conference Room — 4th Floor Lucas State Office Bldg. Des Moines, Iowa	August 9, 1995 1 p.m.
Birth certificates, 95.5, 95.8, 96.6 IAB 8/2/95 **ARC 5766A**	Conference Room Fourth Floor West Lucas State Office Bldg. Des Moines, Iowa	August 22, 1995 3 p.m.
Basic emergency medical care, rescind ch 131 IAB 8/2/95 **ARC 5762A**	Conference Room Side 2, Fourth Floor Lucas State Office Bldg. Des Moines, Iowa	August 22, 1995 1 p.m.
Advanced emergency medical care, amendments to ch 132 IAB 8/2/95 **ARC 5763A**	Conference Room — 4th Floor Lucas State Office Bldg. Des Moines, Iowa	August 22, 1995 1 p.m.
White flashing light authorization, 133.1, 133.3 to 133.5 IAB 8/2/95 **ARC 5764A**	Conference Room — 4th Floor Lucas State Office Bldg. Des Moines, Iowa	August 22, 1995 1 p.m.

PUBLIC SAFETY DEPARTMENT[661]

State fire marshal — flammable liquids, amendments to ch 5 IAB 8/2/95 **ARC 5775A**	Conference Room — 3rd Floor West Half Wallace State Office Bldg. Des Moines, Iowa	August 23, 1995 1:45 p.m.
Fingerprints of juvenile criminal suspects, 11.11, 11.19 IAB 8/2/95 **ARC 5750A**	Conference Room — 3rd Floor West Half Wallace State Office Bldg. Des Moines, Iowa	August 23, 1995 2 p.m.
Handicapped parking, 18.3(4), 18.5 IAB 8/2/95 **ARC 5749A**	Conference Room — 3rd Floor East Half Wallace State Office Bldg. Des Moines, Iowa	August 23, 1995 1:15 p.m.

SECRETARY OF STATE[721]

Election forms, 4.3 IAB 7/19/95 **ARC 5744A**	Secretary of State — 2nd Floor Hoover State Office Bldg. Des Moines, Iowa	August 8, 1995 1:30 p.m.

UTILITIES DIVISION[199]

Quality of service — telephone, 22.1(3), 22.3(1), 22.6 IAB 7/5/95 **ARC 5703A**	Hearing Room — 1st Floor Lucas State Office Bldg. Des Moines, Iowa	August 15, 1995 10 a.m.

Guide to Rule Making, June 1995 Edition, available upon request to the Iowa Administrative Code Division, Lucas State Office Building, Fourth Floor, Des Moines, Iowa 50319.

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 ---AVAILABILITY OF PUBLIC FUNDS

Agency	Program	Service Delivery Area	Eligible Applicants	Services	Application Due Date	Contract Period
Public Health	Substance Abuse	Statewide	Nonprofit Volunteer community organizations	Community substance abuse prevention services	9-15-95	10-1-95 to 6-30-96

Application forms may be obtained by contacting:

Allen Vander Linden
Contracts Administrator
Iowa Department of Public Health
Division of Substance Abuse and Health Promotion
Lucas State Office Building
Des Moines, Iowa 50319-0075
(515) 281-4636

ARC 5758A

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 189.2(2), 206.19(2), and 206.31(2), the Iowa Department of Agriculture and Land Stewardship gives Notice of Intended Action to amend Chapter 45, "Pesticides," Iowa Administrative Code.

Iowa Code section 206.19(2) authorizes the Department to determine the proper use of pesticides including, but not limited to, their formulations, times and methods of application, and other conditions of use. Iowa Code section 206.31(2) authorizes the Secretary of Agriculture to determine additional restrictions for pesticides applied for structural pest control purposes.

The amendments are intended to implement these provisions by providing minimum standards for persons performing inspections to determine the presence of wood-destroying insects.

Any interested person may submit written suggestions or comments on these amendments and the issues raised in this Notice of Intended Action. Such written material shall be directed to the Pesticide Bureau, Iowa Department of Agriculture and Land Stewardship, Henry A. Wallace Building, Des Moines, Iowa 50319-0051, and shall be mailed no later than August 31, 1995.

A public hearing will be held on August 22, 1995, at 1:30 p.m. in the First Floor Conference Room of the Henry A. Wallace Building, at which time persons may present their views either orally or in writing.

These amendments may have an impact on small business within the meaning of Iowa Code section 17A.31(3).

These amendments are intended to implement Iowa Code sections 206.19(2) and 206.31(2).

The following amendments are proposed.

ITEM 1. Amend subrule **45.1(1)** by adding in alphabetical sequence the following new definition:

"Wood-destroying insect" means subterranean termites, carpenter ants, and powder-post beetles.

ITEM 2. Amend subrule **45.22(2)** by adding a new paragraph "**d**" as follows:

d. Wood-destroying insect inspection. Persons conducting wood-destroying insect inspections for the purpose of issuing a wood-destroying insect report for real estate transactions, real estate refinance transactions, or for treatment for control or prevention of wood-destroying insect infestations shall have in effect a valid Iowa commercial pesticide applicator license and certification in category 7b—Termite Control.

ARC 5759A

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 159.5(11), 189.2(2), and 206.19(3), the Iowa Department of Agriculture and Land Stewardship gives Notice of Intended Action to amend Chapter 45, "Pesticides," Iowa Administrative Code.

1995 Iowa Acts, Senate File 256, mandates the Iowa Department of Agriculture and Land Stewardship adopt rules providing that a commercial or public pesticide applicator provide notice only if an occupant requests prior notice in writing and lists the day and evening telephone numbers along with the address of each property adjoining the occupant's property. The notification shall expire on December 31 of each year or the date when the occupant vacates the property, whichever is earlier. These amendments implement these provisions by outlining the procedures for an occupant requesting prior notification and an applicator providing prior notification.

Any interested person may submit written suggestions or comments on these amendments. Such written material shall be directed to the Pesticide Bureau, Iowa Department of Agriculture and Land Stewardship, Henry A. Wallace Building, Des Moines, Iowa 50319-0051, and shall be mailed no later than August 31, 1995.

A public hearing will be held on August 22, 1995, at 10 a.m. in the First Floor Conference Room of the Henry A. Wallace Building at which time persons may present their views either orally or in writing.

These amendments may have an impact on small business within the meaning of Iowa Code section 17A.31(3).

These amendments are intended to implement Iowa Code sections 206.19(3) and 1995 Iowa Acts, Senate File 256.

The following amendments are proposed.

Rescind paragraphs **45.50(7)"c"** and "**d**" and adopt the following new subrules in lieu thereof:

45.50(8) Prior notification of pesticide application to lawns, parks, playgrounds and athletic fields located in urban areas.

a. An occupant of a property adjoining property where pesticides are applied by a commercial or public applicator may receive prior notification of a pesticide application by personally contacting the applicator in writing in a timely manner and providing the following information:

(1) Name and address of occupant.

(2) A telephone number of a location where occupant may be contacted during normal business hours and evening hours.

(3) Address of each property that adjoins occupant's property.

b. The applicator receiving a written request for prior notification shall provide notice at least the calendar day before a scheduled application to property adjoining the occupant's property. The notice may be made in writing, in person or by telephone and shall disclose the date and approximate time of day for the scheduled application. If the notice to the occupant is in a form other than writing the applicator shall document that notice was given and maintain a record of that notice at its place of business.

c. When an applicator is not successful in contacting an occupant of an adjoining property as provided in paragraph "b" of this subrule, the applicator shall, at least the calendar day before a scheduled application, leave a written notice at the residence of the person requesting prior notification indicating the date and approximate time of day for the scheduled application.

d. A request for prior notification shall expire on December 31 of each year, or the date when the occupant no longer occupies the property, whichever is earlier.

45.50(9) Prior notification of pesticide application to golf courses.

a. An occupant of a property adjoining a golf course may receive prior notice of an application by contacting the golf course superintendent or other responsible person in a timely manner and providing the following information:

(1) Name and address of occupant.

(2) Telephone number of a location where the occupant may be contacted during normal business hours and evening hours.

b. A golf course representative receiving a request for prior notification shall provide notice at least the day before the scheduled application. The notice may be made in writing, in person or by telephone and shall disclose the date and approximate time of day for the scheduled application.

c. When a golf course representative is not successful in contacting an occupant of an adjoining property the day before a scheduled application, the representative shall leave a written notice at the residence of the person requesting prior notification which shall disclose the date and approximate time of day for the scheduled application.

d. A request for prior notification shall expire on December 31 of each year, or the date when the occupant no longer occupies the property, whichever is earlier.

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:

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%
June 1, 1995 — June 30, 1995	7.50%
July 1, 1995 — July 31, 1995	7.45%

ARC 5773A

CORRECTIONS DEPARTMENT[201]

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 904.108, the Department of Corrections hereby proposes to amend Chapter 20, "Institutions Administration," Iowa Administrative Code.

1995 Iowa Acts, Senate File 459, section 27, requires the Department of Corrections to establish a fund at each institution for the deposit of commissions received as a result of the inmate telephone system. Expenditures from these funds will be for the benefit of inmates.

This new rule 201—20.20(904) was approved by the Corrections Board at the regular meeting of the Board on July 7, 1995.

Written comments may be submitted to the Director on or before August 22, 1995, at 523 East 12th Street, Des Moines, Iowa 50319.

This rule was also Adopted and Filed Emergency and is published herein as **ARC 5774A**.

This new rule is intended to implement 1995 Iowa Acts, Senate File 459, section 27.

ARC 5751A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 83, "Medicaid Waiver Services," appearing in the Iowa Administrative Code.

These amendments provide the following changes to the Home- and Community-Based Service (HCBS) ill and handicapped, elderly, MR and AIDS/HIV waiver programs:

- The list of eligible adult day care providers for the ill and handicapped waiver is expanded.
- The definition of a unit of adult day care for the elderly waiver program is modified and the payment cap is increased.
- Nursing and counseling services and providers are added to the ill and handicapped waiver.
- Home-delivered meal services and providers are added to the AIDS/HIV waiver.
- The unit of nursing service is changed from 15 minutes to a visit and the unit of home health aide service is changed from one hour to a visit for the AIDS/HIV waiver.
- The Medicare percentage rate was added as the basis of payment for services which have a Medicare payment base for the ill and handicapped and AIDS/HIV waivers.
- "Financial participation" was added to the definitions for the ill and handicapped and AIDS/HIV waivers.
- A separate service application is no longer required for the waivers.
- The ill and handicapped waiver is changed from a model waiver to a regular waiver, removing the limit of 200 clients at any one time. Therefore, policy on waiting lists is removed.
- The eligibility criteria for the ill and handicapped waiver is expanded to allow the waiver to serve persons aged 65 and over who reside in counties that are not served by the elderly waiver.
- Applications for the ill and handicapped and AIDS/HIV waivers are required to be processed in 30 to 90 days unless certain specified conditions exist.
- The effective date for eligibility for the ill and handicapped and AIDS/HIV waivers is clarified. Eligibility exists when a client is income- and resource-eligible, a level of care determination has been made, and a service plan is completed. For clients in the 300 percent eligible group, eligibility begins when these conditions are met, but not before the first of the month following the date of application.
- The case plan for children on the ill and handicapped waiver is made consistent with the MR waiver which requires annual case plans with more frequent revisions to the case plan when there are significant changes in the client's condition or situation.
- Criteria for determining need for service are specified.
- An upper rate limit is provided for homemaker hourly respite providers for the ill and handicapped and AIDS/HIV waivers, an upper limit is provided for adult day care for the ill and handicapped waiver, and the upper limit is increased for HCBS MR hour respite providers for the MR, ill and handicapped, elderly, and AIDS/HIV waivers.

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 August 23, 1995.

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

The following amendments are proposed.

ITEM 1. Amend rule **441—77.30(249A)** as follows:

Amend the introductory paragraph as follows:

441—77.30(249A) ~~Ill~~ *HCBS ill* and handicapped waiver service providers. The following ~~model~~ *HCBS ill and handicapped* waiver service providers shall be eligible to participate in the Medicaid program provided that they meet the standards set forth below:

Amend subrule 77.30(3) as follows:

77.30(3) Adult day care providers. Adult day care providers shall meet ~~the standards set forth in rule 441—171.5(234) and shall have a purchase of service contract.~~ *one of the following conditions:*

a. The provider shall have a contract with the veterans administration to provide adult day health care.

b. The provider shall meet one of the following sets of standards individually or as an integral service provided by an organization:

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

(2) Standards of the Commission on Accreditation of Health Care Organizations.

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

(4) Standards set forth in department of elder affairs rules 321—24.1(231) to 321—24.8(231).

Add the following **new** subrules 77.30(4) and 77.30(6):

77.30(4) Nursing care providers. Nursing care providers shall be agencies which are certified to participate in the Medicare program as home health agencies.

77.30(6) Counseling providers. Counseling providers shall be:

a. Agencies which are certified under the community mental health center standards established by the mental health and developmental disabilities commission, set forth in 441—Chapter 24, Divisions I and III.

b. Agencies which are licensed as meeting the hospice standards and requirements set forth in department of inspection and appeals rules 481—Chapter 53 or which are certified to meet the standards under the Medicare program for hospice programs.

c. Agencies which are accredited under the mental health service provider standards established by the mental health and developmental disabilities commission, set forth in 441—Chapter 24, Divisions I and IV.

ITEM 2. Amend rule 441—77.33(249A) as follows:
Amend the introductory paragraph as follows:

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

Amend subrule 77.33(4) as follows:

77.33(4) Homemaker providers. Homemaker providers shall be agencies which meet the *home care* standards and requirements set forth in department of public health rules 641—80.5(135), ~~and~~ 641—80.6(135), *and 641—80.7(135)* or which are certified as a home health agency under Medicare.

Amend subrule **77.33(8)**, paragraph "**f**," as follows:

f. Home health aide providers meeting the standards set forth in subrule 77.33(3). ~~Home health aide providers contracting with the department of public health shall be considered to have met these standards.~~

Further amend subrule **77.33(8)** by adding the following **new** paragraph "**g**":

g. Home care providers meeting the standards set forth in subrule 77.33(4).

ITEM 3. Amend rule 441—77.34(249A) as follows:
Amend the introductory paragraph as follows:

441—77.34(249A) *HCBS* AIDS/HIV waiver service providers. The following *HCBS* AIDS/HIV waiver service providers shall be eligible to participate in the Medicaid program provided that they meet the standards set forth below:

Add the following **new** subrule 77.34(6):

77.34(6) Home-delivered meals. The following providers may provide home-delivered meals:

a. Home health aide providers meeting the standards set forth in subrule 77.34(2).

b. Home care providers meeting the standards set forth in subrule 77.34(3).

c. Hospitals enrolled as Medicaid providers.

d. Nursing facilities licensed pursuant to Iowa Code chapter 135C.

e. Restaurants licensed and inspected under Iowa Code chapter 137B.

f. Community action agencies as designated in Iowa Code section 216A.93. Home-delivered meals providers subcontracting with community action agencies or with letters of approval from the community action agencies stating the organization is qualified to provide home-delivered meals services may also provide home-delivered meals services.

g. Area agencies on aging as designated in 321—4.4(231). Home-delivered meals providers subcontracting with area agencies on aging or with letters of approval from the area agencies on aging stating the organization is qualified to provide home-delivered meals services may also provide home-delivered meals services.

ITEM 4. Amend rule 441—78.34(249A) as follows:
Amend the introductory paragraph as follows:

441—78.34(249A) ~~Ill~~ *HCBS ill* and handicapped waiver services. Payment will be approved for the following services to clients eligible for ~~model~~ *HCBS ill and handicapped* waiver services as established in 441—Chapter 83. Services must be billed in whole units.

Amend subrule 78.34(1), introductory paragraph, as follows:

78.34(1) Homemaker services. Homemaker services are those *environmental* services provided when the client lives alone or when the person who usually performs these functions for the client needs assistance with performing the functions. *Homemaker service is not a hands-on personal care service and does not include personal supervision.* A unit of service is one hour. Components of the service are directly related to the care of the client and include:

Add the following **new** subrule 78.34(4):

78.34(4) Nursing care services. Nursing care services are services provided by licensed agency nurses to clients in the home which are ordered by and included in the plan of treatment established by the physician. The services shall be reasonable and necessary to the treatment of an illness or injury and include: observation; evaluation; teaching; training; supervision; therapeutic exercise; bowel and bladder care; administration of medications; intravenous, hypodermoclysis, and enteral feedings; skin care; preparation of clinical and progress notes; coordination of services; and informing the physician and other personnel of changes in the patient's conditions and needs. A unit of service is a visit.

Amend subrule **78.34(5)**, paragraphs "**c**" and "**d**," as follows:

c. A unit of service is either one 24-hour day for out-of-home respite care provided by a facility *or camp*, one 4- to 8-hour day for in-home respite care provided by a home health aid agency, or one hour for respite care provided by an HCBS/MR waiver provider, *homemaker agency, or day camp*.

d. Respite care is not to be provided *to persons aged 17 or under* during the hours in which the usual caregiver is employed except when the provider is a camp *providing a 24-hour service*.

Add the following **new** subrule 78.34(6):

78.34(6) Counseling services. Counseling services are face-to-face mental health services provided to the client and caregiver by a mental health professional as defined in rule 441—24.61(225C,230A) to facilitate home management of the client and prevent institutionalization. Counseling services are nonpsychiatric services necessary for the management of depression, assistance with the grief process, alleviation of psychosocial isolation and support in coping with a disability or illness, including terminal illness. Counseling services may be provided both for the purpose of training the client's family or other caregiver to provide care, and for the purpose of helping the client and those caring for the client to adjust to the client's disability or terminal condition. Counseling services may be provided to the client's caregiver only when included in the case plan for the client.

Payment will be made for individual and group counseling. A unit of individual counseling for the waiver client or the waiver client and the client's caregiver is 15 minutes. A unit of group counseling is one hour. Payment for group counseling is based on the group rate divided by six, or, if the number of persons who comprise the group exceeds six, the actual number of persons who comprise the group.

ITEM 5. Amend rule 441—78.37(249A) as follows:
Amend the introductory paragraph as follows:

441—78.37(249A) ~~Elderly~~ *HCBS elderly* waiver services. Payment will be approved for the following services to clients eligible for the *HCBS* elderly waiver services as

established in 441—Chapter 83. Services must be billed in whole units.

Amend subrules 78.37(1) and 78.37(8) as follows:

78.37(1) Adult day care services. Adult day care services provide an organized program of supportive care in a group environment to persons who need a degree of supervision and assistance on a regular or intermittent basis in a day care center. A unit of service is a *half day (1 to 4 hours), a* full day (~~six or more~~ *4 to 8* hours), or ~~a half~~ *an extended* day (~~three through five~~ *8 to 12* hours). Components of the service are set forth in rule 441—171.6(234) or as indicated in the Iowa department of elder affairs Annual Service and Fiscal Reporting Manual.

78.37(8) Home-delivered meals. Home-delivered meals means meals prepared elsewhere and delivered to a waiver recipient at the recipient's residence. Each meal shall ensure the recipient receives a minimum of one-third of the ~~required~~ daily *recommended dietary* allowance ~~needed in a day~~ *as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences*. The meal may also be a liquid supplement which meets the minimum one-third standard. A maximum of 14 meals is allowed per week. A unit of service is a meal.

ITEM 6. Amend rule 441—78.38(249A) as follows:

Amend the introductory paragraph as follows:

441—78.38(249A) ***HCBS*** **AIDS/HIV waiver services.** Payment will be approved for the following services to clients eligible for the *HCBS* AIDS/HIV waiver services as established in 441—Chapter 83. Services must be billed in whole units.

Amend subrule 78.38(1) as follows:

78.38(1) Counseling services. Counseling services are face-to-face mental health services provided to the client and caregiver by a mental health professional as defined in rule 441—24.61(225C,230A) to facilitate home management of the client and prevent institutionalization. Counseling services are nonpsychiatric services necessary for the management of depression, assistance with the grief process, alleviation of psychosocial isolation and support in coping with a *disability or illness, including* terminal illness. *Counseling services may be provided both for the purpose of training the client's family or other caregiver to provide care, and for the purpose of helping the client and those caring for the client to adjust to the client's disability or terminal condition.* Counseling services may be provided to the ~~recipient's~~ *client's* caregiver only when included ~~as part of a counseling session~~ *in the case plan* for the ~~recipient~~ *client*.

Payment will be made for individual and group counseling. A unit of individual counseling for the waiver ~~recipient~~ *client* or the waiver ~~recipient~~ *client* and the ~~recipient's~~ *client's* caregiver is 15 minutes. A unit of group counseling is one hour. Payment for group counseling is based on the *group rate divided by six, or, if the number of persons who comprise the group exceeds six, the* actual number of persons who comprise the group~~, but not less than six~~.

Amend subrule 78.38(2), introductory paragraph, as follows:

78.38(2) Home health aide services. Home health aide services are personal or direct care services provided to the client which are not payable under Medicaid as set forth in rule 441—78.9(249A). A unit of service is ~~one hour~~ *a visit*. Components of the service are:

Amend subrule 78.38(4)as follows:

78.38(4) Nursing care services. Nursing care services are services provided by licensed agency nurses to clients in the home which are ordered by and included in the plan of treatment established by the physician. The services ~~are~~ *shall be* reasonable and necessary to the treatment of an illness or injury and include: observation; evaluation; teaching; training; supervision; therapeutic exercise; bowel and bladder care; administration of medications; intravenous and enteral feedings; skin care; preparation of clinical and progress notes; coordination of services; and informing the physician and other personnel of changes in the patient's conditions and needs. A unit of service is ~~15 minutes~~ *a visit*.

Add the following **new** subrule 78.38(6):

78.38(6) Home-delivered meals. Home-delivered meals means meals prepared elsewhere and delivered to a waiver recipient at the recipient's residence. Each meal shall ensure the recipient receives a minimum of one-third of the daily recommended dietary allowance as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences. The meal may also be a liquid supplement which meets the minimum one-third standard. A maximum of 14 meals is allowed per week. A unit of service is a meal.

ITEM 7. Amend subrule **79.1(2)** as follows:

Amend the provider category of AIDS/HIV waiver service providers as follows:

Provider category	Basis of reimbursement	Upper limit
HCBS AIDS/HIV waiver service providers, including:		
1. Counseling		
Individual:	Fee schedule	$9.80 per unit
Group	Fee schedule	$39.20 per hour
2. Home health aide	~~Retrospective cost related~~ *Agency's financial and statistical cost report and Medicare percentage rate per visit*	~~Maximum~~ *Cannot exceed* Medicare *percentage* rate *per visit*
3. Homemaker	Fee schedule	$18 per hour
4. Nursing care	~~Fee schedule~~ *Agency's financial and statistical cost report and Medicare percentage rate per visit*	~~$9 per unit~~ *Cannot exceed $72.80 per visit*
5. Respite care		
In-home:		
Home health aide	Fee schedule	$104 per day
Out-of-home:		
Nursing facility	Prospective reimbursement	Limit for *nursing facility* level of care
Hospital or skilled nursing facility	*Prospective reimbursement*	*Limit for skilled nursing facility level of care*
Hourly rate providers		
(HCBS/MR waiver providers)	Fee schedule See 79.1(5)	~~$9.27~~ *$12* per hour
Homemaker	*Fee schedule*	*$12 per hour*
6. *Home-delivered meal providers*	*Fee schedule*	*$7 per meal. Maximum of 14 meals per week*

Amend the provider category of elderly waiver service providers, catchwords and adult day care providers, as follows:

Provider category	Basis of reimbursement	Upper limit
~~Elderly~~ *HCBS elderly* waiver service providers, including:		

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

1. Adult day care	Prospective reimbursement for P.O.S. providers. Fee schedule for others.	P.O.S. contract rate or veterans administration contract rate or *$20 per half day,* ~~$31.20~~ *$40* per full day, or ~~$26 per half~~ *$60 per extended* day if no P.O.S. contract.

Further amend the provider category of elderly waiver service providers, respite care providers, HCBS/MR waiver providers, as follows:

(HCBS/MR waiver providers)	Fee schedule See 79.1(15)	~~$9.27~~ *$12* per hour

Amend the provider category of HCBS/MR waiver service providers, catchwords and respite providers, as follows:

HCBS/MR waiver service providers, including:		
2. Respite	Fee schedule determined by ICP and budget. See 79.1(15)	~~$9.27~~ *$12* per hour. Limit 576 units per year, 336 per month

Amend the provider category of ill and handicapped waiver service providers as follows:

Provider category	Basis of reimbursement	Upper limit
~~Ill~~ *HCBS ill* and handicapped ~~Waiver~~ *waiver* service providers, including:		
1. Homemakers	Fee schedule	$18 per hour
2. Home health aides	~~Retrospective cost-related~~ *Agency's financial and statistical cost report and Medicare percentage rate per visit*	~~Maximum~~ *Cannot exceed* Medicare *percentage* rate ~~for aide, maximum Medicare rate for nurse~~ *per visit*
3. Adult day care	Prospective reimbursement *for P.O.S. providers. Fee schedule for others.*	P.O.S. contract rate *or veterans administration contract rate or $40 per day if no P.O.S. or veterans administration contract.*
4. Respite care providers, including:		
In-home:		
~~(~~Home health aide ~~agency—in home)~~	Fee schedule	$10.04 per *4- to 8-hour* day
Out of home:		
~~(Institutional—hospital,~~ *Hospital or skilled nursing facility* ~~nursing~~ *Nursing* facility, *or* intermediate care facility for the mentally retarded— ~~out of home)~~	Prospective reimbursement *Prospective reimbursement*	Limit for *skilled nursing facility* level of care *Limit for nursing facility level of care*
~~(~~Foster group care ~~—out of home)~~	Prospective reimbursement	P.O.S. contract rate
~~(~~Foster family home ~~—out of home)~~	Fee schedule	Emergency care rate (See 156.11(2))
~~(~~Camps~~—out of home)~~	Fee schedule	$115 per day
Hourly rate provider		
(HCBS/MR waiver providers)	Fee schedule ~~See 79.1(15)~~	~~$9.27~~ *$12* per hour
Homemaker	*Fee schedule*	*$12 per hour*
Camps	*Fee schedule*	*$12 per hour*
5. Nursing	*Agency's financial and statistical cost report and Medicare percentage rate per visit*	*Cannot exceed $72.80 per visit*
6. Counseling		
Individual:	*Fee schedule*	*$9.80 per unit*
Group:	*Fee schedule*	*$39.20 per hour*

ITEM 8. Amend subrule **79.14(1)**, paragraphs "e," "f," and "g," as follows:

e. *HCBS* AIDS/HIV waiver service providers shall complete Form 470-2974, Medicaid AIDS/HIV Waiver Provider Application.

f. ~~Elderly~~ *HCBS elderly* waiver providers shall complete Form 470-2973, Medicaid Elderly Waiver Provider Application.

g. ~~Model~~ *HCBS ill and handicapped* waiver providers ~~for the ill and handicapped~~ shall complete Form 470-2975, Medicaid ~~Model~~ *Ill and Handicapped* Waiver Provider Application.

ITEM 9. Amend **441—Chapter 83**, Preamble, as follows:

PREAMBLE

Medicaid waiver services are services provided to maintain persons in their own homes or communities who would otherwise require care in medical institutions. Provision of these services must be cost-effective. Services are limited to certain *targeted* client groups for whom a federal waiver has been requested and approved. Services provided ~~by~~ *through* the waivers are not available to other Medicaid recipients as ~~they~~ *the services* are beyond the scope of the Medicaid state plan.

ITEM 10. Amend 441—Chapter 83, Division I, Title, as follows:

DIVISION I — *HCBS* ILL AND HANDICAPPED WAIVER SERVICES

ITEM 11. Amend rule **441—83.1(249A)** by adding the following new definitions in alphabetical order:

"Financial participation" means client participation and medical payments from a third party including veteran's aid and attendance.

"Intermittent homemaker service" means homemaker service provided from one to three hours a day for not more than four days per week.

"Intermittent respite service" means respite service provided from one to three times a week.

ITEM 12. Amend rule 441—83.2(249A) as follows:

Amend subrule **441—83.2(1)**, paragraph "a," as follows:

a. The person must be determined to be *one of the following:*

(1) ~~blind~~ *Blind* or disabled as determined by the receipt of social security disability benefits, or a disability determination made through the ~~bureau~~ *division* of medical services. Disability determinations are made according to supplemental security income guidelines as per Title XVI of the Social Security Act.

(2) Aged 65 or over and residing in a county that is not served by the HCBS elderly waiver.

Further amend subrule **83.2(1)** by rescinding and reserving paragraph "e."

Amend subrule **83.2(2)**, paragraph "a," as follows:

a. The ~~local~~ *county* social worker shall perform an assessment of the person's needs and determine the availability and appropriateness of services.

(1) This assessment shall be based, in part, on information in the completed Home- and Community-Based Services Assessment or Reassessment, Form SS-1644. Form SS-1644 is completed annually, or more frequently upon request or when there are changes in the client's condition.

(2) Case plans for persons aged 20 or under shall be developed or reviewed after the child's individual education plan and EPSDT plan, if applicable, are developed so as not to replace or duplicate services covered by those plans.

(3) Those case plans for persons aged 20 or under which include homemaker or respite services beyond intermittent shall not be approved until a provider has made a request to cover the service through EPSDT and shall be approved (signed and dated) by the human services area administrator.

ITEM 13. Amend rule 441—83.3(249A) as follows:

Amend subrule 83.3(1) as follows:

83.3(1) Application for ~~financial eligibility~~ *HCBS ill and handicapped waiver services*. The application process as specified in rules 441—76.1(249A) to 441—76.6(249A) shall be followed. ~~Persons who have been placed on the waiting list shall complete a new application at the time their names come up on the waiting list.~~

Rescind and reserve subrule **83.3(2)**.

Amend subrule 83.3(3) as follows:

83.3(3) Approval of application.

a. Applications for the *HCBS* ill and handicapped waiver program shall be processed in 30 days unless ~~the worker can document difficulty in locating and arranging services or circumstances beyond the worker's control.~~ *one or more of the following conditions exist:* ~~In these cases a decision shall be made as soon as possible.~~

(1) An application has been filed and is pending for federal supplemental security income benefits.

(2) The application is pending because the department has not received information which is beyond the control of the client or the department.

(3) The application is pending due to the disability determination process performed through the department.

(4) The application is pending because a level of care determination has not been made although the completed assessment, Form SS-1644, has been submitted to the Iowa foundation for medical care.

(5) The application is pending because the assessment, Form SS-1644, or the case plan has not been completed. When a determination is not completed 90 days from the date of application due to the lack of a completed assessment, Form SS-1644, or case plan, the application shall be denied. The client shall have the right to appeal.

b. Decisions shall be mailed or given to the applicant on the date when ~~both service and~~ the income maintenance eligibility *and level of care* determinations *and the client case plan* are completed.

c. A client must be given the choice between *HCBS* ill and handicapped waiver services and institutional care. The service worker shall have the client or guardian complete and sign Form 470-0660, Home and Community Based Service Report, indicating the client's choice of ~~caregiver~~ *home- and community-based services or institutional care.*

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

Amend subrule **83.3(4)** as follows:

83.3(4) Effective date of eligibility.

a. Deeming of parental *or spousal* income and resources ceases and eligibility shall be effective ~~with the month following the month in which a person requires care in a medical institution~~ *on the date the income and resource eligibility and level of care determinations and the case plan are completed, but shall not be earlier than the first of the month following the date of application.*

b. The effective date of eligibility for the ill and handicapped waiver for persons who qualify for Medicaid due to eligibility for the waiver services and to whom paragraphs "a" and "c" of this subrule do not apply is the date on which the income eligibility and level of care determinations and the case plan are completed.

c. Eligibility for persons covered under subrule 83.2(1)"c"(3) shall exist ~~after the persons require care in a medical institution for a full calendar month and shall be effective no earlier than the first day of that full calendar month~~ *on the date the income and resource eligibility and level of care determinations and case plan are completed, but shall not be earlier than the first of the month following the date of application.*

d. Eligibility continues until the recipient has been in a medical institution for 30 consecutive days for other than respite care. Recipients who are inpatients in a medical institution for 30 or more consecutive days for other than respite care shall be terminated from ~~model~~ *ill and handicapped* waiver services and reviewed for eligibility for other Medicaid coverage groups. The recipient will be notified of that decision through Form SS-1104-0, Notice of Decision. If the client returns home before the effective date of the notice of decision and the person's condition has not substantially changed, the denial may be rescinded and eligibility may continue.

ITEM 14. Amend rule 441—83.4(249A) as follows:

441—83.4(249A) ~~Client~~ ***Financial*** **participation.** ~~Persons~~ must contribute their predetermined ~~client~~ *financial* participation to the cost of ill and handicapped waiver services *or other Medicaid services, as applicable*.

83.4(1) ~~Computation of client participation~~ *Maintenance needs of the individual.* ~~Client participation~~ *The maintenance needs of the individual* shall be computed by deducting an amount ~~for the maintenance needs of the individual~~ which is 300 percent of the maximum *monthly payment for one person under supplemental security income (*SSI*)* ~~grant for an individual~~ from the client's total income.

83.4(2) Limitation on payment. If the sum of the third-party payment and client participation equals or exceeds the reimbursement established by the service worker *for ill and handicapped waiver services*, Medicaid ~~will~~ *shall* make no payments to ~~model~~ *ill and handicapped* waiver service providers. However, Medicaid ~~will~~ *shall* make payments to other medical vendors, *as applicable*.

83.4(3) Maintenance needs of spouse and other dependents. The policy for the maintenance needs of the spouse and other dependents as specified in 441—subrule 75.16(2), paragraphs "d" and "e," shall be followed.

ITEM 15. Amend rule 441—83.5(249A) as follows:

441—83.5(249A) Redetermination. A complete ~~financial~~ redetermination of eligibility for *the* ill and handicapped waiver shall be completed at least once every 12 months *or when there is significant change in the person's situation or condition.*

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

A redetermination of continuing eligibility factors shall be made ~~when a change in circumstances occurs that affects eligibility~~ in accordance with ~~rule~~ *rules 441—76.7(249A) and* 441—83.2(249A). A redetermination shall ~~contain~~ *include verification of the existence of a current case plan meeting* the ~~components~~ *requirements* listed in rule 441—83.7(249A).

ITEM 16. Amend rule 441—83.6(249A) as follows:

441—83.6(249A) Allowable services. Services allowable under the ill and handicapped waiver are homemaker services, home health services, adult day care services, ~~and~~ respite care services, *nursing services, and counseling services* as set forth in rule 441—78.34(249A).

ITEM 17. Amend rule 441—83.7(249A) as follows:

441—83.7(249A) Case plan. A case plan shall be prepared for ill and handicapped waiver clients in accordance with rule 441—130.7(234)~~.~~ *except that* ~~Case~~ *case* plans for *both children and* adults shall be completed every 12 months ~~and case plans for children shall be completed every 6 months~~ *or when there is significant change in the person's situation or condition.* In addition, the case plan shall include the frequency of the ill and handicapped waiver services and the types of providers who will deliver the services.

ITEM 18. Amend rule 441—83.10(249A) as follows:

441—83.10(249A) County reimbursement. The county board of supervisors shall reimburse the department for the state portion of the cost of ill and handicapped waiver services to persons aged 18 ~~and~~ *or* over with mental retardation or mental illness with legal settlement in the county. The county shall ~~enter into a~~ *be notified of its financial responsibility on* Medicaid Home- and Community-Based Payment ~~Agreement~~ *Notice*, Form MA-2171~~, with the department for reimbursement of services provided to persons aged 18 and over with mental retardation or mental illness~~.

ITEM 19. Amend **441—Chapter 83, Division II, Title,** as follows:

DIVISION II — *HCBS* ELDERLY WAIVER SERVICES

ITEM 20. Amend subrule **83.22(2)**, paragraph "**a,**" as follows:

a. Applicants for elderly waiver services shall have an assessment of the need for service and the availability and appropriateness of service. The tool used to complete the assessment shall be the *assessment* tool designated by the long-term care coordinating unit *established at Iowa Code section 231.58.* The assessment shall be completed by the designated case management project for the frail elderly in the community or the local service worker. The Iowa foundation for medical care shall be responsible for determining the level of care based on the completed *assessment* tool and supporting documentation as needed.

ITEM 21. Amend rule 441—83.23(249A) as follows:

Amend subrule 83.23(1), catchwords, as follows:

83.23(1) Application for ~~financial eligibility~~ *HCBS elderly waiver.*

Rescind and reserve subrule **83.23(2)**.

ITEM 22. Amend **441—Chapter 83, Division III, Title,** as follows:

DIVISION III — *HCBS* AIDS/HIV WAIVER SERVICES

ITEM 23. Amend rule **441—83.41(249A)** by adding the following **new** definition in alphabetical order:

"Financial participation" means client participation and medical payments from a third party including veteran's aid and attendance.

ITEM 24. Amend rule **441—83.42(249A)** as follows:

Amend subrule **83.42(1)** by adding the following **new** paragraph "**f**":

f. Have income which does not exceed 300 percent of the maximum monthly payment for one person under supplemental security income.

Amend subrule **83.42(2)**, paragraph "**a,**" as follows:

a. The ~~local~~ *county social* worker shall perform an assessment of the ~~applicant's~~ *person's* need for waiver services and determine the availability and appropriateness of services. *This assessment shall be based, in part, on information in the completed Home- and Community-Based Services Assessment or Reassessment, Form SS-1644. Form SS-1644 shall be completed annually.*

ITEM 25. Amend rule 441—83.43(249A) as follows:

Amend subrule 83.43(1), catchwords, as follows:

83.43(1) Application for ~~financial eligibility~~ *HCBS AIDS/HIV waiver services.*

Rescind and reserve subrule **83.43(2)**.

Amend subrule 83.43(3) as follows:

83.43(3) Approval of application.

a. Applications for the *HCBS* AIDS/HIV waiver program shall be processed in 30 days unless ~~the worker can document difficulty in locating and arranging services or circumstances beyond the worker's control.~~ *one or more of the following conditions exist:* ~~In these cases a decision shall be made as soon as possible.~~

(1) The application is pending because the department has not received information, which is beyond the control of the client or the department.

(2) The application is pending because a level of care determination has not been made or pended although the completed assessment, Form SS-1644, has been submitted to the Iowa foundation for medical care.

(3) The application is pending because the assessment, Form SS-1644, or the case plan has not been completed. When a determination is not completed 90 days from the date of application due to the lack of a completed assessment, Form SS-1644, or case plan, the application shall be denied. The client shall have the right to appeal.

b. Decisions shall be mailed or given to the applicant on the date when ~~both service and~~ income maintenance eligibility *and level of care* determinations *and the client case plan* are completed.

c. A client must be given the choice between *HCBS* AIDS/HIV waiver services and institutional care. The service worker shall have the client or *guardian* complete and sign ~~Part C of~~ Form SS-1645, Home- and Community-Based Service Report, indicating the client's choice of *home- and community-based services or institutional* care.

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

Amend subrule **83.43(4)**, paragraphs "**a**" and "**b,**" as follows:

a. The effective date of eligibility for the *AIDS/HIV* waiver for persons who are already determined eligible for Medicaid is the date on which the ~~person is deter-~~

~~mined to meet all of the criteria set forth in rule 441—83.42(249A)~~ *income and resource eligibility and level of care determinations and the case plan are completed.*

b. The effective date of eligibility for the *AIDS/HIV* waiver for persons who qualify for Medicaid due to eligibility for the waiver services ~~is the date on which the person is determined to meet all of the criteria set forth in rule 441—83.42(249A) and when the eligibility factors set forth in~~ *and to whom* subrule 75.1(7) and~~, for married persons, in~~ rule 441—75.5(249A)~~, have been satisfied~~ *do not apply is the date on which income and resource eligibility and level of care determinations and the case plan are completed.*

Further amend subrule **83.43(4)** by adding the following new paragraph "**d.**"

d. The effective date of eligibility for the AIDS/HIV waiver for persons who qualify for Medicaid due to eligibility for the waiver services and to whom the eligibility factors set forth in 441—subrule 75.1(7) and, for married persons, in rule 441—75.5(249A) have been satisfied, is the date on which the income eligibility and level of care determinations and the case plan are completed, but shall not be earlier than the first of the month following the date of application.

ITEM 26. Amend rule 441—83.44(249A) as follows:

441—83.44(249A) ~~Client~~ *Financial* participation. Persons ~~who are eligible under a special income level~~ must contribute their predetermined ~~client~~ *financial* participation ~~amount~~ to the cost of AIDS/HIV waiver services *or other Medicaid services, as applicable.*

83.44(1) ~~Computation of client participation~~ *Maintenance needs of the individual.* ~~Client participation~~ *The maintenance needs of the individual* shall be computed by deducting an amount ~~for the maintenance needs of the individual~~ which is 300 percent of the maximum ~~SSI grant for an individual~~ *monthly payment for one person under supplemental security income (SSI)* from the client's total income.

83.44(2) Limitation on payment. If the ~~sum~~ *amount* of the ~~third party payment and client~~ *financial* participation equals or exceeds the reimbursement established by the service worker *for AIDS/HIV services*, Medicaid will make no payments ~~for~~ *to* AIDS/HIV waiver service providers. Medicaid will, however, make payments to other medical vendors.

83.44(3) Maintenance needs of spouse and other dependents. The policy for the maintenance needs of the spouse and other dependents as specified in 441—subrule 75.16(2), paragraphs "d" and "e," shall be followed.

ITEM 27. Amend rule 441—83.45(249A) as follows:

441—83.45(249A) Redetermination. A complete ~~financial~~ redetermination of eligibility for AIDS/HIV waiver services shall be ~~done every 180 days~~ *completed at least once every 12 months* or when there is significant change in the person's situation or condition. A redetermination of continuing eligibility factors shall be made ~~when a change in circumstances occurs that affects eligibility~~ in accordance with ~~rule~~ *rules 441—76.7(249A) and* 441—83.42(249A). A redetermination shall ~~contain~~ *include* the components listed in rule 441--83.47(249A).

ITEM 28. Amend rule 441—83.46(249A) as follows:

441—83.46(249A) Allowable services. Services allowable under the AIDS/HIV waiver are counseling services, home health aide services, homemaker services, nursing care services, ~~and~~ respite care services, *and home-delivered meals,* as set forth in rule 441—78.38(249A).

ITEM 29. Amend rule 441—83.47(249A) as follows:

441—83.47(249A) Case plan. A case plan shall be prepared for AIDS/HIV waiver clients in accordance with rule 441—130.7(234)~~. Case~~ *except that case* plans for *both children and* adults shall be completed every 12 months ~~and case plans for children shall be completed every 6 months~~ *or when there is significant change in the person's situation or condition.* In addition, the case plan shall include the frequency of the AIDS/HIV waiver services and the types of providers who will deliver the services.

ARC 5756A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 234.6 and 1995 Iowa Acts, Senate File 462, section 10, subsection 9, and section 38, the Department of Human Services proposes to amend Chapter 156, "Payments for Foster Care and Foster Parent Training," appearing in the Iowa Administrative Code.

These amendments implement the following changes in shelter care payment mandated by the Seventy-sixth General Assembly:

1. The paragraph giving the state funds available for reimbursement of shelter care is deleted as the amount is contained in legislation and does not need to be repeated in rule. The state funds available for reimbursement of shelter care are decreased from $6,710,720 to $3,383,736 for fiscal year 1996 because of increased federal funding through Title IV-A Emergency Assistance. The total amount of state and federal funding available for shelter care remains the same as Fiscal Year 1995 at $8,329,039.

2. Shelter care fixed rate payment policies are revised in response to increases in the number of licensed or approved shelter care beds. These revisions do not change the number of beds for which the Department will be making payment. The maximum utilization factor used to determine the fixed rate paid to shelter care facilities is changed.

There are currently 348 licensed shelter care beds in Iowa, up from 316 beds in April of 1993. Under current policy, the 21 facilities with licensed shelter care beds have the option of being paid for the actual number of units which are used each month or of being paid a fixed

monthly sum. The fixed monthly sum is calculated by multiplying the agency's unit cost by its utilization factor. The utilization factor is either the number of units of service provided to Departmental clients for the last 12-month period or the Department's projection of the number of beds it will need from that facility, whichever is greater. Under these amendments, facilities still have the option of being paid the fixed monthly sum, but the utilization factor shall be the lower of the facility's utilization for the last 12-month period, the Department's projected utilization for that facility, or the utilization factor used in the Fiscal Year 1995 fixed rate contract. Every six months the Department compares actual utilization to the utilization in the "fixed rate" contract and reimburses the shelter care facility for units used above the fixed rate.

3. Shelter care facilities are required to refund any payments which have been made for units in excess of those for which the Department has authorization to pay.

The substance of these amendments is also Adopted and Filed Emergency and is published herein as **ARC 5757A**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

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 August 23, 1995.

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

Des Moines - August 23, 1995 1 p.m.
Des Moines Regional Office
City View Plaza, Conference Room 100
1200 University
Des Moines, Iowa 50314

These amendments are intended to implement Iowa Code section 234.38 and 1995 Iowa Acts, Senate File 462, section 10, subsection 9.

ARC 5752A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 180, "Respite Care Services," and Chapter 182, "Family-Centered Services," appearing in the Iowa Administrative Code.

These amendments broaden the eligibility requirements for MR/DD respite care services to include children with mental retardation or other developmental disabilities at risk of placement in foster family care. Current policy limits respite to children at risk of group care placement. These amendments also add licensed child care centers as eligible providers of respite services in order to promote access to services and match the definitions of "child with mental retardation" to the definition of persons with mental retardation as set forth in rule 441—22.1(234).

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 August 23, 1995.

These amendments are intended to implement Iowa Code section 234.6.

The following amendments are proposed.

ITEM 1. Amend rule **441—180.1(234)** as follows:

Rescind the definition of "Child with mental retardation" and insert the following **new** definition in lieu thereof:

"Child with mental retardation" means a child aged 18 and under who meets the definition of "Persons with mental retardation" as set forth in rule 441—22.1(225C).

Amend the definition of "Respite care services" as follows:

"Respite care services" are support services that provide temporary care to children with mental retardation ~~and~~ *or* other developmental disabilities *who would otherwise enter or continue group care or foster family home placement*. The purpose of these services is to sustain the family by providing time-limited and temporary relief from the ongoing responsibility of care normally provided by the child's parent or legal guardian. These services may be provided in a variety of settings, including, but not limited to, the family's home, an accredited camp, a licensed foster care home, ~~or~~ a registered day care home, *or a licensed child care center.*

ITEM 2. Amend subrule **180.7(1)**, paragraph **"b,"** by adding the following **new** subparagraph **(3)**:

(3) Shall be a licensed child care center. A written assessment of the physical setting is to be completed by the purchase of service agency prior to approval of the center for respite care services. This assessment shall include documentation that the center meets all the licensing standards outlined in 441—Chapter 109 for child care centers.

ITEM 3. Amend rule **441—182.1(234)** as follows:

Rescind the definition of "Child with mental retardation" and insert the following **new** definition in lieu thereof:

"Child with mental retardation" means a child aged 18 and under who meets the definition of "Persons with mental retardation" as set forth in rule 441—22.1(225C).

Amend the definitions of "MR/DD family-centered services" and "Respite care services" as follows:

"MR/DD family-centered services" are family-centered services that are specifically designed for and provided to families of children with mental retardation or *other* developmental disabilities who are at risk of group care *or foster family home* placement, or could be returned home from group *or foster family* care if MR/DD family-centered services are provided. Respite services as set forth in 441—Chapter 180, Division I, may be provided in conjunction with these services or as the only family-centered service.

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

"Respite care services" means support services that provide temporary care to children with mental retardation or other developmental disabilities *who would otherwise enter or continue group care or foster family home placement*. The purpose of these services is to sustain the family by providing time-limited and temporary relief from the ongoing responsibility of care normally provided by the child's family. These services may be provided in a variety of settings including the family's home, an accredited camp, a licensed foster care home, ~~or~~ a registered day care home, *or a licensed child care center*. Rules for family-centered respite care services are contained in 441—Chapter 180.

193D—2.2(544B,17A) Applications. An application to take the written examination shall be submitted on the form provided by the board and must be received in the board office no later than the last day of March *for the June examination and the last day of September for the December examination*.

ITEM 3. Amend subrule **2.5(4)**, paragraph "g" as follows:

g. The review must be conducted prior to April 1 preceding the ~~next~~ *June examination and prior to October preceding the December examination*.

ITEM 4. Amend rule **193D—4.8(544B,17A)**, numbered item **"6,"** second sentence, as follows:

The board may use the ~~Uniform National Examination~~ *CLARB Landscape Architectural Registration Examination* or subjects thereof for purposes of reexamination.

ARC 5760A

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]

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 544B.5, the Landscape Architectural Examining Board hereby gives Notice of Intended Action to amend Chapter 2, "Examinations and Registration," and Chapter 4, "Disciplinary Action," and to correct Iowa Code references in Chapter 1 and Chapters 3 to 5, Iowa Administrative Code.

The amendments reflect a change in the name of the national examination and establish a deadline for applications for a December examination. The examination was previously administered only in June and will now be given in both June and December. All Iowa Code references to 118A are changed to 544B.

Interested parties may submit written comment on these proposed amendments not later than August 22, 1995, to Glenda Loving, Executive Secretary, Iowa Landscape Architectural Examining Board, 1918 S.E. Hulsizer, Ankeny, Iowa 50021.

These amendments are intended to implement Iowa Code section 544B.8.

The following amendments are proposed.

ITEM 1. Amend **193D—Chapters 1** and **3** to **5** by striking references to Iowa Code chapter "118A" and inserting "544B".

ITEM 2. Amend rule 193D—2.2 (544B,17A), introductory paragraph, as follows:

ARC 5769A

PROFESSIONAL LICENSURE DIVISION[645]

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 152C.3, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 130, "Massage Therapists," Iowa Administrative Code.

The proposed amendment allows all permanent licensees to renew on a two-year cycle from the original date of issuance.

Any interested person may make written comments on the proposed amendment on or before August 22, 1995, addressed to Carol Barnhill, Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The proposed amendment is intended to implement Iowa Code chapter 152C.

The following amendment is proposed.

Amend subrule 130.6(1) as follows:

130.6(1) The biennial license ~~renewal period shall extend from October 1 of each odd-numbered year until September 30 of the next odd-numbered year~~ *shall be renewed every two years on the anniversary date of the original license*. The continuing education period shall ~~extend from July 1 of the odd-numbered year until June 30 of the next odd-numbered year~~ *run concurrent with each renewal period*.

ARC 5770A

PROFESSIONAL LICENSURE DIVISION[645]

ATHLETIC TRAINER ADVISORY BOARD

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 152D.5, the Department of Public Health hereby gives Notice of Intended Action to adopt Chapter 350, "Athletic Trainer," Chapter 355, "Petitions for Rule Making," Chapter 356, "Declaratory Rulings," Chapter 357, "Agency Procedure for Rule Making," and Chapter 358, "Public Records and Fair Information Practices," Iowa Administrative Code.

The proposed rules implement Iowa Code chapter 152D by establishing requirements for licensure, continuing education, license renewal, disciplinary action and adopting uniform rules as outlined in the first volume of the Iowa Administrative Code.

The Board of Medical Examiners and the Board of Physical and Occupational Therapy Examiners have been provided copies of the Notice of Intended Action for their review and comments.

Any interested person may make written comments on the proposed rules no later than August 22, 1995, addressed to Marilynn Ubaldo, Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

There will be a public hearing on August 22, 1995, from 9 a.m. to 11 a.m. in the Fourth Floor Conference Room, Side 1, Lucas State Office Building at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed rules.

These proposed rules are intended to implement Iowa Code chapters 17A, 22, 147, 152D and 272C.

The following rules are proposed.

ITEM 1. Adopt a new 645—Chapter 350 as follows:

CHAPTER 350
ATHLETIC TRAINER

645—350.1(152D) Definitions.

"Active engagement" or "actively engaged" in the practice of athletic training, for the purposes of Iowa Code sections 152D.3(2) and 152D.3(3), means that an applicant is either:

1. Currently certified by the National Athletic Trainers Association, Board of Certification; or
2. Practicing athletic training as verified by notarized signatures from:

• The athletic director or administrator of the institution, facility, or agency for which the applicant is currently providing services; and

• The supervising physician for the institution, facility, or agency for which the applicant is currently providing services.

"Administrator" means the administrator of the athletic trainer advisory board office.

"Board" means the athletic trainer advisory board.

"Department" means the Iowa department of public health.

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

"Licensed athletic trainer" means a person licensed under Iowa Code chapter 152D.

"NATA" means the National Athletic Trainers Association.

"NATABOC" means the National Athletic Trainers Association Board of Certification.

"Physical reconditioning" means a part of the practice of athletic training that combines physical treatment with exercise, designed in such a way as to assist the physician or physician assistant with services relating to the care of injuries and illnesses incurred through sports-induced trauma. Such services are designed to maximize health and safety and to promote a healing response in injured or ill persons from the onset of such problems through their participation in sports competition or in physical training programs.

"Physician" means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, osteopathy, chiropractic, or podiatry under the laws of this state.

"Practice of athletic training" means the prevention, physical evaluation, emergency care, and physical reconditioning relating to injuries and illnesses incurred through sports-induced trauma, which occurs during the preparation for or participation in a sports competition or during a physical training program, either of which is sponsored by an educational institution, amateur or professional athletic group, or other recognized organization, by a person who uses the title of licensed athletic trainer.

"Supervising physician" means a physician who supervises the athletic training services provided by a licensed athletic trainer.

"Supervision" means that a supervising physician directs the performance of a licensed athletic trainer in the development, implementation, and evaluation of an athletic training service plan. Supervision shall not be construed as requiring the personal presence of a supervising physician at each activity of the athletic trainer to ensure that the practice of athletic training is carried out only under the supervision of a licensed physician.

645—350.2(147) Availability of information.

350.2(1) All information regarding rules, forms, time and place of meetings, minutes of meetings, records of meetings, and records of hearings is available to the public between the hours of 8 a.m. and 4:30 p.m., Monday to Friday, except holidays.

350.2(2) Information may be obtained by writing to Administrator, Athletic Trainer Advisory Board, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. All official correspondence shall be in writing and directed to the board address.

645—350.3(147) Organization and proceedings of the board.

350.3(1) The athletic training advisory board consists of seven members appointed by the governor and confirmed by the senate. The members of the board shall include three licensed athletic trainers, three physicians licensed to practice medicine in all its branches, and one public member. Members shall serve three-year terms.

A quorum shall consist of a majority of the members of the board.

350.3(2) A chairperson, vice chairperson, and secretary shall be elected at the first board meeting after April 30 of each year.

350.3(3) The board shall hold quarterly meetings and may hold additional meetings as called by the board chairperson, a majority of the board members, or the administrator. The chairperson shall designate the date, place, and time prior to each meeting of the board. The board shall follow the latest edition of Robert's Revised Rules of Order whenever any objection is made as to the manner in which it proceeds at a meeting.

645—350.4(152D) Requirements for temporary licensure. An applicant for a temporary license to practice athletic training shall meet the following requirements:

350.4(1) Submit to the board a completed application for temporary licensure on a form which is provided by the board.

350.4(2) Submit a check or money order in the amount required payable to the Iowa athletic trainer advisory board.

350.4(3) Submit proof of "active engagement" in the practice of athletic training on the application for temporary licensure.

645—350.5(152D) Temporary license renewal.

350.5(1) Temporary licenses shall be renewed by February 28, 1997.

350.5(2) An applicant for temporary license renewal shall submit to the board the following:

a. Proof of current NATA certification; or

b. Proof of "active engagement" in the practice of athletic training as defined in 645—350.1(152D) and proof of completion of 50 clock hours of continuing education from a provider approved by the department, upon recommendation from the board, in accordance with 645—350.12(272C).

645—350.6(147,152D) Requirements for licensure. An applicant for a license as a licensed athletic trainer shall meet the following requirements:

350.6(1) Graduation and receipt of a baccalaureate degree or postbaccalaureate degree from a U.S. regionally accredited college or university with proof of completion of the following courses:

a. Advanced athletic training;
b. Basic athletic training;
c. Health;
d. Human anatomy;
e. Human physiology;
f. Kinesiology; and
g. Physiology of exercise.

Applicants who have obtained their education outside of the United States and its territories must have their academic degrees validated as equivalent to the baccalaureate or postbaccalaureate degree conferred by a U.S. regionally accredited college or university in addition to providing proof of completion of the above coursework.

350.6(2) Successful completion of the National Athletic Trainers Association Board of Certification examination. It is the responsibility of the applicant to make arrangements to take the examination and have the official results submitted to the athletic trainer advisory board.

645—350.7(152D) Application for licensure.

350.7(1) Any person seeking a license shall submit to the board a completed application form which is provided by the board.

350.7(2) The application form shall be completed in accordance with instructions contained in the application. If the application is not completed in accordance with the instructions, the application will not be reviewed by the board and the applicant will be so notified.

350.7(3) Each application shall be accompanied by a check or money order in the amount required payable to the Iowa athletic trainer advisory board.

350.7(4) No application will be considered until requested supporting documents and fee have been received by the board.

645—350.8(152D) Documentation of physician supervision. Each licensee must maintain documentation of physician supervision. It is the responsibility of the licensee to ensure that documentation of physician supervision is obtained and maintained, including the following:

1. Dates and names of physician and physician assistant orders or referrals;
2. Initial evaluations and assessments;
3. Treatments and services rendered, with dates; and
4. Dates of subsequent follow-up care.

645—350.9(147,152D) License renewal.

350.9(1) The biennial license renewal period shall extend from March 1 of each odd-numbered year to February 28 of the next odd-numbered year.

350.9(2) At least one month before the renewal date a renewal notice will be sent to each license holder, who according to the board's records has complied with the continuing education requirements, at the last address in the board's file. Failure to receive the notice shall not relieve the license holder of the obligation to pay biennial renewal fees on or before the renewal date.

350.9(3) If the licensee renews within 30 days after the renewal date, a penalty fee of $50 is required in addition to the renewal fee.

350.9(4) The department reserves the right to audit documentation of physician supervision with license renewal.

645—350.10(147,152D) Fees. All fees are nonrefundable.

350.10(1) Application fee for a license to practice athletic training is $100.

350.10(2) Biennial renewal fee for a license to practice athletic training is $100.

350.10(3) Penalty fee for failure to submit renewal fee when due is $50.

350.10(4) Reinstatement fee for a lapsed license is $100.

350.10(5) Fee for a duplicate license if lost or stolen is $10.

350.10(6) Fee for a certified statement that a licensee is licensed in this state is $10.

645—350.11(272C) License denial. If the department refuses to issue or renew a license the individual shall be notified in writing. Any request for a hearing before the department concerning the denial of a license shall be submitted by the applicant, in writing, to the department by certified mail, return receipt requested, within 30 days of the mailing of a notice of denial of license.

645—350.12(272C) Continuing education requirements.

350.12(1) The biennial continuing education compliance period shall extend from October 1 of each even-numbered year to September 30 of the next even-numbered year. During this period of time, 50 hours of approved continuing education shall be completed by the licensee in order to renew the license for the next biennial license period beginning March 1 of the next odd-numbered year.

350.12(2) If a new license holder is licensed during the first year of the biennial continuing education period, the licensee shall be required to complete only 25 hours of continuing education for renewal of the license. If a new license holder is licensed during the second year of the biennial continuing education period, the licensee is exempt from meeting continuing education requirements of the first license renewal.

350.12(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity offered by a provider approved by the department, upon recommendation of the board.

350.12(4) No hours of continuing education shall be carried over into the next continuing education period.

350.12(5) It is the responsibility of each licensee to finance the costs of continuing education.

350.12(6) The board reserves the right to audit a licensee's continuing education records each biennium. Falsifying reports or failure to meet continuing education requirements may result in formal disciplinary action.

645—350.13(272C) Standards for approval of providers of continuing education activities. An organization, institution, agency, or individual shall be qualified for approval as a provider of continuing education activities by application to the board demonstrating the following:

350.13(1) The provider is currently a NATABOC approved provider of continuing education; or

350.13(2) The provider meets each of the following criteria:

a. The provider presents organized programs of learning;

b. The provider presents subject matter which integrally relates to the practice of athletic training;

c. The provider's program activities contribute to the professional competency of the licensee;

d. The provider's program presenters are individuals who have education, training, or experience by reason of which said individuals may be considered qualified to present the subject matter of the programs; and

e. The provider registers annually with the department and provides proof of continued compliance with paragraphs "a" to "d" above.

645—350.14(272C) Procedures for approval of providers and continuing education activities.

350.14(1) An organization, institution, agency, or individual which desires to be designated as an approved provider of continuing education activities shall apply on a form provided by the board. If approved by the department, upon recommendation from the board, such organization, institution, agency, or individual shall be designated as an approved provider of continuing education activities; and the activities of such an approved provider which are relevant to the practice of athletic training shall be deemed automatically approved for continuing education credit.

350.14(2) All approved providers shall issue a certificate of attendance to each licensee who attends a continuing education activity. The certificate shall include the sponsor name and number; date of program; name of participant; total number of hours excluding breaks and meals; program title and presenter; and program site.

350.14(3) All providers shall keep on record for at least two years a list of licensees attending the continuing education program and a content outline of that program. Upon request of the department, these records shall be submitted to the department within 30 calendar days of the request.

350.14(4) The department, upon recommendation of the board, may at any time reevaluate an approved provider. If, after reevaluation, the department finds there is basis for consideration of revocation of the approval of an approved provider, the department shall give notice by ordinary mail to that sponsor of a hearing on possible revocation at least 30 days prior to the hearing. The decision of the department, upon recommendation by the board, is final.

645—350.15(272C) Reporting of licensee. Each licensee shall be required to submit a licensee's report on continuing education to the board at the time of license renewal. The board will select the licensees whose continuing education reports will be audited by the board. Each licensee to be audited will be required to provide copies of certificates of attendance or completion for all reported activities. Additional documentation may be requested.

645—350.16(272C) Disability or illness. The department, on advice from the board, may in individual cases involving disability or illness grant a waiver of the continuing education requirements for a period of up to one calendar year. A written request for waiver shall be submitted by the licensee and shall be accompanied by acceptable documentation.

645—350.17(272C) Hearings: continuing education. In the event of denial, in whole or in part, of any application for approval of continuing education program of credit for continuing education activity, the applicant or licensee shall have the right to request a hearing. The request must be sent within 20 days after receipt of the notification of denial. The hearing shall be held within 90 days after the receipt of the request for hearing. The hearing shall be conducted by the board. The final decision shall be rendered by the department.

645—350.18(272C) Inactive licensure. A licensee who is not engaged in the practice of athletic training in the state of Iowa residing within or without the state of Iowa may be granted a waiver of compliance upon written application to the department. The application shall contain a statement that the licensee will not hold oneself out to the public as a licensed athletic trainer during the time the license is inactive. The application for waiver of compliance shall be submitted upon a form provided by the board.

645—350.19(272C) Reinstatement of inactive license. The department may reinstate an inactive license upon completion of all of the following:

1. A written request for reinstatement;
2. Payment of the current renewal fee; and
3. Completion of continuing education requirements for the period of time the license was inactive.

645—350.20(272C) Reinstatement of lapsed license.

350.20(1) A license shall be considered lapsed if not renewed within 30 days of renewal date. If the license lapses, the practice of holding oneself out as licensed to practice athletic training must cease until a license is reinstated by the department.

350.20(2) A licensee who wishes to reinstate a lapsed license shall pay past due renewal fee to a maximum of four years, a reinstatement fee, and penalty fees.

350.20(3) Continuing education requirements for the period of time the license was lapsed are not waived.

350.20(4) Application for reinstatement shall be made on a form provided by the board.

645—350.21(272C) Complaints. A complaint of a licensee's professional misconduct shall be made in writing by any person to the Athletic Trainer Advisory Board, Professional Licensure, Lucas State Office Building, Des Moines, Iowa 50319-0075. The complaint shall include the complainant's name, address, and telephone number, shall be signed and dated by the complainant, shall identify the licensee, and shall give the address and any other information about the licensee which the complainant may have concerning the matter.

645—350.22(272C) Report of malpractice claims or actions. Each licensee shall submit to the department a copy of any judgment or settlement in a malpractice claim within 30 days after the occurrence. Any disciplinary action taken by another licensing or certifying authority in any state shall also be reported to the department within 30 days after the occurrence.

645—350.23(272C) Investigation of complaints or malpractice claims. The department shall either investigate or assign an investigation of a complaint or malpractice claim to a member or members of the board who will be known as the investigating board member or committee, or may request that the Iowa department of inspections and appeals investigate the complaint or malpractice claim. The assigned investigator may consult with the board as well as the assistant attorney general concerning the investigation or evidence produced from the investigation. The assigned investigator shall make a written report of the investigation and send it to the department.

645—350.24(272C) Methods of discipline. The department has the authority to impose the following disciplinary sanctions:

350.24(1) Revoke a license.

350.24(2) Suspend a license until further order of the department or for a specified period.

350.24(3) Prohibit permanently, or until further order of the department, or for a specified period, the engaging in specified procedures, methods, or acts.

350.24(4) Place a license on probation.

350.24(5) Require additional education, training, or treatment.

350.24(6) Require a reexamination.

350.24(7) Impose civil penalties not to exceed $1,000, which may be imposed for a violation of any provision of 645—350.25(272C).

350.24(8) Issue citation and warning.

350.24(9) Impose such other sanctions allowed by law as may be appropriate.

645—350.25(272C) Grounds for discipline. The department may impose any of the disciplinary sanctions provided in rule 645—350.24(272C) when the department determines that the licensee is guilty of any of the following acts or offenses:

350.25(1) Fraud in procuring a license.

350.25(2) Professional incompetency.

350.25(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the licensee's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

350.25(4) Habitual intoxication or addiction to the use of drugs.

350.25(5) Conviction of a felony related to the profession or occupation of the licensee. A copy of record of conviction or plea of guilty shall be conclusive evidence.

350.25(6) Fraud in representations as to skill or ability.

350.25(7) Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

350.25(8) Involuntary commitment for treatment of mental illness or substance abuse.

350.25(9) Representing oneself as a licensed athletic trainer when the license has been suspended or revoked.

350.25(10) Revocation, suspension, or other disciplinary action taken by a certification/licensure authority of another state, territory, or country; or failure of the licensee to report such action in writing to the administrator of the athletic training board.

350.25(11) Negligence by the licensee:

a. Failure to exercise due care.

b. Improper delegation of duties or inadequate supervision of employees or other individuals, whether or not injury results.

c. Conduct, practice, or conditions which impair the ability to safely and skillfully practice the profession.

350.25(12) Prohibited acts:

a. Permitting another person to use one's license.

b. Practicing outside the scope of the profession.

c. Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

d. Verbally, physically, or sexually abusing clients/patients.

e. Any sexual intimidation between an athletic trainer and a client/patient.

350.25(13) Unethical business practices:

a. False or misleading advertising.

b. Betrayal of a professional confidence.

c. Falsifying client/patient records.

d. Professional conflict of interest.

e. Misappropriation of funds.

350.25(14) Failure to report a change of name or address to the Administrator, Athletic Trainer Advisory Board, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075 within 30 days.

350.25(15) Falsification of a continuing education record.

350.25(16) Failure to report any judgment or settlement of malpractice claim or action to the Administrator, Athletic Trainer Advisory Board, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075 within 30 days of occurrence.

350.25(17) Failure to comply with a subpoena issued by the department.

350.25(18) Failure to report to the board any violation by another licensee of the grounds for discipline as listed in this rule.

350.25(19) Failure to respond to a request from the board within 30 days of certified mail notice of the request for response.

645—350.26(272C) Alternative procedures and settlement.

350.26(1) Informal settlement—parties. A contested case may be resolved by informal settlement. Negotiation of an informal settlement may be initiated by the state of Iowa represented by the prosecuting attorney, the respondent, or the department. The department may authorize a board member to assist with negotiations toward a settlement.

350.26(2) Informal settlement—waiver of notice and opportunity to be heard. Consent to negotiation by the respondent constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17 during informal settlement negotiation. Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the department.

350.26(3) Informal settlement—department approval. All informal settlements are subject to approval of the department. If the department fails to approve the informal settlement, it shall be of no force or effect to either party.

645—350.27(272C) Disciplinary hearings.

350.27(1) Notice of hearing. If there is a finding of probable cause for a disciplinary hearing, the department shall prepare the notice of hearing and transmit the notice of hearing to the respondent by certified mail, return receipt requested, at least 20 days before the date of the hearing.

350.27(2) Hearings. For any procedural matters not addressed by these rules, 641—Chapter 173 will be applicable.

350.27(3) The notice of hearing and statement of charges shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the notice of hearing and statement of charges is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

350.27(4) The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10.

350.27(5) When the administrative law judge makes a proposed decision and order, it shall be served by restricted certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in subrule 350.27(6).

350.27(6) Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

350.27(7) Upon receipt of an appeal request, the administrative law judge shall prepare a record of the hearings for submission to the director. The record shall include the following:

a. All pleadings, motions, and rules.

b. All evidence received or considered and all other submissions by recording or transcript.

c. A statement of all matters officially noticed.

d. All questions and offers of proof, objections, and rulings on them.

e. All proposed findings and exceptions.

f. The proposed decision and order of the administrative law judge.

350.27(8) The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by restricted certified mail, return receipt requested, or by personal service.

645—350.28(272C) Disciplinary hearings—fees and costs.

350.28(1) The department may charge a fee not to exceed $75 for conducting a disciplinary hearing which results in disciplinary action taken against the licensee by the department. An order assessing a fee shall be included as part of the department's final decision. The order shall direct the licensee to deliver payment directly to the professional licensure division as provided for in subrule 350.28(8).

350.28(2) In addition to this fee, the department may also recover from the licensee the cost for transcripts, witness fees and expenses, depositions, and medical examination fees. The department may assess these costs in the manner it deems most equitable.

350.28(3) The cost of the transcript includes the transcript of the original contested case hearing before the department, as well as transcripts of any other formal proceedings before the department which occur after the notice of the contested case hearing is filed.

350.28(4) Witness fees and expenses.

a. The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing.

b. The department may assess to the licensee the witness fees and expenses incurred by witnesses called to testify on behalf of the state of Iowa.

c. The costs for lay witnesses shall be determined in accordance with Iowa Code section 622.69. For purposes of calculating the mileage expenses allowed under this section, the provisions of Iowa Code section 625.2 do not apply.

d. The costs for expert witnesses shall be determined in accordance with Iowa Code section 622.72. For purposes of calculating the mileage expenses allowed under this section, the provisions of Iowa Code section 625.2 do not apply.

e. The provisions of Iowa Code section 622.74 regarding advance payment of witness fees and the consequences of failure to make such payment are applicable with regard to witnesses who are subpoenaed by either party to testify at the hearing.

f. The department may assess as costs the meal and lodging expenses necessarily incurred by witnesses testifying at the request of the state of Iowa. Meal and lodging costs shall not exceed the reimbursement employees of the state of Iowa receive for these expenses under the

department of revenue and finance guidelines in effect January 1, 1994.

350.28(5) Depositions.

a. The costs for depositions include the cost of transcripts, the daily charge of the court reporter for attending and transcribing the deposition, and all mileage and travel time charges of the court reporter for traveling to and from the deposition which are charged in the ordinary course of business.

b. Deposition costs for purposes of allocating costs against a licensee include only those deposition costs incurred by the state of Iowa. The licensee is directly responsible for the payment of deposition costs incurred by the licensee.

c. If the deposition is of an expert witness, the deposition costs includes a reasonable expert witness fee. This fee shall not exceed the expert's customary hourly or daily fee, and shall include the time reasonably and necessarily spent in connection with such depositions, including the time spent in travel to and from the deposition, but excluding time spent in preparation for that deposition.

350.28(6) Within ten days after conclusion of a contested case hearing and before issuance of any final decision assessing costs, the designated staff person shall certify any reimbursable costs to the department. The designated staff person shall calculate the specific costs, certify the cost calculated, and file the certification as part of the record in the contested case. A copy of the certification shall be served on each party of record at the time of filing.

350.28(7) A final decision of the department imposing disciplinary action against a licensee shall include the amount of any fee assessed, which shall not exceed $75. If the department also assesses costs against the licensee, the final decision shall include a statement of costs delineating each category of costs and the amount assessed. The department shall specify the time period in which the fees and costs must be paid by the licensee.

350.28(8) All fees and costs assessed pursuant to this chapter shall be in the form of a check or money order made payable to the State of Iowa and delivered by the licensee to the professional licensing and regulation division.

350.28(9) Failure of a licensee to pay a fee and costs within the time specified in the department's decision shall constitute a violation of an order of the department and shall be grounds for disciplinary action.

645—350.29(272C) Appeals.

350.29(1) It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

350.29(2) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. Notice should be sent to Administrator, Athletic Trainer Advisory Board, Professional Licensure Division, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

645—350.30(272C) Hearings open to the public. A hearing of a licensing board concerning licensees or an applicant shall be open to the public unless the applicant or licensee or applicant or licensee's attorney requests in writing that the hearing be closed to the public.

645—350.31(272C) Publication of decisions. Final decisions of the board relating to disciplinary proceedings shall be transmitted to the appropriate professional association, the news media and employer.

These rules are intended to implement Iowa Code chapter 154D.

ITEM 2. Reserve Chapters 351 to 354 and adopt a new 645—Chapter 355 as follows:

CHAPTER 355
PETITIONS FOR RULE MAKING

The department hereby adopts the petitions for rule making segment of the Uniform Rules which is printed in the first Volume of the Iowa Administrative Code, with the following amendments:

645—355.1(17A) Petition for rule making. In lieu of the words "(designate office)", insert "Athletic Trainer Advisory Board Administrator, Professional Licensure Division, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075".

In lieu of the words "(AGENCY NAME)", the heading of the petition should read:

BEFORE THE
DEPARTMENT OF PUBLIC HEALTH

645—355.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Athletic Trainer Advisory Board Administrator, Professional Licensure Division, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These rules are intended to implement Iowa Code section 17A.7.

ITEM 3. Adopt a new 645—Chapter 356 as follows:

CHAPTER 356
DECLARATORY RULINGS

The department hereby adopts the declaratory rulings segment of the Uniform Rules which is printed in the first Volume of the Iowa Administrative Code, with the following amendments:

645—356.1(17A) Petition for declaratory ruling. In lieu of the words "(designate office)", insert "Athletic Trainer Advisory Board Administrator, Professional Licensure Division, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075".

In lieu of the words "(AGENCY NAME)", the heading on the petition should read:

BEFORE THE
DEPARTMENT OF PUBLIC HEALTH

645—356.3(17A) Inquiries. In lieu of the words "(designate official by full title and address)", insert "the Athletic Trainer Advisory Board Administrator, Professional Licensure Division, Iowa Department of Public Health,

Lucas State Office Building, Des Moines, Iowa 50319-0075".

These rules are intended to implement Iowa Code section 17A.9.

ITEM 4. Adopt a new 645—Chapter 357 as follows:

CHAPTER 357
AGENCY PROCEDURE FOR RULE MAKING

The department hereby adopts the agency procedure for rule making segment of the Uniform Administrative Rules which is printed in the first Volume of the Iowa Administrative Code, with the following amendments:

645—357.3(17A) Public rule-making docket.

357.3(2) Anticipated rule making. In lieu of the words "(commission, board, council, director)", insert "Department of Public Health, Athletic Trainer Advisory Board Office".

645—357.4(17A) Notice of proposed rule making.

357.4(3) Notices mailed. In lieu of the words "(specify time period)", insert "one year".

645—357.5(17A) Public participation.

357.5(1) Written comments. In lieu of the words "(identify office and address)", insert "Athletic Trainer Advisory Board Office, Professional Licensure Division, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075".

645—357.6(17A) Regulatory flexibility analysis.

357.6(3) Mailing list. In lieu of the words "(designate office)", insert "Athletic Trainer Advisory Board Office, Professional Licensure Division, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075".

645—357.10(17A) Exemptions from public rule-making procedures.

357.10(2) Categories exempt. In lieu of the words "(List here narrowly drawn classes of rules where such an exemption is justified and a brief statement of the reasons for exempting each of them)", insert the following:

"a. Rules which implement recent legislation, when a statute provides for an effective date which does not allow for the usual public notice and participation requirements.

"b. Rules which confer a benefit or remove a restriction on licensees, the public, or some segment of the public.

"c. Rules which are necessary because of imminent peril to the public health, safety, or welfare.

"d. Nonsubstantive rules intended to correct typographical errors, incorrect citations, or other errors in existing rules."

645—357.11(17A) Concise statement of reasons.

357.11(1) General. In lieu of the words "(specify the office and address)", insert "Athletic Trainer Advisory Board Office, Professional Licensure Division, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075".

645—357.13(17A) Agency rule making record.

357.13(2) Contents.

c. In lieu of the words "(agency head)", insert "Athletic Trainer Advisory Board Office, Iowa Department of Public Health".

These rules are intended to implement Iowa Code chapter 17A.4.

ITEM 5. Adopt a new 645—Chapter 358 as follows:

CHAPTER 358
PUBLIC RECORDS AND
FAIR INFORMATION PRACTICES

The department hereby adopts 641—Chapter 175, "Public Records and Fair Information Practices," as 645—Chapter 358.

These rules are intended to implement Iowa Code section 22.11.

ARC 5766A

PUBLIC HEALTH DEPARTMENT[641]

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 chapter 144.13 as amended by 1995 Iowa Acts, Senate File 202, section 1, the Iowa Department of Public Health hereby gives Notice of Intended Action to amend Chapter 95, "Certificate of Birth—Registration Fees," and Chapter 96, "Vital Records," Iowa Administrative Code.

These amendments allow all birth certificates to be registered in the same manner, removing the different process that had been used for out-of-wedlock birth certificates.

Any interested person may make written suggestions or comments on the proposed amendments on or before August 22, 1995. Such written materials should be directed to Jill France, Bureau of Vital Records, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

There will be a public hearing on August 22, 1995, at 3 p.m. in the Fourth Floor West Conference Room of the Lucas State Office Building, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record, and to confine their remarks to the subject of the amendments.

These amendments are intended to implement Iowa Code section 144.13.

The following amendments are proposed.

ITEM 1. Amend subrules 95.5(2) and 95.5(3) as follows:

95.5(2) ~~Certificates of birth to be filed with the state registrar shall be listed on a separate Birth Registration Certification Fee Summary Report than those to be filed with the county registrar.~~

~~95.5(3)~~ All certificates of birth listed on the Birth Registration Certification Fee Summary Report shall be submitted together to the appropriate registrar. All fees shall be remitted to the state registrar with the appropriate copy

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

of the completed Birth Registration and Certification Fee Summary Report.

ITEM 2. Amend rule 641—95.8(144), introductory paragraph, as follows:

641—95.8(144) State Registrar. ~~For out-of-wedlock births which occur in institutions or out-of-wedlock birth certificates forwarded to the state registrar through the county registrar, review~~ *Review* the Birth Registration Certification Fee Summary Report for completeness and correctness, verify that all certificates of birth correspond with those listed on the Birth Registration Certification Fee Summary Report, account for all fees and deposit fees.

ITEM 3. Amend subrules 96.6(4) and 96.6(5) as follows:

96.6(4) Out-of-wedlock birth records *prior to July 1, 1995*. Accessibility: Records of out-of-wedlock births shall not be accessible to the public as of right under Iowa Code chapter 22 when they are in the custody of a county registrar.

For purposes of general public access and confidentiality, "out-of-wedlock" birth records shall be determined as follows:

a. Any record of birth where there is a reference or statement on the certificate or entry which directly indicates or specifies illegitimate or specified "no" regarding "born in wedlock" or "legitimate," or

b. Any record of birth where there is reference or statement on the certificate or entry that either parent is "unknown," "anonymous," or there was a refusal to give parents' name, or

c. Any certificate or entry which reflects the omission or absence of the name of the father of the child.

However, in all of the above paragraphs "a," "b" and "c" where the registrar has evidence from the record itself that the birth is a legitimate birth, the record of birth shall be accessible.

For out-of -wedlock births after July 1, 1995, filed at the county, accessibility will be as described in subrules 96.6(1), (2), and (3).

96.6(5) ~~A listing of all out-of-wedlock births occurring to residents of each county will be generated and sent to each county board of health within 60 days of the date the record is filed with the state registrar for the purpose of tracing immunization of newborns.~~ *The state registrar may transmit to the appropriate local boards of health information from birth certificates for the sole purpose of identifying those children in need of immunizations.* The state registrar may impose conditions to ensure that the use of the data is limited to official purposes.

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PUBLIC HEALTH DEPARTMENT[641]

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 147.161, the Iowa Department of Public Health hereby gives Notice of Intended Action to rescind Chapter 131, "Basic Emergency Medical Care," Iowa Administrative Code.

Iowa Code section 147.161 which authorized 641—Chapter 131 was repealed by 1995 Iowa Acts, Senate File 178; therefore, the Department proposes to rescind 641—Chapter 131 in its entirety and reserve the number.

The Iowa Department of Public Health will hold a public hearing on Tuesday, August 22, 1995, at 1 p.m. in the Fourth Floor Conference Room, Side Two, Lucas State Office Building, Des Moines, Iowa 50319-0075. Any oral or written comments must be received on or before August 22, 1995. Comments should be addressed to Gary Ireland, Chief, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The following amendment is proposed:

Rescind and reserve **641—Chapter 131**.

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PUBLIC HEALTH DEPARTMENT[641]

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 147A.4, the Iowa Department of Public health hereby gives Notice of Intended Action to amend Chapter 132, "Advanced Emergency Medical Care Services," Iowa Administrative Code.

1995 Iowa Acts, Senate File 178, resulted in changes in Iowa Code chapter 147A and the repeal of Iowa Code section 147.161. The corresponding Iowa Administrative Code for Iowa Code section 147.161, 641—Chapter 131, is incorporated into Chapter 132 with the additional amendments intended to implement SF178.

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

Item 1 changes the title of Chapter 132 and deletes the use of the term "advanced" throughout the entire chapter. Item 2 incorporates definitions from 641—Chapter 131 and redefines definitions for clarification. Item 3 is for clarification purposes. Item 4 allows EMS providers to perform emergency medical care, based on preapproved protocols by the medical director, prior to contacting medical control. Item 5 identifies skills that may be performed by EMS providers according to level of certification and approved curricula. Item 6 is for clarification purposes. Item 7 incorporates rules from 641—Chapter 131. Item 8 further clarifies candidates eligible for certification testing and identifies testing accommodations for certain individuals. Item 8 also allows the use of the National Registry written examination for the certification examination. Item 9 outlines how an individual can change to a lower certification level. Item 10 is for clarification purposes regarding continuing education requirements for each level of certification. Item 11 clarifies the renewal standards and incorporates 641—Chapter 131 rules. Item 12 incorporates language from 641—Chapter 131. Item 13 is for clarification purposes. Item 14 incorporates language from 641—Chapter 131 and establishes dates when the new EMT-B transition course can be taken. Items 15 and 16 are for clarification purposes only. Item 17 identifies who shall be EMS instructors and requires practical exam evaluators to attend a department-sponsored workshop. Item 18 requires EMS training programs to indicate on their application, levels of certification to be offered. Item 19 allows continuing education approval by a national continuing education accreditation entity. Item 20 clarifies transport services verses nontransport services and identifies the authorization process for nontransporting services. Item 21 is for clarification purposes only. Item 22 changes the inspection requirement from two years to three years. Item 23 is for clarification of temporary service authorization. Item 24 clarifies and defines conditional service authorization. Item 25 outlines the staffing and skill requirements for all levels of authorization and outlines them in table form. Items 26, 27, 28 and 29 are for clarification purposes only. Item 30 identifies certain optional pieces of equipment for different service authorization levels. Item 31 sets implementation dates for 1995 Iowa Acts, SF178. Item 32 outlines audit requirements of the service medical director. Items 33 through 48 clarify the rules regarding disciplinary procedures and allows issuance of a citation and warning. Items 49 through 51 are for clarification purposes.

The Iowa Department of Public Health will hold a public hearing on Tuesday, August 22, 1995, at 1 p.m. in the Fourth Floor Conference Room, Lucas State Office Building, Des Moines, Iowa 50319-0075. Any oral or written comments must be received on or before August 22, 1995. Comments should be addressed to Gary Ireland, Bureau Chief, Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These amendments are intended to implement Iowa Code chapter 147A as amended by 1995 Iowa Acts, Senate File 178.

The following amendments are proposed.

ITEM 1. Amend **641—Chapter 132** title as follows. With the exception of the definition of "ACLS or advanced cardiac life support," delete the term "advanced" throughout the entire chapter.

~~ADVANCED~~ EMERGENCY
MEDICAL ~~CARE~~ *SERVICES*

ITEM 2. Amend and alphabetically insert the following definitions in rule **641—132.1(147A)**.

"~~Advanced emergency~~ *Emergency* medical care personnel" or "provider" means any *FR*, FR-D, *EMT-A, EMT-B,* EMT-D, EMT-I, or EMT-P currently certified by the department.

~~"Advanced EMT" means an EMT-D or EMT-I.~~

"Air carrier" or "air taxi" means any privately or publicly owned fixed-wing aircraft which may be specifically designed, modified, constructed, equipped, staffed and used regularly to transport the sick, injured or otherwise incapacitated who are in need of ~~prehospital~~ *out-of-hospital* emergency medical care or whose condition requires treatment or continuous observation while being transported.

"Ambulance" means any privately or publicly owned rotorcraft or ground vehicle specifically designed, modified, constructed, equipped, staffed and used regularly to transport the sick, injured or otherwise incapacitated who are in need of ~~prehospital~~ *out-of-hospital* emergency medical care or whose condition requires treatment or continuous observation while being transported.

"Ambulance service" means any privately or publicly owned service program which utilizes ambulances in order to provide patient transportation and emergency medical care at the scene of an emergency or while en route to a hospital *or during transfer from one medical care facility to another or to a private home.* An ambulance service may use first response or rescue vehicles (nontransport) to supplement ambulance vehicles.

"Automated defibrillator" means any external automatic or semiautomatic device that ~~recognizes the presence or absence of ventricular fibrillation and automatically~~ determines whether defibrillation is required. Automated defibrillators must meet or exceed design and performance guidelines stipulated by the Association for the Advancement of Medical Instrumentation for automated external defibrillators, published in February 1986.

"Basic care" means treatment interventions, appropriate to certification level, that provide minimum care to the patient including, but not limited to, CPR, bandaging, splinting, oxygen administration, spinal immobilization, oral airway insertion and suctioning, anti-shock garment, vital sign assessment and administration of over-the-counter drugs.

"Basic ambulance service" means an ambulance service that provides patient treatment at the basic care level.

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

"Emergency medical technician-ambulance" means an individual who has successfully completed, as a minimum, the *1984* United States Department of Transportation's Emergency Medical Technician-Ambulance curriculum, passed the department's approved written and practical examinations, and is currently certified by the department as an EMT-A.

"Emergency medical technician-basic" means an individual who has successfully completed, as a minimum, the 1994 United States Department of Transportation's Emergency Medical Technician-Basic curriculum (excluding endotracheal intubation), passed the department's approved written and practical examinations, and is currently certified by the department as an EMT-B.

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

"Emergency medical technician-defibrillation" means an individual who has successfully completed an approved program which specifically addresses ~~the recognition and~~ manual or automated defibrillation ~~of ventricular fibrillation~~, passed the department's approved written and practical examinations, and is currently certified by the department as an EMT-D.

"Emergency rescue technician" means an individual trained in various rescue techniques including, but not limited to, extrication from vehicles and agricultural rescue, and who has successfully completed a curriculum approved by the department in cooperation with the Iowa Fire Service Institute.

"EMS advisory council" means a council appointed by the director to advise the director and develop policy recommendations concerning regulation, administration, and coordination of emergency medical services in the state.

"EMS instructor" means an individual who has successfully completed ~~the United States Department of Transportation's~~ *an* EMS Instructor curriculum, ~~passed the department's approved written and practical examinations~~ *approved by the department*, and is currently certified by the department as an EMS-I.

"EMT-B" means emergency medical technician-basic.

"ERT" means emergency rescue technician.

"First responder-defibrillation" means an individual who has successfully completed an approved program which specifically addresses ~~the automated~~ defibrillation ~~of ventricular fibrillation~~, passed the department's approved written and practical examinations, and is currently certified by the department as an FR-D.

"~~Rescue~~ *Nontransport* service" means any privately or publicly owned *rescue or first response* service program which does not provide patient transportation *(except when no ambulance is available or in a disaster situation)* and utilizes only rescue or first response vehicles to provide emergency medical care at the scene of an emergency.

"PA" means physician assistant.

"Physician assistant" means an individual licensed pursuant to Iowa Code chapter 148C.

"Primary instructor" means an individual who is responsible for teaching the majority of an initial emergency medical care provider course.

"Registered nurse" means an individual licensed pursuant to Iowa Code chapter 152.

"RN" means a registered nurse.

"Rotorcraft ambulance" means any privately or publicly owned rotorcraft specifically designed, modified, constructed, equipped, staffed and used regularly to transport the sick, injured or otherwise incapacitated who are in need of ~~prehospital~~ *out-of-hospital* emergency medical care or whose condition requires treatment or continuous observation while being transported.

"Service program area" means the geographic area of responsibility served by any given ambulance~~, rescue,~~ or ~~first response~~ *nontransport* service program.

"Service program" or "service" means any 24-hour ~~advanced~~ emergency medical care ambulance service~~, rescue~~ or ~~first response~~ *nontransport* service that has received authorization by the department.

"Specialty certification" means a nonmedical certification in an area related to emergency medical care including, but not limited to, emergency rescue technician and emergency medical services-instructor.

"Training program" means ~~an area vocational school~~, an area community college, *law enforcement academy* or hospital approved by the department to conduct ~~advanced~~ emergency medical care training.

ITEM 3. Amend subrule **132.2(2)**, introductory phrase and paragraph "**a,**" as follows:

132.2(2) An ~~advanced~~ emergency medical care provider may:

a. Render ~~advanced~~ emergency *and nonemergency* medical care in those areas for which the ~~advanced~~ emergency medical care provider is certified, as part of an authorized ~~advanced care~~ service program:

(1) to (4) No change.

(5) During transfer from one medical care facility to another or to a private home.

ITEM 4. Amend subrule 132.2(3) as follows:

132.2(3) When ~~advanced~~ emergency medical care personnel are functioning in a capacity identified in subrule 132.2(2), paragraph "a," they may perform ~~advanced~~ emergency *and nonemergency* medical care ~~in life-threatening situations or in cases of communication failure~~ without contacting a supervising physician or physician designee if written protocols have been approved by the service program medical director which clearly identify when the protocols may be used in lieu of voice contact.

ITEM 5. Amend subrule 132.2(4) as follows:

132.2(4) ~~Advanced~~ Emergency medical care skills which may be performed if approved by the service program's medical director include:

a. At the *FR and* FR-D level, *skills identified in the United States D.O.T. FR curriculum, plus the following skills in which training can be documented*:

(1) Automated defibrillation and external cardiac pacing (provided the pacing is part of an automated defibrillator device and requires no decision making by the *FR and* FR-D).

(2) Oral airway suctioning.

(3) Insertion of an oral or nasopharyngeal airway device.

(4) Oxygen administration.

(5) Endotracheal or esophageal intubation when using a blindly inserted, combined esophageal/endotracheal device approved by the department.

(6) Blood pressure.

b. At the *EMT-A, EMT-B and* EMT-D level, *skills identified in the United States D.O.T. EMT-A and EMT-B curricula, plus the following additional skills in which training can be documented*:

(1) Defibrillation and external cardiac pacing (provided the pacing is part of an automated defibrillator device and requires no decision making by the *EMT-A, EMT-B and* EMT-D).

(2) Monitoring and maintenance of nonmedicated intravenous solutions.

(3) All skills identified in 132.2(4)"a."

c. At the EMT-I level, *skills identified in the United States D.O.T. EMT-I curriculum, plus the following additional skills in which training can be documented*:

~~(1) Initiation, maintenance and monitoring of nonmedicated intravenous solutions (using the peripheral venous system including the external jugular vein).~~

~~(2) Esophageal intubation.~~

~~(3)~~ *(1)* Endotracheal intubation when using a blindly inserted, combined esophageal/endotracheal device.

~~(4)~~ *(2)* Gastric tube insertion.

~~(5)~~ *(3)* Defibrillation and external cardiac pacing (provided the pacing is part of an automated defibrillator device and requires no decision making by the EMT-I).

(4) All skills identified in 132.2(4)"b."

d. At the EMT-P level, *skills identified in the United States D.O.T. EMT-P curriculum, plus the following additional skills in which training can be documented:*

~~(1) Defibrillation, cardioversion and external cardiac pacing.~~

~~(2) Endotracheal and esophageal intubation and suctioning.~~

~~(3) Initiation, maintenance and monitoring of nonmedicated and medicated intravenous solutions (using the peripheral venous system, including the external jugular vein).~~

~~(4) Maintenance and monitoring of intravenous infusion of blood and blood products.~~

~~(5) Administration of oral, intravenous, inhaled, intramuscular, subcutaneous and topical medications approved by the medical director.~~

~~(6) Direct laryngoscopy.~~

~~(7)~~ *(1)* Gastric tube insertion.

~~(8)~~ *(2)* Nasogastric tube insertion.

~~(9) Rotating tourniquets.~~

~~(10)~~ *(3)* Urinary catheterization.

~~(11) Cricothyrotomy and transtracheal jet insufflation.~~

~~(12) Tension pneumothorax decompression.~~

~~(13)~~ *(4)* Intraosseous infusion.

(5) All skills identified in 132.2(4)"c."

ITEM 6. Amend subrule 132.2(6) as follows:

132.2(6) An ~~advanced~~ emergency medical care provider who has knowledge of ~~a basic or advanced~~ *an* emergency medical care provider, ~~or~~ service program *or training program* that has violated Iowa Code chapter 147A or these rules shall report such information to the department.

ITEM 7. Amend subrule 132.3(1) as follows:

132.3(1) To be enrolled in a training program, an applicant shall:

a. Be at least ~~18~~ *17* years of age at the time of enrollment.

b. and c. No change.

~~d. Be physically able to perform the functions of an advanced emergency medical care provider as appropriate.~~

~~e.~~ *d.* Hold a current course completion card in CPR *if enrolling in an EMT-B, EMT-I, or EMT-P course.*

~~f.~~ *e.* Be currently certified as an FR, if enrolling in an FR-D course.

~~g.~~ *f.* Be currently certified, *as a minimum,* as an EMT-A, if enrolling in an ~~advanced EMT~~ *EMT-I* or paramedic course.

ITEM 8. Amend subrule 132.4(1) as follows:

132.4(1) Application and examination.

a. and b. No change.

c. Upon satisfactory completion of the course and all training program requirements, *including successful completion of the state certifying practical examination,* the student shall be recommended by the training program to take the state certification *written* examinations. *Candidates for state certification are not eligible to continue functioning as a student in the clinical and field setting. State certification must be obtained to perform appropriate skills.*

d. to g. No change.

h. The ~~EMT-I and EMT-P~~ *certifying* written examinations shall be administered ~~by the department~~ at times and places ~~scheduled~~ *determined* by the department. ~~FR-D and EMT-D written examinations shall be administered by the training program. The FR-D and EMT-D written examination fee shall be determined by the training program.~~

i. No oral certification examinations shall be permitted, *however, candidates may be eligible for appropriate accommodations for the written examination. Contact the Iowa Department of Public Health, Bureau of Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa, 50319-0075.*

j. and k. No change.

l. A student who fails the practical certification examination shall be required to repeat only those stations which were failed and shall have two additional opportunities to attain a passing score. The student may repeat the failed examination stations on the same day as determined by the training program. *If a student fails the written examination, the practical examination remains valid for a 12-month period from the date it was successfully completed.*

m. A student who fails to attain ~~at least a 75 percent~~ *the appropriate* overall score on the written certification examination shall have two additional opportunities to complete the entire examination and attain a passing score. *Required overall passing scores for the Iowa certification examinations are: FR, EMT-A, or EMT-B — 70 percent; EMT-I and EMT-P — 75 percent. Passing criteria for the National Registry of EMTs' written examinations is established by the National Registry.*

n. A student who fails to pass the ~~practical or~~ written certification examination on the third attempt and who wishes to pursue certification ~~shall repeat the didactic portion of the course within two years after the third attempt and after two years repeat the entire course.~~ *must submit, at a minimum, written verification (card or certificate) of successful completion of an appropriate DOT refresher course or equivalent. Students failing the examination on six attempts must repeat the entire EMT training program to be eligible for certification.*

o. All examination attempts shall be completed within one year of the initial course completion date. *If an individual is unable to complete the testing within the one year due to medical reasons, an extension may be granted upon submission of a signed statement from a physician and approval by the department.*

p. No change.

q. To be eligible to take the practical examination, FR candidates shall have a current course completion card in CPR.

r. Applicants for EMS-I certification shall:

(1) Be currently certified as an emergency medical care provider or currently licensed as a registered nurse, physician assistant or physician.

(2) Successfully complete an EMS-Instructor curriculum approved by the department.

s. Applicants for ERT certification shall successfully complete an ERT curriculum approved by the department in cooperation with the Iowa Fire Service Institute.

ITEM 9. Amend subrule **132.4(2)**, paragraphs **"a"** and **"b,"** as follows:

132.4(2) Multiple certificates and renewal.

a. *With the exception of specialty certifications,* only one certificate issued by the department shall be considered active. That certificate shall be for the individual's highest level of certification. Any lower levels of certification shall be considered inactive.

b. A lower level certificate may be issued if the individual fails to renew the higher level of certification or voluntarily chooses to move from a higher level to a lower level. To be issued a certificate in these instances, an individual shall:

(1) Complete all applicable continuing education requirements for the lower level during the certification period *and submit a written request for the lower level.*

(2) Complete and submit to the department an "Application for Renewal of Certification" and the applicable fee.

(3) Complete the reinstatement process in 132.4(3) if renewal of the higher level is later requested.

ITEM 10. Amend subrule **132.4(3)**, **TABLE 1**, as follows:

TABLE 1

	REQUIRED CONTINUING EDUCATION HOURS FOR REINSTATEMENT (including required copies)			
CERTIFICATION LAPSED FOR	FR-D *FR*	EMT-D *EMT-A* *EMT-D*	EMT-I	EMT-P
Less than 2 years	14	24	48	60
2 - 4 years	28	48	96	120
4 - 6 years	42	72	144	180

ITEM 11. Amend subrule **132.4(4)** and add new paragraph **"d"** as follows:

132.4(4) Renewal standards. ~~The "Application for Renewal of Certification" and instructions for renewal shall be mailed with the certificate to the certificate holder.~~ To be eligible for renewal, the certificate holder shall:

a. Have signed and submitted an "Application for Renewal of Certification," *provided by the department,* and the applicable fee within 90 days after the certificate's expiration date.

b. No change.

c. Have completed the continuing education requirements during the certification period including:

(1) *FR,* FR-D — 14 hours of approved continuing education including at least one hour in each of the required topic areas listed in subparagraph (5).

(2) *EMT-A, EMT-B,* EMT-D — 24 hours of approved continuing education including at least one hour in each of the required topic areas listed in subparagraph (5).

(3) to (5) No change.

(6) EMS-I — Attend at least one EMS-I workshop sponsored by the department.

(7) ERT — It is recommended that at least one hour in each of the following topic areas be completed:

Agricultural/industrial rescue
Rescue equipment/techniques
Special hazards
Vehicle rescue

d. Notify the department of a change in address.

ITEM 12. Amend subrule 132.4(5) as follows:

132.4(5) Continuing education approval. Continuing education hours (CEHs) may be issued for the following types of training during the certification period:

a. Courses which are based upon the department's curricula for EMS providers and other courses pertinent to emergency medical care. Approved self-study and video courses are permitted (4 hours maximum for *FR and* FR-D; 8 hours maximum for *EMT-A, EMT-B and* EMT-D; 16 hours maximum for EMT-I; 20 hours maximum for EMT-P).

b. In-hospital clinical experience in areas relating to emergency medical care (4 hours maximum for *FR and* FR-D; 8 hours maximum for *EMT-A, EMT-B and* EMT-D; 16 hours maximum for EMT-I; 20 hours maximum for EMT-P).

c. to h. No change.

~~i. Basic care continuing education hours which have been approved pursuant to Iowa Administrative Code 641 131.7(147) shall be considered approved for advanced emergency medical care personnel.~~

ITEM 13. Amend subrule 132.4(9), introductory paragraph, as follows:

132.4(9) Certification through endorsement. An individual currently certified by another state or by the National Registry of EMTs must also possess a current Iowa certificate to be considered certified in this state. The department shall contact the state of certification or the National Registry of EMTs to verify certification *or registry* and good standing. To receive Iowa certification, the individual shall:

ITEM 14. Amend subrule 132.5(1) as follows:

132.5(1) Curricula.

a. The training program shall use, as a minimum, the course curricula approved by the department and shall include, as a minimum, the following course components:

(1) to (3) No change.

(4) First responder course:

1. Forty hours of classroom instruction.

2. Clinical experience as may be required by the training program.

3. Ambulance/rescue field experience as may be required by the training program.

(5) Emergency rescue technician course:

1. Forty hours of classroom instruction.

2. Clinical experience as may be required by the training program.

3. Ambulance/rescue field experience as may be required by the training program.

(6) Emergency medical technician-basic:

1. One hundred and ten hours of classroom instruction.

2. Eighteen hours of clinical time.

3. Ambulance/rescue field experience as may be required by the training program.

b. No change.

c. Currently certified first responders who were certified before January 1, 1996, may perform the skills outlined in 132.2(4)"a," upon successful completion of a transition course approved by the department. The transition course shall not exceed 14 hours.

d. Individuals currently certified at the EMT-A or EMT-D level and who were certified prior to January 1, 1996, may perform the skills outlined in 132.2(4)"b,"

upon successful completion of a transition course approved by the department. The transition course shall not exceed 24 hours.

e. Individuals currently certified at the FR level and who were certified prior to January 1, 1996, may obtain EMT-B certification upon successful completion of a transition course approved by the department. Candidates shall successfully pass the EMT-B state certifying practical and written examinations. The transition course shall not exceed 70 hours.

f. FR-D, EMT-D, and EMT-A courses shall not be initiated after July 1, 1996.

ITEM 15. Amend subrule **132.5(2)**, introductory paragraph and paragraph "**d,**" as follows:

132.5(2) Cardiac arrest tape review. ~~Advanced care training~~ *Training* programs may apply to the department for approval to provide cardiac arrest tape review if:

d. The training program submits to the department on a monthly basis a standardized data collection sheet for each cardiac arrest tape review. The standardized data collection sheets are available upon request from: Iowa Department of Public Health, *Bureau of* Emergency Medical Services ~~Section~~, Lucas State Office Building, Des Moines, Iowa 50319-0075.

ITEM 16. Amend subrule **132.5(4)**, paragraph "**c,**" as follows:

132.5(4) Facilities.

c. Opportunities for the student to accomplish the appropriate ~~advanced~~ skill competencies in the field environment shall be ensured. The training program shall use an ~~advanced~~ *appropriate* emergency medical care service program to provide field experience as required in subrule 132.5(1).

ITEM 17. Amend subrule 132.5(5) as follows:

132.5(5) Staff.

a. and b. No change.

c. Course coordinators, ~~and the~~ outreach course coordinators, *and primary instructor(s)* used by the training program shall be currently certified as EMS instructors.

d. and e. No change.

f. If a training program's medical director resigns, the training program director shall report this to the ~~board~~ *department* and provide a curriculum vitae for the medical director's replacement. A new course shall not be started until a qualified medical director has been appointed.

g. and h. No change.

i. The training program shall ensure that each practical examination evaluator and mock patient is familiar with the practical examination requirements and procedures. *Practical examination evaluators shall attend a workshop sponsored by the department.*

ITEM 18. Amend subrule 132.5(11) as follows:

132.5(11) Training program application, inspection and approval.

a. An applicant seeking initial or renewal training program approval shall use the "EMS Training Program Application" provided by the department. The application shall include, as a minimum:

(1) to (7) No change.

(8) Level(s) of EMS certification to be offered.

b. to i. No change.

ITEM 19. Amend subrule 132.6(1) as follows:

132.6(1) Continuing education courses for ~~advanced~~ emergency medical care personnel may be approved by the board, the department, ~~or a~~ training program *or a national EMS continuing education accreditation entity.*

ITEM 20. Amend subrule 132.7(1) as follows:

132.7(1) General requirements for authorization and renewal of authorization.

a. An ambulance~~, rescue~~ or ~~first response~~ *nontransport* service in this state that desires to provide ~~advanced~~ emergency medical care, in the ~~prehospital~~ *out-of-hospital* setting, shall apply to the department for authorization to establish a program utilizing certified ~~advanced~~ emergency medical care providers for delivery of the care at the scene of an emergency *or nonemergency*, during transportation to a hospital, *during transfer from one medical care facility to another or to a private home*, or while in the hospital emergency department and until care is directly assumed by a physician or by authorized hospital personnel. Application for authorization shall be made on forms provided by the department. Applicants shall complete and submit the forms to the department at least 30 days prior to the anticipated date of authorization.

b. No change.

c. Applications for authorization and renewal of authorization may be obtained upon request to: Iowa Department of Public Health, *Bureau of* Emergency Medical Services ~~Section~~, Lucas State Office Building, Des Moines, Iowa 50319—0075.

d. No change.

e. Service program authorization is valid for a period of ~~two~~ *three* years from its effective date unless otherwise specified on the certificate of authorization or unless sooner suspended or revoked.

f. No change.

g. The certificate of authorization shall be issued only to the service program based in the city named in the application and shall not be inclusive of any other base of operation when that base of operation is located in a different city. Any ambulance service or ~~rescue squad~~ *nontransport* service that is based in and operates from more than one city shall apply for and, if approved, shall receive a separate authorization for each base of operation that desires to provide ~~advanced~~ emergency medical care.

h. No change.

i. Nontransporting service programs that only provide basic care need only complete the application process of these rules for authorization.

ITEM 21. Amend subrule **132.7(3)**, paragraph "**b,**" as follows:

132.7(3) Rotorcraft ambulances and air taxis or air carriers.

b. Air taxis or air carriers shall not be subject to the requirements of Iowa Code chapter 147A and these rules except when utilizing ~~advanced EMTs or paramedics~~ *emergency medical care personnel* to provide ~~advanced~~ emergency medical care. In such instances, ~~advanced EMTs or paramedics~~ *emergency medical care personnel* shall be members of an authorized service program (assigned by that service program) and shall be provided with the appropriate equipment and medical direction deemed necessary by that service program's medical director.

ITEM 22. Amend subrule **132.7(4)**, paragraph "**a,**" as follows:

132.7(4) Service program inspections.

a. The department shall inspect each service program at least once every ~~two~~ *three* years. The department with-

out prior notification may make additional inspections at times, places and under such circumstances as it deems necessary to ensure compliance with Iowa Code chapter 147A and these rules.

ITEM 23. Amend subrule **132.7(5)**, paragraphs "**a**" and "**d,**" as follows:

a. A temporary service program authorization may be issued to services that wish to operate during special events that may need ~~advanced~~ emergency medical care coverage *at a level other than basic care*. Temporary authorization is valid for a period of 30 days unless otherwise specified on the certificate of authorization or unless sooner suspended or revoked. Temporary authorization shall apply to those requirements and standards for which the department is responsible. Applicants shall complete and submit the necessary forms to the department at least 30 days prior to the anticipated date of need.

d. The service shall submit a report, *to the department,* within 30 days after the expiration of the temporary authorization which includes as a minimum:

(1) Number of patients treated;
(2) Types of treatment rendered;
(3) Any operational or medical problems.

ITEM 24. Amend subrule 132.7(6) as follows:

132.7(6) Conditional service program authorization. Any service that is unable to meet the ~~24-hour-per-day~~ staffing requirement to receive full authorization ~~at the advanced emergency medical care provider level~~ that wishes to provide ~~advanced~~ *emergency medical* care ~~on an intermittent basis~~ shall apply to the department. The service shall:

a. to e. No change.

f. If an ambulance service, provide as a minimum, one ~~EMT-D~~ *EMT-B* and one licensed driver, who holds a current course completion card in CPR, on each primary response vehicle call *(see Table 2)*. The service shall document each driver's training in emergency driving techniques and in the use of the service's communications equipment.

g. If a ~~rescue or first response~~ *nontransporting* service~~,~~ has, *as a minimum,* a written mutual aid agreement with at least one ground ambulance service to ensure coverage when no certified personnel are available *(see Table 3)*. Simultaneous dispatching may be used in lieu of a written mutual aid agreement.

ITEM 25. Amend subrule 132.8(1) as follows:

132.8(1) Service programs shall:

a. No change.

b. Provide on each primary response vehicle call, as appropriate to the service program's level of authorization, the following:

(1) *Fully authorized basic care and EMT-B* ground ambulance service programs shall provide, as a minimum, one ~~advanced EMT or paramedic and one EMT-A~~ *EMT-B and a licensed driver, (see Table 2)*. The service shall document each driver's training in emergency driving techniques and in the use of the service's communications equipment. *Fully authorized EMT-I ambulance services shall provide, as a minimum, one EMT-I and one EMT-B. Fully authorized EMT-P ambulance services shall provide, as a minimum, one EMT-P and one EMT-B (see Table 2).*

(2) ~~Rescue and first response~~ *Fully authorized nontransporting* service programs shall provide, as a minimum, one ~~advanced emergency medical care provider.~~ *appropriately certified emergency medical care provider at the level of service authorization (see Table 3).*

(3) ~~First response or rescue~~ *Nontransporting* service programs that may also want to transport patients shall:

1. Apply to the department for authorization to transport patients on an occasional basis.
2. Use a vehicle that complies with subrule 132.8(4).
3. Provide staffing in accordance with subrule 132.7(6)"f."

TABLE 2: AMBULANCE SERVICE STAFFING

	Level of Authorization			
	Basic Care	*EMT-B*	*EMT-I*	*EMT-P*
Full authorization minimum staffing	*1 - EMT-B 1 - Licensed driver*	*1 - EMT-B 1 - Licensed driver*	*1 - EMT-I 1 - EMT-B*	*1 - EMT-P 1 - EMT-B*
Conditional authorization minimum staffing	*Not Applicable*	*Not Applicable*	*1 - EMT-B 1 - Licensed driver*	*1 - EMT-B 1 - Licensed driver*

TABLE 3: NONTRANSPORTING SERVICE STAFFING

	Level of Authorization				
	Basic Care	*First Responder*	*EMT-B*	*EMT-I*	*EMT-P*
Full Authorization minimum staffing	*Not Applicable*	*1 - FR*	*1 - EMT-B*	*1 - EMT-I*	*1 - EMT-P*
Conditional authorization minimum staffing	*Not Applicable*	*Mutual aid agreement with a transporting service*	*Mutual aid agreement with a transporting service.*	*Mutual aid agreement with a transporting service*	*Mutual aid agreement with a transporting service*

(4) Nothing in these rules shall prevent a ~~first response or rescue~~ *nontransporting* service program from transporting patients in an emergency situation when lack of transporting resources would cause an unnecessary delay in patient care.

(5) Unless otherwise established by protocol approved by the medical director, the emergency medical care provider with the highest level of certification (on the transporting service) shall attend the patient.

c. No change.

d. Maintain current personnel rosters and personnel files. The files shall include the names and addresses of all personnel and documentation that verifies the following qualifications:

(1) Current provider level certification.
(2) Current course completion card in CPR.
(3) If a paramedic, *and working for an EMT-P service,* current course completion card in ACLS.
(4) Other current certifications/endorsements as may be required by the medical director.
(5) Documentation of emergency driving and use of the service's communications equipment.

e. to k. No change.

l. Secondary response vehicles are not required to meet the vehicle standards, staffing and equipment requirements of primary response vehicles. When ~~advanced~~ emergency medical care is to be provided, however, appropriate staff, equipment and supplies shall also be provided to ensure continuity of care. If an ~~advanced~~ *appropriate* emergency medical care provider is not available to staff and to provide ~~advanced~~ emergency medical care on a secondary response vehicle, a registered nurse,

physician or physician's assistant may provide that care pursuant to their license.

m. and n. No change.

o. The service program shall maintain a skills maintenance log (or a similar form or system containing comparable data) available upon request from: Iowa Department of Public Health, *Bureau of* Emergency Medical Services ~~Section~~, Lucas State Office Building, Des Moines, Iowa 50319-0075. The medical director shall designate, in writing, the minimum number and type of monthly or quarterly mandatory skills to be performed. ~~However, as a minimum, individuals~~ *Individuals* who are certified as an *FR,* FR-D, EMT-D, *EMT-B* or EMT-I shall complete defibrillation practice sessions (monthly for individuals who utilize manual defibrillators and quarterly for individuals who utilize automated defibrillators).

p. No initial authorization shall be issued to EMT-D, *EMT-B* or EMT-I services wishing to utilize a manual defibrillator. This provision does not apply to EMT-D or EMT-I services authorized prior to January 1, 1990.

q. Provide appropriate patient care skills by level of authorization (see Tables 4 and 5).

TABLE 4: AMBULANCE LEVEL SKILLS

BASIC LEVEL	*EMT-B LEVEL*	*EMT-I LEVEL*	*EMT-P LEVEL*
CPR, oxygen, bandaging, splinting, traction splint, vital sign assessment, antishock garment, spinal immobilization, oral airway insertion and suctioning	*Skills identified in 132 2(4)"b" including defibrillation esophageal/ tracheal/ double-lumen airway IV maintenance* patient-assisted meds *optional*	*Skills identified in 132 2(4)"c" including IV initiation EOA EGTA*	*Skills identified in 132 2(4)"d" including Pharmacologic agents endotracheal intubation*

TABLE 5: NONTRANSPORT LEVEL SKILLS

FR BASIC	*FR*	*EMT-B*	*EMT-I*	*EMT-P*
CPR oxygen bandaging splinting	*Skills identified in 132 2(4)"a" including AED esophageal airway*	*Skills identified in 132 2(4)"b" including defibrillation esophageal airway patient-assisted meds*	*Skills identified in 132 2(4)"c" including IV initiation EOA EGTA*	*Skills identified in 132 2(4)"d" including Pharmacologic agents endotracheal intubation*

ITEM 26. Amend subrule 132.8(2) as follows:

132.8(2) Each service program shall complete and maintain accurate records concerning the emergency care provided to each patient. An oral or written report should be given to the receiving hospital to ensure continuity of patient care. ~~The "Iowa Prehospital Care Report" and the "Iowa Prehospital Advanced Care Report" (or a similar report utilized by a service program containing comparable data) shall be maintained.~~ The data entered thereon shall be provided, upon request of the department, to the department for statistical and other study purposes, or for verification of compliance with Iowa Code chapter 147A and these rules.

~~a. Service programs shall complete and submit to the department on a quarterly basis, a special patient care report for each call where cardiopulmonary resuscitation is performed. The report is available upon request to: Iowa Department of Public Health, Emergency Medical Services Section, Lucas State Office Building, Des Moines, Iowa 50319-0075.~~

~~b.~~ In addition, *FR,* FR-D, EMT-D, *EMT-B* and EMT-I service programs shall:

~~(1)~~ *1.* Use the defibrillation protocol approved by the department.

~~(2)~~ *2.* Make simultaneous voice/ECG recordings on each call where cardiopulmonary resuscitation is performed. These recordings shall commence upon arrival at the patient's side and shall not be terminated until patient care is assumed by higher level personnel with appropriate training and equipment.

~~(3)~~ *3.* Submit a copy of the patient care report and the original voice/ECG recording to the approved training program designated by the medical director within 48 hours of the cardiac arrest.

ITEM 27. Amend subrule 132.8(3), introductory paragraph, as follows:

132.8(3) ~~The "Iowa Prehospital Care Report" and the "Iowa Prehospital Advanced Care Report" (or any similar report utilized by a service program containing comparable data)~~ *The patient care report* is a confidential document and shall be exempt from disclosure pursuant to Iowa Code subsection 22.7(2) and shall not be accessible to the general public. Information contained in those reports, however, may be utilized by any of the indicated distribution recipients and may appear in any document or public health record in a manner which prevents the identification of any patient or person named in those reports.

ITEM 28. Amend subrule 132.8(4) as follows:

132.8(4) Required equipment and vehicle standards.

a. to c. No change.

d. ~~Rescue and first response~~ *Nontransport* service programs shall be equipped, as a minimum, with the Iowa essential EMS equipment listed in subrule 132.8(10). In addition to the Iowa essential EMS equipment listed in subrule 132.8(10), ~~rescue and first response~~ *nontransport* service programs shall carry equipment and supplies in quantities as determined by the medical director, and appropriate to the service program's level of care as established in the service program's approved protocols.

e. to i. No change.

j. Over-the-counter drugs may be administered by *FR,* FR-D, *EMT-A,* EMT-D, *EMT-B,* EMT-I or EMT-P service programs upon completion of training and establishment of a written protocol approved by the medical director.

k. and l. No change.

m. Ambulance service programs shall maintain a telecommunications system between the ~~advanced~~ emergency medical care provider and the source of their medical direction and other appropriate entities. ~~First response and rescue~~ *Nontransport* service programs shall maintain a telecommunications system between the ~~advanced~~ emergency medical care provider and the responding ambulance service and other appropriate entities.

n. and o. No change.

ITEM 29. Amend subrule **132.8(7)**, paragraph **"b,"** as follows:

b. ~~FR-D~~ *Nontransport* services (operating in conjunction with ~~nonadvanced~~ *basic* care *transport* services) shall provide assurances that the ambulance service will have adequate equipment and trained staff to ensure continuity of care. This shall include, if necessary, ensuring that an ~~FR-D~~ *emergency medical care provider* is present with the patient while en route to a hospital.

ITEM 30. Amend subrule 132.8(10) as follows:

132.8(10) Iowa essential EMS equipment for ambulance~~, rescue~~ and ~~first response services~~ *nontransport* services.

a. to m. No change.

n. Lower extremity traction splint (optional for ~~first responders~~ *EMT-A, EMT-D, EMT-B, EMT-I, and EMT-P nontransport services*).

o. No change.

p. Short spine board (or equivalent extrication device) and long spine board (optional for ~~first responders~~ *EMT-A, EMT-D, EMT-B, EMT-I, and EMT-P nontransport services*).

q. to u. No change.

~~v. Medical antishock trousers (adult size required with convertible or pediatric size recommended). Antishock trousers are optional for first responders.~~

~~w.~~ *v.* Penlight or equivalent and flashlight.

~~x.~~ *w.* Rigid extrication collars (Philadelphia, stiff-neck or equivalent) in at least three basic sizes.

~~y.~~ *x.* Defibrillator *(required, except for basic level services)*.

1. No change.

2. Manual or ~~automatic~~ *automated*, portable, battery-operated with voice/ECG recorder. (EMT-D, *EMT-B,* EMT-I, EMT-P).

y. Esophageal/tracheal double-lumen airway device (required, except for basic level services).

ITEM 31. Add new subrule 132.8(11) as follows:

132.8(11) Implementation. The director may grant exceptions and variances from the requirements of this chapter for any ambulance or nontransporting service. Exceptions or variations shall be reasonably related to undue hardships which existing services experience in complying with this chapter. No exception or variance may be granted unless the service has adopted a plan, approved by the department prior to July 1, 1996, to achieve compliance during a period not to exceed seven years. Services requesting exceptions and variances shall be subject to other applicable rules adopted pursuant to 147A. Nothing in this chapter shall be construed to require any ambulance or nontransporting service to provide a level of care beyond minimum basic care standards.

ITEM 32. Amend subrule 132.9(4), introductory paragraph, as follows:

132.9(4) The medical director, supervising physicians, physician designees or other qualified designees shall randomly audit (at least quarterly) documentation of calls where ~~basic or advanced~~ *emergency medical* care was provided. The medical director shall *randomly* review ~~and sign each audit~~ *audits* performed by the ~~medical director~~, supervising physician, physician designee or other designee. ~~As a minimum, all calls where advanced care was provided based upon protocol (without prior contact with medical direction) shall be audited.~~ The audit shall be in writing and shall include, but need not be limited to:

ITEM 33. Amend rule 641—132.10(147A), catchwords, as follows:

641—132.10 (147A) Complaints *and* investigations—denial, *citations and warnings,* probation, suspension or revocation of service program authorization or renewal—~~appeal~~.

ITEM 34. Amend subrule 132.10(1) as follows:

132.10(1) All complaints regarding the operation of authorized ~~advanced~~ emergency medical care service programs, or those purporting to be or operating as the same, shall be reported to the department. The address is: Iowa Department of Public Health, *Bureau of* Emergency Medical Services ~~Section~~, Lucas State Office Building, Des Moines, Iowa 50319-0075.

ITEM 35. Amend subrule 132.10(3), introductory paragraph, as follows:

132.10(3) Service program authorization may be denied, *issued a citation and warning,* placed on probation, suspended or revoked by the department in accordance with Iowa Code subsection 147A.5(3) for any of the following reasons:

ITEM 36. Amend subrule 132.10(4) as follows:

132.10(4) The department shall notify the applicant of the granting or denial of authorization or renewal, or shall notify the alleged violator of action to *issue a citation and warning,* place on probation or suspend or revoke authorization or renewal pursuant to Iowa Code sections 17A.12 and 17A.18. Notice of *issuance of a* denial, *citation and warning,* probation, suspension or revocation shall be served by restricted certified mail, return receipt requested, or by personal service.

ITEM 37. Amend subrule 132.10(5) as follows:

132.10(5) Any requests for appeal concerning the denial, *citation and warning,* probation, suspension or revocation of service program authorization or renewal shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 30 days of the receipt of the department's notice. The address is: Iowa Department of Public Health, *Bureau of* Emergency Medical Services ~~Section~~, Lucas State Office Building, Des Moines, Iowa 50319-0075. If such a request is made within the 30-day time period, the notice shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, *citation and warning,* probation, suspension or revocation has been or will be removed. After the hearing, or upon default of the applicant or alleged violator, the administrative law judge shall affirm, modify or set aside the denial, *citation and warning,* probation, suspension or revocation. If no request for appeal is received within the 30-day time period, the department's notice of denial, probation, suspension or revocation shall become the department's final agency action.

ITEM 38. Amend subrule 132.10(13) as follows:

132.10(13) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: *Bureau of* Emergency Medical Services ~~Section~~, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

ITEM 39. Amend rule 641—132.11(147A), catchwords, as follows:

641—132.11(147A) *Complaints and investigations—denial* ~~Denial~~, *citation and warning,* probation, suspension, or revocation of ~~advanced~~ emergency medical care personnel certificates or renewal.

ITEM 40. Amend subrule 132.11(1), introductory paragraph, as follows:

132.11(1) The department may deny an application for issuance or renewal of an ~~advanced~~ emergency medical care provider certificate, *including specialty certifications,* or place on probation, *or issue a citation and warning,*

suspend or revoke the certificate when it finds that the applicant or certificate holder has committed any of the following acts or offenses:

ITEM 41. Amend rule 641—132.12(147A), catchwords, as follows:

641—132.12(147A) ***Complaints and investigations—denial*** ~~**Denial**~~**,** ***citation and warning,*** **probation, suspension, or revocation of training program or continuing education provider approval or renewal.**

ITEM 42. Amend subrule 132.12(1) as follows:

132.12(1) The department may deny an application for approval or renewal, *or issue a citation and warning,* or place on probation, *or* suspend or revoke the approval or renewal when it finds that the applicant has failed to meet the applicable provisions of these rules or has committed any of the following acts or offenses:

a. and b. No change.

c. Suspension or revocation of approval to provide ~~basic~~ emergency medical care training or other disciplinary action taken pursuant to Iowa Code ~~section 147.161~~ *chapter 147A*. A certified copy of the record or order of suspension, revocation or disciplinary action is conclusive or prima facie evidence.

ITEM 43. Amend subrule 132.13(1) as follows:

132.13(1) All complaints regarding ~~advanced~~ emergency medical care personnel, training programs or continuing education providers, or those purporting to be or operating as the same, shall be reported to the department. The address is: Iowa Department of Public Health, *Bureau of* Emergency Medical Services ~~Section~~, Lucas State Office Building, Des Moines, Iowa 50319-0075.

ITEM 44. Amend subrule 132.13(2) as follows:

132.13(2) An ~~advanced~~ emergency medical care provider who has knowledge of ~~a~~ *an* ~~basic or advanced~~ emergency medical care provider or service program that has violated Iowa Code chapter 147A, ~~Iowa Code section 147.161,~~ Iowa Administrative Code 641—Chapter 132 or these rules, shall report such information to the department.

ITEM 45. Amend subrule 132.13(3) as follows:

132.13(3) Complaint investigations may result in the department's issuance of a notice of denial, *citation and warning,* probation, suspension or revocation.

ITEM 46. Amend subrule 132.13(5) as follows:

132.13(5) Notice of denial, *issuance of a citation and warning,* probation, suspension or revocation shall be effected in accordance with the requirements of Iowa Code section 17A.12. Notice to the alleged violator of denial, probation, suspension or revocation shall be served by certified mail, return receipt requested, or by personal service.

ITEM 47. Amend subrule 132.13(6) as follows:

132.13(6) Any request for a hearing concerning the denial, *citation and warning,* probation, suspension or revocation shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 20 days of the receipt of the department's notice to take action. The address is: Iowa Department of Public Health, *Bureau of* Emergency Medical Services ~~Section~~, Lucas State Office Building, Des Moines, Iowa 50319-0075. If the request is made within the 20-day time period, the notice to take action shall be deemed to be suspended pending the hearing. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, *citation and warning,* probation, suspension or revocation has been or will be removed. If no request for a hearing is received within the 20-day time period, the department's notice of denial, *citation and warning,* probation, suspension or revocation shall become the department's final agency action.

ITEM 48. Amend subrule 132.13(14) as follows:

132.13(14) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Iowa Department of Public Health, *Bureau of* Emergency Medical Services ~~Section~~, Lucas State Office Building, Des Moines, Iowa 50319-0075.

ITEM 49. Amend subrule **132.14(2)**, paragraph "**f,**" as follows:

f. Submit to the department, within ten days after having given verbal notification to the department, a written explanation for the temporary variance request that addresses each of the above paragraphs. The address and telephone number are: Iowa Department of Public Health, *Bureau of* Emergency Medical Services ~~Section~~, Lucas State Office Building, Des Moines, Iowa 50319-0075, (515)281-3741.

ITEM 50. Amend subrule 132.15(1), introductory paragraph, as follows:

132.15(1) Upon responding to an emergency call, ambulance, ~~rescue~~ or ~~first response~~ *nontransport* paramedic level services may make a determination at the scene as to whether emergency medical transportation or nonemergency transportation is needed. The determination shall be made by a paramedic and shall be based upon the nonemergency transportation protocol approved by the service program's medical director. When applying this protocol, the following criteria, as a minimum, shall be used to determine the appropriate transport option:

ITEM 51. Amend subrule 132.15(2) as follows:

132.15(2) If treatment is not indicated, the service program may make arrangements for nonemergency transportation. If arrangements are made, the service program shall remain at the scene until nonemergency transportation arrives. During the wait for nonemergency transportation, however, the ambulance~~, rescue~~ or ~~first response~~ *nontransport* service may respond to an emergency.

ARC 5764A

PUBLIC HEALTH DEPARTMENT[641]

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 321.423, the Iowa Department of Public health hereby gives Notice of Intended Action to amend Chapter 133, "White Flashing Light Authorization," Iowa Administrative Code.

1995 Iowa Acts, Senate File 178, amended Iowa Code chapter 147A relating to emergency medical services. Amendments in Chapter 133 represent corresponding changes for clarification. Item 1 updates parenthetical Code references. Item 2 updates definitions to be compatible with changes in Iowa Code chapter 147A. Items 3 to 7 are for clarification purposes.

The Iowa Department of Public Health will hold a public hearing on Tuesday, August 22, 1995, at 1 p.m. in the Fourth Floor Conference Room, Lucas State Office Building, Des Moines, Iowa 50319-0075. Any oral or written comments must be received on or before August 22, 1995. Comments should be addressed to Gary Ireland, Bureau Chief, Emergency Medical Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These amendments are intended to implement Iowa Code sections 321.423 as amended by 1995 Iowa Acts, Senate File 178, and 321.428.

The following amendments are proposed.

ITEM 1. Amend **641—Chapter 133** by striking references to "73GA,HF2562" and inserting "321".

ITEM 2. Amend rule **641—133.1(321)** by amending three definitions, deleting two and adding one definition as follows:

"Emergency medical care provider" means any individual currently certified by the ~~Iowa board of medical examiners~~ *department* pursuant to Iowa Code section 147A.6, ~~the Iowa department of public health pursuant to Iowa Code section 147.161~~ or other member of an ambulance, ~~rescue~~ or ~~first response~~ *nontransport* service who actively participates in the rendering of emergency medical care.

~~"First response service" means the same as defined in IAC 641—132.1(147A).~~

"Member" means any individual utilized by an ambulance, ~~rescue~~ or ~~first response~~ *nontransport* service to provide emergency medical care.

"Nontransport service" means any privately or publicly owned rescue or first response service program which does not provide patient transportation (except when no ambulance is available or in a disaster situation) and utilizes only rescue or first response vehicles to provide emergency medical care at the scene of an emergency.

~~"Rescue service" means the same as defined in IAC 641—132.1(147A).~~

"Service program" or "service" means any emergency ambulance, ~~rescue~~ or ~~first response~~ *nontransport* service based in this state.

ITEM 3. Amend subrule **133.3(1)**, paragraphs "**a**" and "**b**," as follows:

133.3(1) Authorization certificates (provided by the department) shall be issued by the service director for service vehicles and vehicles owned by emergency medical care providers who are members in good standing with the service. Vehicle authorization shall be limited to:

a. Vehicles owned or exclusively operated by the ambulance, ~~rescue~~ or ~~first response~~ *nontransport* service.

b. Vehicles owned or operated by emergency medical care provider members of the ambulance, ~~rescue~~ or ~~first response~~ *nontransport* service.

ITEM 4. Amend subrule 133.3(5) as follows:

133.3(5) The service director shall provide an informational sheet which explains the requirements for use of the white lights to each member who is issued an authorization certificate. The information sheet is available upon request from the Iowa Department of Public Health, *Bureau of* Emergency Medical Services ~~Section~~, Lucas State Office Building, Des Moines, Iowa 50319-0075.

ITEM 5. Amend subrule 133.4(3) as follows:

133.4(3) An emergency medical care provider or service director who has knowledge of any emergency medical care provider or service program that has violated Iowa Code chapter 147A~~, Iowa Code section 147.161~~, Iowa Administrative Code 641—Chapter ~~131 or~~ 132 or these rules shall report that information to the department.

ITEM 6. Amend subrule 133.5(2) as follows:

133.5(2) Any request for appeal concerning denial, probation, suspension or revocation shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 30 days of the receipt of the department's notice. The address is: Iowa Department of Public Health, *Bureau of* Emergency Medical Services ~~Section~~, Lucas State Office Building, Des Moines, Iowa 50319-0075. If the request is made within the 30-day time period, the notice shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, probation, suspension or revocation has been or will be removed. If no request for appeal is received within the 30-day time period, the department's notice of denial, probation, suspension or revocation shall become the department's final agency action.

ITEM 7. Amend subrule 133.5(10) as follows:

133.5(10) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Iowa Department of Public Health, *Bureau of* Emergency Medical Services ~~Section~~, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These amendments are intended to implement Iowa Code sections 321.423 as amended by 1995 Iowa Acts, Senate File 178, and 321.428.

ARC 5775A

PUBLIC SAFETY DEPARTMENT[661]

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 101.1 and 101A.5, the Iowa Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 5, "Fire Marshal," Iowa Administrative Code.

These rules amend various provisions related to the handling and storage of flammable liquids. References to national codes are updated, and several provisions related to use and handling of certain refrigerants in mobile air conditioning systems are added. In Item 3, language substituted for the text of a provision of NFPA 30, "Flammable and Combustible Liquids Code," is renumbered to reflect the numbering of items contained in the new version of the adopted code.

A public hearing on these proposed amendments will be held on August 23, 1995, at 1:45 p.m., in the Third Floor Conference Room (West Half), Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Plans and Research Bureau, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, or by telephone at (515)281-5524, at least one day prior to the public hearing. Any written comments or information regarding these amendments should be directed to the Plans and Research Bureau at the address indicated. Persons who wish to convey their views orally other than at the public hearing may contact the Plans and Research Bureau by telephone or in person at the Bureau office at least one day prior to the public hearing.

These amendments are intended to implement Iowa Code chapter 101.

The following amendments are proposed.

ITEM 1. Amend rule 661—5.250(101), introductory paragraph, as follows:

661—5.250(101) Rules generally. The standards "NFPA 58 Standard for the Storage and Handling of Liquefied Petroleum Gases," 1992 edition, and "NFPA ~~54 1988~~ *54* National Fuel Gas Code," ~~1988~~ *1992* edition, as published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, are hereby adopted by reference as the rules governing liquefied petroleum gases with the following amendments:

ITEM 2. Amend 661—Chapter 5 by adding the following new rule:

661—5.252(101) Prohibition of certain refrigerants.

5.252(1) "Mobile air conditioning system" means mechanical vapor compression equipment which is used to cool the driver or passenger compartment of any motor vehicle.

5.252(2) The distribution, sale or use of refrigerants containing liquefied petroleum gas, as defined in Iowa Code section 101.1, for use in mobile air conditioning systems, is prohibited.

ITEM 3. Amend rule 661—5.300(101), introductory paragraph and the first and second unnumbered paragraphs, as follows:

661—5.300(101) Rules generally. The standard "NFPA 30 Flammable and Combustible Liquids Code," ~~1990~~ *1993* edition, as published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, is hereby adopted by reference as the rules governing flammable and combustible liquids with the following amendments:

Delete subsection ~~2-3.7.1~~ *2-3.8.1* and insert in lieu thereof the following:

~~2-3.7.1~~ *2-3.8.1* Each connection to an aboveground tank through which liquid can normally flow shall be provided with an external control valve as close as practical to the shell of the tank. ~~Except for flammable and combustible liquids whose chemical characteristics are incompatible with steel, such valves and their tank connections installed after January 17, 1980, shall be of steel.~~ In addition to the control valve or any other normal tank valves there shall be an emergency internal check valve at each pipe connection to any tank opening below normal liquid level. The emergency internal check valve shall be effectively located inside the tank shell and shall be operable both manually and by an effective heat activated device which, in case of fire, will automatically close the valve to prevent the flow of liquid from the tank even though the pipe lines are broken from the tank.

ITEM 4. Rescind and reserve subrule **5.301(9)**.

ITEM 5. Amend rule **661—5.304(101)** as follows:

Amend subrule 5.304(1), introductory paragraph, as follows:

5.304(1) Except as allowed by *rule* 661—5.305(101), the standard "NFPA 30A Automotive and Marine Service Station Code," ~~1990~~ *1993* edition, ~~and Tentative Interim Amendment 90-1,~~ as published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, ~~are~~ *is* hereby adopted by reference as the rules governing dispensing motor vehicle fuel into the fuel tanks of motor driven vehicles with the following amendments:

Rescind and reserve subrule **5.304(1)**, paragraph "**a.**"

Amend subrule 5.304(2) as follows:

5.304(2) The standard "NFPA 407 Standard for Aircraft Fuel Servicing," ~~1985~~ *1990* edition, as published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, is hereby adopted by reference as the rules governing ground fuel servicing of aircraft with liquid petroleum fuel.

ITEM 6. Rescind and reserve rule **661—5.314(101)**.

ITEM 7. Rescind rule 661—5.350(101) and insert the following new rule in lieu thereof:

661—5.350(101) Rules generally. The standard, "NFPA 31 Installation of Oil Burning Equipment," 1992 edition, as published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, is hereby adopted by reference as the rules governing oil burning equipment in the state of Iowa.

ITEM 8. Rescind rule 661—5.400(101) and insert the following new rule in lieu thereof:

661—5.400(101) Rules generally. The standard, "NFPA 37 Installation and Use of Stationary Combustion Engines and Gas Turbines," 1990 edition, as published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, is hereby adopted by reference as the rules governing the installation and use of stationary combustion engines and gas turbines in the state of Iowa.

ITEM 9. Rescind rule 661—5.450(101) and insert the following new rule in lieu thereof:

661—5.450(101) Rules generally. The standard, "NFPA 385 Standard for Tank Vehicles for Flammable and combustible Liquids," 1990 edition, as published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, is hereby adopted by reference as the rules governing the transportation of flammable and combustible liquids in tank vehicles in the state of Iowa.

ITEM 10. Rescind rule 661—5.850(101) and insert the following new rule in lieu thereof:

661—5.850(101) Rules generally. The code, "NFPA 495 Manufacture, Transportation, Storage, and Use of Explosive Materials," 1992 edition, as published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, with the exception of chapter 2 and references to other specific standards contained in chapter 2, is hereby adopted by reference as the rules governing the manufacture, transportation, storage, and use of explosive materials in the state of Iowa.

ARC 5750A

PUBLIC SAFETY DEPARTMENT[661]

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 690.1, the Iowa Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 11, "Identification Section of the Division of Criminal Investigation," Iowa Administrative Code.

These amendments implement provisions of 1995 Iowa Acts, House File 528, which relax existing restrictions on retention of fingerprints of juvenile criminal suspects and establishment of criminal history records for juveniles.

A public hearing on these proposed amendments will be held on August 23, 1995, at 2 p.m. in the Third Floor Conference Room (West Half), Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Plans and Research Bureau, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, or by telephone at (515)281-5524, at least one day prior to the public hearing. Any written comments or information regarding these amendments should be directed to the Plans and Research Bureau at the address indicated above. Persons who wish to convey their views orally other than at the public hearing may contact the Plans and Research Bureau by telephone or in person at the Bureau office at least one day prior to the public hearing.

These amendments are intended to implement Iowa Code section 232.148.

The following amendments are proposed:

ITEM 1. Rescind and reserve rule **661—11.11(692)**.

ITEM 2. Amend rule 661—11.19(232) as follows:

661—11.19(232) Juvenile fingerprints *and criminal histories*.

11.19(1) Authority to fingerprint. A law enforcement agency may fingerprint and photograph any juvenile who is 14 years of age or older and who has been taken into custody and charged with the commission of an offense which would be an aggravated misdemeanor or felony if committed by an adult. Fingerprints of juveniles taken pursuant to this subrule shall be submitted to the division of criminal investigation.

11.19(2) Fingerprints of juveniles waived to adult court. If jurisdiction over a juvenile suspect has been transferred from juvenile court to adult court, then fingerprints of that suspect taken pursuant to Iowa Code section 232.148 and transmitted to the division of criminal investigation shall be handled by the division in the same manner as fingerprints of adult suspects are handled and are subject to the same provisions of law and these rules which govern fingerprints of adult criminal suspects.

11.19(3) Fingerprints entered into the Automated Fingerprint Identification System (AFIS).

~~a.~~ Fingerprints of juveniles ~~who remain under the jurisdiction of a juvenile court~~ shall be entered into the AFIS maintained by the department of public safety. ~~A criminal history sheet shall not be initiated on these individuals unless authorized by Iowa Code section 232.45A or 690.4.~~

~~b. The division of criminal investigation shall expunge the fingerprints of juveniles entered into the AFIS from that system if either of the following conditions applies:~~

~~(1) Notification is received from the guardian or legal counsel of the juvenile that a juvenile petition was not filed regarding the offense or suspected offense which led to the taking of the juvenile's fingerprints, or that such a petition was filed and subsequently dismissed.~~

~~(2) The department of public safety receives a petition from an individual who has reached the age of 21 whose fingerprints were taken when the person was a juvenile provided that the individual was neither adjudicated delinquent nor convicted of an aggravated misdemeanor or felony which occurred on or after the person's sixteenth birthday.~~

11.19(4) Juvenile criminal histories.

a. A fingerprint card received for a juvenile suspect shall be used to establish a criminal history record for the suspect.

b. Criminal histories of juveniles over whom jurisdiction has been transferred from juvenile court to adult court shall be handled in the same manner as criminal histories of adults.

c. Criminal histories of juveniles who remain under the jurisdiction of the juvenile court shall be maintained only if the juvenile is adjudicated delinquent based upon

an offense which would be an aggravated misdemeanor or felony if committed by an adult. The criminal history record established in response to receiving a fingerprint card shall be expunged if the delinquency petition is dismissed.

d. Criminal history records of juveniles over whom jurisdiction has not been transferred from juvenile to adult court shall be expunged when the subject reaches the age of 21 unless the subject has been convicted of a serious or aggravated misdemeanor or a felony between the ages of 18 and 21. If the subject has been convicted of a serious or aggravated misdemeanor or a felony between the ages of 18 and 21, the criminal history record shall be maintained in the same manner as adult criminal history records.

~~c.~~ ***11.19(5)*** The division of criminal investigation shall establish an internal procedure for ~~maintaining~~ *tracking criminal history* records ~~of fingerprints~~ expunged from the AFIS *files of the division* for audit purposes only.

This rule is intended to implement Iowa Code section 232.148.

ARC 5749A

PUBLIC SAFETY DEPARTMENT[661]

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 321L.8, the Iowa Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 18, "Handicapped Parking," Iowa Administrative Code.

These amendments modify requirements for the dimensions of handicapped parking spaces to make Iowa requirements compatible with the federal Americans with Disabilities Act (Public Law 101-336). The major change from current Iowa rules is the imposition of a requirement that providers of parking make the first handicapped space provided and one out of each eight additional handicapped accessible spaces provided "van accessible." An alternative offered in the federal regulations for "universally accessible" spaces is allowed for in these amendments. Another change is made to update the rule regarding handicapped parking signs to conform to requirements contained in Iowa Code section 321L.6.

A public hearing on these proposed amendments will be held on August 23, 1995, at 1:15 p.m., in the Third Floor Conference Room (East Half), Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Plans and Research Bureau, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by telephone at (515)281-5524 at least one day prior to the public hearing. Any written comments or information regarding these rules should be directed to the Plans and Research Bureau at the address indicated above. Persons who wish to convey their views orally other than at the public hearing may contact the Plans and Research Bureau by telephone or in person at the Bureau office at least one day prior to the public hearing.

These amendments are intended to implement Iowa Code sections 321L.5 and 321L.6.

The following amendments are proposed.

ITEM 1. Amend rule 661—18.3(321L) by adding the following new subrule:

18.3(4) Van accessible spaces. The first handicapped parking space provided in a parking lot or parking structure, and every eighth handicapped parking space provided thereafter, shall be a van accessible space. A "van accessible" space shall be 96 inches wide with an adjacent access aisle at least 96 inches wide. Two adjacent van accessible spaces may share a common access aisle.

EXCEPTION: Van accessible spaces are not required to be provided in a parking lot or structure if all of the handicapped parking spaces provided in the parking lot or structure are "universally accessible." A "universally accessible" space is at least 132 inches wide with an adjacent 60-inch wide access aisle. Two adjacent universally accessible spaces may share a common access aisle.

ITEM 2. Rescind rule 661—18.5(321L) and insert in lieu thereof the following new rule:

661—18.5(321L) Designation. Each handicapped parking space shall be designated as reserved for physically handicapped persons by a sign meeting the following requirements established in Iowa Code section 321L.6:

18.5(1) Each handicapped parking sign shall have the international symbol of accessibility in white on a blue background.

18.5(2) Each handicapped parking sign shall be affixed vertically to another object so that it is readily visible to the driver of a vehicle approaching the handicapped parking space.

NOTE: The pavement in a handicapped parking space may be marked with the international symbol of accessibility, but such marking does not meet the requirements of this subrule.

18.5(3) Each handicapped parking sign shall include language stating the amount of the fine for improperly using the handicapped parking space.

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:

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%
July 1, 1995 — July 31, 1995	8.75%
August 1, 1995 — August 31, 1995	8.25%

ARC 5774A

CORRECTIONS DEPARTMENT[201]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 904.108, the Department of Corrections hereby adopts under emergency procedures amendment to Chapter 20, "Institutions Administration," Iowa Administrative Code.

1995 Iowa Acts, Senate File 459, section 27, requires the Department of Corrections to establish a fund at each institution for the deposit of commissions received as a result of the inmate telephone system. Expenditures from these funds will be for the benefit of inmates.

In compliance with Iowa Code section 17A.4(2), the Board finds that notice and public participation are unnecessary because the rule provides a benefit to inmates and the public.

The Department finds that, pursuant to Iowa Code section 17A.5(2)"b"(2), this emergency filing does confer a benefit to the public in that these commissions subsidize and in many cases totally fund the cost of direct inmate services such as inmate recreational/leisure programs and equipment. Therefore, the normal effective date of 35 days after publication should be waived since it is necessary for this rule to be effective for the deposit and expenditure of these commissions.

This rule is also published herein under Notice of Intended Action as **ARC 5773A** to allow for public comment.

This rule was adopted as "Emergency" and approved as "Notice of Intended Action" by the Corrections Board at the regular meeting of the Board on July 7, 1995.

This rule is intended to implement 1995 Iowa Acts, Senate File 459, section 27.

This rule became effective upon filing on July 7, 1995.

Amend 201—Chapter 20 by reserving **201—20.19** and adding the following new rule:

201—20.20(904) Inmate telephone commissions.

20.20(1) Each institution shall deposit all commissions received from the inmate telephone system vendor into a fund to be used for the benefit of inmates.

20.20(2) All expenditures from this fund will be approved by a committee comprised of the director, deputy director of institutions, a rotating warden appointed by the deputy director of institutions, and a representative from the attorney general's office.

20.20(3) All requests for expenditures shall be in writing from the warden, which will detail the service or product to be purchased, how the expense will benefit the inmate population, the need for the expense, and the actual cost.

20.20(4) The committee will review requests monthly and will provide the requesting institution a written response as to the decision to approve, deny, or modify the request.

This rule is intended to implement 1995 Iowa Acts, Senate File 459, section 27.

[Filed Emergency 7/14/95, effective 7/14/95]
[Published 8/2/95]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/2/95.

ARC 5754A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249C.15, the Department of Human Services hereby amends Chapter 93, "PROMISE JOBS Program," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments July 12, 1995. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on June 7, 1995, as **ARC 5646A**.

These amendments revise policies governing the PROMISE JOBS program. PROMISE JOBS service options for Family Investment Program (FIP) participants under both regular FIP and welfare-reform FIP policies are added. PROMISE JOBS on-the-job training (OJT) is added to the activities which are available to FIP participants, to be included in the employability plan for regular FIP participants, and to be included in the Family Investment Agreement (FIA) for welfare-reform FIP participants.

These amendments also allow PROMISE JOBS participants to combine employment with less than full-time postsecondary classroom training in the employability plan or the FIA.

In 441—Chapter 93, Division I and Division II, the Preamble and certain rules are revised only to include PROMISE JOBS OJT in the description of the options available under PROMISE JOBS. Other rules have different or additional revisions. Specifically:

- Subrules 93.6(1) and 93.106(1) are revised to remove a reference to cash bonus, a discontinued program.
- Subrule 93.9(1), paragraph "d," is revised to add PROMISE JOBS OJT to the list of PROMISE JOBS activities and to include work experience in the list, as it was previously omitted.
- Rule 441—93.11(249C), introductory paragraph is revised to add PROMISE JOBS OJT to the list of PROMISE JOBS activities and to include job-seeking skills training in the list, as it was previously omitted.
- Rules 441—93.14(249C) and 441—93.114(249C) are revised to incorporate the revisions which allow greater program flexibility for PROMISE JOBS participants who wish to combine education activities and employment in their plan to reach self-sufficiency.
- Rules 441—93.22(249C) and 441—93.122(249C) are revised to make the FIP-Unemployed Parent (FIP-UP) work program policies consistent with the changes for combining employment and part-time postsecondary classroom training and to add the flexibility of using unsubsidized employment to meet the requirements of the program, as provided by federal regulation.
- Rules 441—93.23(249C) and 441—93.123(249C) are added to establish the PROMISE JOBS OJT policies.

These PROMISE JOBS program changes were developed through a process which began when PROMISE JOBS provider agencies at the local service delivery area (SDA) level brought concerns about program flexibility and effectiveness to the heads of the three PROMISE JOBS partnership agencies, Human Services, Economic Development, and Employment Services.

The process continued with a PROMISE JOBS focus group, representing all levels of staff in the three agencies, through the PROMISE JOBS Advisory Committee, and SDA review of their recommendations.

These program changes, both the addition of OJT and the provision for combining part-time employment with part-time postsecondary education, will increase PROMISE JOBS participant options as families develop their self-sufficiency plans. Families will be able to combine earning capability and training in ways that are not possible under current policy. This will have advantages to the PROMISE JOBS program as it will increase the training opportunities available. It will increase public awareness of the services of the PROMISE JOBS program since private employers, as well as public employers, can be OJT providers. The changes mean that these less-expensive training opportunities will allow the number of training opportunities to be kept at the highest participation level possible.

The Department of Human Services finds that these amendments confer a benefit on PROMISE JOBS participants. Both the addition of OJT and the provision for combining part-time employment with part-time postsecondary education will increase PROMISE JOBS participants' options as families develop their self-sufficiency plans. Families will be able to combine earning capability and training in ways that are not possible under current policy. This will have advantages to the PROMISE JOBS program as it will increase the training opportunities available. It will increase public awareness of the services of the PROMISE JOBS program since private employers, as well as public employers can be OJT providers. The changes mean that these less-expensive training opportunities will allow the number of training opportunities to be kept at the highest participation level possible. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2).

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

These amendments are intended to implement Iowa Code sections 239.2 and 239.5 and chapter 249C.

These amendments became effective August 1, 1995.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 93] is being omitted. These amendments are identical to those published under Notice as **ARC 5646A**, IAB 6/7/95.

[Filed 7/12/95, effective 8/1/95]
[Published 8/2/95]

[For replacement pages for IAC, see IAC Supplement 8/2/95]

ARC 5757A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 234.6 and 1995 Iowa Acts, Senate File 462, section 10, subsection 9, and section 38, the Department of Human Services hereby amends Chapter 156, "Payments for Foster Care and Foster Parent Training," appearing in the Iowa Administrative Code.

These amendments implement the following changes in shelter care payment mandated by the Seventy-sixth General Assembly:

1. The paragraph giving the state funds available for reimbursement of shelter care is deleted as the amount is contained in legislation and does not need to be repeated in rule. The state funds available for reimbursement of shelter care are decreased from $6,710,720 to $3,383,736 for fiscal year 1996 because of increased federal funding through Title IV-A Emergency Assistance. The total amount of state and federal funding available for shelter care remains the same as Fiscal Year 1995 at $8,329,039.
2. Shelter care fixed rate payment policies are revised in response to increases in the number of licensed or approved shelter care beds. These revisions do not change the number of beds for which the Department will be making payment. The maximum utilization factor used to determine the fixed rate paid to shelter care facilities is changed.

There are currently 348 licensed shelter care beds in Iowa, up from 316 beds in April of 1993. Under current policy, the 21 facilities with licensed shelter care beds have the option of being paid for the actual number of units which are used each month or of being paid a fixed monthly sum. The fixed monthly sum is calculated by multiplying the agency's unit cost by its utilization factor. The utilization factor is either the number of units of service provided to Departmental clients for the last 12-month period or the Department's projection of the number of beds it will need from that facility, whichever is greater. Under these amendments, facilities still have the option of being paid the fixed monthly sum, but the utilization factor shall be the lower of the facility's utilization for the last 12-month period, the Department's projected utilization for that facility, or the utilization factor used in the Fiscal Year 1995 fixed rate contract. Every six months the Department compares actual utilization to the utilization in the "fixed rate" contract and reimburses the shelter care facility for units used above the fixed rate.

3. Shelter care facilities are required to refund any payments which have been made for units in excess of those for which the Department has authorization to pay.

In compliance with Iowa Code section 17A.4(2), the Department of Human Services finds that notice and public participation are unnecessary because these amendments implement 1995 Iowa Acts, Senate File 462, section 10, subsection 9, which authorizes the Department to adopt rules without notice and public participation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived and these amendments made effective September 1, 1995, as authorized by 1995 Iowa Acts, Senate File 462, section 10, subsection 9, and section 38.

These amendments are also published herein under Notice of Intended Action as **ARC 5756A** to allow for public comment.

The Council on Human Services adopted these amendments July 12, 1995.

These amendments are intended to implement Iowa Code section 234.38 and 1995 Iowa Acts, Senate File 462, section 10, subsection 9.

These amendments shall become effective September 1, 1995.

The following amendments are adopted.

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

ITEM 1. Amend subrule **156.11(3)**, introductory paragraph and paragraphs "**a**" and "**b,**" as follows:

156.11(3) *Shelter care payment.* Public and private juvenile shelter care facilities approved or licensed in Iowa shall be paid according to the rate-setting methodology in 441—150.3(5)"p"(1). These facilities shall have the option of being paid a monthly sum which is calculated by multiplying the agency's unit cost by the utilization factor *by the number of days in the month.* The utilization factor shall be ~~either~~ *the lesser of the following: (1) the actual* ~~the average~~ department of human services ~~monthly~~ *average daily* utilization for the last 12-month period, *(2) the average daily number of beds in the agency's fiscal year 1995 fixed rate contract,* or *(3)* the department of human services' projected *average daily* utilization~~, whichever is greater~~ *of shelter care beds for the upcoming fiscal year. All units shall be based on a calendar year.* Only units of service for which the department of human services is authorized to pay shall be considered in this rule. The utilization factor shall not exceed the licensed capacity of the facility.

a. Agencies shall be reimbursed for any units of service provided in excess of the six-month utilization factor on a six-month basis. The six-month utilization factor is computed by multiplying the utilization factor by ~~six months~~ *the number of days in the six-month period.* The six-month periods shall end December 31 and June 30. The amount of reimbursement shall be determined by multiplying the agency's unit cost by the number of excess units provided.

EXCEPTION: For the first period of fiscal year 1996, the number of months will be four, rather than six, beginning September 1, 1995, and ending December 31, 1995. Calculations shall be made as above, adjusted for the four-month period.

b. The total reimbursement to the agency shall not exceed the agency's allowable costs as defined in *441—subrule* 150.3(5). Agencies shall refund any payments which have been made *for units* in excess of ~~the agencies' allowable costs~~ *those actually provided by the agency. This shall be calculated on a six-month basis. The six-month periods shall end December 31 and June 30. The refund amount shall be determined by multiplying the agency's unit cost by the number of units paid for in excess of the number of units provided.*

EXCEPTION: For the first period of fiscal year 1996, the number of months will be four, rather than six, beginning September 1, 1995, and ending December 31, 1995. Calculations shall be made as above, adjusted for the four-month period.

Further amend subrule **156.11(3)** by rescinding and reserving paragraph "**c.**"

ITEM 2. Amend rule **441—156.11(234)**, implementation clause, to read as follows:

This rule is intended to implement Iowa Code section 234.38 and ~~1994 Iowa Acts, Senate File 2313, section 10, subsection 11~~ *1995 Iowa Acts, Senate File 462, section 10, subsection 9.*

[Filed Emergency 7/12/95, effective 9/1/95]
[Published 8/2/95]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/2/95.

ARC 5747A

INDUSTRIAL SERVICES DIVISION[343]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 86.8, the Industrial Commissioner hereby amends Chapter 8, "Substantive and Interpretive Rules," Iowa Administrative Code.

This amendment provides reference to current tables which determine payroll taxes.

In compliance with Iowa Code section 17A.4(2), the Industrial Commissioner finds that notice and public participation are unnecessary. Rule 8.8(85,17A) is noncontroversial and, further, Iowa Code section 85.61(6) requires adoption of current tables to determine payroll taxes by July 1 of each year. The Division must wait until the Internal Revenue Service and Iowa Department of Revenue and Finance determine whether there will be changes in their publications on July 1 of the current year.

The Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective July 7, 1995, as it confers a benefit upon the public to ensure speedy and uniform compliance with the Division's legislative mandate.

The Division has determined that the amendment will have no impact on small business within the meaning of Iowa Code section 17A.31.

This amendment is intended to implement Iowa Code section 85.61(6).

This amendment will become effective on July 7, 1995.

The following amendment is adopted.

Amend 343—8.8(85,17A) to read as follows:

343—8.8(85,17A) Payroll tax tables. Tables for determining payroll taxes to be used for the period July 1, ~~1994~~ *1995*, through June 30, ~~1995~~ *1996*, are the tables in effect on July 1, ~~1994~~ *1995*, for computation of:

1. Federal income tax withholding according to the percentage method of withholding for weekly payroll period. (Internal Revenue Service, Circular E Publication 15 [Rev. ~~January 1994~~ *January 1995*].)

2. Iowa income tax withholding computer formula for weekly payroll period. (Iowa Department of Revenue and Finance Publication ~~44-001~~ *44-002 [Rev. May 1995]* for *all* wages paid ~~after January 1, 1989~~ *on or after July 1, 1995.*)

3. Social security and Medicare withholding (FICA) at the rate of 7.65 percent (Internal Revenue Service, Circular E Publication 15 [Rev. ~~January 1994~~ *January 1995*].)

This rule is intended to implement Iowa Code section 85.61(6).

[Filed Emergency 7/7/95, effective 7/7/95]
[Published 8/2/95]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/2/95.

ARC 5776A

LABOR SERVICES DIVISION[347]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 88.5, 7A.3(1) and 17A.5(2), the Labor Commissioner adopts an amendment to Chapter 10, "General Industry Safety and Health Rules," Iowa Administrative Code.

The amendment relates to occupational exposure to asbestos and a correction.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 10, 1995, as **ARC 5587A**.

In compliance with Iowa Code section 88.5(1)"b," a public hearing was scheduled for June 1, 1995. No comments were received.

This amendment is identical to the Notice of Intended Action.

Pursuant to Iowa Code section 17A.5(2)"b"(2) and (3), this amendment shall become effective upon publication on August 2, 1995. The Commissioner finds that this amendment confers a benefit on employees by permitting them to be provided with safety and health equal to those found in states under federal OSHA's jurisdiction and is necessary because of the safety and health of employees in this state.

This amendment is intended to implement Iowa Code section 88.5.

The amendment will become effective August 2, 1995.

The following amendment is adopted.

Amend rule **347—10.20(88)** by inserting at the end thereof:

60 Fed. Reg. 9624 (February 21, 1995)
60 Fed. Reg. 11194 (March 1, 1995)

[Filed Emergency After Notice 7/14/95, effective 8/2/95]
[Published 8/2/95]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/2/95.

ARC 5777A

LABOR SERVICES DIVISION[347]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), the Labor Commissioner adopts an amendment to Chapter 26, "Construction Safety and Health Rules," Iowa Administrative Code.

The amendment relates to occupational exposure to asbestos and a correction.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 10, 1995, as **ARC 5588A**.

In compliance with Iowa Code section 88.5(1)"b," a public hearing was scheduled for June 1, 1995. No comments were received.

This amendment is identical to the Notice of Intended Action.

Pursuant to Iowa Code section 17A.5(2)"b"(2) and (3), this amendment shall become effective upon publication on August 2, 1995. The Commissioner finds that this amendment confers a benefit on employees by permitting them to be provided with safety and health equal to those found in states under federal OSHA's jurisdiction and is necessary because of the safety and health of employees in this state.

This amendment is intended to implement Iowa Code section 88.5.

The amendment will become effective August 2, 1995.

The following amendment is adopted.

Amend rule **347—26.1(88)** by inserting at the end thereof:

60 Fed. Reg. 9625 (February 21, 1995)
60 Fed. Reg. 11194 (March 1, 1995)

[Filed Emergency After Notice 7/14/95, effective 8/2/95]
[Published 8/2/95]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/2/95.

ARC 5765A

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 136A.5, the Department of Public Health hereby rescinds Chapter 4, "Birth Defects Institute," Iowa Administrative Code, and adopts a new chapter with the same title.

The proposed rules update and better organize the sequential order of the chapter. Given technological improvement, the specimen collection testing period requirement is reduced. The test for branched chain ketoacidemia (MSUD) will be discontinued. In the past 12 years, 450,000 newborns were screened with no positive occurrence.

The proposed rules have been developed in collaboration with the Birth Defects Advisory Committee which met May 17, 1995, and approved the proposed changes.

A public hearing was held on June 27, 1995, from 8:30 to 9:30 a.m. in Hearing Room 2 of the Lucas State Office Building. Only one person attended and commented. This person was a representative of the Christian Science Committee on Publication for Iowa (CSCPI) and requested a specific paragraph providing an exemption for religious reasons. However 641—Chapter 4 has long had the provision in it for the parents or guardian to refuse the test and these rules continue this provision. The request on the part of CSCPI to modify the Notice of Intended Action with their suggested wording does nothing to enhance this provision. Current rules already accommodate their situation. The Department, therefore, has made no change from the Notice of Intended Action as published June 7, 1995, in the Iowa Administrative Bulletin as **ARC 5665A**. No other comments were received.

The Department of Public Health finds that these rules confer a benefit for parents of newborns. Therefore, these rules are filed pursuant to Iowa Code section 17A.5(2)"b"(2).

The State Board of Health adopted these rules at their regularly scheduled board meeting on July 12, 1995.

These rules are intended to implement Iowa Code chapter 136A.

These rules became effective July 14, 1995.

The following rules are adopted.

Rescind 641—Chapter 4 and insert the following **new** chapter in lieu thereof:

CHAPTER 4
BIRTH DEFECTS INSTITUTE

641—4.1(136A) Newborn screening policy. It shall be the policy of the state of Iowa that all newborns shall be tested for hypothyroidism, phenylketonuria (PKU), galactosemia, hemoglobinopathies, and congenital adrenal hyperplasia (CAH).

641—4.2(136A) Physician responsibility. The attending physician having hospital delivery privileges shall have the responsibility for ensuring that infants under the physician's care are screened. Parents or guardians shall be informed of the type of specimen, how it is obtained, the nature of the diseases being screened, and the consequences of treatment and nontreatment. Should a parent or guardian refuse the test, said refusal shall be documented in writing and will become a part of the medical record. In the event that a midwife is attending the birth of a child, the protocol agreed upon by the physician and midwife shall ensure compliance with this rule.

641—4.3(136A) Time sequence for screening tests. The specimen (blood) shall be drawn from the infant at least 24 hours after birth, but not later than five days after birth. In any event, screening should be done prior to discharge. A second test shall be performed by 14 days of age when:

1. The first test was done prior to 24 hours after birth.
2. The first test was done while the infant was on antibiotic therapy. The second test shall be done at least 24 hours after the infant is off antibiotic therapy.

All specimens shall be forwarded by first-class mail, or other appropriate means, to the central laboratory designated by the birth defects institute within 24 hours after collection.

641—4.4(136A) Unattended birth. When a birth occurs that is not attended by a health professional, the county registrar shall inform the parents or guardians, when a certificate of birth is filed, of the need for a newborn blood test for hereditary metabolic disorders. The registrar shall also inform parents or guardians where the specimen may be collected.

641—4.5(136A) Central laboratory. Specimens shall be submitted to the central laboratory designated by the birth defects institute.

4.5(1) The central laboratory shall test specimens within 24 hours of receipt. The central laboratory shall notify the submitting physician or birthing facility of an inappropriate specimen and request an additional specimen.

4.5(2) Reports of presumptive positive results are made within 24 hours to the consulting physician, or the physician's designee, who then notifies the attending physician. This initial report is to be followed within 24 hours by a written report to the attending physician and birthing facility.

4.5(3) A consulting physician shall be designated by the birth defects institute in collaboration with the central laboratory to provide interpretation of test results and consultation to attending physicians.

4.5(4) The central laboratory shall submit a semiannual report to the birth defects institute. These reports shall include:

a. Monthly activity report.
(1) Number of infants tested by birthing facility.
(2) Number of repeat tests by birthing facility.
(3) Number of presumptive positive results by test and facility.
(4) Number of confirmed positive results by test.
(5) Results of quality assurance testing.
b. Annual report detailing screening activity, fiscal accounting and educational activity.

4.5(5) The central laboratory shall distribute specimen collection forms and other materials to birthing facilities as required.

4.5(6) The central laboratory shall provide educational materials concerning specimen collection procedures.

4.5(7) The central laboratory shall have available for review a written quality assurance program covering all aspects of its newborn screening activity.

4.5(8) The central laboratory shall act as fiscal agent for program charges. The charges will encompass analytical, technical, administrative, educational, and follow-up for the screening program.

4.5(9) Sixty days prior to the end of the fiscal year all activities associated with this program (central laboratory, consulting physician, and fiscal agent) shall submit a combined program proposal and budget to the Iowa department of public health for the birth defects institute for the coming year.

The Iowa department of public health shall annually review and determine the fee to be charged for all activities associated with this program. The review and fee determination will be completed at least one month prior to the beginning of the fiscal year.

641—4.6(136A) Expanded MSAFP testing policy. Expanded Maternal Serum Alpha-Fetoprotein (MSAFP) screening will be available. If patients desire this screening test and specimens are drawn, specimens shall be submitted by their physicians to the central laboratory. A serum or clotted blood specimen shall be collected during 15 to 20 weeks of pregnancy, accompanied by a standard test request form, all contained in a specimen kit provided by the central screening laboratory.

4.6(1) The central laboratory shall test specimens within three working days of receipt. Abnormal expanded MSAFP test results are reported within 24 hours to the consulting physician or the physician's designee who then notifies the submitting physician. On the next working day this initial report is to be followed by a written report to the submitting physician.

4.6(2) A consulting physician shall be designated by the birth defects institute in collaboration with the central laboratory to provide interpretation of test results and consultation to attending physicians.

4.6(3) The consulting physician will develop and provide professional educational presentations as necessary.

4.6(4) The central laboratory shall submit a monthly report detailing screening activity to the consulting physician. This report shall include:

a. Number of initial tests.
b. Number of repeat tests.
c. Number of confirmed abnormal results.
d. Results of quality assurance testing.

4.6(5) The consulting physician shall submit a required report to the birth defects institute. These reports shall include:

a. Number and type of outcomes of presumptive abnormal expanded MSAFP tests.

b. Consultative activity.
c. Educational activity.
d. Fiscal report identifying expenditures.

4.6(6) The central laboratory shall distribute specimen collection forms and other materials to birthing facilities as required.

4.6(7) The central laboratory shall provide educational materials concerning specimen collection procedures.

4.6(8) The central laboratory shall have available for review a written quality assurance program covering all aspects of its testing activity.

4.6(9) The central laboratory shall act as a fiscal agent for program charges. The charges will encompass analytical, technical, administrative, educational and follow-up costs for the screening program.

4.6(10) Sixty days prior to the end of the fiscal year, all activities associated with this program (central laboratory, consulting physician and fiscal agent) shall submit a combined program proposal and budget to the Iowa department of public health for the birth defects institute for the coming year.

The Iowa department of public health shall annually review and determine the fee to be charged for activities associated with this program. The review and fee determination will be completed at least one month prior to the beginning of the fiscal year.

641—4.7(136A) Regional genetic consultation service (RGCS). Comprehensive genetic services are available statewide through outreach clinics.

4.7(1) Regional genetic consultation service patient fees. A sliding fee scale shall be established for patients attending genetic counseling clinics. Fees charged at RGCS clinics are based upon hourly wages of professional (medical geneticists, regional consultants), support and clerical staff, travel and supply costs associated with clinic service.

4.7(2) Clinic service. The service provided at the clinic may include:

a. Consultations by board-certified geneticists.
b. Physical examinations.
c. Information regarding the diagnosis, including inheritance patterns, prognosis, and risk for future pregnancies.
d. Medical management.
e. Referral to appropriate agencies.

4.7(3) Billable services. Families/clients seen in the regional genetic consultation service clinics will have bills submitted to third-party payers where applicable. Families/clients who do not have third-party coverage will be billed on a sliding fee scale. The sliding fee scale will be established using the federal government (Community Service Administration) poverty guidelines. The birth defects advisory committee will approve the sliding fee guidelines on an annual basis. Billing will be done by the Iowa department of public health staff or its designee. Payments received from receipts of service based on the sliding fee scale or from the third-party payers shall be used to support the RGCS.

These rules are intended to implement Iowa Code chapter 136A.

[Filed Emergency After Notice 7/14/95,effective 7/14/95]
[Published 8/2/95]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/2/95.

ARC 5761A

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 135.11(5), the Iowa Department of Public Health hereby adopts the following amendments to Chapter 130, "Emergency Medical Services Training and Equipment Grants," Iowa Administrative Code.

1995 Iowa Acts, Senate File 178, resulted in changes in Iowa Code section 147A relating to emergency medical services. Additionally, equipment and special projects language is eliminated as the funds are no longer available. Item 1 changes the title of the chapter to indicate training grants only. Item 2 revises definitions and identifies the most current source for computing the training grant formula. Item 3 deletes references to equipment funding. Item 4 deletes reference to special projects funding. Item 5 is cleanup language related to new definitions. Item 6 establishes the application process for receiving training grants and renumbers existing subrules. Items 7, 8, and 9 eliminate equipment funding language. Item 10 allows for reallocation of unobligated funds. Item 11 eliminates special projects language. Items 12 and 13 reflect the change in the State EMS office from Section to Bureau.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments should be waived and these amendments should be made effective upon filing with Administrative Rules Coordinator on July 14, 1995, as it confers a benefit upon the basic ambulance services by establishing them as a priority when counties are establishing budgets for FY96 EMS training funds.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 7, 1995, as **ARC 5649A**. The Iowa Department of Public Health held a public hearing on Tuesday, June 27, 1995, at 1 p.m., Hearing Room 1, First Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The proposed amendments were given to the Iowa EMS Advisory Council and the 22 EMS training programs for comment. Comments received have led to an additional three items and one more definition change. The definition of "Applicant" was overlooked in the Notice and is now amended to reflect the new changes. Item 10 was added to allow counties to apply for unobligated funds. Items 12 and 13 were added to reflect the state EMS office status change from Section to Bureau. The addition of Items 10, 12 and 13 plus the definition of "Applicant" are the only differences from the amendments published under Notice of Intended Action. The Iowa State Board of Health adopted these amendments on July 12, 1995.

These amendments are intended to implement Iowa Code chapter 135 as amended by 1995 Iowa Acts, Senate File 178.

These amendments shall become effective July 14, 1995.

The following amendments are adopted.

ITEM 1. Amend **641—Chapter 130** title as follows:

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

EMERGENCY MEDICAL SERVICES TRAINING ~~AND EQUIPMENT~~ GRANTS

ITEM 2. Amend ten definitions in rule **641—130.1(135)** and delete two definitions as follows:

"~~Advanced emergency~~ *Emergency* medical care personnel" means any individual currently certified by the ~~Iowa board of medical examiners~~ *department* pursuant to Iowa Code section 147A.6.

"Ambulance service" means any privately or publicly owned service program which utilizes ambulances in order to provide patient transportation and emergency medical care at the scene of an emergency or while en route to a hospital *or during transfer from one medical care facility to another or to a private home*.

"Applicant" means an ~~individual or public or private entity~~ *Iowa county* which has submitted an application for ~~County EMS Equipment funds or Special EMS Training Project funds~~ *county EMS training funds*.

"Area" means the number of square miles in a county listed in the ~~"1980~~ *most current edition of* "Census of Population and Housing," ~~dated March, 1981,~~ published by the ~~Iowa department of economic development~~ *United States Bureau of the Census*.

~~"Basic emergency medical care personnel" means any individual currently certified by the department pursuant to Iowa Code section 147.161.~~

"EMS course" means a course for ~~basic or advanced~~ emergency medical care personnel pursuant to Iowa Code section ~~147.161 or Iowa Code section~~ 147A.4, subsection 2.

"EMS provider" means ~~basic or advanced~~ emergency medical care personnel, other health care practitioners or members of the general public involved in the provision of emergency medical care.

"~~First response~~ *Nontransport* service" means any privately or publicly owned *rescue or first response* service program which does not provide patient transportation (except when no ambulance is available or in a disaster situation) and utilizes only first response vehicles to provide emergency medical care at the scene of an emergency.

~~"Rescue service" means any privately or publicly owned service program which does not provide patient transportation (except when no ambulance is available or in a disaster situation) and utilizes only rescue vehicles to provide emergency medical care and extrication at the scene of an emergency.~~

"Rural population" means the number of rural residents listed in the ~~"1980~~ *most current edition of* "Census of Population and Housing," ~~dated March 1981,~~ published by the ~~Iowa department of economic development~~ *United States Bureau of the Census*.

"Service program" means any emergency medical care ambulance~~, rescue~~ or ~~first response~~ *nontransport* service.

"Total population" means the number of residents listed in the ~~"1980~~ *most current edition of* "Census of Population and Housing," ~~dated March 1981,~~ published by the Iowa ~~department of economic development~~ *United States Bureau of the Census*.

ITEM 3. Amend subrule 130.2(1) as follows:

130.2(1) The county EMS training ~~and equipment funding~~ *fund* is intended to supplement EMS funds at the county or local level.

ITEM 4. Rescind and reserve subrule **130.2(2)**.

ITEM 5. Amend rule 641—130.4(135), introductory paragraphs, as follows:

641—130.4(135) County EMS training grants. Grants for training-related purposes at the county and local level are available from the department according to the following allocation formula:

1. Fifty percent of the funds will be allocated according to each county's rural population, and
2. Fifty percent of the funds will be allocated according to each county's area.

County EMS training grants may be used to train members of an ambulance~~, rescue~~ or ~~first response~~ *nontransport* service located in a neighboring county if service is provided on a regular basis to residents of the funding county. ~~It is not necessary to submit an application for the EMS training grant.~~

ITEM 6. Adopt **new** subrule 130.4(1) as follows and renumber **130.4(1)** as **130.4(2)** and **130.4(2)** as **130.4(3)**.

130.4(1) Application process. An application for EMS training grants is required. The application process is as follows:

a. Each county EMS association shall propose a plan for spending the county's allocation and submit the plan to the department. The plan shall establish spending priorities pursuant to 1995 Iowa Acts, Senate File 178.

b. The department shall review the plan and shall approve, request clarification or request a new proposal.

c. Upon approval by the department, the county's allocation shall be released except as provided in subrule 130.6(5).

ITEM 7. Rescind and reserve rule **641—130.5(135)**.

ITEM 8. Amend subrule 130.6(1) as follows:

130.6(1) The training ~~and equipment~~ funds shall be disbursed separately to each county. The county board of supervisors or their designee shall be responsible for the administration of these funds. The county shall be responsible for repayment of any funds which are not spent in compliance with these rules.

ITEM 9. Amend subrule 130.6(2) as follows:

130.6(2) Each county shall submit to the department a quarterly report of training ~~and equipment~~ fund expenditures pursuant to these rules.

ITEM 10. Amend subrule 130.6(3) as follows:

130.6(3) All funds must be obligated for expenditure by May 31 and must actually be expended prior to June 30. *Funds not obligated by May 31 shall be submitted to the department by June 1. Counties may apply to the department for unobligated funds.* No carryover of funds is permitted between fiscal years.

ITEM 11. Rescind and reserve rule **641—130.7(135)**.

ITEM 12. Amend subrule 130.8(2) as follows:

130.8(2) Any request for appeal concerning denial or partial denial shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 30 days of the receipt of the department's notice. The address is: Iowa Department of Public Health, *Bureau of* Emergency Medical Services ~~Section~~, Lucas State Office Building, Des Moines, Iowa 50319-0075. Prior to or at the hearing, the department may rescind the denial or partial denial. If no request for appeal is received within the 30-day time period, the de-

partment's notice of denial or partial denial shall become the department's final agency action.

ITEM 13. Amend subrule 130.8(10) as follows:

130.8(10) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Iowa Department of Public Health, *Bureau of* Emergency Medical Services ~~Section~~, Lucas State Office Building, Des Moines, Iowa 50319-0075.

ITEM 14. Amend **641—Chapter 130**, implementation sentence, as follows:

These rules are intended to implement *1995 Iowa Acts, House File 530, and* Iowa Code chapter 135 ~~and 1990 Iowa Acts, Senate File 2327, section 14, and House File 2371, section 6(3)"b."~~ *as amended by 1995 Iowa Acts, Senate File 178.*

[Filed Emergency After Notice 7/14/95, effective 7/14/95]
[Published 8/2/95]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/2/95.

ARC 5748A

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the Iowa Department of Education hereby adopts an amendment to Chapter 21, "Community Colleges," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 1, 1995, as **ARC 5468A**. A public hearing was held on March 21, 1995. The Department of Education adopted this rule on June 8, 1995.

There are no changes as a result of the public hearing and these rules are identical to those published under Notice of Intended Action.

These rules are intended to implement Iowa Code section 260C.44.

These rules will become effective September 9, 1995.

The following rules are adopted.

Amend 281—Chapter 21 by adding the following new Division IX.

DIVISION IX
APPRENTICESHIP PROGRAM

281—21.72(260C) Purpose. The purpose of the apprenticeship program is to provide individuals, at least 16 years of age, except where a higher minimum age standard is otherwise fixed by law, employment to learn a skilled trade or an occupation; and to authorize each community college to establish or contract for the establishment of apprenticeship programs for apprenticeable occupations.

281—21.73(260C) Definitions.

"Apprentice" shall mean a worker at least 16 years of age, except where a higher minimum age standard is otherwise fixed by law, who is employed to learn a skilled trade or occupation under the standards of apprenticeship.

"Apprenticeable occupation" is a skilled trade which possesses all of the following characteristics:

1. It is customarily learned in a practical way through a structured, systematic program of on-the-job, supervised training.
2. It is clearly identified and commonly recognized throughout an industry.
3. It involves manual, mechanical or technical skills and knowledge which require a minimum of 2,000 hours of on-the-job work experience.
4. It requires related instruction to supplement on-the-job training.

"Apprenticeship agreement" shall mean a written agreement between an apprentice and the apprentice's employer, or an apprenticeship committee acting as the agent for the employer(s). The agreement contains the terms and conditions of the employment and training of the apprentice.

"Apprenticeship committee" shall mean those persons designated by the sponsor to act for it in the administration of the program. A committee may be "joint," i.e., composed of an equal number of representatives of the employer(s) and of the employees represented by a bona fide collective bargaining agent(s), and is established to conduct, operate, or administer an apprenticeship program and enter into apprenticeship agreements with apprentices. A committee may be "unilateral" or "nonjoint" and shall mean a program sponsor in which a bona fide collective bargaining agent is not a participant.

"Apprenticeship program" shall mean a plan containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, including such matters as the requirement for a written apprenticeship agreement.

"Bureau" shall mean the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor.

"Cancellation" shall mean the termination of the registration or approval status of a program at the request of the sponsor or termination of an apprenticeship agreement at the request of the apprentice.

"Certification" shall mean written approval by the Bureau of: (1) a set of apprenticeship standards developed by a national committee or organization, joint or unilateral, for policy or guidelines used by local affiliates, as substantially conforming to the standards of apprenticeship; or (2) an individual as eligible for probationary employment as an apprentice under a registered apprenticeship program.

"Employer" shall mean any person or organization employing an apprentice whether or not such person or organization is a party to an apprenticeship agreement with the apprentice.

"Registration agency" shall mean the Bureau.

"Registration of an apprenticeship agreement" shall mean the acceptance and recording thereof by the Bureau as evidence of the participation of the apprentice in a particular registered apprenticeship program.

"Related instruction" shall mean an organized and systematic form of instruction designed to provide the apprentice with knowledge of the theoretical and technical subjects related to the trade or occupation.

"Sponsor" shall mean any person, association, committee or organization operating an apprenticeship program and in whose name the program is (or is to be) registered or approved.

281—21.74 (260C) Apprenticeship programs. For an apprenticeship program to be offered by a community college or a local educational agency, the program must be approved by the U. S. Department of Labor, Bureau of Apprenticeship and Training, and meet all requirements outlined in Title 29, Part 29, of the National Apprenticeship Act.

The rules in this division are intended to implement Iowa Code section 260C.44 and Title 29, Part 29, of the National Apprenticeship Act.

[Filed 7/12/95, effective 9/9/95]
[Published 8/2/95]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/2/95.

ARC 5753A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 239.18, the Department of Human Services hereby amends Chapter 41, "Granting Assistance," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments July 12, 1995. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on May 10, 1995, as **ARC 5575A**.

These amendments delete the requirement that the paternity of a biological father be established by the court before a biological father, who is not the legal father, can be added to the Family Investment Program (FIP) eligible group.

Iowa law requires the legal father to obtain a court order to disestablish paternity. After the legal father disestablishes his paternity, the alleged biological father may establish his paternity of the child by a court order or by other means. The Iowa legislature never delegated authority to the Department to modify Iowa family law for the purpose of administering FIP.

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

These amendments are intended to implement Iowa Code section 239.5.

These amendments shall become effective October 1, 1995.

The following amendments are adopted.

ITEM 1. Amend subrule **41.8(1)**, paragraph "**a,**" subparagraph **(2)**, as follows:

(2) Any natural or adoptive parent of such child, if the parent is living in the same home as the dependent child. ~~Paternity of the biological father shall be established by the court before a father who is not the legal father of the child is added to the eligible group.~~

ITEM 2. Amend subrule **41.28(1)**, paragraph "**a,**" subparagraph **(2)**, as follows:

(2) Any natural or adoptive parent of such child, if the parent is living in the same home as the dependent child. ~~Paternity of the biological father shall be established by the court before a father who is not the legal father of the child is added to the eligible group.~~

[Filed 7/12/95, effective 10/1/95]
[Published 8/2/95]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/2/95.

ARC 5755A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 217.6 and 252H.4, the Department of Human Services hereby amends Chapter 99, "Support Establishment and Enforcement Services," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments July 12, 1995. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on May 24, 1995, as **ARC 5598A**.

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.

The following revisions were made to the Notice of Intended Action.

Subrule 99.62(3), paragraph "a," and subrule 99.63(4), paragraph "b," were revised by deleting the word

"verifiable" as a decision was made not to require child support recovery workers to verify the information unless the information shows inconsistencies between income and expenses.

Subrule 99.63(4), paragraph "d," subparagraph (3), was revised to allow the objecting parent access to the court through the child support recovery unit.

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

These amendments shall become effective October 1, 1995.

The following amendments are adopted.

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 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 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 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 either 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 seek recourse by filing a private petition for modification through the district court or by submitting a request for a court hearing to the child support recovery unit within 30 days of the date of issuance of the first notice of decision or within 10 days of the date of issuance of the second notice of decision, whichever is later. If a timely request is received by the unit, the unit shall certify the matter to 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.

~~c~~ *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 considered 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*.

[Filed 7/12/95, effective 10/1/95]
[Published 8/2/95]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/2/95.

ARC 5768A

PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF PODIATRY EXAMINERS

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Podiatry Examiners hereby amends Chapter 220, "Podiatry Examiners," Iowa Administrative Code.

The amendments clarify the application process and eliminate the examination fee requirement since the examination fee is determined by and paid directly to the National Board of Podiatric Medical Examiners.

Notice of Intended Action was published in the May 10, 1995, Iowa Administrative Bulletin as **ARC 5566A**. The adopted amendments are identical to those published under Notice.

The amendments were approved during the June 21, 1995, meeting of the Board of Podiatry Examiners. These amendments will become effective on September 6, 1995.

These amendments are intended to implement Iowa Code section 147.76 and chapter 149.

The following amendments are adopted.

ITEM 1. Amend subrule **220.1(2)**, paragraph "**a,**" as follows:

a. Submit a completed application form with official supporting documents and the ~~accompanied~~ *appropriate* application fee ~~of $100 and examination fee of $300, if taking the PMLexis examination in Iowa~~ *to the Iowa board of podiatry examiners*;

ITEM 2. Amend subrule **220.1(2)** by adding a new paragraph "**b**" and relettering paragraphs "**b**" to "**d**" as "**c**" to "**e,**" respectively.

b. Submit the appropriate examination fee, if taking the PMLexis in Iowa, directly to the National Board of Podiatric Medical Examiners.

ITEM 3. Rescind subrule **220.3(2)**.

[Filed 7/14/95, effective 9/6/95]
[Published 8/2/95]

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ARC 5767A

PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF SOCIAL WORK EXAMINERS

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Social Work Examiners hereby amends Chapter 280, "Board of Social Work Examiners," Iowa Administrative Code.

The amendments clarify when 4,000 hours of work experience is required and eliminate the examination fee

language. The examination fee is determined by and paid directly to the American Association of State Social Work Boards (AASSWB).

There are no changes from the Notice of Intended Action which was published in the Iowa Administrative Bulletin on March 15, 1995, as **ARC 5494A**.

These amendments will become effective September 6, 1995.

These amendments are intended to implement Iowa Code section 147.76 and chapter 154C.

The following amendments are adopted.

ITEM 1. Amend subrule **280.3(3)**, paragraph **"b,"** as follows:

b. Completion of 4,000 hours of *part-time* employment.

ITEM 2. Rescind and reserve subrule **280.7(2)**.

[Filed 7/14/95, effective 9/6/95]
[Published 8/2/95]

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ARC 5771A

PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF PHYSICIAN ASSISTANT EXAMINERS

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 148C.3, the Board of Physician Assistant Examiners hereby amends Chapter 325, "Physician Assistants," Iowa Administrative Code.

These amendments provide a clarification of the definition of remote clinic; revise and clarify the process for application for license and registration and updating license files; clarify the license and registration and renewal process; change the license renewal date; clarify the partial list of duties and emergency medicine duties of physician assistants; change the supervision requirements; change the remote medical clinic requirements; and establish procedures for disciplinary hearing fees and costs.

Notice of Intended Action was published on March 1, 1995, in the Iowa Administrative Bulletin as **ARC 5466A**.

A public hearing was held March 21, 1995, at 1 p.m. in the Fourth Floor Conference Room, Side 1, Lucas State Office Building.

The adopted amendments are identical to those published under Notice of Intended Action with the exception of 325.7(3)"d" which adds language to make the physician assistant as well as the supervising physician jointly responsible for physician assistant supervision and 325.7(3)"e" which clarifies previous wording.

These amendments were approved during the July 6, 1995, teleconference of the Board of Physician Assistant Examiners.

These amendments are intended to implement Iowa Code chapters 147A, 148C and 272C.

These amendments will become effective September 6, 1995.

The following amendments are adopted.

ITEM 1. Amend rule **645—325.2(148C,147A,272C)** by adding the following **new** definition in alphabetical order:

"Remote clinic" means a medical clinic for ambulatory patients which is away from the main practice location of a supervising physician and in which a supervising physician is present less than 50 percent of the time the clinic is open. The remote clinic definition will not be applied to nursing homes, patient homes, hospital outpatient departments or at any location at which medical care is incidentally provided (e.g., diet center, free clinic, site for athletic physicals, jail facility).

ITEM 2. Rescind subrules 325.3(1) and 325.3(2) and insert the following **new** subrules in lieu thereof:

325.3(1) Registration. An individual may apply for registration as a physician assistant with the board on forms supplied by the board. The applicant shall:

a. Present notarized evidence of graduation from an approved program for the education of physician assistants and present notarized evidence of passing the certifying examination for physician assistants conducted by the National Commission on Certification of Physician Assistants or a successor examination approved by the board. The initial examination scores must be included in the application.

b. Document the past professional history and work experience applicable to being a physician assistant.

c. Submit an initial nonrefundable fee of $50.

325.3(2) Temporary registration. Individuals may be granted temporary registration at the discretion of the board if they meet all other requirements for registration and document the following information to the board:

a. The physician assistant has taken but not received notification regarding the results of the national certifying examination, or

b. The physician assistant has not taken the national certifying examination but is eligible. The applicant must take the physician assistant certifying examination the next time it is offered.

c. Submit a nonrefundable fee of $50.

ITEM 3. Rescind subrules 325.4(1) to 325.4(3) and insert the following **new** subrules in lieu thereof:

325.4(1) Licensure. A physician assistant must be licensed by the board to practice under the supervision of a physician or physicians. Application for licensure of a physician assistant must be made on forms supplied by the board, and

a. The applicant shall:

(1) Comply with subrule 325.3(1) for registration. This can be done at the same time as applying for licensure.

(2) Present proof of compliance with the continuing education provisions as set forth in rule 325.19(148C).

(3) Submit a description of how the physician assistant is to function within the practice, including a plan for supervision of the physician assistant.

(4) Describe any limitation on the prescriptive authority of the physician assistant in addition to the limitations set out in 325.7(1)"s"(2).

b. In conjunction with the physician assistant's submission, a supervising physician shall:

(1) Provide evidence that the supervising physician(s) is eligible to supervise a physician assistant.

1. The physician is approved to supervise a physician assistant by the board based on a statement of eligibility from the board of medical examiners.

2. Once approved, the board will consider the physician eligible to supervise a physician assistant until the board receives written notification from the board of medical examiners that the physician has been found to be ineligible along with the reasons for ineligibility.

(2) Submit information about the supervising physician's or physicians' professional background, specialty and scope of practice.

c. Submit a nonrefundable fee of $100. If applying for registration and licensure at the same time, the fee is $150.

d. The board may modify the proposed functioning of a physician assistant and then approve the application for license as modified.

325.4(2) Temporary licensure. Physician assistants may be granted temporary licensure by the board if they meet all requirements and document the following information to the board:

a. Comply with subrule 325.3(2) and obtain temporary registration with the board. Application for temporary registration can be made at the same time as temporary licensure.

b. Comply with 325.4(1)"a"(3) and 325.4(1)"b."

c. Submit a nonrefundable fee of $100. If applying for temporary registration and temporary licensure at the same time, the fee is $150.

325.4(3) Locum tenens. The locum tenens physician assistant shall comply with licensure requirements in 325.4(1). No additional fee will be charged for locum tenens.

ITEM 4. Rescind subrules 325.4(5) to 325.4(9) and insert the following new subrules in lieu thereof:

325.4(5) If a supervising physician ceases to function as a supervising physician for any reason, the physician assistant:

a. Must so notify the board on the next business day.

b. May continue to practice with any other supervising physician currently specified in the license; or

c. May submit the information required by 325.4(1)"b" to amend the license to include another supervising physician. There will be no additional fee to amend the physician assistant license.

325.4(6) If a physician assistant discontinues working under the supervision of all physicians approved in the physician assistant's license, the physician assistant shall inform the board by the next business day and the license shall terminate until a new license application is submitted and approved by the board.

325.4(7) If a physician assistant with a valid license discontinues working with one physician or group of physicians and chooses to work in a different clinical practice with a different physician or group of physicians, the license must be revised by completion of a new license application. There will be no additional fee to revise the physician assistant license.

325.4(8) The physician assistant shall notify the board of any change in home or work address within 30 days of its occurrence.

325.4(9) A physician assistant registered or licensed under Iowa Code chapter 148C may use the words "physician assistant" after the person's name or signify the same by the use of the letters "P.A." after the person's name. A person not registered or licensed as required under this chapter who falsely claims to be a "physician assistant" or "P.A." shall be guilty of a simple misdemeanor.

ITEM 5. Rescind rules **645—325.5(148C)** to **645—325.7(148C)**, insert the following new rules **645—325.5(148C)** to **645—325.8(148C)** and renumber **645—325.8(148C)** to **645—325.12(148C)** as **645—325.9(148C)** to **645—325.13(148C)**:

645—325.5(148C) Licensing and registration renewal.

325.5(1) Licensure and registration.

a. Initial licensure and registration shall be valid for at least one year and shall expire on the first expiration date (September 30) following the first anniversary of the initial licensure and registration.

b. Each subsequent renewal shall be valid for a period of two years and shall expire on September 30.

c. Licensure and registration shall be renewed by submitting renewal forms within 30 days prior to the expiration date with a nonrefundable fee of $100 for renewing both licensure and registration or $5 for registration alone.

d. If the license and registration renewal form and nonrefundable $100 fee ($5 for registration alone) are not received by the board within 60 days after the expiration date, the license and registration are lapsed and a new application and nonrefundable fee of $150 ($50 for registration alone) must be submitted.

325.5(2) Temporary licensure and registration.

a. Temporary licensure and temporary registration may be issued for one year and may, at the discretion of the board, be renewed for one additional year at a fee of $150 ($50 for temporary registration alone). The temporary license/registration shall be renewed only upon a showing that through no fault of the physician assistant, the applicant was unable to take the certifying examination recognized by the board.

b. Within 30 days of receipt, the physician assistant shall notify the board of the results of the approved national physician assistant certifying examination and shall submit the examination scores to the board as needed for regular licensure and registration.

c. If the physician assistant fails the examination, the physician assistant must cease practicing as a physician assistant immediately and surrender the temporary license or disciplinary action will be initiated.

d. There will be no additional fee for conversion to a regular license or registration.

325.5(3) Other fees.

a. The fee for issuing a duplicate license is $10.

b. The fee for a certified statement that a physician assistant is licensed or registered in this state is $10.

645—325.6(148C) Free medical clinic.

325.6(1) A licensed physician assistant may be supervised at a free medical clinic by a qualified practicing physician.

325.6(2) A qualified practicing physician means a physician with a valid license to practice medicine in Iowa and who is providing medical services to the free medical clinic.

325.6(3) A licensed physician assistant shall make application on the forms approved by the board to work in a free medical clinic. This application shall include the following:

a. The name and license number of the physician assistant applying to work in the clinic.

b. The name and license numbers of the physician or physicians who will be supervising the physician assistant in the clinic.

325.6(4) Approval to work in a free medical clinic shall be renewed at the time the license and registration are renewed. There will be no additional fee for approval to work in a free medical clinic.

645—325.7(148C) Duties.

325.7(1) The medical services to be provided by the physician assistant are those delegated by a supervising physician. The ultimate role of the physician assistant cannot be rigidly defined because of the variations in practice requirements due to geographic, economic, and sociologic factors. The high degree of responsibility a physician assistant may assume requires that, at the conclusion of the formal education, the physician assistant possess the knowledge, skills and abilities necessary to provide those services appropriate to the practice setting. The physician assistant's services may be utilized in any clinical settings including, but not limited to, the office, the ambulatory clinic, the hospital, the patient's home, extended care facilities and nursing homes. Diagnostic and therapeutic medical tasks common to the physician's practice may be assigned to the physician assistant by a supervising physician after demonstration of proficiency and competence. The medical services to be provided by the physician assistant are those delegated by a supervising physician. These services include, but are not limited to, the following:

a. The initial approach to a patient of any age group in any setting to elicit a medical history and perform a physical examination.

b. Assessment, diagnosis and treatment of medical or surgical problems and recording the findings.

c. Order, interpret, or perform laboratory tests, X-rays or other medical procedures or studies.

d. Performance of therapeutic procedures such as injections, immunizations, the suturing and care of wounds, removal of foreign bodies, ear and eye irrigation and other clinical procedures.

e. Performance of office surgical procedures including, but not limited to, skin biopsy, mole or wart removal, toenail removal, removal of a foreign body, arthrocentesis, incision and drainage of abscesses.

f. Assisting in surgery.

g. Prenatal and postnatal care and assisting a physician in obstetrical care.

h. Care of orthopedic problems.

i. Performing and screening the results of special medical examinations including, but not limited to, electrocardiogram or holter monitoring, radiography, audiometric and vision screening, tonometry, and pulmonary function screening tests.

j. Instruction and counseling of patients regarding physical and mental health on matters such as diets, disease, therapy, and normal growth and development.

k. Assisting a physician in the hospital setting by performing medical histories and physical examinations, making patient rounds, recording patient progress notes and other appropriate medical records, assisting in surgery, performing or assisting with medical procedures, providing emergency medical services and issuing, transmitting and executing patient care orders of the supervising physician.

l. Providing services to patients requiring continuing care (home, nursing home, extended care facilities).

m. Referring patients to specialty or subspecialty physicians, medical facilities or social agencies as indicated by the patient's problems.

n. Immediate evaluation, treatment and institution of procedures essential to providing an appropriate response to emergency medical problems.

o. Order drugs and supplies in the office, and assist in keeping records and in the upkeep of equipment.

p. Admit patients to a hospital or health care facility.

q. Order diets, physical therapy, inhalation therapy, or other rehabilitative services as indicated by the patient's problems.

r. Administer any drug (a single dose).

s. Prescribe drugs and medical devices under the following conditions:

(1) The physician assistant shall have passed the national certifying examination conducted by the National Commission on the Certification of Physician Assistants or its successor examination approved by the board. Physician assistants with a temporary license may order drugs and medical devices only with the prior approval and direction of a supervising physician. Prior approval may include discussion of the specific medical problems with a supervising physician prior to the patient's being seen.

(2) The physician assistant may not prescribe Schedule II controlled substances which are listed as stimulants or depressants in Iowa Code chapter 124. The physician assistant may order Schedule II controlled substances which are listed as stimulants or depressants in Iowa Code chapter 124 only with the prior approval and direction of a physician. Prior approval may include discussion of the specific medical problems with a supervising physician prior to the patient's being seen.

(3) The physician assistant shall inform the board of any limitation on the prescriptive authority of the physician assistant in addition to the limitations set out in 325.7(1)"s"(2).

(4) A physician assistant shall not prescribe substances that the supervising physician does not have the authority to prescribe except as allowed in 325.7(1)"n."

(5) The physician assistant may prescribe, supply and administer drugs and medical devices in all settings including, but not limited to, hospitals, health care facilities, health care institutions, clinics, offices, health maintenance organizations, and outpatient and emergency care settings except as limited by 325.7(1)"s"(2).

(6) A physician assistant who is an authorized prescriber may request, receive, and supply sample drugs and medical devices except as limited by 325.7(1)"s"(2).

(7) The board of physician assistant examiners shall be the only board to regulate the practice of physician assistants relating to prescribing and supplying prescription drugs, controlled substances and medical devices.

t. Supply properly packaged and labeled prescription drugs, controlled substances or medical devices when pharmacist services are not reasonably available or when it is in the best interests of the patient as delegated by a supervising physician.

(1) When the physician assistant is the prescriber of the medications under 325.7(1)"s," these medications shall be supplied for the purpose of accommodating the patient and shall not be sold for more than the cost of the drug and reasonable overhead costs as they relate to supplying prescription drugs to the patient and not at a profit to the physician or physician assistant.

(2) When a physician assistant supplies medication on the direct order of a physician, subparagraph (1) does not apply.

(3) A nurse or staff assistant may assist the physician assistant in supplying medications when prescriptive drug supplying authority is delegated by a supervising physician to the physician assistant under 325.7(1)"s."

u. May, at the request of the peace officer, withdraw a specimen of blood from a patient for the purpose of determining the alcohol concentration or the presence of drugs.

v. Direct medical personnel, health professionals and others involved in caring for patients in the execution of patient care.

w. May authenticate medical forms by signing the form and including a supervising physician's name.

x. Perform other duties appropriate to a physician's practice.

325.7(2) Emergency medicine duties.

a. A physician assistant may be a member of the staff of an ambulance or rescue squad pursuant to Iowa Code chapter 147A.

b. A physician assistant shall document skills, training and education equivalent to that required of a certified advanced emergency medical technician or a paramedic.

c. A physician assistant must apply for approval of advanced care training equivalency on forms supplied by the board of physician assistant examiners.

d. Exceptions to this subrule include:

(1) A physician assistant who accompanies and is responsible for a transfer patient, or

(2) A physician assistant who serves on a basic ambulance or rescue squad service, or

(3) Physician assistants who render aid within their skills during an emergency.

325.7(3) Supervision. It shall be the responsibility of the physician assistant with a supervising physician to ensure that the physician assistant is adequately supervised:

a. Patient care provided by the physician assistant shall be reviewed with a supervising physician on an ongoing basis as indicated by the clinical condition of the patient. However, every chart need not be signed, nor every patient visit reviewed, and the physician need not be physically present at each activity of the physician assistant.

b. Patient care provided by the physician assistant may be reviewed with a supervising physician in person, by telephone or by other telecommunication devices.

c. When signatures are required, electronic signatures are allowed if:

(1) The signature is transcribed by the signer into an electronic record and is not the result of electronic regeneration, and

(2) A mechanism exists allowing confirmation of the signature and protection from unauthorized reproduction.

d. The physician assistant and a supervising physician are responsible in ensuring that a supervising physician must be readily available in person, by telephone, or by telecommunication to respond to a request of the physician assistant.

e. In the absence of one supervising physician, the physician assistant may carry out those tasks for which approval has been granted if supervision is provided by another physician approved by the board.

f. If the physician assistant is being trained to perform new tasks, the training may be carried out only under the direct, personal supervision of a supervising physician or another qualified individual.

325.7(4) Remote medical clinic.

a. A physician assistant may provide medical services in a remote medical clinic if:

(1) The physician assistant has a permanent license and has at least six months' practice as a physician assistant.

(2) The physician assistant and supervising physician comply with the supervision requirements outlined in 325.7(3).

(3) A supervising physician must visit a remote clinic to provide additional medical direction, medical services and consultation at least every two weeks or less frequently as specified in special circumstances. Visits may be less frequent than every two weeks if unusual or emergency circumstances exist.

b. When a physician assistant supplies medications as delegated by a supervising physician in a remote clinic, the physician assistant shall secure the regular advice and consultation of a pharmacist regarding the distribution, storage and appropriate use of prescription drugs, controlled substances, and medical devices.

325.7(5) Health care providers shall consider the instructions of the physician assistant to be instructions of a supervising physician if the instructions concern duties delegated to the physician assistant by a supervising physician.

325.7(6) The physician assistant shall be identified as a physician assistant to patients and to the public.

325.7(7) The physician assistant may treat a patient in consultation with a physician(s) in a recognized medical residency program who holds a permanent license. The ultimate responsibility for supervision of the physician assistant remains with the supervising physicians listed on the physician assistant's license.

645—325.8(147) Prescription requirements.

325.8(1) Each written prescription drug order issued by a physician assistant shall contain the following:

a. The date of issue.

b. The name and address of the patient for whom the drug is prescribed.

c. The name, strength, and quantity of the drug, medicine, or device prescribed and directions for use.

d. A supervising physician's name, the physician assistant's name and their practice address.

e. The signature of the physician assistant followed by the initials "P.A.".

f. Any prescription for controlled substances prescribed by the physician assistant shall contain the Drug Enforcement Administration (D.E.A.) number of the physician assistant.

325.8(2) Each oral prescription drug order issued by a physician assistant shall include the same information required for a written prescription, except for the written signature and address of the practitioners.

This rule is intended to implement Iowa Code section 147.107.

ITEM 6. Insert the following <u>new</u> rule **645—325.14(148C)** and renumber rules **645—325.13(148C)** to **645—325.17(148C)** as **645—325.15(148C)** to **645—325.19(148C)**.

645—325.14(148C) Disciplinary hearing fees and costs.

325.14(1) The board may charge a fee not to exceed $75 for conducting a disciplinary hearing which results in

disciplinary action taken against the licensee by the board. An order assessing a fee shall be included as part of the board's final decision. The order shall direct the licensee to deliver payment directly to the department of public health as provided in 325.14(9).

325.14(2) In addition to this fee, the board may also recover from the licensee the costs for transcripts, witness fees and expenses, depositions, and medical examination fees. The board may assess these costs in the manner it deems most equitable.

325.14(3) Transcript.

a. The cost of the transcript includes the transcript of the original contested case hearing before the board as well as transcripts of any other formal proceedings before the board which occur after the notice of the contested case hearing is filed.

b. In the event of an appeal to the full board from a proposed decision, the appealing party shall timely request and pay for the transcript necessary for use in the agency appeal process. The board may assess the transcript costs against the licensee pursuant to Iowa Code section 272C.6(6) or against the requesting party pursuant to Iowa Code section 17A.12(7).

325.14(4) Witness fees and expenses.

a. The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing.

b. The board may assess a licensee the witness fees and expenses incurred by witnesses called to testify on behalf of the state of Iowa.

c. The costs for lay witnesses shall be determined in accordance with Iowa Code section 622.69. For purposes of calculating the mileage expenses allowed under this section, the provisions of Iowa Code section 625.2 do not apply.

d. The costs for expert witnesses shall be determined in accordance with Iowa Code section 622.72. For purposes of calculating the mileage expenses allowed under this section, the provisions of Iowa Code section 625.2 do not apply.

e. The provisions of Iowa Code section 622.74 regarding advance payment of witness fees and the consequences of failure to make such payment are applicable with regard to witnesses who are subpoenaed by either party to testify at the hearing.

f. The board may assess as costs the meal and lodging expenses necessarily incurred by witnesses testifying at the request of the state of Iowa. Meal and lodging costs shall not exceed the reimbursement employees of the state of Iowa receive for these expenses under the department of revenue and finance guidelines in effect on July 1, 1993.

325.14(5) Depositions.

a. The cost for depositions includes the cost of transcripts, the daily charge of the court reporter for attending and transcribing the deposition, and all mileage and travel time charges of the court reporter for traveling to and from the deposition which are charged in the ordinary course of business.

b. Deposition costs for purposes of allocating costs against a licensee include only those deposition costs incurred by the state of Iowa. The licensee is directly responsible for the payment of deposition costs incurred by the licensee.

c. If the deposition is of an expert witness, the deposition cost includes a reasonable expert witness fee. This fee shall not exceed the expert's customary hourly or daily fee, and shall include the time reasonably and necessarily spent in connection with such depositions, including the time spent in travel to and from the deposition, but excluding time spent in preparation for that deposition.

325.14(6) Medical examination fees. All costs of physical or mental examinations ordered by the board pursuant to Iowa Code section 272C.9(1) as part of an investigation of a pending complaint or as a sanction following a contested case hearing shall be paid directly by the licensee.

325.14(7) Within ten days after conclusion of a contested case hearing and before issuance of any final decision assessing costs, the designated staff person shall certify any reimbursable costs to the board. The designated staff person shall calculate the specific costs, certify the cost calculated and file the certification as part of the record in the contested case. A copy of the certification shall be served on each party of record at the time of filing.

325.14(8) A final decision of the board imposing disciplinary action against a licensee shall include the amount of any fee assessed which shall not exceed $75. If the board also assesses costs against the licensee, the final decision shall include a statement of costs delineating each category of costs and the amount assessed. The board shall specify the time period in which the fees and costs must be paid by the licensee.

a. A party must file an objection to any fees or costs imposed in a final decision in order to exhaust administrative remedies. An objection must be filed in the form of an application for rehearing pursuant to Iowa Code section 17A.16(2).

b. The application will be resolved by the board consistent with the procedures for ruling on an application for rehearing. Any dispute regarding the calculations of any fees or costs to be assessed may be resolved by the board upon receipt of the parties' written objections.

325.14(9) All fees and costs assessed pursuant to this chapter shall be in the form of a check or money order made payable to the State of Iowa and delivered by the licensee to the department of public health.

325.14(10) Failure of a licensee to pay a fee and costs within the time specified in the board's decision shall constitute a violation of an order of the board and shall be grounds for disciplinary action.

[Filed 7/14/95, effective 9/6/95]
[Published 8/2/95]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/2/95.

ARC 5772A

REVENUE AND FINANCE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue and Finance hereby adopts amendments to Chapter 40, "Determination of Net Income," Chapter 45, "Partnerships," Chapter 46, "Withholding," and Chapter 48, "Composite Returns," Iowa Administrative Code.

Notice of Intended Action was published in IAB, Volume XVII, number 25 on June 7, 1995, page 1827, as **ARC 5647A**.

The amendments describe a method for taxation of compensation paid to nonresident individuals who are members of professional athletic teams. This amendment is effective for tax years beginning on or after January 1, 1995. The method provides that the compensation of a nonresident athletic team member is taxed in the ratio of the member's duty days in Iowa to the member's total duty days in the tax year. The amendments are based on model regulations promulgated by a group of state tax administrators under the direction of the Federation of Tax Administrators.

Subrule 40.46(1) includes definitions for a number of terms that are involved in the taxation of nonresident team members of professional athletic teams.

Subrule 40.46(2) describes the procedure for filing composite returns by athletic teams for nonresident team members that are subject to Iowa income tax.

Subrule 40.46(3) provides examples of taxation of compensation of nonresident team members of professional athletic teams.

Subrule 40.46(4) describes how a nonresident team member of a professional athletic team can submit an alternative method for the taxation of the compensation of the nonresident team members if the nonresident member believes that the method for taxation of the compensation provided in this rule is not equitable. The subrule also describes a procedure for appeal of the rejection of the alternate method, if the alternative method is rejected by the Department of Revenue and Finance.

The amendments make corrections of references to other rules in the rule relating to the distribution and taxation of partnership income.

The amendments clarify that withholding is required from gambling winnings from slot machines at racetracks at the same income threshold as winnings from slot machines on riverboats.

The amendments make a number of revisions to the rules for composite returns to specify that a professional athletic team can file composite returns on behalf of nonresident team members (employees).

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

These amendments will become effective September 6, 1995, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapter 99F and sections 422.3, 422.7, 422.8, 422.13, 422.15, and 422.16.

The following amendments are adopted.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chapters 40, 45, 46, 48] is being omitted. These amendments are identical to those published under Notice as **ARC 5647A**, IAB 6/7/95.

[Filed 7/14/95, effective 9/6/95]
[Published 8/2/95]

[For replacement pages for IAC, see IAC Supplement 8/2/95]

AGENCY	RULE	DELAY
Human Services Department[441]	185.22(1)*"d,"* 185.22(2)*"d,"* 185.22(3)*"d,"* 185.42(3), 185.62(1)*"d,"* 185.62(2)*"d,"* 185.62(3)*"d,"* 185.82 **[IAB 6/7/95, ARC 5613A,** Items 5 to 8]	Effective date of August 1, 1995, delayed 70 days by the Administrative Rules Review Committee at its meeting held July 11, 1995. [Pursuant to §17A.4(5)]

*SUMMARY OF THE OPINIONS OF THE ATTORNEY GENERAL

THOMAS J. MILLER

January through June, 1995

CONSTITUTIONAL LAW

Item veto. Iowa Const., art. III, § 16; Iowa Code § 99E.10; 1994 Iowa Acts, ch. 1199, § 12; Senate File 481, § 16. The appropriation of "remaining revenues" to the Iowa State Fair Foundation in subsection 16(40) of Senate File 481 includes only those revenues that are left after deducting the amounts appropriated by the legislature in subsections 1 through 39. The funds item vetoed by the Governor remain in the Lottery Fund until further appropriated during the next legislative session. It is unnecessary to determine whether subsection 16(40) invades the Governor's item veto power. (Miller and Pottorff to Murphy, State Senator, and Millage, State Representative, 6-13-95) #95-6-4

COUNTIES; MENTAL HEALTH INSTITUTES

Liability for continued cost of care at private facilities. Iowa Code §§ 222.60, 226.9, 226.18, 226.19, 226.32, 227.11, 227.14, 229.6, 229.14, 230.1, 230.5, 230.8, 230.9, 230.10, 230.15, 230.17, 230.18, 252.2, 252.4, 252.13, 255.16, 331.381, 331.424, 347.16, 444.25 (1995). The county of legal settlement must pay for the continued cost of care provided to indigent, senile patients after their transfer from a state mental health institute to a private facility. (Ramsey and Kempkes to Carter, Jefferson County Attorney, 3-21-95) #95-3-1

COUNTY AND COUNTY OFFICERS

Constructing radio tower and leasing it to private party. Iowa Code §§ 23A.2, 331.301, 331.361 (1995). A county board of supervisors may arrange to construct a radio tower for a public purpose and lease part of it to a private party competing against owners of existing radio towers if the lease results from specific authorization in an ordinance. (Kempkes to Gipp, State Representative, 6-7-95) #95-6-1(L)

*Reproduced as submitted by the Attorney General

Contracts with private, for-profit corporations to operate county detention facility; bond referendum for "county jail." Iowa Code §§ 331.441, 331.447, 356.1, 356.2, 356.5, 356.36, 356.43, 356A.1, 356A.2, 356A.3, 356A.4, 356A.5, 356A.6, 356A.7, 356A.7 (1993). A county with a detention facility may not contract with a private, for-profit corporation for its operation. Passage of a bond referendum specifically for a "county jail" generally precludes a county from designating the newly finished building as a "county detention facility." (Kempkes to Harper, State Representative, and Ferguson, Black Hawk County Attorney, 2-6-95) #95-2-1

Private use of public property; investigating and prosecuting county attorney for improper private use. Iowa Const. art. III, § 31 (1857); Iowa Code §§ 13.2, 66.3, 331.322, 331.754, 331.756, 721.2 (1995). County assessors may use county-owned vehicles and computers for private purposes if facts and circumstances indicate that the use also serves some public purpose. Similarly, part-time county attorneys may allow their private business partners or associates to use county-owned computers and office space for private purposes if facts and circumstances indicate that such use also serves some public purpose. County boards of supervisors could request an area prosecutor from this office to investigate county attorneys allegedly allowing the misuse of county property or request a court to appoint a special prosecutor to investigate any suspected misuse. (Kempkes to Eddie, State Representative, 5-19-95) #95-5-1

LABOR

Application of child labor laws to emancipated minors. Iowa Code §§ 92.1, 92.3, 92.5, 92.8 (1995). The various employment restrictions in chapter 92 apply to all persons under eighteen years of age regardless of their emancipation. (Kempkes to Johnson, Deputy Labor Commissioner, 5-24-95) #95-5-2(L)

MUNICIPALITIES

Cable television franchises. Iowa Code § 364.2(4); 47 U.S.C. § 541. The cable television consumer protection and competition act of 1992, which prohibits a franchising authority from unreasonably refusing to grant a cable television franchise, preempts state law provisions which provide that a franchise may be granted only if an ordinance is passed and approved at an election. (Hunacek to Grundberg, 6-7-95) #95-6-3(L)

MUNICIPALITIES; TAXATION

Local option tax. Iowa Code § 422B.1 (1995). When a city lies within two counties, and no one resides in the city's incorporated area lying within one of the counties, a local sales and services tax may not be imposed upon that area of the city. (Kempkes to Bailey, Page County Attorney, 4-26-95) #95-4-1(L)

SHERIFF; CIVIL SERVICE; PUBLIC RECORDS

Use of reserve deputy sheriffs; duties of county civil service commission in appointing and promoting regular deputy sheriffs and in allowing access to service records by regular deputy sheriffs. Iowa Code §§ 80D.6, 80D.8, 80D.9, 80D.10, 80D.11, 80D.12, 91B.1, 331.652, 341A.6, 341A.8 (1995). A county may assign to reserve deputies those duties of a regular, full-time deputy for which the reserve deputies are properly trained and supervised to perform, even though such assignment may reduce overtime payments to regular, full-time deputies. Although a county civil service commission may arrange, compile, and administer competitive tests to determine the relative qualifications of persons seeking employment as regular deputies, the Law Enforcement Academy must design and prepare practical tests to determine the ability of persons to perform the duties of a regular deputy. A county civil service commission must allow regular deputies to inspect their respective service records in order to identify inaccurate or misleading information. (Kempkes to Van Fossen, State Representative, 6-20-95) #95-6-6(L)

TAXATION; COUNTIES

Low-income individuals between the ages of 23 and 65 are entitled to file claims for rent reimbursements and property tax credits. However, there is no obligation to fund the low-income fund in order to provide for the claimed reimbursements or credits. Iowa Code §§ 425.17(2), 425.18, 425.39 and 425.40 (1995). (Miller to Bernau, State Representative, 6-7-95) #95-6-2(L)

TREASURER

Investment of public funds. Iowa Code §§ 12B.5, 12B.10 (1995). Iowa Code section 12B.10(4)(e) (1995), which prohibits the treasurer from investing in reverse repurchase agreements, does not prevent the treasurer from investing state operating funds in securities lending transactions collateralized by cash or securities. Iowa Code section 12B.5 (1995), which provides a criminal penalty for loaning public funds or otherwise using public funds for a private purpose, does not prevent the treasurer from engaging in securities lending transactions with funds in the state operating portfolio provided that the transactions do not further a private purpose. (Barnett to Fitzgerald, State Treasurer, 6-20-95) #95-6-5(L)

IOWA CONSTITUTION	OPINION
Art. III, § 16	95-6-4
Art. III, § 31	95-5-1

1993 IOWA CODE	OPINION
331.441	95-2-1
331.447	95-2-1
356.1	95-2-1
356.2	95-2-1
356.5	95-2-1
356.36	95-2-1
356.43	95-2-1
356A.1	95-2-1
356A.2	95-2-1
356A.3	95-2-1
356A.4	95-2-1
36A.5	95-2-1
356A.6	95-2-1
356A.7	95-2-1

1995 IOWA CODE	OPINION
12B.5	95-6-5(L)
12B.10	95-6-5(L)
13.2	95-5-1
23A.2	95-6-1(L)
66.3	95-5-1
80D.6	95-6-6(L)
80D.8	95-6-6(L)
80D.9	95-6-6(L)
80D.10	95-6-6(L)
80D.11	95-6-6(L)
80D.12	95-6-6(L)
91B.1	95-6-6(L)
92.1	95-5-2(L)
92.3	95-5-2(L)
92.5	95-5-2(L)
92.8	95-5-2(L)
99E.10	95-6-4
222.60	95-3-1
226.9	95-3-1

226.18	95-3-1
226.19	95-3-1
226.32	95-3-1
227.11	95-3-1
227.14	95-3-1
229.6	95-3-1
229.14	95-3-1
230.1	95-3-1
230.5	95-3-1
230.8	95-3-1
230.9	95-3-1
230.10	95-3-1
230.15	95-3-1
230.17	95-3-1
230.18	95-3-1
252.2	95-3-1
252.4	95-3-1
252.13	95-3-1
255.16	95-3-1
331.42	95-3-1
331.301	95-6-1(L)
331.322	95-5-1
331.361	95-6-1(L)
331.652	95-6-6(L)
331.754	95-5-1
331.756	95-5-1
341A.6	95-6-6()
341A.8	95-6-6(L)
347.16	95-3-1
364.2(4)	95-6-3(L)
422B.1	95-4-1(L)
425.17(2)	95-6-2(L)
425.18	95-6-2(L)
425.39	95-6-2(L)
425.40	95-6-2(L)
444.25	95-3-1
721.2	95-5-1

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*SUMMARY OF DECISIONS

THE SUPREME COURT OF IOWA

FILED JULY 19, 1995

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No. 94-412. dE KONING v. MELLEMA.

Appeal from the Iowa District Court for Lyon County, Tom Hamilton, Judge. APPEAL AFFIRMED; CROSS APPEAL MOOTED. Considered by McGiverin, C.J., and Larson, Carter, Neuman, and Ternus, JJ. Opinion by McGiverin, C.J. (9 pages $3.60)

On behalf of some eligible electors and as part of their effort to contest a successful school bond election, plaintiff Robert de Koning brought this mandamus action in equity asking the district court to order defendant Ken Mellema, Lyon county auditor and commissioner of elections, to designate a member to a contest court pursuant to Iowa Code section 57.7 (1993). The district court sustained Mellema's summary judgment motion on the basis that the electors had not timely filed a bond as required by Iowa Code sections 62.5 and 62.6, and therefore had not properly initiated a contest court proceeding. De Koning appealed, contending (1) the bond requirement does not apply in this public measure contest, (2) Mellema waived the bond requirement, and (3) the failure to post bond did not prejudice Mellema and thus should not have resulted in dismissal of this action. Mellema cross-appealed, contending that the district court erred in refusing to also conclude that the contest court proceeding had not been properly initiated because de Koning had not been timely designated. OPINION HOLDS: I. We conclude as a matter of law Mellema had no duty under Iowa Code section 57.7 to designate a member to the contest court because the electors did not satisfy the bond requirement set forth in Iowa code sections 62.5 and 62.6. The statutory procedures set forth in Iowa Code chapter 62 for contesting elections of county officers are made applicable to public measure contests by Iowa Code section 57.6. Because no bond was filed within twenty days after the election results were declared, the contestants failed to comply with the statutory procedures and therefore no contest court was properly initiated. II. The issue raised in Mellema's cross-appeal is rendered moot. We reject de Koning's waiver and excuse arguments.

*Reproduced as submitted by the Court

No. 93-1538. STATE v. HENSLEY.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Warren County, Thomas S. Bown and William H. Joy, Judges. **DECISION OF COURT OF APPEALS AND JUDGMENT OF DISTRICT COURT AFFIRMED.** Considered by McGiverin, C.J., and Larson, Carter, Neuman, and Ternus, JJ. Opinion by McGiverin, C.J. (12 pages $4.80)

Defendant James H. Hensley, III was arrested and charged with second-degree theft of a motorcycle. Deputy Lettington visited Hensley at the county jail at a time neither knew Hensley had been appointed counsel. Through several motions Hensley sought to suppress the statements he had made to deputy Lettington at the jail. The motions were denied and the State offered Hensley's statements that "he felt the motorcycle was stolen" at trial. Hensley appeals his subsequent second-degree theft conviction, arguing that: (1) the trial court erred in admitting his statements obtained in violation of his constitutional rights; and (2) the evidence was insufficient to support his conviction. The court of appeals affirmed the conviction. We granted Hensley's application for further review. **OPINION HOLDS:** I. Hensley's Sixth Amendment right to counsel was violated and his statements to the deputy should have been suppressed. However, the circumstantial evidence of Hensley's actual belief that the motorcycle was stolen is so overwhelming that it is beyond a reasonable doubt the jury's verdict would have been the same had the statements been suppressed. Accordingly, their admission was harmless error. II. Substantial evidence supports the conviction. We affirm.

No. 94-1819. STATE v. KELLOGG.

Appeal from the Iowa District Court for Delaware County, Walter Rothschild and Randall J. Nigg, District Associate Judges. **AFFIRMED.** Considered by Harris, P.J., and Carter, Snell, Andreasen, and Ternus, JJ. Opinion by Andreasen, J. (7 pages $2.80)

Francis Kellogg's appeal bond was set at $10,000 on each of two convictions of domestic abuse assault causing bodily injury. He appeals the denial of his application for reduction of the bond amount, contending the amount is excessive and violates his statutory and constitutional rights. He also challenges the court's imposition of the additional conditions relating to the use of alcohol. **OPINION HOLDS:** I. Kellogg has no constitutional right to bail pending appeal. II. Iowa Code section 811.5 does provide for bail during certain criminal appeals, but the trial court also has discretion to impose conditions of release which will assure the appearance of the person and the safety of other persons. The trial court did not abuse its discretion in setting appeal bond at a total of $20,000. III. The circumstances involved in Kellogg's crimes, his refusal to take responsibility for them, his prior convictions for second-degree murder and assault, together with his violations of the no-contact order present a significant concern for the victim's safety. It was reasonable for the court to conclude a no-contact order was not alone sufficient to protect the victim. We affirm the court's restrictions on Kellogg's use of alcohol while out on bond. IV. Our Supreme Court Supervisory Order—In The Matter of Uniform Bond Schedules (filed April 30, 1991) is to be used in setting conditions of defendants' *pretrial* release. It has no application to bond set for a convicted defendant while appeal is pending. We affirm the conditions of release set by the court.

No. 94-877. STATE v. ASHBURN.

Appeal from the Iowa District Court for Scott County, James E. Kelley, Judge. **REVERSED AND REMANDED.** Considered by Harris, P.J., and Lavorato, Snell, Andreasen, and Ternus, JJ. Per curiam. (7 pages $2.80)

In September 1993 Jerry Dean Ashburn filed a petition for a hearing on the department of correction's implemented restitution plan. The district court rejected each of Ashburn's claims of error and granted summary judgment in favor of the State. On appeal Ashburn argues the district court erred in finding: (1) he is serving one continuous sentence and therefore restitution is immediately enforceable; (2) there was authority for the State to deduct funds deposited by outside sources from his prison account for restitution; and (3) his due process rights were not violated by the State's failure to provide a hearing prior to confiscating funds from his prison account deposited by outside sources. **OPINION HOLDS:** I. The district court correctly found that Iowa Code section 910.5 neither directly, indirectly or by implication suggests that restitution can only be enforced when an offender is serving the sentence on convictions for which restitution was ordered. II. Iowa Administrative Code rule 201-20.11(7), which provides authority for the department of corrections to deduct restitution payments "from all credits to an inmate's account" with certain exemptions, essentially codifies revised policy number IN-V-106. Ashburn's complaints of present and future authority for the State to deduct funds deposited by outside sources are moot. Our resolution of the due process issue also moots his complaints about deductions made from his account prior to the amendment. III. The State failed to provide Ashburn with the predeprivation procedures outlined in *Walters v. Grossheim*, 525 N.W.2d 830, 831 (Iowa 1994). Therefore, we reverse and remand this case to the district court for proceedings consistent with *Walters*.

No. 94-1135. YEGGE v. INTEGRITY MUT. INS. CO.

Appeal from the Iowa District Court for Polk County, Jack Levin, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Lavorato, Snell, and Andreasen, JJ. Opinion by Harris, J. (5 pages $2.00)

Integrity Mutual Insurance Company, having provided a business liability policy to New Way Construction, denied coverage when New Way was sued by Alan and Janice Yegge in a dispute arising from construction of a residence. The Yegges, successful in the litigation but unsuccessful in their attempts to collect on the judgment against New Way, brought this action against Integrity pursuant to Iowa Code section 516.1. This statute allows them to enforce a judgment by "stepping into the shoes of" the judgment debtor. Partly by way of summary judgment, but largely on the basis of a trial on the facts, the trial court determined the policy provided no duty to indemnify and hence no duty to defend. The Yegges now appeal, challenging the trial court's judgment. **OPINION HOLDS:** Not one of the Yegges' five claims sought recovery for anything covered in the policy. The Yegges would convert a routine business policy into a performance bond, clearly a risk Integrity did not undertake. The trial court's judgment is affirmed.

No. 94-1257. SHEDLOCK v. IOWA DIST. COURT.

Certiorari to the Iowa District Court for Polk County, Scott Rosenberg, District Associate Judge. **WRIT ANNULLED.** Considered by McGiverin, C.J., and Larson, Carter, Neuman, and Ternus, JJ. Opinion by Neuman, J.
(8 pages $3.20)

David Shedlock filed a petition for writ of certiorari challenging his punishment for contempt of a protective order issued in connection with his conviction for criminal trespass. Shedlock was demonstrating on the sidewalk near the Planned Parenthood offices when he approached a member of the staff, Debra Steilin, who was not named in the protective order. Steilin was a passenger in a car driven by Jill June, who was named in the protective order. When Shedlock saw that June was the driver, he reportedly withdrew. He followed the car to the Planned Parenthood parking lot and when the women left the car he began shouting at them about repentance and killing. The district court found Shedlock in willful and deliberate violation of the protective order. Shedlock was sentenced to fifty days incarceration with credit for time served. We granted the petition for writ of certiorari. **OPINION HOLDS:** I. Upon Shedlock's appeal, the trial court was authorized to condition his release as necessary to assure the safety of others. The trial court retained inherent power to punish disobedience of its orders. II. We concur in the district court's reasoning that a communication made to three individuals in the same location at the same time is a communication to every single one of those persons. Shedlock yelled at June, Steilin and the security guard, which demonstrated Shedlock's knowing and willful disregard for the court's order. III. The sentence Shedlock received was well within the limits of Iowa Code section 665.4 (court may sentence contemnor to up to six months in jail). We find no abuse of the court's discretion in sentencing. We annul the writ.

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No. 94-1164. STATE v. RUPE.

Appeal from the Iowa District Court for Story County, William J. Pattinson and Dale E. Ruigh, Judges. **AFFIRMED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Andreasen, and Ternus, JJ. Opinion by Neuman, J.
(6 pages $2.40)

Rupe appeals his conviction for two counts of sexual abuse. Rupe claims Iowa Code section 910A.14 did not authorize the district court to allow a child witness to testify by closed-circuit television simply because the child's veracity may have been impaired in his presence. He also claims his Sixth Amendment right to confront witnesses was violated. He further claims his counsel was ineffective in failing to object to allegedly irrelevant and prejudicial prior acts evidence introduced by the State. **OPINION HOLDS:** I. The district court did not err in considering the trauma-related impairment to a minor's truth-telling capabilities as relevant to the inquiry under section 910A.14. II. This interpretation of section 910A.14 does not interfere with the defendant's right of confrontation. III. We preserve the ineffective-assistance-of-counsel claim for postconviction proceedings.

No. 94-189. STATE v. NELSON.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Fremont County, J.C. Irvin, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT REVERSED AND REMANDED.** Considered by Harris, P.J., and Lavorato, Snell, Andreasen, and Ternus, JJ. Per curiam. (6 pages $2.40)

The issue on appeal is whether the defendant who was charged with three offenses but convicted of only one must pay restitution for the entire amount of attorney fees and costs of the case, as ordered by the district court, or be assessed fees and costs proportionally. The court of appeals affirmed the district court. We granted further review. **OPINION HOLDS:** We find the fees and costs were not clearly associated with any single charge; therefore, the defendant should only be required to pay restitution for one-third of the fees and costs of the case. We vacate the court of appeals decision and reverse and remand the district court judgment. On remand the district court shall consider Nelson's reasonable ability to pay.

No. 94-452. CLUBINE v. AMERICAN CYANAMID CO.

Appeal from the Iowa District Court for Monona County, Robert C. Clem, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Snell, Andreasen, and Ternus, JJ. Opinion by Harris, J. (6 pages $2.40)

Farmers sued providers of herbicides for damage to their crops. The herbicides have been approved by the EPA. The principal issue is whether, as the trial court ruled, the farmers' claims were preempted by federal legislation. **OPINION HOLDS:** I. Each of the farmers' label-based claims (that the herbicides were defective and unreasonably dangerous, that they breached an implied warranty of merchantability, and that they breached an express warranty) is derived from the assertion of factual matters the federal insecticide, fungicide, and rodenticide Act (FIFRA), 7 U.S.C. § 136 *et seq.*, expressly places within the exclusive dominion of the EPA. The claims are thus preempted. II. Plaintiffs have failed to establish their claim that defendants were negligent in testing their products. Dismissal of all claims must be affirmed.

No. 94-271. SANFORD v. MEADOW GOLD DAIRIES.

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge. **AFFIRMED ON BOTH APPEALS.** Considered by Harris, P.J., and Lavorato, Snell, Andreasen, and Ternus, JJ. Opinion by Harris, J. (8 pages $3.20)

Plaintiff Mark D. Sanford was hired as a freezer operator by defendant Meadow Gold Dairies, Inc. On March 10, 1989, he suffered an injury when his right thumb was caught in a machine that filled ice cream containers. Sanford reinjured his hand on the job on May 15, and was told to stay off work pending his referral to a specialist. On August 30 Sanford underwent surgery on his hand and since then has not worked at Meadow Gold. He was fired on February 27, 1990, when he reported for work. The nature and extent of Sanford's injuries are hotly disputed. Meadow Gold suspected Sanford was malingering, sought to stop

No. 94-271. SANFORD v. MEADOW GOLD DAIRIES (continued).
his healing-period benefits, questioned his diagnosis, and contemplated private surveillance. Sanford believed Meadow Gold was oblivious of the real pain he was suffering and was improperly bent on denying him the benefits to which he was entitled. Sanford sued Meadow Gold for wrongful discharge and fraudulent misrepresentation. At the close of all evidence the trial court sustained Meadow Gold's motion for a directed verdict on the fraudulent misrepresentation count. The jury thereafter found for Sanford on his claim for wrongful discharge in violation of public policy, awarding $500 for past mental pain and suffering and $25,000 in punitive damages. Both parties appeal. **OPINION HOLDS:** I. The trial court did not abuse its discretion under the circumstances in receiving the evidence that Sanford had been fully compensated by workers' compensation benefits as a result of his injury. II. In dismissing the fraudulent misrepresentation claim, the trial court accepted Meadow Gold's argument that state courts are preempted from considering disputes interpreting collective bargaining agreements under section 301(a) of the labor management relations act. We affirm on a different ground. Sanford did not show any damages on this count beyond those already considered and either allowed or rejected on the retaliatory discharge count. Any further recovery would be duplicative. III. We cannot say as a matter of law that Meadow Gold's conduct, giving rise to the punitive damages award, was directed specifically at Sanford. IV. The special verdict that Sanford suffered no past or future loss of wages is supported by his own testimony that his continued employment at Meadow Gold was impossible by reason of his injury. V. Sanford's wrongful discharge claim is not preempted by federal statute because there is really no argument concerning the terms or effect of the union contract. All controverted issues involved routine state law. VI. Tax the costs three-fourths to Sanford and one-fourth to Meadow Gold.

No. 93-1560. BAUMLER v. HEMESATH.
Appeal from the Iowa District Court for Winneshiek County, John J. Bauercamper, Judge. **AFFIRMED IN PART AND REVERSED IN PART ON APPEAL; REVERSED AND REMANDED ON CROSS-APPEAL.** Considered by Larson, P.J., and Carter, Neuman, Lavorato, and Andreasen, JJ. Opinion by Neuman, J. (11 pages $4.40)

Joseph Baumler brought this action against his employers, Jack and Karen Hemesath, alleging that while working on their farm he sustained injuries as a result of their negligent failure to maintain a safe working area and negligent failure to warn. The Hemesaths now appeal from a jury verdict for Baumler and his wife contending: (1) the tire rut into which Baumler fell was an open and obvious danger; (2) failure to warn should not have been submitted to the jury where Baumler had actual and superior knowledge of the danger; (3) their motion for new trial was improperly denied because the verdict was not supported by substantial evidence and erroneous evidentiary rulings denied them a fair trial; (4) the district court erred in precluding evidence of insurance-paid medical bills; and (5) the district court erred in setting the interest rate for past damages pursuant to Iowa Code chapter 535 (1993) rather than chapter 668. Baumlers cross-appeal contending the interest rate for future damages should also have been set pursuant to section 535.3, not section 668.13. **OPINION HOLDS:** I. From the proof

No. 93-1560. BAUMLER v. HEMESATH. (continued)
it appears the Hemesaths could have anticipated the safety risk of the tire rut, yet they gave no warning nor minimized the hazard. A reasonable jury could have found the Hemesaths acted negligently toward Baumler. The district court's denial of the Hemesath's motion for directed verdict is affirmed. II. There was sufficient evidence to submit the issue regarding the Hemesaths' failure to warn to the jury. Also, the court properly submitted the issue as a separate specification of negligence. III. The court did not abuse its discretion in refusing to grant a new trial based upon the introduction of evidence regarding Baumler's children's serious medical conditions. IV. Sufficient evidence of future damages was presented to submit this element of damages to the jury. V. This case was tried pursuant to Iowa Rule of Civil Procedure 97, not chapter 668. Therefore, the collateral source rule applied and the court properly precluded proof that some of Baumler's expenses were covered by insurance. VI. The court properly held the interest provisions of chapter 668 did not apply to Baumler's past damages. VII. Interest on the claim related to the slip in the tire rut accrued from the date of the amended petition, not the original petition as ordered by the district court. We reverse and remand on this issue for entry of a corrected judgment. VIII. The court incorrectly applied the chapter 668 interest rate to future damages. We reverse and remand for entry of interest on the judgment at ten percent per annum, pursuant to section 535.3.

No. 93-1596. FIREMAN'S FUND INS. CO. v. ACC CHEM. CO.
Appeal from the Iowa District Court for Clinton County, John A. Nahra, Judge. **REVERSED AND REMANDED.** Considered en banc. Opinion by Larson, J. (16 pages $6.40)

The insured parties under comprehensive general liability insurance policies, collectively Chemplex, have appealed from a judgment against their insurance carriers, asserting that the damages awarded to them were inadequate. The insurance carriers cross-appealed the court's refusal to grant judgments for them as a matter of law. **OPINION HOLDS:** The notice issue is dispositive of this case. Chemplex acknowledges that it did not directly notify the insurers for five years of the pollution it had caused and of a possible claim. It argues, however, that it effectively notified them by sending an agent of the insurance companies a carbon copy of a letter notifying a pollution insurer (not involved in this case) of the possibility of a claim. It also argues that the insurers had "constructive" notice of the pollution because of the insurers' yearly inspections of the site. (1) We reject the constructive notice argument. The inspections could not notify insurers that the EPA had in fact conducted an extensive investigation or that Chemplex had committed itself to a consent decree with the EPA to incur millions of dollars in remediation costs. (2) All of the policies required written notice of an occurrence. The letter received by the alleged agent was not substantial compliance with those notice requirements. (3) Substantial compliance was not excused. (4) The insurers were prejudiced by the five-year delayed notice. We reverse the judgments of the district court and remand for entry of a judgment in favor of the insurance companies on their cross-appeals. We do not address any of the remaining issues.

No. 94-952. ESTATE OF DEAN v. AIR EXEC, INC.

Appeal from the Iowa District Court for Wapello County, James P. Rielly, Judge. AFFIRMED. Considered by McGiverin, C.J., and Larson, Carter, Neuman, and Ternus, JJ. Opinion by Carter, J. (6 pages $2.40)

George Rump and plaintiff's decedent, Julia Dean, were directed by their common employer to travel from Fort Madison, Iowa, to Ottumwa, Iowa. Rump leased an aircraft from the defendant, Air Exec, Inc. (Air Exec). Rump and Dean then proceeded toward Ottumwa with Rump piloting the plane. The plane crashed, killing both Rump and Dean. Dean's personal representative commenced the present action against Air Exec, alleging that the crash had been caused by Rump's negligence and that Air Exec, as the owner of the aircraft, was liable for the negligence of its lessee. This claim is predicated on the aircraft owner's liability statutes, Iowa Code section 328.1(19) and section 328.41. Air Exec sought summary judgment on the theory that, absent gross negligence, the coemployee immunity granted the lessee under Iowa Code section 85.20 should also inure to the benefit of parties that are vicariously liable for the coemployee's negligence. The district court denied summary judgment, and Air Exec appealed. **OPINION HOLDS:** The workers' compensation laws do not immunize third parties from tort claims by injured employees. Moreover, we conclude the broadly stated liability that the aircraft owner's liability statute imposes turns on the negligence rather than the liability of the operator. The district court's order is affirmed.

No. 94-426. MORRIS v. LEAF.

Appeal from the Iowa District Court for Polk County, Richard Strickler, Judge. AFFIRMED. Considered by McGiverin, C.J., and Larson, Carter, Neuman, and Ternus, JJ. Opinion by Larson, J. (6 pages $2.40)

This is an action brought to recover damages for injuries sustained when the car operated by one of the plaintiffs was struck by a driver who was attempting to elude a police officer. The district court granted summary judgment on the ground the officer had no duty to protect the injured party from the negligent act of the fleeing motorist and that, as a matter of law, the officer's acts were not the proximate cause of the collision. On appeal, the plaintiffs contend summary judgment was not appropriate in this case because the high-speed chase in which the officer had engaged the fleeing driver created the kind of special relationship that we have held is necessary to establish tort liability of a police officer. They also argue the City is liable for the officer's actions under Iowa Code section 670.2. **OPINION HOLDS:** I. The officer did not owe a duty to the plaintiffs under these facts. In addition, a police officer involved in a high-speed chase is not civilly liable to an injured third party, under Iowa Code section 321.231, unless the officer acted with reckless disregard for the safety of others. In order to prove recklessness in this situation, a plaintiff must show that the actor has intentionally done an act of an unreasonable character in disregard of a risk known to or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow. In this case, the officer's conduct did not amount to recklessness as a matter of law. II. Also, we find no duty owing from the employee to the public and therefore conclude section 670.2 is inapplicable. Summary judgment was appropriate. It is not necessary to address the remaining issues.

No. 94-411. BENJAMIN v. LINDNER AVIATION.

Appeal from the Iowa District Court for Lee County, David B. Hendrickson, Judge. **AFFIRMED IN PART; REVERSED IN PART.** Considered en banc. Opinion by Ternus, J. Dissent by Snell, J. (18 pages $7.20)

Appellant, Heath Benjamin, found over $18,000 in currency inside the wing of an airplane. At the time, appellee, State Central Bank, owned the plane and it was being serviced by appellee, Lindner Aviation, Inc. All three parties claimed the money as against the true owner. After a bench trial, the district court held that the currency was mislaid property and belonged to the owner of the plane. The court awarded a finder's fee to Benjamin. Benjamin appealed and Lindner Aviation and State Central Bank cross-appealed. **OPINION HOLDS:** I. We hold that Iowa Code chapter 644 does not abrogate the common law classifications of found property and applies only if the property discovered can be categorized as "lost" property as that term is defined under the common law. II. There was substantial evidence to find that the currency discovered by Benjamin was mislaid property and not lost property, abandoned property, or treasure trove. III. Mislaid property belongs to the owner of the premises where it was found. We think that the place where the money was found is the airplane, not the hangar where the airplane was parked. We affirm the trial court's judgment that the bank, as the owner of the plane, has the right to possession of the property as against all but the true owner. IV. The statutory finder's fee for "lost" property does not apply. The trial court erred in awarding Benjamin a finder's fee. **DISSENT ASSERTS:** The second test for determining that property is mislaid is that the owner "overlooks or forgets where the property is." It is not likely or reasonable to suppose that a person would secrete $18,000 in an airplane wing and then forget where it was. The scenario unfolded in this case convinces me that the money found in the airplane wing was abandoned. I would hold that Benjamin is legally entitled to the entire amount of money that he found in the airplane wing as the owner of abandoned property.

No. 94-477. IOWA DEP'T OF TRANSP. v. IOWA DIST. CT.

Certiorari to the Iowa District Court for Bremer County, Bryan H. McKinley, Judge. **WRIT SUSTAINED.** Considered en banc. Opinion by Ternus, J. Dissent by Snell, J. (15 pages $6.00)

Garry Lee Schumacher was charged with operating a motor vehicle while intoxicated (OWI) and possession of a controlled substance. On August 27, 1993, Schumacher pled guilty to the possession charge. The court dismissed the OWI charge. Between the time that Schumacher committed the offense and the time he was convicted, a new law now codified at Iowa Code section 321.209(8) (1995) requiring the DOT to revoke the driver's license of any drug offender became effective. The DOT notified Schumacher that his license was revoked pursuant to section 321.209(8). Schumacher then filed an application for a nunc pro tunc order in his criminal case. He asked that the district court enter an order that section 321.209(8) did not apply to him because his drug offense was committed before the effective date of the statute. The county attorney consented to the entry of such an order. The district court amended its judgment and sentence by adding a statement that the law providing for revocation of drivers' licenses for drug offenses did not apply to Schumacher. The DOT filed a petition for writ of certiorari challenging the district court's jurisdiction to enter

No. 94-477. IOWA DEP'T OF TRANSP. v. IOWA DIST. CT. (continued) the nunc pro tunc order. We granted the petition. **OPINION HOLDS:** Section 321.209 expressly confers on the DOT the duty to revoke a driver's license when that driver has been convicted of a drug offense. Under chapter 17A, Schumacher could seek judicial review of his license revocation. However, Schumacher's application for nunc pro tunc did not meet the statutory prerequisites for judicial review under Iowa Code section 17A.19: it did not name the DOT as the respondent as required by subsection four. Without the authority obtained in judicial review proceedings, the district court had no authority to adjudicate the application of section 321.209(8). II. The county attorney had no authority in plea negotiations to bind the DOT. **DISSENT ASSERTS:** The DOT claiming it has a right to revoke Schumacher's driver's license under section 321.209(8) must base its action "upon receiving a record of the operator's conviction." Schumacher's conviction is for simple possession. Thus, there is no *operator's* conviction in this case. The DOT's attempt to broaden its jurisdiction to include every controlled substance conviction is well beyond its authority. The district court had a right to amend, correct, or explain its ruling by a nunc pro tunc order to reflect the true state of the record of the guilty plea proceedings. The DOT as well as the county attorney and district court are all bound by the plea agreement. I would annul the DOT's application for a writ of certiorari.

No. 94-538. COLLISTER v. CITY OF COUNCIL BLUFFS.

Appeal from the Iowa District Court for Pottawattamie County, Glen M. McGee, Judge. **APPEAL AFFIRMED; CROSS-APPEAL MOOTED.** Considered by Harris, P.J., and Carter, Snell, Andreasen, and Ternus, JJ. Opinion by Ternus, J. (7 pages $2.80)

A disabled street sweeper owned by the City of Council Bluffs was struck by a vehicle driven by Richard Collister, and owned by Peggy Collister. The Collisters and their insurer, State Farm Insurance Co., brought suit for damages. The jury found the city and the driver of the street sweeper at fault. The defendants appealed arguing the court erred by instructing the jury that the city could be found negligent for (1) "failing to take any action to warn approaching traffic" and (2) "failing to take appropriate action to provide roadway lighting which is up to current design standards." **OPINION HOLDS:** I. The city has no immunity under section 668.10(1) for its negligent failure to warn of its parked street sweeper. The operators of city vehicles must observe the rules of the road. II. While we disapprove of the court's instructions regarding the city's duty to provide roadway lighting, any error is not reversible. First, the city failed to preserve error. Second, the instructions were actually more favorable to the city than they should have been. Therefore, the error was not prejudicial. We affirm the order entering judgment on the jury's verdict. Because we do not reverse the judgment, we need not consider Richard's cross-appeal.

No. 94-1159. SPELLER v. STATE.

Appeal from the Iowa District Court for Lee County, D.B. Hendrickson, Judge. **AFFIRMED.** Considered by Harris, P.J., and Lavorato, Snell, Andreasen, and Ternus, JJ. Opinion by Lavorato, J. (13 pages $5.20)

Officer Bauswell served a major disciplinary report on Herbert Speller for, among other things, disobeying an order to hand over a cup. The disciplinary hearing committee met and found Speller guilty of violating rule 23 (disobeying a lawful order). Speller's appeals to the warden and to the Iowa department of corrections were denied. In both appeals Speller contended that once he realized the officer was not "playing," he complied with the officer's order. Speller filed an application for postconviction relief. He claimed the disciplinary committee violated his due process rights because it failed to (1) consider his defense, or (2) make adequate written findings on it. The district court concluded the committee simply did not believe Speller's defense. Speller appealed from the district court's denial of his application. **OPINION HOLDS:** I. Committee chair Charles Harper's testimony supports a reasonable inference that the committee did consider Speller's defense and rejected it though the written decision does not spell this out. II. In its written decision, the committee said it relied on Bauswell's report and Speller's statement to the investigating officer. We conclude that the committee's written statement of the evidence it relied upon satisfied due process. We suggest, however, that in the future, disciplinary committees refer to specific statements in reports, or, at the very least, attach to the written statement those reports specifically referenced in the written statement. The district court correctly denied Speller's application for postconviction relief.

No. 94-275. STATE v. KNOX.

Appeal from the Iowa District Court for Emmet County, Charles H. Barlow, Judge. **AFFIRMED.** Considered en banc. Opinion by Lavorato, J. (15 pages $6.00)

A jury convicted James Knox of sexual abuse in the third degree. At trial Knox sought to introduce evidence that (1) the complainant had chlamydia at the time he allegedly sexually abused her, and (2) he did not have the disease when tested three months later. The district court denied admission of this proffered evidence after a rule 412 hearing. On appeal Knox challenges this ruling and the sufficiency of the evidence to convict him. **OPINION HOLDS:** I. We need not decide the question whether this proffered evidence of chlamydia falls within the prohibition of the rape shield law. II. The rape shield law and the general rules of relevancy require a balancing test. The chlamydia evidence may have had some marginal relevancy and still may not have been admissible because its unfair prejudice substantially outweighed its probative value. The district court was well within its discretion in excluding this evidence and Knox's Sixth and Fourteenth Amendment rights were not thereby implicated. III. We reject Knox's suggestion that direct physical evidence was a necessary prerequisite to conviction. From all of the evidence a reasonable fact finder could conclude that a sex act occurred and that the complainant did not consent to it. Substantial record evidence supports the conviction. We affirm.

No. 93-1663. LAWRENCE v. GRINDE.

Appeal from the Iowa District Court for Linn County, Larry J. Conmey, Judge. AFFIRMED IN PART AND REVERSED IN PART. Considered en banc; Ternus, J., takes no part. Opinion by Snell, J. Dissent by Carter, J. (21 pages $8.40)

Larry Lawrence was indicted for bankruptcy fraud for failing to disclose a transfer of funds in his bankruptcy petition. A federal court found Lawrence not guilty. Two regional newspapers published articles discussing Lawrence's indictment and acquittal. Lawrence then brought a legal malpractice action against David Grinde, Fred Dumbaugh and their law firm for negligently handling his bankruptcy case. Lawrence sought to recover the costs of defending the criminal action and damages for injury to his reputation and severe emotional distress. The district court granted defendants' motion for directed verdict on the reputation issue but allowed the jury to consider Lawrence's other claims. The jury awarded Lawrence $700,000 for emotional distress and $52,000 for economic loss, including $14,233.49 for attorney fees. The district court denied defendants' motions for judgment notwithstanding the verdict or new trial, but ordered a remittitur for damages exceeding $5000 for emotional distress and exceeding $14,233.49 for economic loss. Lawrence agreed to a remittitur regarding economic loss but appealed from the rest of the judgment. Defendants cross-appealed. **OPINION HOLDS:** I. Lawrence preserved error on his challenges. II. The district court did not err in granting defendants' motion for directed verdict on the reputation issue. Reputation damages are not a legal remedy available in a damage action premised on this defendant's negligent act. III. The claimed emotional distress is too far removed from, and does not naturally ensue from, the defendants' negligent conduct to impose a duty to protect against emotional anguish. The trial court erred as a matter of law in submitting the claim of severe emotional distress to the jury. The trial court's grant of directed verdict on the reputation claim is affirmed. The denial of defendants' motion for judgment notwithstanding the verdict is reversed. Lawrence's recovery of attorney fees associated with his bankruptcy fraud action are not at issue here and remain as awarded by the trial court. **DISSENT ASSERTS:** I. I submit that the facts of the present action are deserving of a departure from the general limitation on damages for emotional distress. There is a strong circumstantial corroboration of prolonged emotional distress placed on Lawrence over a prolonged period of time. I would affirm the judgment of the district court allowing the emotional damages awarded in the verdict of the jury. II. I disagree with the conclusion that damages to reputation are never recoverable in negligence cases. When, as here, there is no claim of economic injury associated with damage to reputation, that type of injury is simply another variety of emotional distress. There was also adequate circumstantial corroboration of that type of mental anguish. I would reverse the judgment of the district court granting a directed verdict on Lawrence's claim for injury to reputation.

No. 94-580. CITY OF DES MOINES v. IOWA DIST. COURT.

Certiorari to the Iowa District Court for Polk County, Scott Rosenberg, District Associate Judge. WRIT ANNULLED. Considered by McGiverin, C.J., and Larson, Carter, Neuman, and Ternus, JJ. Per curiam. (2 pages $.80)

The State petitioned for certiorari to challenge the court's acquittal of a defendant charged with violating a misdemeanor city ordinance. **OPINION HOLDS:** We believe the petition was improvidently granted. We therefore annul the writ.

No. 94-582. STATE v. GILLILAND.

Appeal from the Iowa District Court for Johnson County, John R. Sladek, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Carter, Neuman, and Ternus, JJ. Per curiam. (3 pages $1.20)

Michael Gilliland appeals from his assault-with-a-dangerous-weapon conviction. He contends the district court erred in instructing the jury that, when used in an assault, a semitrailer is a dangerous weapon as a matter of law. **OPINION HOLDS:** Gilliland acquiesced in the challenged jury instruction and therefore waived error. We note, however, that when a particular instrumentality is not specifically listed as a dangerous weapon under the definitional statute, Iowa Code § 702.7, the determination of whether it is a dangerous weapon should be left to the fact finder. Gilliland's conviction is affirmed.

No. 94-623. PIERCE v. IOWA-MISSOURI CONFERENCE OF SEVENTH-DAY ADVENTISTS.

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Carter, Lavorato, and Neuman, JJ. Per curiam. (6 pages $2.40)

David Pierce, his wife and his children brought suit against the Seventh-Day Adventist Church on several theories, following his termination as a ministerial intern. The Church filed a motion for summary judgment. The district court granted the motion, ruling that the free exercise clause of the First Amendment, made applicable to the states through the Fourteenth Amendment, precluded it from addressing any issues related to the Church's policies, procedures or actions in terminating Pierce. Pierce appeals. **OPINION HOLDS:** We believe Pierce's effectiveness as a minister was the "essence" of his termination. The First Amendment requires secular tribunals to refuse to interfere with a church's relationship with its ministers. We decline to review any aspect of the executive committee's decision to terminate Pierce's employment. The judgment of the district court is affirmed.

No. 94-1762. STATE v. DIXON.

Appeal from the Iowa District Court for Polk County, Rodney J. Ryan and Joel D. Novak, Judges. **AFFIRMED.** Considered by Harris, P.J., and Larson, Snell, Andreasen, and Ternus, JJ. Opinion by Snell, J. (11 pages $4.40)

During the trial of Michael C. Dixon for involuntary manslaughter and failure to give aid and information, the trial court sua sponte declared a mistrial. The declaration occurred after defense counsel objected to the court's remarks regarding the accuracy of a State's exhibit. Following a hearing before a second judge, the trial court granted Dixon's motion to dismiss on double-jeopardy grounds. The State appeals. **OPINION HOLDS:** We are unable to find any manifest necessity for the judge's sua sponte declaration of a mistrial in this case or that the ends of public justice were served by it. The judge abused his discretion in declaring a mistrial and retrial is barred on double jeopardy grounds. We affirm.

No. 95-555. IOWA SUPREME COURT BD. OF PROFESSIONAL ETHICS v. SATHER.

On review of the report of the Grievance Commission. ATTORNEY REPRIMANDED. Considered by Harris, P.J., and Larson, Snell, Andreasen, and Ternus, JJ. Opinion by Snell, J. (7 pages $2.80)

Following his father's death in 1977, attorney David Sather asked Joseph Brick to handle his father's estate. Brick later informed Sather he had a conflict of interest and Sather took over as attorney even though he had no experience in probate matters. Over the next several years, the clerk of court and eventually the board repeatedly sent notices to Sather regarding the delinquency of the estate closing. Sather did not respond to any of these notices. Sather was publicly reprimanded in 1986 for failing to make timely filings, failing to remove delinquencies, and failing to respond to notices of complaint. Sather thereafter received several more notices of delinquency and formal complaint but failed to respond. The district court, on its own motion, eventually closed the estate in 1994. The board filed a complaint with the grievance commission, which recommended Sather be publicly reprimanded. **OPINION HOLDS:** The board has demonstrated by a convincing preponderance of the evidence that Sather neglected his legal responsibilities as the designated attorney for his father's estate and demonstrated a serious pattern of failure, without excuse, to perform his duty to respond to notices of the district court and inquiries by the board. We hereby reprimand attorney Sather. Costs are taxed to Sather.

No. 94-117. STATE v. PADAVICH.

Appeal from the Iowa District Court for Appanoose County, James P. Rielly and Phillip R. Collett, Judges. AFFIRMED. Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Neuman, JJ. Opinion by Lavorato, J. (23 pages $9.20)

Christopher Fenton Padavich appeals his convictions for possession of marijuana with intent to deliver and failure to affix drug tax stamps. He argues: (1) the anticipatory search warrant at issue is invalid; (2) the jury verdict on the element of possession for both offenses is not supported by substantial evidence; (3) his trial counsel was ineffective in failing to alert the court to alleged jury misconduct; and (4) the district court abused its discretion in sentencing him by considering two past convictions that had been reversed. **OPINION HOLDS:** I. In *State v. Gillespie*, 530 N.W.2d 446, 448 (Iowa 1995), we held that Iowa Code sections 808.3 and 808.4 prohibit anticipatory search warrants. Ignoring the anticipatory portion of the search warrant application, the remainder of the application contained sufficient facts to establish present probable cause to search the Brushy Church residence. The district court correctly overruled Padavich's motion to suppress. II. There was substantial evidence in the record for a reasonable jury to find that Padavich possessed the marijuana seized from the Brushy Church residence. III. Padavich's ineffective assistance of counsel claim is preserved for postconviction relief consideration because the appellate record is inadequate to decide it. IV. The district court did not abuse its discretion in sentencing Padavich; it did not rely on prior reversed convictions. We affirm.

No. 94-83. WEST v. WESSELS.

Appeal from the Iowa District Court for Kossuth County, Joseph J. Straub, Judge. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.** Considered by McGiverin, C.J., and Larson, Carter, Neuman, and Ternus, JJ. Opinion by Carter, J. (8 pages $3.20)

The district court granted defendants' summary judgment motions, finding that West's six tort and breach-of-contract theories of liability were precluded by a previous final judgment upholding termination of West's contract as superintendent with the Buffalo Center-Rake-Lakota Community School District. West appeals. **OPINION HOLDS:** I. West's following three claims are not barred by claim preclusion: (1) alleged breach of contract by the school district under Count I during the time that contract was still in force, (2) alleged willful falsification of a "misconduct" claim in resisting West's application for unemployment insurance benefits embraced within Counts II, IV, and VI, and (3) a claim of tortious interference with West's prospective contractual relationship with another school district under Count V. The record discloses genuine issues of material fact with respect to the first and third matters identified. The second matter is not actionable for other reasons. Neither does issue preclusion apply to bar West from pursuing claims one and three. II. Count II presents a claim sounding in tort for violation of contractual duties. However, none of the defendants named in that count may be found liable as they were not parties to the contract. III. Defendant Lipps asserts that in acting as the school district's attorney he is immune from West's claims. We need consider this issue only as it applies to Count IV. It is impossible to determine on the record, as it exists at this time, that Lipps has immunity with respect to those allegations. IV. The district court acted well within its broad discretion in allowing amendments to defendants' answers. V. On remand, relevant material contained in the closed-session meetings should be made available to West for such use as is allowed under the rules of evidence in pursuing those claims remaining after our decision is filed and procedendo has issued. Other discovery issues raised by West have been considered and found to be without merit. VI. The judgment dismissing Counts II, III, V, and VI of the petition on the merits is affirmed. The matter is remanded for further proceedings on Counts I and IV consistent with this opinion. VII. The costs of appeal are assessed eighty percent to appellant and twenty percent to appellees.

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