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Pursuant to section 17A.6 of the Iowa Code, the Iowa Administrative Code [IAC] Supplement is published biweekly and supersedes Part II of previous publications.

The Supplement contains replacement pages to be inserted in the loose-leaf IAC according to instructions in the respective Supplement. Replacement pages incorporate amendments to existing rules or entirely new rules or emergency or temporary rules which have been adopted by the agency and filed with administrative rules co-ordinator as provided in sections 7.17, 17A.4 to 17A.6. [It may be necessary to refer to the Iowa Administrative Bulletin* to determine the specific change.] The Supplement may also contain new or replacement pages for "General Information," Tables of Rules Implementing Statutes, and Index.
Index.

When objections are filed to rules by the Administrative Rules Review Committee, Governor or the Attorney General, the context will be published with the rule to which the objection applies.

Any delay by the Administrative Rules Review Committee of the effective date of filed rules will also be published in the Supplement.

Each page in the Supplement contains a line at the top similar to the following:

IAC 9/24/86 Employment Services[341] Ch 1, p.7

*Section 17A.6 has mandated that the "Iowa Administrative Bulletin" be published in pamphlet form which will contain material formerly published in Part I of the IAC Supplement. The Bulletin will contain Notices of Intended Action, Filed Rules, effective date delays, Economic Impact Statements, and the context of objections to rules filed by the Committee, Governor, or the Attorney General.

In addition, the Bulletin shall contain all proclamations and executive orders of the Governor which are general and permanent in nature, as well as other materials which are deemed fitting and proper by the Committee.

INSTRUCTIONS

FOR

Updating Iowa Administrative Code
with Biweekly Supplement

NOTE: Please review the "Preface" for both the Iowa Administrative Code and Biweekly Supplement and follow carefully the updating instructions.

The boldface entries in the left-hand column of the updating instructions correspond to the tab sections in the IAC Binders.

Obsolete pages to IAC are listed in the column headed "Remove Old Pages." New and replacement pages in this Supplement are listed in the column headed "Insert New Pages." It is important to follow instructions in both columns.

Editor's phone: (515) 281-3355 or (515) 281-8157

UPDATING INSTRUCTIONS
February 11, 1987, Biweekly Supplement

IOWA ADMINISTRATIVE CODE

	Remove Old Pages*	Insert New Pages
COLLEGE AID COMMISSION[245]	Ch 4, p.2	Ch 4, p.2
	Ch 10, p.1—Ch 10, p.6	Ch 10, p.1—Ch 10, p.6
	Ch 10, p.17—Ch 10, p.20	Ch 10, p.17—Ch 10, p.20
	Ch 10, p.43a—Ch 10, p.46	Ch 10, p.43a—Ch 10, p.46
	Ch 10, p.55	Ch 10, p.55
DENTAL EXAMINERS, BOARD OF[320]	Analysis, p.1—Analysis, p.3	Analysis, p.1—Analysis, p.3
	Ch 15, p.2—Ch 20, p.1	Ch 15, p.2—Ch 20, p.1
	Ch 29, p.3—Ch 30, p.3	Ch 29, p.3—Ch 30, p.3
PUBLIC HEALTH DEPARTMENT[470]	Analysis, p.7, 8	Analysis, p.7, 8
	Analysis, p.11, 11a	Analysis, p.11, 11a
	Ch 18, p.1—Ch 25, p.1	Ch 18, p.1—Ch 25, p.1
	Ch 51, p.2, 2a	Ch 51, p.2, 2a
	Ch 51, p.51, 52	Ch 51, p.51, 52
	Ch 75, p.1—Ch 77, p.1	Ch 75, p.1—Ch 77, p.1
	Ch 111, p.1—Ch 121, p.1	Ch 111, p.1—Ch 121, p.1
	Ch 135, p.8, 9	Ch 135, p.8, 9
	Ch 135, p.26, 27	Ch 135, p.26, 27
	Ch 152, p.10—Ch 154, p.1	Ch 152, p.10—Ch 154, p.1

*It is recommended that "Old Pages" be retained indefinitely in a place of your choice. They may prove helpful in tracing the history of a rule.

	Remove Old Pages*	Insert New Pages
HUMAN SERVICES DEPARTMENT[498]	Corresponding Numbers p.1—Ch 209, p.5	Page 1
SUBSTANCE ABUSE, IOWA DEPARTMENT OF[805]	Ch 6, p.1—Ch 6, p.10	Ch 6, p.1—Ch 6, p.10
TRANSPORTATION, DEPARTMENT OF[820]	Analysis, p.5a, 5b [07,A] Ch 1, p.14, 15	Analysis, p.5a, 5b [07,A] Ch 1, p.14, 15
WATER, AIR AND WASTE MANAGEMENT[900]	Analysis, p.1 Ch 4, p.1—Ch 4, p.6	Analysis, p.1 Ch 1, p.5—Ch 5, p.1

The following are some of the "umbrella" Departments, Commissions, and Divisions created by state government reorganization.

AGRICULTURE AND LAND STEWARDSHIP, DEPARTMENT OF[21]	Ch 9, p.1, 2	Ch 9, p.1—Objection, 9.7
Insurance Division[191]	Analysis, p.1—Analysis, p.4 Ch 2, p.1—Ch 3, p.1 Ch 5, p.1, 2 Ch 15, p.27—Ch 16, p.1	Analysis, p.1—Analysis, p.4 Ch 2, p.1—Ch 3, p.1 Ch 4, p.1—Ch 5, p.2 Ch 15, p.27—Ch 16, p.1
Racing and Gaming Division [195]	Ch 8, p.11—Ch 8, p.14	Ch 8, p.11—Ch 8, p.14
Utilities Division[199]	Ch 22, p.10, 11 Ch 22, p.30	Ch 22, p.10, 11 Ch 22, p.30
Industrial Services, Division of[343]	Ch 4, p.9—Ch 5, p.1 Ch 7, p.1—Ch 8, p.1	Ch 4, p.9—Ch 5, p.1 Ch 7, p.1—Ch 8, p.1
HUMAN SERVICES DEPARTMENT[441]		Analysis, p.1—Ch 209, p.5
Environmental Protection Commission[567]	Analysis, p.1, 2 Ch 1, p.3	Analysis, p.1, 2 Ch 3, p.1
Natural Resource Commission[571]	Analysis, p.1, 1a	Analysis, p.1, 1a

*It is recommended that "Old Pages" be retained indefinitely in a place of your choice. They may prove helpful in tracing the history of a rule.

REVENUE AND FINANCE DEPARTMENT[701]	Analysis, p.3, 4	Analyis, p.3, 4
	Analysis, p. 7, 8	Analysis, p.7, 8
	Ch 12, p.3—Ch 13, p.4	Ch 12, p.3—Ch 13, p.5
	Ch 15, p.1—Ch 15, p.4	Ch 15, p.1—Ch 15, p.4
	Ch 15, p.11	Ch 15, p.11
	Ch 18, p.1, 2	Ch 18, p.1, 2
	Ch 18, p.11, 12	Ch 18, p.11, 12
	Ch 18, p.41	Ch 18, p.41
	Ch 26, p.13—Ch 30, p.2	Ch 26, p.13—Ch 30, p.2
	Ch 30, p.5, 6	Ch 30, p.5, 6
	Ch 63, p.13, 14	Ch 63, p.13—Ch 63, p.15
	Ch 81, p.9 — Ch 81, p.11	Ch 81, p.9—Ch 81, p.11
Index Volume	"E" tab, p.1—p.2	"E" tab, p.1—p.2a
	"I" tab, p.9—p.12	"I" tab, p.9, 10
	"W" tab, p.1—p.8	"W" tab, p.1—p. 6-8

*It is recommended that "Old Pages" be retained indefinitely in a place of your choice. They may prove helpful in tracing the history of a rule.

2. Describe the institution's general policy regarding acceptance of transfer credits from NCA accredited institutions.

3. Describe the institution's specific policy regarding transfer credit from the applicant.

4. Are accompanied by an official transcript indicating the institution has previously accepted transfer credits earned at the applicant.

5. Indicate the institution is currently accepting transfer credits earned at the applicant.

6. Indicate that the institution is accepting and has previously accepted transfer credits for course work earned at applicant in the identical manner it accepts and applies toward graduation requirements transfer credits earned at an NCA accredited institution.

7. Verify that transfer credits from the applicant being accepted by the institution are not "life experience credit" or "credit by examination."

Each applicant must renew and refile its application every three (3) years subsequent to initial approval for participation in the program.

4.2(2) *Processing applications.* Applicant forms shall be provided by the commission. The applicant institution shall furnish to the commission supporting documentation establishing accreditation or accreditation plans of the institution.

If applicant attempts to qualify for the tuition grant program under paragraph 4.2(1)*"e"* above, applicant shall provide to the commission a copy of the official transcript issued by applicant for any student used pursuant to paragraph 4.2(1)*"e"* "4" as an example of the transfer of credits earned at applicant to an NCA accredited institution.

The applicant institution must submit its application by January 1 so that on January 2 of the following year its students may begin submitting need analysis applications for the following academic year.

Applications received by the commission will be submitted to a committee of NCA registrars selected by the commission. The committee will be asked to review the application to verify that the requirements for credit transfer of these rules have been satisfied.

4.2(3) *Notice of change of status.* Any institution which (a) loses NCA accreditation, (b) ceases to be a candidate for NCA accreditation, (c) ceases to be a school giving satisfactory assurance that it has the potential for accreditation and is making progress toward accreditation, or (d) becomes aware that its credits are no longer being accepted by three NCA institutions previously identified to the commission pursuant to paragraph 4.2(1)*"e"* above shall so notify the commission immediately. Failure to comply with this notice of change requirement will be justification for revocation of eligibility.

4.2(4) *Definitions.*

"Applicant" is an educational institution seeking to participate in the Iowa tuition grant program (Iowa Code section 261.9, et seq.).

"Credit" is hourly academic credit granted for completed course work at applicant, and accepted for transfer by an NCA accredited institution. "Life experience credit" and "credit by examination" do not constitute credit for the purposes of these rules.

4.2(5) *Review of eligibility.*

a. The commission shall periodically, at least every three (3) years, investigate and review compliance of institutions participating in the tuition grant program with criteria described in Iowa Code section 261.9 and this rule.

b. If the commission finds that an institution fails to comply with the provisions of Iowa Code section 261.9 and this rule, participation in the tuition grant program shall be suspended.

This rule is intended to implement Iowa Code chapter 261.

[Filed 1/28/71; amended 6/29/72, 10/15/73, 6/28/74]
[Filed 1/7/77, Notice 10/20/76—published 1/26/77, effective 3/2/77]
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[Filed 7/15/83, Notice 4/27/83—published 8/3/83, effective 9/7/83]
[Filed emergency 8/26/83—published 9/14/83, effective 8/26/83]
[Filed 12/16/83, Notice 9/14/83—published 1/4/84, effective 2/8/84]
[Filed 8/22/86, Notice 6/4/86—published 9/10/86, effective 10/15/86]
[Filed 1/15/87, Notice 12/3/86—published 2/11/87, effective 3/18/87]

CHAPTER 10
IOWA GUARANTEED STUDENT LOAN PROGRAM

[Revision of ch 10 was filed emergency on 6/27/86. Replacement pages reflect only the amendments from the 3/12/86, 7/2/86, 7/16/86, and 10/22/86 IABs.] The filed emergency amendments were rescinded and chapter 10 was adopted following Notice, 10/22/86 IAB, effective 12/10/86.

Preamble: The Iowa Guaranteed Student Program and the Iowa PLUS Program provide loans to students for educational expenses at postsecondary education institutions. The Iowa College Aid Commission is the guarantee agency for these loans. The rules presented here specify the policies and procedures for the origination and servicing of Iowa Guaranteed Student Loans and Iowa PLUS Loans.

References to Code of Federal Regulations are those in effect as of July 1, 1983, unless specified otherwise.

245—10.1(261) Iowa guaranteed student loans. Iowa Guaranteed Student Loans are long-term, low-interest loans available to students for educational expenses so they may pursue studies beyond the high school level at approved educational institutions. They are an important supplement to federal, state, institutional, and private programs for student financial aid. They are a financial resource that must be repaid.

The loans are made by eligible lenders such as banks, savings and loan associations, and credit unions which use their own funds; lenders are insured from loss as long as they use proper care in making and servicing loans.

The Iowa College Aid Commission (ICAC), a state agency that serves as guarantor for the loans, insures the loans against the borrower's failure to pay, death, permanent and total disability, or bankruptcy in exchange for a guarantee fee.

The U.S. Department of Education pays interest on the loans while students attend eligible educational institutions at least half time, through the grace period, and during authorized deferments. Students may also elect to pay their own interest.

Loan applications are available from participating lenders, eligible schools, and the Iowa College Aid Commission.

245—10.2(261) Eligibility.

10.2(1) *Borrower.* Reference: Code of Federal Regulations, Title 34, Section 682.201. To be eligible to borrow an Iowa Guaranteed Student Loan a student must be:

1. A U.S. citizen, national, or eligible noncitizen in accordance with federal program regulations;
2. A resident of the state of Iowa, a student attending an approved education institution in Iowa, or a resident of a state contiguous to Iowa borrowing from an eligible lender located in Iowa;
3. Accepted for enrollment or enrolled at least half time in an approved school, and if currently enrolled, in good standing and maintaining satisfactory academic progress;
4. Free of the obligation to repay overpayments on education grants (Pell Grant, Supplemental Education Opportunity Grant, National Direct Student Loan, and State Student Incentive Grant) unless exempted in accordance with federal program regulations;
5. Not in default on education loans unless exempted by circumstances specified below;
6. Attending neither elementary nor secondary school if enrolled or accepted for enrollment in a vocational school, and able to benefit from the training offered;
7. A national of the United States if enrolled or accepted for enrollment in a school outside of the U.S.; and
8. Able to meet the requirements of the federal regulations if enrolled in a flight school program at a vocational school or an institution of higher education. See 34 CFR 682.201(a)(3).

An applicant must provide specific personal or family financial information to the school financial aid office on forms approved by the Department of Education. Copies of appropriate Internal Revenue Service forms may be required for verification.

A student in default on a previous National Direct Student Loan (NDSL), Federal Insured Student Loan (FISL), Health Education Assistance Loan (HEAL), Guaranteed Student Loan (GSL), Parental Loan for Undergraduate Students (PLUS) or Auxiliary Loan to Assist Students (ALAS) must pay the defaulted loan in full before a loan may be guaranteed unless the ICAC agrees to reinstate eligibility on the basis of adequate evidence of extenuating circumstances. If the ICAC refuses reinstatement, the applicant may present a formal appeal. In determining whether a student is in default on a NDSL, FISL, HEAL, GSL, PLUS, or ALAS

Loan, a school may, in good faith and in the absence of information to the contrary, rely upon a written statement to that effect by the student.

An applicant who has taken bankruptcy may be eligible for a loan, if, at the time of bankruptcy filing, the applicant was not in default on any previous student loan.

A student must show need to qualify for a federally subsidized Guaranteed Student Loan (GSL). A need analysis system approved by the U.S. Secretary of Education for use with campus-based programs, i.e., the Supplemental Educational Opportunity Grant Program, the College Work-Study Program, and the Perkins Loan Program (formerly the National Direct Student Loan Program), must be used to determine the expected family contribution and resultant unmet need. (Forms available upon request.) A lender may not make a Guaranteed Student Loan for more than the unmet need, as certified by the school.

A student's dependency status determines criteria that are applied in need analysis to establish eligibility for a Guaranteed Student Loan (GSL). Dependency status is ascertained by a school official in accordance with these specifications:

A student is considered to have no dependence on parents for financial support, and thus to be independent if the student is:

1. Twenty-four (24) years old or older by December 31 of the award year;
2. An orphan or ward of the court;
3. A veteran of the U.S. Armed Forces;
4. A graduate or professional student declaring not to be claimed as a dependent on parents' income tax return for the first calendar year of the award;
5. Married and declaring not to be claimed as a dependent on parents' income tax return for the first calendar year of the award;
6. One who has legal dependents other than a spouse;
7. Unclaimed on parents' income tax return for the two (2) years preceding the award year and an earner of annual income of $4,000 or more during the two years; or
8. Determined through documentation by the aid administrator to be independent by reason of unusual circumstances.

A student is considered dependent on parents for financial support if the student does not meet the qualifications for independent status.

The Iowa Guaranteed Student Loan Program is subject to federal and state laws that prohibit discrimination of a person from equal opportunity because of race, religion, color, sex, age, national origin, ancestry, marital status, or physically handicapped condition.

10.2(2) *Lender.* Reference: Code of Federal Regulations, Title 34, Section 682.200.

Banks, savings and loan associations, credit unions, pension funds, insurance companies, and schools that meet the requirements outlined in 34 CFR 682.200 are eligible to be lenders under the Iowa Guaranteed Student Loan Program. A single agency of the state of Iowa or a single nonprofit, private agency designated by the state of Iowa also qualifies. A school must meet the requirements specified below. For the purposes of purchasing, holding, and consolidating loans made by other lenders under the program, the Student Loan Marketing Association and the Iowa Student Loan Liquidity Corporation are also considered lenders.

A lender may participate in the Iowa Guaranteed Student Loan Program by executing the Agreement to Guarantee Loans which establishes the rights and duties of the lender and the Iowa College Aid Commission. (This form is available from the ICAC office.) Both the lender and the ICAC retain an original copy of this document. A lender is not required to make any quota of loans nor to commit any specific amount of funds to the program. The agreement may be terminated upon sixty-day notice by the lender or the ICAC or as provided in rule 10.77(261).

A lender must provide the ICAC with its Department of Education (DE) identification number which serves as a lender identifier for the program. The ICAC can assist a lender in requesting a DE identification number.

The ICAC reserves the right to limit, suspend, or terminate the participation of a lender in the Iowa Guaranteed Student Loan Program under terms consistent with the Agreement to Guarantee Loans, applicable state and federal law, and ICAC rules. See rules 10.77(261) to 10.89(261) for a description of limitation, suspension, and termination procedures.

Schools in Iowa are eligible to be lenders if they meet the federal and state requirements pertaining to both lenders/holders and schools. A school must present to the ICAC justification for the school to have lender status. The Executive Director of the ICAC grants approval or denial. A request for appeal must be made to the ICAC within thirty days of denial; the ICAC acts upon a request for appeal within sixty days of its receipt.

In addition to provisions of the Agreement to Guarantee Loans, a school requesting to serve as a lender must:

1. Employ at least one person whose full-time responsibilities are limited to the administration of programs of financial aid for students attending that institution;
2. Submit a report on projected volume in the loan program including documentation to support the institution's projections and a statement of the resources (staff, facilities, administrative budget) that the institution intends to commit to the administration of the program;
3. Ensure that eligible students have an opportunity to obtain a coordinated package of student financial aid, such as grant and work assistance, and that students are made aware of such programs (A school that has not applied for certification for participation in federal aid programs other than the Guaranteed Student Loan Program is not allowed to serve as a lender under the Iowa Guaranteed Student Loan Program.);
4. Show evidence that each student or parent borrowing a GSL or PLUS Loan has been denied GSL or PLUS Loans by at least two participating financial institutions, including the lender with whom the borrower has an account relationship;
5. Adhere to the loan limits described in this manual or one-half the cost of education, whichever is less, except in the case of a student who has not previously enrolled in a program beyond high school, in which case a loan may not exceed $1500 unless the loan is to be disbursed in two or more installments, none of which may exceed one half of the loan with the interval between the first and second installments being not less than one third of the period of enrollment for which the loan is made;
6. Make loans applicable only to the expenses of a single academic period; all loans made within a period of ninety days are considered a single loan.

10.2(3) *School and course of study.* Reference: Code of Federal Regulations, Title 34, Sections 682.200 and 683.10.

Most institutions of higher education and vocational schools that are approved by the U.S. Department of Education for participation in the guaranteed loan programs are eligible under the Iowa Guaranteed Student Loan and PLUS Programs. Vocational schools include business or trade schools and technical institutions. Some foreign schools are eligible.

An institution offering primarily home-study or correspondence courses is not eligible. Home-study or correspondence courses offered by an eligible institution are not eligible.

A postsecondary educational institution may establish eligibility by filing an application with:

Division of Eligibility and Agency Evaluation (DEAE)
Bureau of Postsecondary Education
U.S. Department of Education
Washington, DC 20202

After the DEAE grants eligibility, the educational institution must execute an Agreement to Participate in the Guaranteed Student Loan Program with the Secretary of Education.

Any course of study at an eligible school qualifies as long as the course of study leads to a certificate or degree and academic credit is awarded.

The ICAC reserves the right to limit, suspend, or terminate the participation of a school in the Iowa Guaranteed Student Loan and PLUS Programs under terms consistent with applicable state and federal law and ICAC rules. See rules 10.77(261) to 10.89(261) for a description of limitation, suspension, and termination procedures.

245—10.3(261) Loan amounts.

Type of Student	A Guaranteed Student Loan is limited to the lesser of:	Cumulative Maximum
Undergraduate	For each of the first two years of study: Maximum of $2,625 or unmet need indicated by need analysis For each of the remaining years: Maximum of $4,000 or unmet need indicated by need analysis	$17,250
Graduate or Professional	Maximum of $7,500 or unmet need indicated by need analysis	$54,750 including amounts borrowed by the student under the GSL, PLUS, and SLS programs for undergraduate study

Unmet need is defined as the cost of education less all other financial aid and less the expected family contribution.

A GSL is also limited to:
- the amount requested by the borrower,
- the amount recommended by the school, or
- the amount approved by the lender in accordance with the lender's policy, whichever is less.

Financial aid officers are urged to counsel students that repeat borrowing may result in reaching the cumulative limit for undergraduate or for graduate/professional students before a course of study is completed.

A Guaranteed Student Loan may be used only for bona fide educational expenses at the educational institution and for the period for which the loan is sought. Educational expenses include tuition and fees as well as the school's estimate of other reasonably related expenses. Other expenses usually include room and board, books and supplies, transportation and commuting costs, and personal expenses. In some cases child care, study abroad, and handicapped student expenses are included, and allowances may also be made for dependent children and for guarantee and origination fees. Transportation costs may not include purchase or repair of a vehicle.

A borrower must submit an application for each loan. Subsequent loans are not automatically approved by either the ICAC or the lender.

Because a lender loans its own funds, the lender has the right to establish requirements more strict than those of the ICAC. The lender must inform potential borrowers of the additional requirements.

A student is eligible for an additional loan providing eight (8) months elapse from the beginning date of the loan period on the previous application to the beginning date of the loan period on the new application and providing the loan periods do not overlap.

If eight (8) months do not elapse, a student is eligible for an additional loan providing:

1. The previous loan was less than the maximum, in which case the new loan will be approved for the difference between the previous loan and the maximum; or

2. The student has advanced to the next grade level and is applying for a loan period that does not overlap with the loan period of the previous loan.

The only instance in which a student may borrow again for the same loan period or for an overlapping loan period is when the student's previous loan was for less than the maximum.

A student is limited to two (2) maximum loans per grade level. An undergraduate may borrow no more than two (2) maximum loans or a total of $5,250 for either of the first two (2) grade levels of undergraduate study or $8,000 for a remaining grade level of undergradutate study. A graduate student may borrow no more than two (2) maximum loans or a total of $15,000 for a grade level.

Applicants for additional loans must meet the eligibility requirements specified in subrule 10.2(1), and additional loans must conform to the loan amounts stated above.

245—10.4(261) Application process.

10.4(1) A lender may provide its name, address, and DE identification number in the lender section of applications (ICAC 1915) before distribution. A lender participating in the Accelerated Loan Processing Option (ALPO) Program must provide its name and DE identification number, but the address of the ICAC Processing Center instead of its own to facilitate appropriate forwarding by the school. See rule 10.15(261) for a description of the ALPO Program.

10.4(2) A student obtains an application. Applications are available from participating lenders, school financial aid offices, and the ICAC. Students are encouraged to obtain their applications from their lenders.

10.4(3) The applicant completes section I according to the instructions, including completion of the promissory note and cosigner information, retains borrower copy D and the application booklet, and submits copies A, B, and C to the school financial aid office.

10.4(4) The financial aid officer completes section II, retains school copy C, and mails copies A and B of the application directly to the lender specified on the application. An application may not be returned to the applicant for delivery to the lender. If the lender identified on an application is a participant in the ALPO Program, the school mails copies A and B of the application directly to the ICAC Processing Center.

10.4(5) The lender completes section III, retains lender copy A (the original), and forwards copy B to the ICAC Processing Center. If the lender is an ALPO participant, the Processing Center completes section III and mails lender copy A to the lender.

10.4(6) The ICAC Processing Center sends copies of the Notice of Loan Guarantee and Disclosure Statement to the lender and the school as notification that a loan is guaranteed. The lender, which receives two copies, forwards one of them to the applicant.

10.4(7) After receiving guarantee notice, the lender sends the Guaranteed Student Loan check to the school for delivery to the student.

245—10.5(261) Responsibilities of the borrower. Reference: Application and Promissory Note for an Iowa Guaranteed Student Loan, Borrower Certification, and Statement of Borrower's Rights and Responsibilities.

A borrower must complete and submit an application in a timely fashion. The ICAC processes for guarantee only loan applications that are received on or before the ending date of

the loan period as indicated by the school.

A borrower is responsible for reading, understanding, and complying with the provisions of the Borrower Certification and the Statement of Borrower's Rights and Responsibilities as cited in the application. These provisions include:

1. The borrower must use loan proceeds only for educational expenses at the school and for the loan period specified on the application; and
2. The borrower must notify the lender promptly and in writing if any of the following events occur before the loan is repaid:

Failure to enroll in school for the period for which the loan was intended,
Withdrawal from school or attendance on less than a half-time basis,
Transfer to another school, or
Change in name or address.

A borrower must adhere to the established loan limits in rule 10.3(261).

A borrower who requests a deferment is responsible for providing the lender with written evidence of eligibility and must notify the lender in writing as soon as the condition for which the deferment was granted no longer exists.

245—10.6(261) Forms for which the borrower is responsible. All forms listed below are available at the College Aid Commission office.

Application and Promissory Note for an Iowa Guaranteed Student Loan (ICAC 1915): A borrower completes section I and the promissory note for a Guaranteed Student Loan and delivers the form to the school financial aid office.

Credit Application: A borrower, and cosigner if required by the lender, completes the lender's own credit application if requested.

Repayment and Disclosure Statement (ICAC 1906): A borrower who chooses to repay in installments signs this statement which is an addendum to the promissory note. The lender retains the promissory note until the debt is paid in full.

Request for Deferment of Repayment Form (ICAC 1960): To be granted a deferment, a borrow completes this form supplied by the lender, has it signed by the appropriate authorizing official, and returns it to the lender.

Late Disbursement Request (ICAC LD-81): To receive funds after the ending date of the loan period or after a student has ceased at least half-time attendance, a borrower obtains obtains this form from the lender, completes section I, has section II, if applicable, completed by the school, and returns the form to the lender.

245—10.7(261) Responsibilities of the school. Reference: Code of Federal Regulations, Title 34, Sections 682.205, 682.600 to 682.612.

A school must be able to document that it is eligible for participation in the Iowa Guaranteed Student Loan Program. See subrule 10.2(3).

A school participating in the program must comply with the requirements of federal and state statutes and regulations that govern the program.

A school must maintain proper administrative and fiscal procedures and records as required by 34 CFR 668 and 682.612. Financial aid records must be maintained separate from other records.

It is strongly recommended that a school advise and counsel its students regarding other forms of student financial aid and regarding the rights and responsibilities of GSL borrowers, particularly repayment obligations and consequences of default. Counseling is important when loans are requested and when students prepare to leave school.

A school must review a student's file before certifying an application to confirm that the student has not already borrowed the loan maximum for the same loan period and that the student has one of the following aid applications, whichever is appropriate, on file:

If a school determines a borrower ineligible for federal interest benefits, a lender may submit the application for guarantee accompanied by a cover letter. The borrower of an unsubsidized loan must pay the interest for the life of the loan, and the lender receives no special allowance.

245—10.21(261) Unsubsidized loans. An applicant, judged ineligible for a subsidized loan, may still receive a Guaranteed Student Loan, however, the borrower must pay the interest for the full life of the loan. A loan to a student who does not qualify for interest subsidy is not eligible for payment of special allowance to the lender.

A lender must be able to substantiate to the satisfaction of all applicable regulatory agencies that an unsubsidized loan does not constitute preferential treatment.

A borrower who applies and is approved for a GSL, but chooses to waive interest benefits must do so in writing. The borrower is responsible for all interest on the loan for in-school, grace, and authorized deferment periods. Arrangements must be made between the borrower and the lender for the interest to be paid as it accrues or for the interest to be capitalized when the loan enters repayment. The federal government pays special allowance to the lender.

245—10.22(261) Special allowance. Reference: Code of Federal Regulations, Title 34, Section 682.302.

The U.S. Department of Education pays a special allowance on Guaranteed Student Loans in addition to interest benefits to adjust the maximum loan rate to current money market conditions. Special allowance is paid for the life of the loan, regardless of whether a loan is an in-school, grace, repayment, deferment, or forbearance period.

On a loan that is canceled by return of the original uncashed check or paid in full within sixty days of disbursement, a lender earns special allowance on the full amount disbursed, including fees, from the date of disbursement to the date the original check is returned or the date the loan is otherwise paid in full.

Special allowance is not paid on unsubsidized loans (except if a borrower has waived interest benefits), loans paid in full, loans for which claims are paid by the guarantor, loans for which claims are denied by the guarantor, and loans that have lost their guarantee.

The formula used by the Department of Education for computing special allowance for a three-month period is: Average of the bond equivalent rate of 91-day Treasury Bills for the quarter, minus the applicable interest rate on the loan, plus three and one-half percent. For loans disbursed before October 1, 1981, the annualized percentage is rounded up to the nearest one-eighth of one percent. For loans disbursed on or after that date, the percentage is not rounded up. The result is divided by four. (A lender has the option of waiving upward rounding for all special allowance billings and listing all loans as being disbursed after October 1, 1981.)

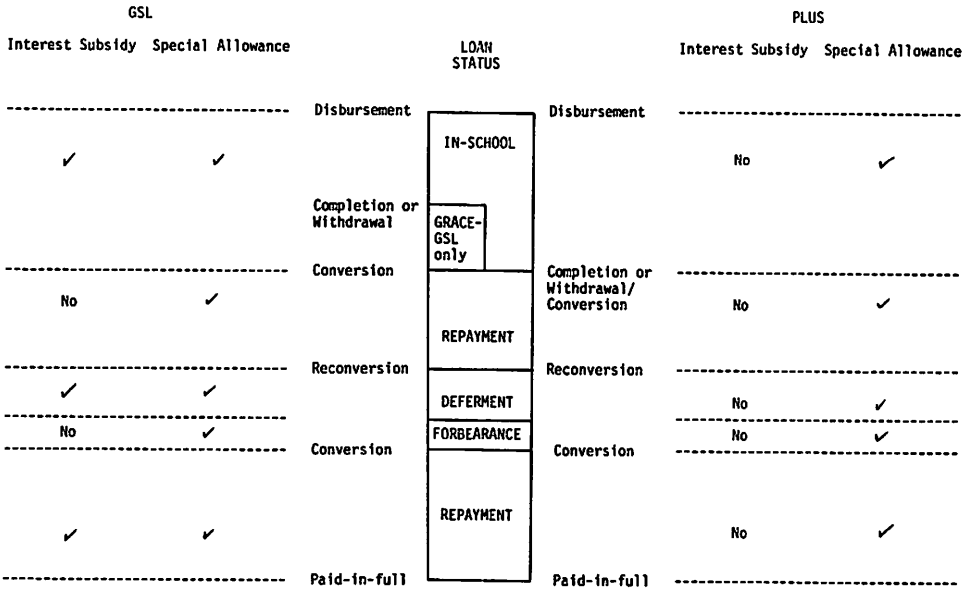
The special allowance rate is set quarterly on March 31, June 30, September 30, and December 31 of each year by the Secretary of Education in consultation with the Secretary of the Treasury. The rates set apply to the quarters ending on those dates.

A lender bills the U.S. Department of Education for special allowance using the Request for Interest and Special Allowance (ED 799). A lender may bill quarterly, semiannually, or annually. The Department of Education calculates the actual amount of special allowance due based on information supplied by the lender.

A lender should bill for interest benefits and special allowance concurrently and on the same form (ED 799). Two separate forms are not submitted.

ICAC informs lenders each quarter of the special allowance rate.

245—10.23(261) Loan eligibility for interest and special allowance.



245—10.24(261) Guarantee fee. Reference: Code of Federal Regulations, Title 34, Sections 682.202(d) and 682.401(b) (6) as in effect December 26, 1986. The ICAC guarantee fee is an amount a borrower pays to the ICAC for guaranteeing repayment of a loan. Its rate is determined by the ICAC with consideration given to the ICAC Reserve Fund and the requirements of the U.S. Department of Education regulations.

The guarantee fee for an Iowa Guaranteed Student Loan with a period of instruction beginning prior to May 1, 1987, is three-fourths of one percent (.75%) per year calculated for the period between disbursement and ten (10) months following a student's anticipated completion date. The guarantee fee for an Iowa Guaranteed Student Loan for a period of instruction beginning on or after May 1, 1987, is one and one-half percent (1.5%) of the loan amount. The amount of the guarantee fee is computed by the ICAC and reported to a lender on the Notice of Loan Guarantee and Disclosure Statement. Assistance with calculation of guarantee fees is available from the College Aid Commission office.

A guarantee fee on a multiple disbursement loan is charged only on the portion of the loan disbursed.

A lender deducts the guarantee fee from the proceeds of a loan and holds the fee in an escrow account until a billing is received. Once a month the ICAC Processing Center sends each lender a Fee Billing Statement for the guarantee fees on all GSLs scheduled for disbursement the previous month. The fees for multiple disbursement loans are billed according to the months that individual disbursements are scheduled.

A lender is to use the Fee Billing Statement to notify the ICAC Processing Center of all changes to a loan apparent at disbursement. Lenders are encouraged to provide as much information on the Fee Billing Statement as necessary to clarify their intentions.

A loan for which the guarantee fee is past due for over one hundred thirty days is subject to cancellation.

A lender must recalculate the guarantee fee of a loan and prepare a new Notice of Loan Guarantee and Disclosure Statement (NOG/DS) or make changes to the original NOG/DS and have the borrower initiate the changes if an amount less than the original amount guaranteed is disbursed or a loan is changed from single to multiple disbursement.

The ICAC does not charge an additional guarantee fee for extension, conversion, or any authorized period of deferment or forbearance.

A guarantee fee must be refunded to a borrower if the entire amount of loan proceeds disbursed is repaid within sixty days of the disbursement date by the borrower, by a check issued by the school, or by the return of the original check. If the original check is returned the loan is canceled; otherwise it is paid-in-full. If the guarantee fee has already been paid by the lender, credit on a future Fee Billing Statement may be requested. If a school takes more than sixty days to return an original loan check for a student who never enrolled, a refund may be obtained by contacting the ICAC office in Des Moines.

A loan cannot be sold or transferred until the guarantee fee has been paid.

In deference to long-standing usage, the term "insurance premium" is sometimes used in lieu of guarantee fee, despite the fact that the guarantee fee or insurance premium is incident to a guarantee transaction and is not actually "insurance."

This rule is intended to implement Iowa Code section 261.37.

245—10.25(261) Origination fee. An origination fee of five percent of the principal amount of a loan is assessed by the U.S. Department of Education. A lender may pass the origination fee on to the borrower by deducting it from the loan proceeds. Origination fees are verified by the Department of Education and deducted from the interest and special allowance paid to lenders.

A lender must keep a record of the fees the lender is authorized to deduct from loan proceeds before disbursement. When requesting interest and special allowance, a lender must

report the amount deducted as origination fees. If the total of origination fees exceeds the interest and special allowance due, the Department of Education deducts the difference from the lender's next request for subsidy payment.

If a loan is disbursed in multiple installments, a lender deducts five percent of each disbursement and reports only the portion of the total origination fee actually collected on the Lender's Request for Interest and Special Allowance.

A lender selling or transferring a loan within the billing period it is disbursed must collect the origination fee and see that it is reported on a Lender's Request for Interest and Special Allowance. The seller and buyer of a loan are responsible for an equitable distribution of the fee collected, but only the seller reports the fee. An audit trail must be maintained.

The origination fee is refunded by the U.S. Department of Education only if the original uncashed check is returned to the lender. There are no exceptions. If the check is returned after a lender has reported the fee on the Request for Interest and Special Allowance, the lender must make an adjustment to the next billing.

245—10.26(261) Prepayment. Student borrowers may prepay a Guaranteed Student Loan in whole or in part at any time without penalty.

Prepayments made during the in-school or grace periods are applied to the principal of the loan. Prepayments on notes in repayment are applied to accrued interest, if any, then to principal. Prepayments on unsubsidized loans should be applied to any accrued interest and then to the principal.

Borrowers who make prepayments may request that a lender credit the prepayment on a monthly basis to future payments due. If a lender does not receive such a request, the lender credits the entire prepayment to principal.

A prepayment made before conversion is reported to the ICAC Processing Center on the Lender Manifest when a loan is converted to repayment. A prepayment made after conversion is reported when a lender has other additional cause to report the loan.

245—10.27(261) Repayment requirements. A loan enters repayment at the expiration of the grace period to which the borrower is entitled. The first payment is due thirty to forty-five days after the grace period expires.

A borrower must pay at least $30 per month ($360 per year) on a GSL disbursed before October 1, 1981. A borrower must pay at least $50 per month ($600 per year) on a GSL disbursed on or after October 1, 1981.

A borrower is entitled to at least five years to repay a loan unless monthly payment amounts specified above would pay off the loan in less time. A borrower and lender may agree on a repayment period of less than five years, but in this case, a borrower may at any time before paying off the loan, request refinancing of the unpaid balance over the remaining time of the five-year period as long as the required minimum payment amount is met.

The maximum repayment period is ten years, and a borrower must repay a loan within fifteen years of the original disbursement date. Periods of deferment and forbearance are not included in calculating the ten- and fifteen-year periods.

Minimum payment amounts apply to a GSL borrower, not to each of the borrower's loans. A borrower must make monthly payments greater than the minimum if necessary to repay the debt within ten years.

In determining repayment terms, a lender must consider a borrower's loans held by other lenders as well as loans of the borrower's spouse, if applicable. Because of other outstanding student loans, a lender and a borrower may mutually agree to reduce the monthly and annual payments although repayment may not be extended beyond the maximum ten-year period.

A borrower has three options to repay Guaranteed Student Loans:

1. Pay the outstanding balance in full on or before the date repayment must begin,
2. Pay any part of the outstanding balance and execute a repayment agreement for the remainder,
3. Execute a repayment agreement for the outstanding balance.

A lender must notify a borrower of impending repayment obligations during the grace period.

3. The estimated guarantee fee for the late disbursement amount.

10.57(2) *Direct disbursement.* A lender may disburse PLUS Loan proceeds directly to a student borrower only after receiving written approval from the ICAC. A letter detailing the circumstances and requesting permission for direct disbursement must be submitted to the ICAC.

The ICAC approves direct disbursement of loan proceeds to pay off a personal loan only if:

1. The note for the personal loan specifies the loan is for educational purposes, and

2. The check for the proceeds of the personal loan was made copayable to the student and the school and mailed to the school.

After the ICAC's written approval is received, the lender may disburse directly to the student borrower proceeds equal to the amount due on the personal loan. The student may repay the personal loan directly by signing over the check. Any balance of student loan proceeds remaining after the check for payment of a personal note is drawn must be sent to the school with a copy of the ICAC letter of approval for direct disbursement.

245—10.58(261) Loan status. A PLUS Loan enters repayment as of the date of disbursement. A parent borrower must begin payments within sixty days of the disbursement date and make payments until the loan is paid in full. A student borrower attending school full time qualifies for deferment of the repayment of principal but must begin paying interest immediately or arrange with the lender for capitalization of the interest as provided in rule 10.59(261).

After a lender has disbursed a PLUS Loan to a student borrower and granted a deferment based on full-time attendance, several things may occur before the borrower is due to complete school and assume payments of interest and principal.

1. Notification from the ICAC, the school, or the borrower that the borrower has left school or dropped below full-time enrollment, requiring that the borrower's conversion to repayment be accelerated as provided in the terms of the note (ICAC 1954D).

2. Notification that the student has transferred to another school. If the student documents full-time attendance at another eligible school with the same anticipated completion date, the original date for repayment remains accurate. If the anticipated completion date is earlier, the date for repayment must be accelerated as provided in the terms of the note. If it is later, the date for repayment must be extended and an extension agreement executed.

3. Failure of the borrower to receive a degree or certificate by the anticipated completion date. If the student documents full-time attendance at an approved school, the original date for repayment is extended and an extension agreement executed.

4. Application by the borrower for an additional loan.

If notification of a change is received from a source other than the ICAC, a lender must notify the ICAC using the Demographic Update (Form #130) or the Lender Manifest (ICAC 1911), whichever applies.

245—10.59(261) Interest. Reference: Code of Federal Regulations, Title 34, Section 682.202, as in effect December 26, 1986.

PLUS Loans are made at twelve percent simple interest. Iowa PLUS Loans disbursed before November 1, 1982, are fourteen percent loans.

A borrower is responsible for payment of all interest on a PLUS Loan for the life of the loan, including authorized deferment periods. No interest is paid by the federal government.

The ICAC indicates the applicable interest rate for a loan at the time an application is processed and prints the interest rate on the Notice of Loan Guarantee. The rate is determined by the anticipated disbursement date for the loan and the prevailing PLUS interest rate on that date. Interest on the unpaid principal balance may not exceed the rate disclosed on the borrower's Notice of Loan Guarantee.

Federal regulations provide for interest rates of twelve and fourteen percent only. The rate of interest on PLUS Loans is set according to the average bond equivalent rates of 91-day Treasury Bills over a twelve-month period beginning on or after the date of a change in the interest rate. If the average remains equal to or less than fourteen percent, the PLUS interest rate remains twelve percent. If the average exceeds fourteen percent, the PLUS interest rate changes to fourteen percent effective for loans disbursed on or after the first day of the first month beginning after the date the new rate is published.

A borrower may have both twelve and fourteen percent loans. The interest rate of a loan is determined by the disbursement date, regardless of the rate of any other PLUS Loans the borrower may have.

A lender may require a borrower who qualifies to defer repayment of principal to pay monthly or quarterly interest payments during the in-school period or any period of deferment or forbearance or may allow the borrower's interest to accrue and be capitalized.

Interest which has accrued on a PLUS Loan may be capitalized, that is, added to the unpaid principal of the loan, in these instances only:

1. Interest accrued during the in-school period provided attendance is full-time and capitalization is expressly authorized by the promissory note;
2. Interest accrued during a period deferment;
3. Interest accrued from a period of forbearance;
4. Interest accrued from the date the loan was required to enter repayment until the actual repayment start date; and
5. Interest accrued from most recent payment to the execution of a promissory note to consolidate loans.

For PLUS Loans for periods of enrollment beginning before May 1, 1987, a lender may capitalize accrued interest as specified in "1" to "3" above only when repayment of principal is required to begin or resume.

For PLUS Loans to student borrowers for periods of enrollment beginning on or after May 1, 1987, accrued interest, as specified in items 1 through 3 above, may be capitalized no more frequently than once a year. However, if agreed upon by the borrower and the lender, capitalization may be on a quarterly basis during any period when the borrower is pursuing:

1. Full-time study at an eligible institution;
2. Half-time study during an enrollment period for which the student has obtained a GSL or Supplemental Loan;
3. An approved graduate fellowship program; or
4. An approved rehabilitation training program.

Capitalization of accrued interest in all circumstances included in this paragraph is also permitted when repayment is required to begin or resume.

Interest accrued from the date a loan was required to enter repayment until the actual repayment start date may be capitalized only on the date the repayment period actually begins.

Interest accrued from the most recent payment to the execution of a promissory note to consolidate loans may be capitalized only at execution of consolidation.

245—10.60(261) Special allowance. Reference: Code of Federal Regulations, Title 34, Section 683.14.

The U.S. Department of Education pays a special allowance on PLUS Loans to adjust the maximum loan rate to current money market conditions. Special allowance is paid for the life of the loan, regardless of whether a loan is in repayment, deferment, or forbearance status.

On a loan that is canceled by return of the original uncashed check or paid in full within sixty days of disbursement, a lender earns special allowance on the full amount disbursed, including fees, from the date of disbursement to the date the original check is returned or the date the loan is otherwise paid in full.

Special allowance is not paid on loans paid in full, loans for which claims are paid by the guarantor, loans for which claims are denied by the guarantor, and loans that have lost their guarantee.

The formula used by the Department of Education for computing special allowance for a three-month period is: Average of the bond equivalent rate of 91-day Treasury Bills for the quarter, minus the applicable interest rate on the loan, plus three and one-half percent. For loans disbursed before October 1, 1981, the annualized percentage is rounded up to the nearest one-eighth of one percent. For loans disbursed on or after that date, the percentage is not rounded up. The result is divided by four. (A lender has the option of waiving upward rounding for all special allowance billings and listing all loans as being disbursed after October 1, 1981.)

The special allowance rate is set quarterly on March 31, June 30, September 30, and December 31 of each year by the Secretary of Education in consultation with the Secretary of the Treasury. The rates set apply to the quarters ending on those dates.

A lender bills the U.S. Department of Education for special allowance using the Request for Interest and Special Allowance (ED Form 799). A lender making PLUS Loans must complete the special allowance section with information regarding PLUS Loans even when the special allowance rate precludes the lender receiving payment. A lender may bill quarterly, semiannually, or annually. The Department of Education calculates the actual amount of special allowance due based on information supplied by the lender.

A lender bills for interest benefits on GSLs and special allowance on GSLs and PLUS Loans concurrently and on the same form (ED Form 799). Two separate forms are not submitted.

The ICAC informs lenders each quarter of the special allowance rate.

245—10.61(261) Loan eligibility for interest and special allowance. See rule 10.23(261) which applies to PLUS Loans as well as Guaranteed Student Loans.

245—10.62(261) Guarantee fee. Reference: Code of Federal Regulations, Title 34, Sections 682.202(d) and 682.401(b) (6), as in effect December 26, 1986.

The ICAC guarantee fee is an amount a borrower pays to the ICAC for guaranteeing repayment of a loan. Its rate is determined by the ICAC with consideration given to the ICAC Reserve Fund and the requirements of the U.S. Department of Education regulations.

The guarantee fee for an Iowa PLUS Loan with a period of instruction beginning prior to May 1, 1987, is one percent (1%) per year on the declining principal balance for the life of the loan. The guarantee fee for an Iowa PLUS Loan for a period of instruction beginning on or after May 1, 1987, is three percent (3%) of the loan amount. The amount of the guarantee fee is computed by the ICAC and reported to a lender on the Notice of Loan Guarantee.

A lender deducts the guarantee fee from the proceeds of a loan and holds the fee in an escrow account until a billing is received. Once a month the ICAC Processing Center sends lenders a Fee Billing Statement for the guarantee fees on all PLUS Loans scheduled for disbursement the previous month. A lender is to use the Fee Billing Statement to notify the ICAC Processing Center of all changes to a loan apparent at disbursement. Lenders are encouraged to provide as much information on the Fee Billing Statement as necessary to clarify their intentions.

A loan for which the guarantee fee is past due for over one hundred and thirty days is subject to cancellation.

A lender must ascertain a new-guarantee fee for a loan and disclose it to the borrower on the promissory note if: an amount less than the original amount guaranteed is disbursed.

The ICAC does not charge an additional guarantee fee for extension, deferment, forbearance, refinance, or consolidation.

A guarantee fee must be refunded to a borrower if the entire amount of loan proceeds is repaid within sixty days of the disbursement date by the borrower, by a check issued by the school, or by the return of the original check. If the original check is returned, the loan is canceled; otherwise it is paid in full. A credit adjustment is requested on the next Fee Billing Statement. If a school takes more than sixty days to return an original loan check for a student who never enrolled, a refund may be obtained by contacting the ICAC office in Des Moines.

A loan cannot be sold or transferred until the guarantee fee has been paid.

In deference to long-standing usage, the term "insurance premium" is sometimes used in lieu of guarantee fee, despite the fact that the guarantee fee or insurance premium is incident to a guarantee transaction and is not actually "insurance."

A guarantee fee is the only fee charged on a PLUS Loan. There is no origination fee.

245—10.63(261) Prepayment. A borrower may prepay a PLUS Loan in whole or in part at any time without penalty.

Prepayments are applied to accrued interest, if any, then to principal.

A prepayment is reported to the ICAC Processing Center on the Lender Manifest when a lender has other additional cause to report the loan.

245—10.64(261) Repayment requirements. A PLUS Loan enters repayment as of the disbursement date. There is no grace period on a PLUS Loan. The first payment must be made within sixty days of the disbursement date unless the borrower qualifies for a deferment. A lender is encouraged by the ICAC to set the first payment date thirty to forty-five days following disbursement in keeping with the standards set for lending institution consumer loans. Rate tables provided for the PLUS Program are based on thirty days between disbursement and first payment.

A borrower must pay at least $50 per month ($600 per year) on a PLUS Loan.

A borrower is entitled to at least five years to repay a loan unless the monthly payment amount would pay off the loan in less time. A borrower may accelerate repayment and sign

If the ICAC denies the request or grants reinstatement subject to limitation, the school or lender may request in writing a meeting to show cause why its eligibility should be reinstated. Pending outcome of the meeting, a school or lender granted reinstatement subject to limitations maintains its right to participate in the ICAC program subject to the reinstatement limitations.

These rules are intended to implement Iowa Code section 261.37.

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◊Two ARCs.
*Three ARCs.

DENTAL EXAMINERS, BOARD OF[320]

TITLE I
GENERAL PROVISIONS
CHAPTER 1
DEFINITIONS

1.1(153) Department
1.2(153) Board
1.3(153) Chapter
1.4(153) Examination meeting
1.5(153) Practice of dentistry
1.6(153) Practice of dental hygiene
1.7(153) Inactive status
1.8(153) Peer review
1.9(153) Peer review committee

CHAPTERS 2 to 4
Reserved

TITLE II
ADMINISTRATION
CHAPTER 5
ORGANIZATION

5.1(153) Board
5.2(153) Meetings
5.3(153) Budget
5.4(153) Compensation
5.5(153) Office

CHAPTER 6
INFORMATION AND RECORDS

6.1(153) Availability of information
6.2(153) Records of board
6.3(153) Change of address
6.4(153) Forms

CHAPTER 7
RULES

7.1(153) Petition for rulemaking
7.2(153) Oral presentations for rulemaking
7.3(153) Declaratory rulings

CHAPTERS 8 and 9
Reserved

TITLE III
LICENSING
CHAPTER 10
GENERAL

10.1(153) Licensed personnel
10.2(153) Display of license and license renewal
10.3(153) Supervision of dental hygienist
10.4(153) Unauthorized practice

CHAPTER 11
APPLICATIONS

11.1(153) Examination required to practice dentistry
11.2(153) Application to practice dentistry
11.3(153) Application for dental licensure by credentials
11.4(153) Examination required for licensure to practice dental hygiene
11.5(153) Application to practice dental hygiene
11.6(153) Application for dental hygiene licensure by credentials
11.7(153) Character references
11.8(153) Felonies

CHAPTER 12
EXAMINATIONS

12.1(153) Examination procedure for dentistry
12.2(153) Examination procedure for dental hygiene
12.3(153) Re-examination
12.4(153) Additional requirements

CHAPTER 13
SPECIAL LICENSES

13.1(153) Resident dentist license
13.2(153) Dental college faculty permits

CHAPTER 14
RENEWAL

14.1(153) Renewal of license to practice dentistry or dental hygiene
14.2(153) Notice of renewal
14.3(153) Grounds for nonrenewal of license to practice dentistry or dental hygiene
14.4(153) Reinstatement

CHAPTER 15
FEES

15.1(153) License application fees
15.2(153) Renewal fees
15.3(153) Late renewal fees
15.4(153) Miscellaneous fees

CHAPTER 16
PRESCRIBING, ADMINISTERING, AND DISPENSING DRUGS

16.1(153) Definitions
16.2(153) Scope of authority
16.3(153) Purchasing, administering and dispensing of controlled substances
16.4(153) Dispensing—requirements for containers and labeling
16.5(153) Identifying information on prescriptions

CHAPTER 31
COMPLAINTS

TITLES VII TO X

CHAPTERS 32 to 50
Reserved

CHAPTER 51
PROCEDURAL RULES

320—15.4(153) Miscellaneous fees.

15.4(1) The fee for issuing a duplicate license shall be ten dollars ($10).

15.4(2) The fee for a certification of the Iowa license shall be ten dollars ($10).

These rules are intended to implement Iowa Code sections 147.10, 147.80 and 153.22.

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CHAPTER 16
PRESCRIBING, ADMINISTERING, AND DISPENSING DRUGS

320—16.1(153) Definitions.

"Controlled substance" means a drug, substance, or immediate precursor in Schedules I through V of division II, of Iowa Code chapter 204.

"Prescription drug" means (a) any drug or medicine the label of which is required by federal law to bear the statement: "Caution: federal law prohibits dispensing without a prescription," (b) any drug or medicine which, becauses of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to prescribe, administer, or dispense such drug or medicine, or (c) a new drug or medicine which is limited under state law to use under the professional supervision of a practitioner licensed by law to prescribe, administer, or dispense such drug or medicine as defined in Iowa Code section 155.3(10).

320—16.2(153) Scope of authority.

16.2(1) A license issued by this board permits the licensee to prescribe, administer, or dispense prescription drugs if the use is directly related to the practice of dentistry within the scope of the dentist-patient realtionship. Registration with the Federal Drug Enforcement Administration and the Iowa board of pharmacy examiners further extends this privilege to controlled substances.

16.2(2) A dental examination must be conducted and a medical history taken before a dentist initially prescribes, administers, or dispenses medication to a patient. The examination must focus on the patient's dental problems, and the resulting diagnosis must relate to the patient's specific complaint. The patient's dental record must contain written evidence of the examination and medical history.

16.2(3) On each occasion when a medication is prescribed, administered, or dispensed to a patient an entry must be made in the patient's dental record containing the following information: the name, quantity, and strength of the medication; the directions for its use; the date of issuance; and the condition for which the medication was used.

16.2(4) A patient's dental record that contains an entry pertaining to the issuance of medications must be retained by the dentist for a minimum of five (5) years following the date of the last entry.

320—16.3(153) Purchasing, administering, and dispensing of controlled substances.

16.3(1) When controlled substances are purchased, records must be maintained showing the date of receipt, the name and address of the supplier, the name and quantity of drugs received.

16.3(2) When controlled substances are administered or dispensed, records separate and apart from the patient records must be maintained showing date of dispensing, name and address of person to whom the drugs were administered or dispensed, and the name and quantity of drugs administered or dispensed.

16.3(3) All records must be retained for a period of two (2) years from the date of the last entry. All records must be readily available for inspection by state or federal agents.

16.3(4) Every two (2) years the dentist is required to perform a complete inventory of all controlled substances in stock.

16.3(5) Security of controlled substances must be maintained by storage in a securely locked, substantially constructed cabinet.

16.3(6) The dentist shall notify state controlled substance authorities of the loss or theft of controlled substances upon the discovery of the loss or theft.

320—16.4(153) Dispensing—requirements for containers and labeling.

16.4(1) Containers. A prescription drug shall be dispensed in a container which meets the requirements of the Poison Prevention Packaging Act of 1970, 15 U.S.C. ss. 1471-1476 (1976)

which relates to childproof closure, unless otherwise required by the patient. Containers must also meet the requirements of Section 502G of the Federal Food Drug and Cosmetic Act, 21 U.S.C. ss. 301 et seq. (1976) which pertains to light resistance and moisture resistance needs of the drug being dispensed.

16.4(2) Labeling. A label shall be affixed to the container in which a prescription drug is dispensed bearing the following information:

1. Name and address of the dentist.
2. Name of the patient.
3. Date dispensed.
4. Directions for use.
5. Name and strength of medication.
6. If it is Schedule II, III, or IV controlled substance, the federal transfer warning statement must appear on the label as follows: "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed."
7. Cautionary statements, if any.

16.4(3) Prescription sample drugs dispensed in the original container or package and provided without charge shall be deemed to conform to labeling and packaging requirements.

320—16.5(153) Identifying information on prescriptions.

16.5(1) Prescriptions for Schedule II, III, IV, and V controlled substances must include the name and address of the prescribing dentist and the dentist's federal DEA number. The name and address of the prescribing dentist may be preprinted. Proper security shall be maintained if prescription forms are preprinted.

16.5(2) The dentist's signature on a prescription must be original, not a copy or facsimile.

16.5(3) Emergency prescriptions. If an emergency requires the issuance of a prescription, an appropriate prescription may be telephoned to a pharmacist. An emergency prescription for a Schedule II controlled substance must be covered by a written prescription within seventy-two (72) hours. A dentist may not order a renewal or a refill of an emergency prescription unless the order is in writing and the dentist has given the patient a dental examination and has taken a medical history.

16.5(4) For the purpose of authorizing an oral prescription of a controlled substance listed in Schedule II of the uniform controlled substances Act, Iowa Code chapter 204, the term "emergency situation" means those situations in which the prescribing dentist determines:

a. That immediate administration of the controlled substance is necessary for proper treatment of the intended ultimate user;

b. That no appropriate alternative treatment is available, including administration of a drug which is not a controlled substance under Schedule II of Iowa Code chapter 204;

c. That it is not reasonably possible for the prescribing dentist to provide a written prescription to be presented to the person dispensing the substance prior to dispensing.

These rules are intended to implement Iowa Code section 153.20.

[Filed 1/23/87, Notice 12/17/86—published 2/11/87, effective 3/18/87]

CHAPTERS 17 to 19
Reserved

TITLE IV
AUXILIARY PERSONNEL

CHAPTER 20
AUXILIARY PERSONNEL

320—20.1(153) Auxiliary personnel. A licensed dentist may employ unlicensed auxiliary personnel to perform any acts not considered to be the unauthorized practice of dentistry or dental hygiene. Auxiliary personnel shall not include commercial dental laboratories or dental laboratory technicians who are employees or independent contractors of licensed dentists.

320—20.2(153) Unauthorized practice of dentistry or dental hygiene.

20.2(1) It shall be considered the unauthorized practice of dentistry or dental hygiene for any person not licensed to practice dentistry or dental hygiene to perform any acts other than those acts which meet the following criteria:

a. The acts are mechanical in nature and require limited judgment; and

b. The acts are performed only under the authorization and direct supervision of a licensed dentist; and

c. The acts are performed in a dental office by an employee for an employing dentist; and

d. The acts are an adjunct to services provided by the dentist and require no diagnosis, prescription or treatment.

20.2(2) The following acts would constitute the unauthorized practice of dentistry or dental hygiene when performed by unlicensed auxiliary personnel:

a. Preparing, placing, carving or contouring restorations including acid etch restorations.

b. Any removal or addition to hard or soft tissue.

c. Removal of subgingival and supragingival calculus deposits.

d. Placement and removal of temporary crowns and restorations.

e. Injection of local anesthetics.

f. Making impressions except for study models.

g. Induction and monitoring of nitrous oxide or other inhalation agent when used as an analgesia or anesthesia.

20.2(3) Coronal polishing of teeth by a dental assistant using only a rotary instrument and a rubber cup for such purpose at the direction and under the immediate personal supervision of an Iowa licensed dentist in the latter's dental office is deemed not to be the giving of prophylactic treatment within the purview of section 153.13(2), Code of Iowa.

320—20.3(153) Direct supervision required. Direct supervision shall mean that the dentist is present at all times while the auxiliary personnel are performing acts prescribed by the supervising dentist which do not constitute the unauthorized practice of dentistry or dental hygiene.

320—20.4(153) Unlawful practice by auxiliary personnel. Auxiliary personnel who assist a dentist in practicing dentistry in any capacity other than as an employee directly supervised by a dentist in a dental office, or who directly or indirectly procure a licensed dentist to act as nominal owner, proprietor or director of a dental office as a guise or subterfuge to enable such auxiliary personnel to engage directly or indirectly in the practice of dentistry, or who perform dental service directly or indirectly on or for members of the public other than as an employee for an employing dentist shall be deemed to be practicing dentistry without a license.

320—20.5(153) Advertising and soliciting dental services prohibited. No auxiliary

a. Has completed a board approved course of training; or

b. Has training equivalent to that required in 29.6(1)"a" while a student in an accredited school of dentistry, and

c. Has adequate equipment with fail-safe features and a twenty-five percent minimum oxygen flow.

29.6(2) A dentist utilizing nitrous oxide inhalation analgesia and auxiliary personnel shall be trained and capable of administering basic life support.

29.6(3) A licensed dentist who has been utilizing nitrous oxide inhalation analgesia in a dental office in a competent manner for the twelve-month period preceding the effective date of this rule, but has not had the benefit of formal training outlined in subrules 29.6(1)"a" or 29.6(1)*"b,"* may continue the use provided the dentist fulfills the requirements of 29.6(1)*"c"* and 29.6(2).

320—29.7(153) Noncompliance. Violations of the provisions of this chapter may result in revocation or suspension of the dentist's permit or other disciplinary measures as deemed appropriate by the board.

320—29.8(153) Reporting of adverse occurrences related to general anesthesia, parenteral sedation and nitrous oxide inhalation analgesia.

29.8(1) *Reporting.* All licensed dentists in the practice of dentistry in this state must submit a report within a period of thirty days to the board of any mortality or other incident which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during, or as a result of nitrous oxide inhalation analgesia, parenteral sedation or general anesthesia related thereto. The report shall include responses to at least the following:

a. Description of dental procedure.

b. Description of preoperative physical condition of patient.

c. List of drugs and dosage administered.

d. Description, in detail, of techniques utilized in administering the drugs utilized.

e. Description of adverse occurrence:

1. Describe in detail symptoms of any complications, to include but not limited to onset, and type of symptoms in patient.
2. Treatment instituted on the patient.
3. Response of the patient to the treatment.

f. Describe the patient's condition on termination of any procedures undertaken.

29.8(2) *Failure to report.* Failure to comply with subrule 29.8(1), when the occurrence is related to the use of general anesthesia, parenteral sedation, or nitrous oxide inhalation analgesia, may result in the dentist's loss of authorization to administer general anesthesia, parenteral sedation, or nitrous oxide inhalation analgesia or in other sanctions provided by law.

These rules are intended to implement Iowa Code sections 153.33 and 153.34.

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[Filed 1/23/87, Notice 12/17/86—published 2/11/87, effective 3/18/87]

TITLE VI

PROFESSIONAL REGULATION

CHAPTER 30
DISCIPLINE

320—30.1(153) General. The board has authority to impose discipline for any violation of chapter 153, title VIII, or the rules promulgated thereunder.

320—30.2(153) Methods of discipline. The board has authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specified period.
3. Nonrenewal of license.
4. Prohibit permanently, until further order of the board or for a specified period, the engaging in specified procedures, methods or acts.
5. Probation.
6. Require additional education or training.
7. Require re-examination.
8. Order a physical or mental examination.
9. Impose civil penalties not to exceed one thousand dollars ($1,000.00) where specifically provided by rules.
10. Issue citation and warning.
11. Such other sanctions allowed by law as may be appropriate.

320—30.3(153) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative seriousness of the violation as it relates to assuring the citizens of this state a high standard of professional care.
2. The facts of the particular violation.
3. Any extenuating circumstances or other countervailing considerations.
4. Number of prior violations or complaints.
5. Seriousness of prior violations or complaints.
6. Whether remedial action has been taken.
7. Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee.

320—30.4(153) Grounds for discipline. The following shall constitute grounds for the imposition by the board of one or more of the disciplinary sanctions set forth in rule 320—30.2(153) specifically including the imposition of civil penalties not to exceed one thousand dollars ($1,000).

1. Fraud or deceit in procuring a resident dentist license, faculty permit, or license to practice dentistry or dental hygiene, whether by examination or credentials. Fraud or deceit shall mean any false or misleading statement of a material fact or omission of information required to be disclosed.
2. Fraud or deceit in renewing a resident dentist license, faculty permit, or other license to practice dentistry or dental hygiene, including but not limited to false or misleading statements concerning continuing education required for renewal.
3. Fraud in representation as to skill or ability whether by words or conduct, false or misleading allegations, or concealment of that which should have been disclosed, including but not limited to false or misleading statements contained in advertising allowed by these rules.
4. Conviction of a felony if the felony conviction relates to the practice of dentistry or dental hygiene.
5. Habitual use of drugs or intoxicants rendering unfit for practice.
6. Practicing dentistry or dental hygiene while in a state of advanced physical or mental disability where such disability renders the licensee incapable of performing professional services or impairs functions of judgment necessary to the practice.
7. Making suggestive, lewd, lascivious or improper advances to a patient.
8. Willful and gross malpractice.
9. Willful and gross neglect.
10. Obtaining any fee by fraud or misrepresentation.
11. Splitting fees, accepting rebates, or accepting commissions from any source associated with the service rendered to the patient except as provided elsewhere by law or rule. The sharing of income in a partnership or association shall not be construed as splitting fees nor shall compensating dental hygienists on the basis of a percentage of the fee received for the overall service be deemed accepting a commission.
12. Failure to pay fees required by these rules.
13. Unprofessional conduct as defined by section 153.32.
14. Using or attempting to use any patient recall list, records, reprints or copies thereof, or any information gathered from patients served by a dental hygienist in the office of a prior employer unless such names appear on a recall list of the new employer through the legitimate practice of dentistry.
15. Use of the name *"clinic"*, *"institute"* or other title which may suggest a public or semipublic activity to what is in fact an individual or group private practice.
16. Failure to maintain a satisfactory standard of competency.
17 Failure to maintain adequate safety and sanitary conditions for a dental office.
18. Indiscriminately or promiscuously prescribing or dispensing any drug or prescribing or dispensing any drug for other than lawful purposes.

19. Encouraging, assisting or enabling the unauthorized practice of dentistry in any manner.

20. Associating with a dental laboratory or technician where the dentist delegates or permits the assumption by the dental laboratory or dental laboratory technician of any service constituting the practice of dentistry or where the laboratory or technician holds itself out to the public in any way as selling, supplying, furnishing, constructing, repairing or altering prosthetic dentures, bridges, orthodontic or other appliances or devices to be used as substitutes for or as part of natural teeth or associated structures, or for correction of malocclusions or deformities.

21. Failure to prominently display the name of all persons who are practicing dentistry within an office.

22. Employment of or permitting an unlicensed dentist to practice dentistry.

23. Failure to comply with the decision of the board imposing discipline.

24. Failure to report any of the following:

Any acts or omissions which could result in the suspension or revocation of a license when committed by a person licensed to practice dentistry or dental hygiene.

Every adverse judgment in a professional malpractice action to which the licensee was a party.

Every settlement of a claim against the licensee alleging malpractice.

25. Advertising of any kind or character or through any mode or media except as is expressly authorized by the rules of the board.

26. Employing or making use of advertising solicitors or publicity agents or soliciting employment personally or by representative except as is expressly authorized by rules of the board.

27. Employing any person to obtain, contract for, sell or solicit patronage, or make use of free publicity press agents except as is expressly authorized by rules of the board.

28. Any violation of any provision of chapter 153, or for being a party to or assisting in any violation of any provision of chapter 153.

29. Any willful or repeated violations of chapter 153, or for being a party to or assisting in any violation of any provision of chapter 153.

This chapter is intended to implement Iowa Code sections 153.34(9), 258A.3(2)*"e,"* 258A.4 and 258A.5.

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CHAPTER 31
COMPLAINTS

320—31.1(153) Complaints. A complaint by any person relating to licensure or concerning the conduct of a licensee shall be made in writing to the board and shall contain the following information:

1. Complainant's name, address and telephone number.
2. Nature of the complaint including, as appropriate:
The name and address of the licensee;
Date or dates on which incident giving rise to the complaint occurred;
Particulars of the incident giving rise to the complaint;
Any subsequent efforts made to resolve the complaint;
Any other available information relating to the incident.
3. Complainant's signature.
4. Date on which complaint is made.

320—31.2(153) Procedure for review. Complaints made to the board shall be assigned to a peer review committee for review and investigation.

17.1(6) *Screening.* Every such building which is located in an area in which flies and mosquitoes have not otherwise been effectively controlled shall have all windows and doors to the outside equipped with screens of not less than 16 meshes to the inch, which are so maintained as to effectively prevent the entrance into the building of flies and mosquitoes, provided that all outside screen doors shall open outward and be self-closing and provided that effective means other than screens may be substituted therefor when specifically approved by the health officer.

17.1(7) *Overcrowding.* If any room in such dwelling is overcrowded the health officer may order the number of persons sleeping or living in said room to be so reduced that there shall not be less than four hundred cubic feet of air to each adult and two hundred cubic feet of air to each child under twelve years of age occupying such room.

[Filed prior to July 1, 1952]

[Filed emergency 7/29/83—published 8/17/83, effective 7/29/83]

CHAPTER 18
TOURIST CAMPS, TRAILER CAMPS, CABIN CAMPS, CONSTRUCTION CAMPS AND SIMILAR ESTABLISHMENTS AND AREAS

470—18.1(135) General. All tourist camps, trailer camps, cabin camps, construction camps and similar establishments and areas available for residence, except mobile home parks as defined by rule, camp or picnic use which are maintained, operated or leased, free of charge or upon payment of fees, by any municipality, community, institution, corporation, association, firm or person, except hotels and other establishments which are licensed by the state department of agriculture, shall comply with the following requirements:

Trailers may be occupied as temporary residence (except as prohibited by the housing law and local ordinances) only when parked in a trailer camp or other area with facilities complying with the provision of this code.

18.1(1) *Supervision.*

a. The owner or authorized agent shall maintain in good repair and appearance all sanitary facilities and appliances on the premises, and shall be personally liable and responsible for the same. It shall be the duty of the management to bring prompt action as may be necessary to enforce these rules or, if necessary, to eject from the premises any persons who willfully or maliciously damage the sanitary facilities and appliances provided or do not strictly adhere to these or other camp regulations.

b. At least one competent caretaker shall be responsible for the supervision of the premises and shall make necessary routine inspections and exercise all duties necessary in the maintenance of the premises in a strictly sanitary manner.

c. Adequate equipment for maintaining the premises in a strictly sanitary manner at all times shall be provided and maintained by the owner or management.

18.1(2) Reserved. [Space provisions moved to 71.12(1350)]

18.1(3) *Fires.* All fires shall be made in stoves or other equipment provided for that purpose. Open unattended fires shall not be permitted.

18.1(4) *Water supply.* There shall be provided within two hundred feet of any trailer space or cabin, accessible at all times, a water supply which complies with the requirements of chapter 41 of the department of water, air and waste management rules entitled "Water Supplies."

18.1(5) *Excreta and sewage.* There shall be provided at each such camp, establishment or area, accessible at all times, a method of excreta disposal which complies with the requirements of chapter 69 entitled "Sewage, Commercial Wastes and Excreta Disposal."

18.1(6) *Garbage and refuse.* Every such camp, establishment or area shall comply with the requirements of chapter 16 entitled "Garbage and Refuse."

18.1(7) *Room size, heating, lighting, ventilation, plumbing, screening and overcrowding.* All cabins and other habitable buildings shall comply with the requirements of chapter 17. A group of tourist camp buildings under the same ownership may connect to a common house sewer.

Trailers shall comply with the minimum floor area for habitable rooms. However, the ceiling height may be reduced to six and one-half feet provided adequate cross-ventilation is provided by windows on both sides of the trailer.

18.1(8) *Toilets and washing facilities.* Separate toilets shall be provided for males and females, one for each twenty-five males and one for each twenty-five females. Where water is available under pressure, separate hand-washing facilities which comply with the requirements of chapter 12 shall be provided for males and for females or in each cabin or habitable building. Where water under pressure is not available, a wash basin, soap and one towel for each person shall be provided at each cabin or other permanent habitable building. All lavatories, bathtubs and shower baths shall be maintained in a strictly sanitary condition. Toilets and toilet rooms shall comply with the requirements of chapter 12 except that no sewage disposal facilities shall be located within fifty feet of any cabin or trailer. Where fly-tight sanitary privies are provided for trailer camps, they shall be constructed with the seat hinged to permit dumping soil can or chemical toilet contents into the pit. The location of all toilets or privies shall be plainly indicated by appropriate signs.

All trailers with built-in toilets shall be provided with fly-tight, leak-proof metal receptacles for containing human excrement and said receptacle shall contain sufficient chemicals to render the contents free from creating a fly or odor nuisance.

The owner or management of all camp sites shall provide a satisfactory depository for the contents of trailer house chemical toilets, and also shall provide washing facilities for the chemical toilets in a sanitary manner.

18.1(9) *Communicable disease.* It shall be the duty of all camp owners or managers or other persons knowing or suspecting the presence of persons in the camp inflicted with any communicable disease to report the said condition immediately to the local health officer.

18.1(10) *Permanent register.* A permanent register of all guests and patrons of the premises shall be maintained and open to the inspection of the health officer or representative of the department at all times.

[Filed prior to July 1, 1952]

[Filed emergency 7/29/83—published 8/17/83, effective 7/29/83]

CHAPTER 19
MASS GATHERINGS

470—19.1(135) Definitions. For the purpose of these rules, the following terms shall have the meaning indicated in this rule:

19.1(1) *"Attendant"* means any person who obtains admission to an outdoor assembly by the payment of money or without charge.

19.1(2) *"Mass gathering"* means an outdoor assembly which may be attended by more than one thousand (1,000) attendants for a period of more than twelve (12) hours duration. A mass gathering does not mean an event which is conducted or sponsored by a governmental unit on publicly owned property or an event which is held within a permanent building constructed for the purpose of conducting mass gathering activities.

19.1(3) *"Person"* means an individual, group of individuals, partnership, firm, corporation or association.

470—19.2(135) General prohibition. No person shall sponsor, promote, operate, maintain or conduct a mass gathering unless he shall have complied with the requirements of these rules. Compliance with these rules does not exempt compliance with other federal and state statutes and regulations or local regulations and ordinances.

470—19.3(135) Notice and plan. Any person planning to sponsor, promote, operate, maintain or conduct a mass gathering shall notify the commissioner of public health at least thirty days before the date event is scheduled to begin. The notice shall include the plan for compliance with the provisions of these rules.

470—19.4(135) Requirements. The following shall be provided and in operation at least twenty-four hours before the mass gathering is scheduled to begin.

19.4(1) *Water supply.* All water shall be from a source approved by the state department of health. If water is not available in a pressure system, the transportation vehicles must be approved by the state department of health.

a. For each twenty-four-hour period, at least five thousand gallons of water shall be provided for each one thousand attendants. Water shall be continuously available.

b. At least four (4) outlets shall be provided for each one thousand (1,000) attendants. One-half of the outlets shall be of fountain type. The outlets shall be conveniently located.

c. No common drinking cup shall be provided or allowed to be used.

19.4(2) *Washing facilities.* Hand washing facilities with soap and paper towels shall be provided for use of food handlers. These facilities must be located conveniently to each food concession and kitchen.

19.4(3) *Toilet facilities.*

a. The method of toilet waste disposal shall be approved by the state department of health.

b. All toilet facilities shall be enclosed and separate facilities shall be provided for each sex.

c. At least ten (10) individual toilet compartments shall be provided for each one thousand (1,000) attendants or fraction thereof.

d. Toilet facilities shall be conveniently located and be accessible for servicing.

e. Toilet facilities shall be kept clean and supplied with toilet tissue.

f. Toilet facilities shall be at least two hundred (200) feet from food service facilities.

19.4(4) *Solid waste.* Receptacles for the collection of solid waste shall be located at convenient locations. The receptacles shall be readily accessible to collection vehicles. The pick up and removal of refuse, trash, garbage and rubbish shall be made at least once a day and more often if necessary. Final disposal shall be to a site approved by the state department of health.

19.4(5) *Medical facilities and personnel* Each site shall be provided with an adequately staffed first aid station. Arrangements shall be made for ambulance service. There shall be some means of summoning an ambulance if required. The first aid station shall be readily accessible to ambulances.

19.4(6) *Food service facilities.* All food service facilities must be inspected and approved by the state department of agriculture before operation.

19.4(7) *Telephone.* At least one telephone shall be provided in a convenient location for each one thousand (1,000) attendants.

19.4(8) *Civil defense.* Notification of disaster service, local board of health, and law enforcement agency shall be provided.

470—19.5(135) Violation of these rules. Violation of these rules while the mass gathering is in progress, either by default of provision of required services or facilities or because of influx of greater number of attendants than anticipated, shall be grounds for immediately closing the mass gathering by order of the commissioner of public health or other legal means instituted by the commissioner or other state official.

These rules implement Iowa Code section 135.11.

[Filed August 17, 1971]

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CHAPTER 20
Reserved

TITLE III
STATE PLUMBING CODE

CHAPTERS 21 to 24
Reserved
[Chapters 21 to 34 rescinded, 12/23/81, IAB]

CHAPTER 25
PLUMBING CODE
See also O.P.P. [630] Chapter 5 Division 4

470—25.1(135) Minimum requirements. The provisions of this code shall be construed to establish minimum requirements of chapters 1 to 13 and Appendix D of the Uniform Plumbing Code, 1985 Edition as published by the International Association of Plumbing and Mechanical Officials, 5032 Alhambra Avenue, Los Angeles, California 90032, and are hereby adopted by reference with amendments as the state plumbing code as authorized by Iowa Code section 135.11(7).

Local ordinances or rules and regulations may provide for higher but not lower standards than those found in the above-mentioned code and consistent with Iowa Code section 364.3(3).

470—25.2(135) Applicability. The provisions of this code are applicable to the plumbing in buildings and premises within cities and to plumbing in buildings and premises located outside the corporate limits of any city but which are served by individual connections to municipal water supply or sewer systems located inside the corporate limits.

Amendments:

a. Section 103. Add the following definitions:

"Building storm drain", a building (house) storm drain is a building drain used for conveying rain water, surface water, groundwater, subsurface water, or other similar discharge to a building storm sewer or a combined building sewer extending to a point not less than three feet outside the building wall.

"Building storm sewer", a building (house) storm sewer is the extension from the building storm drain to the public storm sewer, combined sewer, or other point of disposal.

b. Section 120. Add the following definitions:

"Storm sewer", a storm sewer is a sewer used for conveying rain water, surface water, condensate, cooling water, or similar liquid wastes, exclusive of sewage and industrial waste.

"Subsoil drain", a subsoil drain is a drain which receives only subsurface or seepage water and conveys it to a place of disposal.

c. Section 201. Delete the subsections e, f, g, h, i and j.

Add to Section 201:

(e) The provisions of this code are not intended to prevent the use of any alternative material or method of construction, provided any such alternative has been first approved by the state plumbing code committee as established in Iowa Code sections 135.12 and 135.13.

(f) Requests for consideration of alternative provisions or applications thereof shall be submitted to the plumbing code committee by the building owner or his agent in writing with substantiating data and drawings.

(g) The granting of such alternative provisions or applications will be stated in writing along with limitations or conditions thereof.

d. Section 203. Revise subsections (a), (b), and (d) to read as follows:

(a) Copper tube for underground drainage and vent piping shall have weight of not less than that of copper drainage tube Type L.

(b) Copper tube for above ground drainage and vent piping shall have weight of not less than that of copper drainage tubing Type M. Exception: Type DWV may be used in one- and two-family dwellings.

event, any facilities wholly or partially constructed or to be constructed with federal financial assistance pursuant to Public Law 725-79th Congress, approved August 13, 1946.

51.1(2) *Medical staff.* The medical staff of a hospital shall be defined as an organized body composed of all licensed physicians who are appointed to the staff of a hospital by its governing board.

51.1(3) *Registered nurse.* A registered nurse shall be a person from an accredited school of nursing and registered in the state of Iowa.

470—51.2(135B) Classification. Classification of hospitals and compliance with:

51.2(1) *Classification.* For the purpose of administering the hospital licensing law, all institutions subject to licensure shall be classified in the following manner:

a. General hospital. Any institution providing hospital care, including general medical, surgical or maternity care and treatment.

b. Specialized hospital or sanatorium. Any institution providing specialized care and treatment, e.g., tuberculosis, pediatrics, mental diseases, orthopedics, etc.

51.2(2) *Compliance requirements for each classification.*

a. General hospitals. Any hospital classified as a general hospital shall comply with all of the general regulations for hospitals, and they shall comply with regulations pertaining to specialized services, insofar as such specialized services are provided in the hospital.

b. Specialized hospitals and sanatoriums. Specialized hospitals and sanatoriums shall comply with all general regulations for hospitals and all regulations pertaining to such specialized services as are provided by the hospital, sanatorium or institution.

470—51.3(135B) License.

51.3(1) *Separate license required.* A separate license shall be required for each hospital even though more than one is operated under the same management. A separate license is not required for separate buildings of a hospital located on separate parcels of land, which are not adjoining but provide elements of the hospital's full range of services for the diagnosis, care, and treatment of human illness, including convalescence and rehabilitation and which are organized under a single owner or governing board with a single designated administrator and medical staff.

51.3(2) *License not required.* The following are not deemed to come within the meaning of the hospital licensing law and shall not be required to obtain a license thereunder:

a. Any institution for well children, day nursery and child care center, foster boarding homes or houses and homes for handicapped children. However, such institutions as have a dual function, including nursing and medical care, and care of the sick are required to be licensed.

b. Homes, houses or institutions for aged persons which limit their functions to board and room and provide no medical or nursing care and house no bedridden persons.

c. Dispensary or first-aid stations maintained for the care of employees, students, customers, members of any commercial or industrial plant, educational institution or convent.

51.3(3) *Posting of license.* The license shall be conspicuously posted on the premises.

51.3(4) The department shall recognize, in lieu of its own inspection, the comparable inspections and inspection findings of the Joint Commission on Accreditation of Hospitals (JCAH) and the American Osteopathic Association (AOA), if the department is provided with copies of all requested materials relating to the inspection process.

51.3(5) Hospitals not accredited by the JCAH or the AOA shall be inspected by the department utilizing the current Medicare standards of participation found in Title XVIII of the Federal Social Security Act and 42 C.F.R. Part 405 Subpart J as of March 1, 1986. The department may promulgate additional standards. Where practical, surveys for state licensure purposes shall be performed concurrently with Medicare certification.

This rule is intended to implement Iowa Code sections 135B.7 and 135B.9.

470—51.4(135B) General regulations for the administration of hospitals.

51.4(1) *Governing board.* The governing board or the owner or the person or persons designated by the owner as the governing authority shall be the supreme authority in the hospital, responsible for the management, control, and appointment of the medical staff and functioning of the institution subject to the laws of the state of Iowa. The governing board shall appoint a medical staff which shall consist of one or more licensed physicians who shall be responsible to the governing authority for the clinical and scientific work of the hospital.

51.4(2) *Medical staff.*

a. A roster of medical staff members shall be kept, and a copy of said roster shall be reported annually to the state department of health.

b. All hospitals shall have one or more licensed physicians designated for emergency call service at all times.

c. A hospital shall not deny clinical privileges to physicians and surgeons, podiatrists, osteopaths or osteopathic surgeons, or dentists licensed under Iowa Code chapter 148, 149, 150, 150A, or 153 solely by reason of the license held by the practitioner.

51.4(3) *Nursing staff.*

a. The department of nursing shall be organized to provide complete and efficient

470—51.32(135B) Tuberculosis hospitals.

51.32(1) Any hospital or sanatorium primarily intended for the reception, diagnosis, care and treatment of tuberculosis cases shall be considered a tuberculosis hospital or sanatorium, and shall conform to all requirements set forth in the foregoing standards and regulations for general hospitals and special hospitals, except that maternity facilites need not be provided as part of the tuberculosis hospital service if provision is made for adequate prenatal care at the institution and arrangements are made for the delivery, postpartum care of the mother and the care of the infant at some available licensed hospital that does provide maternity service.

51.32(2) The professional staff shall be personnel especially qualified in the diagnosis and treatment of tuberculosis.

51.32(3) All patients diagnosed or suspected of having tuberculosis shall be segregated from the noninfectious patients in the hospital.

51.32(4) The use of infectious disease precautions (isolation technique) shall be established for the protection of the patients, hospital personnel and visitors, and the necessary instruction given to patients, personnel and visitors to insure this procedure.

51.32(5) Personnel employed at tuberculosis hospitals shall have a complete physical examination which shall include skin tests with tuberculin and a chest X ray at the start of service of employment, and annually thereafter, unless indicated at shorter intervals.

470—51.33(135B) Nervous and mental disease hospitals.

51.33(1) Any nervous and mental disease hospital operating as a nervous and mental disease hospital must be devoted primarily to the care of mental cases, have a staff of professional personnel especially qualified in the diagnosis and treatment of mental illnesses.

51.33(2) Hospitals admitting mental patients shall be under the direction of a well-qualified physician who is experienced in psychiatry.

51.33(3) There shall be in attendance at all times a registered nurse with special training or experience in the care of mental patients.

51.33(4) Nervous or mental patients shall be admitted to mental hospitals in accordance with the commitment laws of Iowa.

51.33(5) Patients should be grouped according to age, degree of activity, kind and duration of mental illness. Children under sixteen years of age, alcoholics and drug addicts, patients with favorable prognosis shall be segregated, as well as patients with tuberculosis or other communicable diseases.

51.33(6) Facilities for isolation as recommended by the attending physician shall be provided.

51.33(7) Rules pertaining to general hospitals are applicable to mental hospitals, except that maternity facilities need not be provided as part of the mental hospital service if provision is made for adequate prenatal care of the mother, and the care of the infant at some available licensed hospital that does provide maternity service.

470—51.34(135B) Long term care service.

51.34(1) *Long term care service definition.* Long term care service means any building or distinct part of a building utilized by the hospital for the provision of a service (except as provided by 51.34(2) below) that falls within the definition of a health care facility as specified in chapter 135C, Code of Iowa, 135C.1(2), Intermediate Care Facility, and 135C.1(3), Skilled Nursing Facility as it would be applied were it not operating as part of a hospital licensed under chapter 135B, Code of Iowa.

51.34(2) *Long term care service general requirements.*The general requirements for the hospital's long term care service shall be the same as required by chapter 135C, Code of Iowa, and the rules promulgated under its authority for the category of health care facility involved. Exceptions to those rules requiring distinct parts to be established may be waived where it is found to be in the best interest of the long term care resident and of no detriment to the patients in the hospital.

Requests for variances to other rules for which equivalent health, safety and welfare provisions are provided may be made in accordance with the appropriate health care facility rules. In any case where a distinct part has been established for long term residents or where the department has given approval for the intermingling of such residents with acute care patients, the same provisions and rules promulgated under chapter 135C shall be applicable. These rules include, but are not limited to, the same restrictions, obligations, programs of care, personal and rehabilitative services and all of the conveniences and considerations which the residents would normally have received in a licensed health care facility.

51.34(3) *Long term care service staff.* The staffing requirements for the hospital's long term care service shall be the same as required by chapter 135C, Code of Iowa, and the rules promulgated under its authority for the category of health care facility involved. Where a hospital operates a free standing nursing care facility, it shall be under the administrative authority of a licensed nursing home administrator. He will be responsible to the hospital's administrator.

51.34(4) *Long term care service equipment and supplies.* The equipment and supplies required for the hospital's long term care service shall be the same as required by chapter 135C, Code of Iowa, and the rules promulgated under its authority for the category of health care facility involved.

51.34(5) *Long term care service space.* The space requirements for the various areas and resident rooms of the hospital's long term care service shall be the same as required by chapter 135C, Code of Iowa, and the rules promulgated under its authority for the category of health care facility involved.

470—51.35(135B) Penalty and enforcement. See sections 135B.14 through 135B.16.

470—51.36(135B) Validity of rules. If any provision of these rules or the application thereof to any person or circumstances shall be held invalid, such validity shall not affect the provisions or application of these rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules are declared to be severable.

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CHAPTERS 52 to 55
Reserved

CHAPTER 75
STATEWIDE INDIGENT OBSTETRICAL PATIENT CARE PROGRAM

470—75.1(71G,Ch1246) Definitions.

"Applicant" means a person for whom assistance under this program is being requested.

"Delivery" means that the delivery occurs after twenty (20) weeks gestation.

"Family" means a group of two or more persons related by birth, marriage, or adoption who reside together or a unit of one who is an unrelated individual and is not living with any relatives.

"Nonquota case" means a patient who is provided obstetrical or newborn care services at the University of Iowa Hospitals and Clinics under the indigent nonquota obstetrical care program established pursuant to Iowa Code chapter 255 and referenced in 1986 Iowa Acts, chapter 1246, section 111.

"Obstetrical and newborn care services" means those types of services as recognized by the latest editions of The American College of Obstetricians and Gynecologists, "Standards for Obstetric-Gynecologic Services" and The American Academy of Pediatrics, "Standards and Recommendations for Hospital Care of Newborn Infants."

"Poverty level" means poverty income guidelines established by the United States Department of Health and Human Services.

"Program" means the statewide indigent obstetrical patient care program for quota and nonquota cases.

"Provider" means a hospital licensed in Iowa or a physician licensed and practicing in the state and who agrees to serve eligible patients.

"Quota case" means a patient who is provided obstetrical or newborn care by an Iowa licensed hospital or physician under the indigent obstetrical patient quota program established pursuant to 1986 Iowa Acts, chapter 1246, section 111.

"Resident" means the individual must be a legal resident of the state.

"Spend-down" means the process by which an applicant obligates income for allowable medical expenses to reduce income to a qualifying level. The medical expenses used for spend-down cannot be paid for with funds from this program.

"Spend-down interval" means one (1) month for delivery services and means six (6) months for antepartum and delivery services.

470—75.2(71GA,Ch1246) Covered services.

75.2(1) *Quota cases.* The following obstetrical and newborn care services may be provided through the indigent obstetrical patient care program for quota cases.

a. Antepartum and postpartum care for quota patients, except where patient qualifies for antipartum and postpartum care provided by the department of public health, maternal and child health care program.

b. Normal delivery.

c. Cesarean section.

d. Newborn hospital care.

e. Sick newborns who qualify as a quota case will be covered until the patient is stabilized and transferred to University of Iowa Hospitals and Clinics, where the patient will receive care as a nonquota indigent patient.

f. Inpatient transportation from one hospital to another when authorized by a medical provider.

g. Excluded services for quota cases will include but not be limited to elective abortion, elective hysterectomy, circumcision, nonobstetric related procedures and services.

75.2(2) *Nonquota cases.* Obstetrical and newborn care services will be provided for nonquota cases through the program at the University of Iowa Hospitals and Clinics pursuant to Iowa Code chapter 255. Care will be provided for sick newborns who were certified as

quota cases who may be transferred to University of Iowa Hospitals and Clinics and then will receive care as nonquota indigent patients.

470—75.3(71GA,Ch1246) Eligibility criteria. The certification process to determine eligibility for services under the program will include the following requirements:

75.3(1) *Income.*

a. Income guidelines will be set at one hundred fifty percent (150%) of the poverty income guidelines published by the United States Department of Health and Human Services. State income guidelines will be adjusted following any change in Department of Health and Human Services guidelines.

b. Income information will be provided by the applicant, who will attest in writing to the accuracy of the information contained on the application. The general relief director may request verification of income.

c. All earned and unearned income of family members as defined by DHHS poverty guidelines will be used in calculating the applicant's gross income for purposes of determining initial and continued eligibility.

d. Income will be estimated prospectively as follows:

(1) Annual income will be estimated based on the applicant's income for the past three (3) months unless the applicant's income will be changing or has changed, or

(2) In the case of self-employed families the past year's income tax return will be used in estimating annual income unless a substantial change has occurred.

(3) Terminated income will not be considered.

e. An applicant whose income falls between one hundred fifty percent (150%) and three hundred percent (300%) of the poverty level guidelines may qualify through spend-down of medical expenses of all family members as follows:

(1) The applicant must provide copies of medical bills or a statement from the providers of projected medical expenses.

(2) Medical expenses which can be used to meet spend-down are as follows:

1. Health insurance premiums, deductibles, or coinsurance charges.
2. Medical and dental expenses as defined by the Internal Revenue Service.

(3) In order to qualify with spend-down, the estimated annual income will be prorated based on the length of time the patient would be eligible for this program minus projected and actual medical expenses.

75.3(2) *Resources.*

a. The resource limitation for an applicant will be five thousand dollars ($5,000) per household.

b. The following resources are exempt from countable resources:

(1) Tools of the trade, equipment and uniforms required by an employer in the performance of the job.

(2) Equity value of a person's household goods and personal effects regardless of value.

(3) Items required because of a person's medical or physical condition regardless of value.

(4) One vehicle if necessary for employment of a household member, if necessary for the medical treatment of a specific or regular medical problem of a household member, if modified for operation for transportation of a handicapped household member, or if needed because of climate, terrain or distance to perform essential daily activities. If no vehicle is excluded because of provisions listed above, one vehicle is excluded to the extent the current market value does not exceed four thousand five hundred dollars ($4,500). The current market value minus encumbrances in excess of four thousand five hundred dollars ($4,500) would be counted against the resource limit.

(5) Cash value of life insurance less than or equal to two thousand five hundred dollars ($2,500).

(6) A prepaid burial contract or funds set aside for burial purposes.

(7) A homestead, regardless of value, including all land contingent to the home and the building located on the land.

(8) Real estate used for self-employment, regardless of value.

(9) Other real property with equity of less than six thousand dollars ($6,000) and the rate of return is at least six percent (6%) of the equity.

(10) Burial spaces.

(11) Resources and inventories necessary for self-employment.

c. Resource information will be provided by the applicant, who will attest in writing to the accuracy of the information contained on the application. The general relief director may request verification of resources.

75.3(3) *Noneligibility for Title XIX or medically needy without spend-down.* In order to be eligible for this program, the applicant must not be eligible for services under Title XIX or the medically needy program without a spend-down.

470—75.4(71GA,HF2484) Application procedures.

75.4(1) A person desiring obstetrical and newborn care under this program, or the parent or guardian of a minor desiring such care, may apply to the general relief director of the person's county of residence at any time between confirmation of the pregnancy and not later than sixty (60) days after delivery.

75.4(2) The applicant will provide the following information to be considered for eligibility under this program:

a. Income and resource information on an application form provided by the general relief director.

b. Written verification obtained from the department of human services certifying that the applicant is not eligible for Title XIX or the medically needy program without a spend-down. The applicant will submit this copy within sixty (60) days of applying with the general relief director. To meet this sixty (60)-day deadline, the applicant will need to apply with the department of human services before or immediately after contacting the general relief director.

c. Medical certification form obtained from a medical provider which assesses risk status of pregnancy.

75.4(3) Once the applicant is determined to be eligible, the general relief director will then also determine whether it will be a quota or nonquota case. Designation of quota cases shall be on a first-come first-served basis.

75.4(4) The general relief director will provide written notification to the applicant regarding determination of eligibility or noneligibility and the applicant's right to appeal a denial.

75.4(5) After an applicant has been determined to be eligible, the patient or provider will report any changes in eligibility or status of pregnancy to the general relief director within ten (10) days from the date the change occurred.

75.4(6) Standardized application, determination of eligibility, and certification forms will be furnished by the department of public health to the general relief directors.

75.4(7) Copies of appropriate certification forms will be mailed by the general relief director to the department of public health as follows:

a. In counties covered by the department of public health's maternal and child health program, certification forms will be sent at twenty-six (26) weeks or more gestation.

b. In counties not covered by maternal and child health programs, certification forms will be sent upon determination of eligibility for patients whose antepartum care will also be paid through the program.

75.4(8) Receipt of a certification form for a quota patient by the department of public health shall be considered the point in time when the quota has been used.

75.4(9) For nonquota cases, appropriate papers must be processed pursuant to Iowa Code chapter 255.

470—75.5(71GA,HF2484) Reimbursement of providers.

75.5(1) The University of Iowa Hospitals and Clinics and other hospitals will submit their billings on the UB 82, uniform hospital billing form, and physicians will submit their billings on the HCFA 1500. Forms will be furnished by the providers.

75.5(2) Providers will submit bills after delivery but not more than sixty (60) days after the delivery or after determination of eligibility, whichever occurs later.

75.5(3) All providers except the University of Iowa Hospitals and Clinics will submit bills to the general relief office. General relief offices will forward all bills for a quota case to the department of public health not more than one (1) week after receipt.

75.5(4) The University of Iowa Hospitals and Clinics will submit bills on UB 82 and HCFA 1500 directly to the department of public health for data collection purposes.

75.5(5) Reimbursement for physicians and hospitals will be based upon the Title XIX rates. Bills will be adjusted accordingly by the department of public health and forwarded to the department of revenue and finance for payment. General relief directors will be notified by the department of public health of authorized payment.

75.5(6) Providers may be reimbursed for antepartum care prior to the patient's becoming ineligible, as long as the patient is counted as a quota case.

75.5(7) On an annual basis the department of public health will furnish participating physicians a list of reimbursable procedure codes.

75.5(8) The indigent obstetrical care fund is last pay. Private insurance shall be billed first.

75.5(9) All providers of services to quota and nonquota obstetrical and newborn patients shall agree to accept as full payment the reimbursements allowable under the medical assistance program established pursuant to Iowa Code chapter 249A, up to a maximum of one thousand four hundred dollars ($1,400) per case. In case total reimbursable charges exceed one thousand four hundred dollars ($1,400), reimbursement to providers will be prorated based upon allowable reimbursements amounts.

75.5(10) Certifications for quota cases received with expected delivery dates between the period of June 15 and July 15 will have one thousand four hundred dollars ($1,400) encumbered.

470—75.6(71GA,HF2484) Reassignment of county quotas.

75.6(1) Unused quota numbers will be assigned by the department of public health after March 31 of each year to counties according to receipt of request on a case-by-case, first-come basis.

75.6(2) Request for additional quotas cannot be made until all quotas have been used in a given county.

75.6(3) Requests for additional quotas may be submitted by general relief directors and must be based on pending applications. Requests will be made on forms provided by the department of public health designed to provide necessary information regarding pending applications.

470—75.7(71GA,HF2484) Appeals and fair hearings.

75.7(1) *Right of appeal.* An applicant shall have the right to appeal whenever a decision of the general relief director or the state program results in the individual's denial of eligibility for the program or denial as a quota case. No appeal can be filed for denial as a quota case, if there are no quotas available. Quotas would not be available if already assigned or sequestered to cases under appeal. Quotas will only be held when applicant is appealing a change in status from quota to nonquota.

75.7(2) *Request for reconsideration.* The applicant seeking to appeal shall first request reconsideration by the general relief director of the denial of eligibility for this program or denial as a quota case. The written request shall be made within fifteen (15) days from the date the individual receives notice of the decision which is the subject of appeal. The written request shall state the adverse decision being appealed and the reasons the applicant believes state standards were not correctly applied. The general relief director shall reconsider the application and make a written determination with notice of right to appeal to the state within ten (10) days of receipt of the request. If the denial stands, the applicant may appeal to the department of public health.

75.7(3) *Request for hearing.* An appeal is brought by filing an appeal with the Director, Division of Family and Community Health, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, within thirty (30) days of the county's final determination in subrule 75.7(2).

75.7(4) *Contested case.* Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five (5) 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 adverse action 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.

75.7(5) *Hearing.* The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—chapter 4, Iowa Administrative Code.

75.7(6) *Decision of hearing officer.* A written decision of the hearing officer shall be issued, where possible, within thirty (30) days from the date of the request for a hearing unless the parties agree to a longer period of time. The decision of the hearing shall be served by 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 (10) days after it is received by the aggrieved party unless an appeal to the commissioner is taken as provided in subrule 75.7(7).

75.7(7) *Appeal to commissioner.* Any appeal to the commissioner for review of the proposed decision and order of the hearing officer shall be filed in writing and mailed to the commissioner by certified mail, return receipt requested, or delivered by personal service within ten (10) days after the receipt of the hearing officer's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the hearing officer. Any appeal shall state the reason for appeal.

75.7(8) *Record of hearing.* Upon receipt of an appeal request, the hearing officer shall prepare the record of the hearing for submission to the commissioner. 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 thereon.

e. All proposed findings and exceptions.

f. The proposed decision and order of the hearing officer.

75.7(9) *Decision of commissioner.* The decision and order of the commissioner becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

75.7(10) *Exhausting administrative remedies.* It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the commissioner 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.

75.7(11) *Petition for judicial review.* Any petition for judicial review of a decision and order shall be filed in the district court within thirty (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: Division Director, Division of Family and Community Health, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These rules are intended to implement 1986 Iowa Acts, Chapter 1246, section 111.

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TITLE XIII

CHAPTER 76
Reserved

TITLE XIV

LOCAL BOARDS

CHAPTER 77
LOCAL BOARDS OF HEALTH

470—77.1(137) Organization of local boards of health.

77.1(1) ***Officers of local board of health.*** Each local board of health shall, at its first meeting during any calendar year, elect one of its members to serve as chairperson until the first meeting of the following calendar year.

a. The local board of health may elect a vice-chairperson, secretary, or other such officers as it may deem advisable.

to the state registrar why the certificate shall not be canceled, the state registrar may cancel the certificate, and it shall not be available for certification.

These rules are intended to implement section 144.3 of the Code.

[Filed June 8, 1971]

CHAPTERS 105 to 110
Reserved

TITLE XIX
CHRONIC RENAL DISEASE PROGRAM

CHAPTER 111
FINANCIAL ASSISTANCE TO
ELIGIBLE END-STAGE RENAL DISEASE PATIENTS

470—111.1(135) Definitions. For the purpose of these rules, the following definitions shall apply:

"Applicant" means a person with end-stage renal disease who applies to the department for financial assistance. An application from or on behalf of an unemancipated minor under eighteen (18) years of age, or any disabled person who is eighteen (18) years of age or older who is still dependent and living in the home, shall be processed as if the applicant were a minor.

"Commissioner" means the commissioner of public health.

"Committee" means the renal disease advisory committee established by Iowa Code section 135.46.

"Department" means the state department of public health.

"Direct expenses" means costs incurred as a result of receiving transplantation or dialysis services.

"End-stage renal disease" means kidney failure which has progressed enough to require dialysis treatment or a kidney transplant to sustain life.

"Exempt financial resources" means:

1. A homestead as defined in these rules,
2. Personal property as defined in these rules,
3. Life insurance,
4. Equity in a motor vehicle,
5. Income earned by dependents of the applicant or patient,
6. Public assistance, welfare payments, or child support payments specifically used for dependents of the applicant or patient,
7. Funeral contracts or burial trusts not to exceed $2,000 per family member,
8. The balance due on a sales contract when commercial or farm property or a business is sold on contract. Payments received on the contract, however, shall be considered as gross income, and
9. The equity value of commercial or farm property or of a business as specified in subrule 111.5(3).

"Family member" means the applicant, the applicant's spouse, any children under eighteen (18) years of age, and any disabled children eighteen (18) years of age or older who are still dependent and living in the home. If the applicant is an unemancipated minor, family member means the applicant's parent(s) or guardian(s), any siblings under eighteen (18) years of age, and any disabled siblings under eighteen (18) years of age or older who are still dependent and living in the home.

"Financial assistance" means the program funds provided to or on behalf of patients for those expenses directly or indirectly related to their end-stage renal disease as set forth in these rules.

"Financial resources" means personal, public or private assets available to applicants to offset the expenses associated with their end-stage renal disease other than funds provided by this program.

"Financial status" means the level of income into which applicants are categorized for purposes of determining the extent of their eligibility to receive financial assistance.

"Gross income" means money derived from any source (excluding borrowed money or loans obtained for specific uses) available to applicants to offset the expenses associated with their end-stage renal disease other than funds provided by this program. Gross income includes, but is not limited to:

1. Money wages or salary,
2. Net income from nonfarm self-employment,
3. Net income from farm self-employment,
4. Royalties,
5. Dividends,
6. Interest,
7. Income from estates or trusts,
8. Net rental income,
9. Public assistance or welfare payments such as supplemental security income,
10. Pensions (disability or retirement) and annuities (including regular insurance payments),
11. Unemployment compensation,
12. Workers' compensation,
13. Alimony,
14. Veterans pensions and benefits, and
15. Strike benefits.

"Health insurance" means health insurance expense reimbursement policies, but specifically excludes all hospital and surgical indemnity policies.

"Homestead" means the dwelling occupied or intended to be occupied by the applicant as a home during all or part of the period of eligibility applied for. It shall include a garage, if applicable, and only so much of the land surrounding it as is reasonably necessary for use as a home. The word "dwelling" shall encompass a fixed or mobile home located on land or water or any building occupied wholly or in part as a home. When a homestead has more than one dwelling situated thereon, the dwelling shall be considered to be the one in which the applicant lives the majority of time.

When an applicant is confined in a nursing home, extended-care facility or hospital, the applicant shall be considered as occupying or living on the homestead provided the applicant does not lease, rent or otherwise receive profits from other persons for the use thereof.

"Indirect expenses" means incurred costs associated with those necessary expenditures which permit the patient to receive transplantation or dialysis services which result in direct expenses.

"Medical resources" means a public or private resource which is or may be available to pay all or a part of the medical costs of a patient including, but not limited to the following:

1. Medicare (Title XVIII),
2. Medical Assistance (Title XIX),
3. Health insurance policies and health maintenance organization contracts, whether issued on an individual or a group basis, including coverage carried by an absent or noncustodial parent,
4. The Veterans Administration,
5. CHAMPUS (civilian health and medical program of the uniformed services),
6. Vocational rehabilitation, and
7. County relief.

"Medical status" means the category into which patients are placed who have received a transplant or are dialyzing via:

1. Outpatient hemodialysis,
2. Outpatient machine peritoneal dialysis,
3. Home hemodialysis,
4. Home machine peritoneal dialysis,
5. Continuous ambulatory peritoneal dialysis,
6. Continuous cycling peritoneal dialysis, or

7. Any other medically recognized method of dialysis.

"Nonexempt financial resources" means:

1. Certificates of deposit,
2. Checking accounts,
3. Fund-raising drives,
4. Market value of stocks and bonds,
5. Savings accounts, and
6. The equity value of commercial or farm property or of a business as specified in subrule 111.5(3).

"Patient" means a person with end-stage renal disease who applies to the department for financial assistance and who is approved to receive the assistance.

"Period of eligibility" means the six-month maximum time frame for which financial assistance may be approved.

"Personal property" means property of any kind, except real property as defined in these rules, and is limited to household goods and nontaxable personal property.

"Physician" means a person who is licensed under Iowa Code chapter 148, 150 or 150A.

"Program" means the chronic renal disease program conducted by the department.

"Provider" means a professional, public or private organization which provides services, directly or indirectly, for the treatment of end-stage renal disease.

"Real property" means commercial or farm property or a business including machinery and equipment used by the applicant in the prosecution of ordinary business.

470—111.2(135) Program established—purpose.

111.2(1) The purpose of the program is to provide financial assistance to eligible persons with end-stage renal disease who require lifesaving services for the renal disease but are unable to pay for the service on a continuing basis.

111.2(2) Reserved.

470—111.3(135) Residency requirements.

111.3(1) To be eligible for financial assistance, applicants shall be residents of the state of Iowa. Residence is that place in which a person is living for other than a temporary purpose. Residence once acquired continues until the person abandons it and acquires residence elsewhere.

111.3(2) Temporary absence is the absence of a person during which time there is intent to return or because of a change in intent does return. A temporary absence from the state of Iowa shall not be deemed to have interrupted residency requirements.

470—111.4(135) Application procedures.

111.4(1) Persons seeking financial assistance shall apply on forms provided by the department. The address is: Chronic Renal Disease Program, Iowa State Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319.

111.4(2) The date of application shall be the date the application is received by the department.

111.4(3) The department shall approve or deny the application or request additional information within sixty days from the date the application is received. Applicants shall be notified by mail of the department's decision.

111.4(4) Approved applicants will receive financial assistance for time periods not to exceed six (6) months at which time a redetermination of eligibility shall be made by the department. If during an approved period the patient experiences a change in medical or financial status, the department shall be notified in writing within thirty (30) days of the date and nature of the change. Upon receipt of this information, the department shall evaluate the patient in accordance with the eligibility criteria identified in these rules and any subsequent change in financial assistance shall become effective the month following the change in medical or financial status. Patients shall be notified by mail of any change in financial assistance. Failure

of the patient to notify the department of any change in medical or financial status during an approved period of eligibility may deny to that patient any increase in financial assistance that may otherwise have been allowed. Similarly, failure of the patient to notify the department of any change in medical or financial status during an approved period of eligibility which would have caused a decrease in financial assistance may result in the recovery of financial assistance as set forth in subrule 111.5(6).

111.4(5) There is no automatic right to receive continued financial assistance from one period of eligibility to the next. Eligibility for continued financial assistance shall be redetermined in the same manner as initial eligibility.

470—111.5(135) Consideration of gross income and other financial and medical resources.

111.5(1) All gross income and other financial and medical resources available to an applicant shall be considered in determining eligibility and any financial participation that may be required of the applicant.

111.5(2) The gross income of an applicant's spouse shall be considered available to the applicant in determining the extent of eligibility and financial participation. Similarly, if the applicant is an unemancipated minor, the gross income of the responsible parent(s), guardian or custodian of the minor shall be considered available to the applicant.

111.5(3) The equity value of commercial or farm property or of a business which is not the homestead (including machinery and equipment) owned or controlled by the applicant, the applicant's spouse or if a minor by the applicant's responsible parent(s), guardian or custodian, shall be considered as a countable financial resource. Equity value is defined as the current market value of the property or business, less any legal debt. Verification of the current market value and the substantiation of legal debt shall be the responsibility of the applicant and shall be obtained from a knowledgeable source including, but not limited to:

a. Real estate brokers;

b. The local office of the Farmer's Home Administration (for rural land);

c. A local office for the Agricultural Stabilization and Conservation Service (for rural land);

d. Banks, savings and loan associations, mortgage companies, and similar lending institutions;

e. Officials of local property tax jurisdictions; and

f. County extension services.

Commercial or farm property or a business (which is not the homestead) shall be excluded as a financial resource when the equity value does not exceed $100,000. When the equity value exceeds $100,000 only that amount exceeding the $100,000 limit shall be counted as a financial resource.

111.5(4) Financial assistance shall be approved only for those services or that part of the cost of a given service for which no other financial or medical resource exists. Applicants shall take all steps necessary to apply for and, if entitled, accept any other financial or medical resource for which they qualify. Failure to do so, without good cause, shall result in the denial or termination of any financial assistance from this program that would have been covered by the other resource.

111.5(5) When another financial or medical resource can be obtained, that resource shall be considered to be available, unless good cause for failure to obtain that resource is determined to exist. Determination of good cause shall be made by the department and shall be based upon information and evidence provided by the applicant, or by one acting on the applicant's behalf.

111.5(6) Program staff may, for purposes of verification, contact any person or agency referred to in these rules in order to assure that any financial assistance that may be provided is not or will not be provided when another financial or medical resource exists. The department may pursue the recovery of any financial assistance provided for any duplicate or unallowable payment made by the department to or on behalf of the patient.

470—111.6(135) Types of financial assistance available and limitations.

111.6(1) Financial assistance for charges incurred for the provision of dialysis and kidney transplantation shall be limited to dialysis and transplantation facilities which meet the requirements of the Secretary of Health and Human Services as an approved end-stage renal disease (ESRD) provider under section 226(g), Title II of the Social Security Act. The types of financial assistance that may be provided shall be limited to the expense categories listed below depending upon the financial and medical resources available to the patient.

a. Hospital and independent dialysis facility charges for inpatient and outpatient services:

(1) For patients with no other resources, program payment to each provider shall cover Medicare-approvable charges had Medicare been in effect and shall not exceed two thousand dollars ($2,000) a month.

(2) For patients with Medicare only, program payment shall not exceed Part A and Part B Medicare coinsurance and deductibles.

(3) For patients with Medicare and private health insurance, program payment shall not exceed Part A and Part B Medicare coinsurance and deductibles not paid in full by that private health insurance.

(4) For patients with private health insurance only, program payment to each provider shall cover coinsurance and deductibles not to exceed Medicare-approvable charges had Medicare been in effect and shall not exceed two thousand dollars ($2,000) a month.

b. Medical charges approvable by Medicare that include, but are not limited to, physicians' services, ambulance transportation and oxygen equipment:

(1) For patients with no other resources, program payment to each provider shall cover Medicare-approvable charges had Medicare been in effect and shall not exceed one thousand dollars ($1,000) a month.

(2) For patients with Medicare only, program payment shall not exceed Part B Medicare coinsurance and deductibles.

(3) For patients with Medicare and private health insurance, program payment shall not exceed Part B Medicare coinsurance and deductibles not paid in full by that private health insurance.

(4) For patients with private health insurance only, program payment to each provider shall cover coinsurance and deductibles not to exceed Medicare-approvable charges had Medicare been in effect and shall not exceed one thousand dollars ($1,000) a month.

c. Medicare-approvable home dialysis supply charges:

(1) For patients with no other resources, program payment shall not exceed what would have been Medicare-approvable charges had Medicare been in effect.

(2) For patients with Medicare only, program payment shall not exceed Part B Medicare coinsurance and deductibles.

(3) For patients with Medicare and private health insurance, program payment shall not exceed Part B Medicare coinsurance and deductibles not paid in full by that private health insurance.

(4) For patients with private health insurance only, program payment shall cover coinsurance and deductibles, not to exceed what would have been Medicare-approvable charges had Medicare been in effect.

d. Home hemodialysis assistants: Reimbursement for home hemodialysis assistants shall be limited to twenty-five dollars ($25) per dialysis day when no other financial or medical resource is available. Home hemodialysis assistants are persons other than the applicant's family members and any siblings of the applicant who have been trained in home hemodialysis procedures by a Medicare-approved end-stage renal disease provider and who have been hired to assist with the home hemodialysis procedure. For home hemodialysis patients in financial status category 2, the reimbursement rate shall be eighty percent (80%). For home hemodialysis patients in financial status category 3, the reimbusement rate shall be fifty percent (50%).

e. Pharmaceuticals: Legend (prescription) and nonlegend (nonprescription) drugs and other related medical supplies ordered by a physician not covered by any other resource. Pharmaceuticals include vitamins, but do not include food supplements. Drug reimbursement shall be

limited to the average wholesale price of generic drugs plus a one dollar ($1) filling fee when generically equivalent drug substitutions of demonstrated bioavailability are in stock unless the physician specifically states that no drug substitution is to be made. If generically equivalent drugs of demonstrated bioavailability are not in stock or if the physician has specified that drug substitution is not to occur, reimbursement shall be limited to the average wholesale price of the prescribed brand or trade name drug product plus a one dollar ($1) filling fee. Reimbursement shall be limited to eighty percent (80%) of the average wholesale price as stipulated above for patients in financial status category 2, and to fifty percent (50%) of the average wholesale price as stipulated above for patients in financial status category 3. For patients with other third-party payor resources, reimbursement shall not exceed the average wholesale price not paid in full by those resources plus a one dollar ($1) filling fee. Any charges that exceed the reimbursed amount shall be the responsibility of the patient.

f. Travel: To and from the nearest appropriate Medicare-approved ESRD facility for outpatient dialysis, home dialysis training, transplantation and the three (3) months of post-transplant care following the date of discharge. Reimbursement shall be paid at ten cents (10¢) per mile for patient or family members (as defined in these rules) who are able to drive. When patients or family members are unable to drive and must hire a driver, reimbursement shall be paid at twenty cents (20¢) per mile. When a patient must travel by cab or other means of transportation, payment shall be at the rate normally charged for any farepaying passenger not to exceed twenty dollars ($20) per round trip. Travel reimbursement for outpatient dialysis patients in financial status category 2 shall be limited to eighty percent (80%). Travel reimbursement for outpatient dialysis patients in financial status category 3 shall be limited to fifty percent (50%). Patients who travel to other than the nearest appropriate ESRD facility shall receive travel assistance not to exceed the amount that would be reimbursable had they traveled to the nearest appropriate facility. In the event of a transplant, when time is of the essence, and the patient (transplant recipient) is requested to utilize air transport, program payment shall be limited to the least costly fare available at the moment.

g. Lodging: For home dialysis training, transplantation and the three (3) months of post-transplant care following the date of discharge. Payment shall be made for actual lodging expenses not to exceed eighteen dollars ($18) per day. Lodging reimbursement for patients in financial status category 2 shall be limited to eighty percent (80%). Lodging reimbursement for patients in financial status category 3 shall be limited to fifty percent (50%).

h. Health insurance and Medicare:

(1) Premiums for health insurance policies and enrollment fees for health maintenance organization contracts that provide the patient with coverage for ESRD medical care. When a patient has family coverage, whether issued on an individual or group basis, program payment shall be limited to the premium or enrollment fee for an individual policy or contract (from the same company) that provides the same or substantially the same benefits. This does not include hospital and surgical indemnity policies.

(2) Premiums for Medicare.

111.6(2) Financial assistance for the expense categories listed above shall be:

a. Limited to a reimbursement rate of 70 percent for eligible claims received by this program on or after May 14, 1986.

b. Limited to a reimbursement rate of 85 percent for eligible claims received by this program on or after July 1, 1986.

111.6(3) Should program appropriations be insufficient to meet all eligible requests for financial assistance, it shall be the responsibility of the department, with the advice and assistance of the committee, to take appropriate and necessary action to ensure that program expenses not exceed program funds. This action may include, but need not be limited to:

a. Reducing the amount(s) and type(s) of financial assistance provided to each patient,

b. Setting a maximum limit on the amount of financial assistance which may be provided to each patient, or

c. Limiting the number of applicants who may be approved to receive financial assistance.

This rule is intended to implement Iowa Code sections 135.45 to 135.48.

470—111.7(135) Procedures for determining eligibility.

111.7(1) Upon receipt of application, the department shall review the application for completeness. Applications found to be incomplete shall be returned to the applicant with appropriate instructions or shall be held by the department pending receipt of additional information from the applicant or other parties.

111.7(2) If the applicant is a minor, necessary information shall be provided by the responsible parent, guardian or custodian of the minor.

111.7(3) An application shall be considered complete when the information contained therein enables the department to determine the applicant's financial status in accordance with the eligibility criteria established by the department. When necessary, program staff will verify resources shown on the application and will inform applicants of other resources that may be available to them.

111.7(4) When applicable, a copy of the most recent federal and state income tax return of the applicant, the applicant's spouse, the applicant's parent(s) or the legal guardian or custodian financially responsible for the care of the applicant shall be submitted to the department and shall be considered a part of the application.

111.7(5) Based on the evaluation of each application, the type(s) of financial assistance provided shall be determined and made known to the applicant by mail. Financial assistance shall be available for approved dialysis and transplant-related expenses incurred no more than three (3) months prior to the month the application is received by the department.

111.7(6) The criteria that follow shall be the criteria utilized to determine the applicant's financial status and eligibility:

a. All income shall be included in the determination of gross income. In regard to nonexempt financial resources, two thousand dollars ($2,000) will be disregarded for the first family member plus one thousand dollars ($1,000) for each additional family member living in the home.

b. Four financial status categories, plus a Medical Assistance category, shall be used as set forth in Appendix 1. These categories are presented in dollar ranges based on percentage increases of the 1985 Department of Health and Human Services poverty income guidelines. Each range is increased proportionately by the number of family members. The financial status category into which the applicant falls for eligibility purposes is determined upon evaluation of the applicant's gross income and other financial and medical resources. The type(s) of financial assistance which may be provided is displayed in Appendix 2.

470—111.8(135) Transfer or disposal of resources at less than fair market value.

111.8(1) In determining eligibility for financial assistance, resources that have been given away or sold or otherwise transferred or disposed of six months prior to the month of application at less than fair market value for the purpose of establishing eligibility for financial assistance shall still be counted as if those resources were still available as shown below:

a. For uncompensated value between $6,000 and $18,000: One period of eligibility from the date of transfer or disposal.

b. For uncompensated value between $18,001 and $30,000: Two periods of eligibility from the date of transfer or disposal.

c. For uncompensated value between $30,001 and $42,000: Three periods of eligibility from the date of transfer or disposal.

d. For uncompensated value between $42,001 and over: Four periods of eligibility from the date of transfer or disposal.

111.8(2) Transfer or disposal of resources shall be presumed to be for the purpose of establishing eligibility for financial assistance unless convincing evidence to the contrary is furnished to verify that the transaction was exclusively for some other purpose. Examples of giving away or selling or otherwise transferring or disposing of resources at less than fair market value include, but are not limited to, establishing a trust, contributing to a charity or other organization, removing a name from a joint bank account, or decreasing the extent of ownership interest in a resource.

111.8(3) Convincing evidence to verify that the transaction was exclusively for a purpose other than establishing eligibility may include documents, letters, and contemporaneous writings, as well as other circumstantial evidence.

470—111.9(135) Payment procedures.

111.9(1) Patients shall submit claims for approved financial assistance items on forms provided by the department with sufficient documentation to clearly support the amount(s) claimed.

111.9(2) Providers of service, on behalf of patients, may submit claims on forms other than those provided by the department provided those forms contain information equivalent to that required by the department.

111.9(3) Program staff shall review claims submitted for appropriateness and accuracy based upon the patient's medical and financial status at the time services were provided. Claims submitted for amounts greater or lesser than what the patient is entitled to shall be adjusted accordingly. Upon issuance of the warrant, a copy of the claim form shall accompany the warrant and any necessary adjustment(s) shall be noted identifying the amount and the reason for the adjustment(s).

111.9(4) Reimbursement of approved expenses incurred by patients may be made directly to the patient when the patient possesses the necessary expense documentation.

111.9(5) Reimbursement of approved expenses may be made directly to the provider of service on behalf of the patient when the provider possesses the necessary expense documentation.

111.9(6) When other financial or medical resources are available to the patient, the program will consider for payment any eligible expense claim or portion thereof provided the claim is for approved expenses incurred no more than twelve (12) months prior to the month the claim is received by the program.

111.9(7) The department shall consider the date of claim to be the date the extent of the department's liability has been determined. Funds allocated to this program for the fiscal year in which such determinations are made shall also be the funds from which payment is made.

111.9(8) Rescinded, effective 8/1/85.

470—111.10 Rescinded, effective 4/1/87.

470—111.11(135) Denial, suspension, revocation or reduction of financial assistance.

111.11(1) The department may deny, suspend, revoke or reduce financial assistance based upon eligibility and financial criteria and other pertinent sections of these rules. Applicants or patients so affected shall be notified by certified mail (return receipt requested) or by personal service.

111.11(2) Provided that rule changes affecting the types or limitations of financial assistance are made in accordance with the rulemaking process pursuant to Iowa Code chapter 17A, the appeal provisions of this rule shall not apply to any action taken pursuant to subrule 111.6(3).

111.11(3) Notwithstanding subrule 111.11(2), upon receipt of a notice of denial, suspension, revocation, or reduction, the applicant or patient may request an appeal. The appeal shall be made in writing to the department within thirty (30) days from the date of the applicant's or patient's receipt of the department's notice of denial, suspension, revocation, or reduction of financial assistance. The address is: Chronic Renal Disease Program, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. If such a request is made within the thirty (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, suspension, revocation, or reduction of financial assistance has been or will be removed. After the hearing, or upon default of the aggrieved party, the hearing officer shall affirm, modify, or set aside the denial, suspension, revocation, or reduction of financial assistance. If no request for appeal is received within the thirty (30)-day time period, the department's notice of denial, suspension, revocation, or reduction of financial assistance shall become the department's final agency action.

111.11(4) Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five (5) 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 adverse action is based and any additional information which may be provided by the applicant or patient shall also be provided to the department of inspections and appeals.

111.11(5) The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—chapter 4, Iowa Administrative Code.

111.11(6) When the hearing officer makes a proposed decision and order, it shall be served by 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 (10) days after it is received by the aggrieved party unless an appeal to the commissioner is taken as provided in subrule 111.11(7).

111.11(7) Any appeal to the commissioner for review of the proposed decision and order of the hearing officer shall be filed in writing and mailed to the commissioner by certified mail, return receipt requested, or delivered by personal service within ten (10) days after the receipt of the hearing officer's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the hearing officer. Any request for an appeal shall state the reason for appeal.

111.11(8) Upon receipt of an appeal request, the hearing officer shall prepare the record of the hearing for submission to the commissioner. 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 thereon.

e. All proposed findings and exceptions.

f. The proposed decision and order of the hearing officer.

111.11(9) The decision and order of the commissioner becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

111.11(10) It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the commissioner 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.

111.11(11) Any petition for judicial review of a decision and order shall be filed in the district court within thirty (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: Chronic Renal Disease Program, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

111.11(12) The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

APPENDIX I

1985 DEPARTMENT OF HEALTH AND HUMAN SERVICES
POVERTY INCOME GUIDELINES (BASE)*

CHRONIC RENAL DISEASE PROGRAM FINANCIAL STATUS CATEGORIES

# in Family	(A) Medical Assistance	(1) To 150% of Base	(2) To 200% of Base	(3) To 250% of Base	(4) To 300% of Base
1	Persons	$0 - $ 7,874	$ 7,875 - $10,499	$10,500 - $13,124	$13,125 - $15,749
2	receiving	0 - 10,574	10,575 - 14,099	14,100 - 17,624	17,625 - 21,149
3	Medical	0 - 13,274	13,275 - 17,699	17,700 - 22,124	22,125 - 26,549
4	Assistance	0 - 15,974	15,975 - 21,299	21,300 - 26,624	26,625 - 31,949
5	(Title XIX)	0 - 18,674	18,675 - 24,899	24,900 - 31,124	31,125 - 37,349
6		0 - 21,374	21,375 - 28,499	28,500 - 35,624	35,625 - 42,729
7		0 - 24,074	24,075 - 32,099	32,100 - 40,124	40,125 - 48,149
8		0 - 26,774	26,775 - 35,699	35,700 - 44,624	44,625 - 53,549
For each additional family member increase by:		$2,700	$3,600	$4,500	$5,400

*BASE - POVERTY INCOME GUIDELINES

# in Family	Amount
1	$ 5,250
2	7,050
3	8,850
4	10,650
5	12,450
6	14,250
7	16,050
8	17,850

Increase by $1,800 for each additional family member.

APPENDIX 2

TYPES OF FINANCIAL ASSISTANCE AVAILABLE BY FINANCIAL STATUS CATEGORY

TYPES OF ASSISTANCE	(A) MEDICAL ASSISTANCE	(1) TO 150% OF BASE	(2) TO 200% OF BASE	(3) TO 250% OF BASE	(4) TO 300% OF BASE
Hospital and independent facility charges	NA	AP	AP	AP	AP
Medical charges	NA	AP	AP	AP	AP
Home dialysis supply charges	NA	AP	AP	AP	AP
Home hemodialysis assistants	NA	AP	AP at 80%	AP at 50%	NA
Pharmaceuticals	Nonlegend and coinsurance	AP	AP at 80%	AP at 50%	NA
Travel for outpatient dialysis, home dialysis training, transplantation and three months post-transplant period only	In-city only	AP	AP at 80%	AP at 50%	NA
Lodging for home dialysis training, transplantation, and three months post-transplant period only	NA	AP	AP at 80%	AP at 50%	NA
Health insurance and Medicare	AP (excluding Medicare)	AP	AP	AP	NA

NA = No Assistance AP = Assistance Provided BASE = Poverty Income Guidelines (See Appendix 1)

These rules are intended to implement Iowa Code sections 135.45 to 135.48 and 1986 Iowa Acts, Senate File 2175, section 508, subsection 1, paragraph "g."

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CHAPTERS 112 and 113
Rescinded, effective 5/1/82
See Ch 111

CHAPTERS 114 to 120
Reserved

*See IAB, Inspections and Appeals Department.

TITLE XX
EYEGLASS LENSES

CHAPTER 121
STANDARD FOR IMPACT RESISTANCE AND METHOD OF TESTING

470—121.1(135) Standard for impact-resistant lenses. In order for a lens to be considered impact resistant, the lens must not fracture when subjected to the test specified below. For the purpose of these rules, a lens will be considered to have fractured if it cracks through its entire thickness, including a laminar layer, if any, and across a complete diameter into two or more separate pieces or if any lens material visible to the naked eye becomes detached from the ocular surface.

470—121.2(135) Method of testing lenses. All lenses used in eyeglasses or sunglasses must be capable of withstanding an impact test in which a 5/8-inch steel ball weighing approximately 0.56 ounces is dropped from a height of fifty inches upon the horizontal upper surface of the lens. The ball shall strike within a 5/8-inch diameter circle located at the geometric center on the exterior surface of the lens. The ball may be guided, but not restricted, in its fall by being dropped through a tube extending to within approximately four inches of the lens. The test shall be conducted with the lens supported by a tube (1-inch inside diameter, 1¼-inch outside diameter, and approximately 1-inch high) affixed to a rigid iron or steel base plate. The total weight of the base plate and its rigidly attached fixtures shall not be less than twenty-seven pounds. For lenses of small minimum diameter, a support tube having an outside diameter of less than 1¼ inches may be used. The support tube shall be made of rigid acrylic plastic, steel or other suitable substance and shall have securely bonded on the top edge a 1/8 - by 1/8-inch neoprene gasket having a hardness of 40±5, as determined by ASTM Method D 1415; a minimum tensile strength of one thousand two hundred pounds, as determined by ASTM Method D 412; and a minimum ultimate elongation of 400 percent, as determined by ASTM Method D 412. The

470—135.106(148) Temporary licensure.

135.106(1) The board may, in its discretion, issue a temporary license authorizing the licensee to practice medicine and surgery whenever, in the opinion of the board, a need exists therefor and the person possesses the qualifications prescribed by the board for such license, which shall be substantially equivalent to those required under chapter 148 or chapter 150A as the case may be. A temporary license shall be issued for one year and, at the discretion of the board may be annually renewed, not to exceed two additional years, at a fee of one hundred fifty dollars per year.

135.106(2) Each applicant shall:

a. Submit a completed application form accompanied by a fee of one hundred fifty dollars.

b. Present a photostatic copy of a diploma issued by a school or college of medicine and surgery or osteopathic medicine and surgery approved by the board. The board may accept, in lieu of a diploma from a medical college approved by it all of the following:

(1) A diploma issued by a medical college which has been neither approved nor disapproved by the board; and

(2) The completion of one year of training as a resident physician, which training has been approved by or is acceptable to the board; and

(3) The recommendation of the Educational Council for Foreign Medical Graduates, Incorporated or similar accrediting agency.

(4) The board may waive the provisions of paragraph "*b*"(1), "*b*"(2) and "*b*"(3) for a foreign physician, here for teaching purposes only, who is properly admitted under a visa of the State Department of the United States.

(5) Furnish an affidavit from a licensed physician, superintendent of an institution or dean of an approved college of medicine and surgery or osteopathic medicine and surgery in this state setting forth facts supporting the need that exists for the issuance of said license.

135.106(3) Candidates may be required to satisfactorily complete an examination prescribed by the medical examiners.

a. The medical examiners may require written, oral or practical examinations.

b. In any case, the medical examiners may require the candidate to appear for a personal interview before the board or a member thereof.

c. Grades received in a license examination before the duly constituted authority of another state, territory, foreign country or before the national board of medical examiners or national board of osteopathic examiners may be accepted in lieu of a written examination conducted by the medical examiners, in which instance:

(1) The applicant must furnish a photostatic copy of his national board certificate or an original certificate of license obtained as a result of such examination.

(2) The statements made in the application must be reviewed and verified by the examining board issuing the original certificate, who will also certify, under seal, as to the schedule of subjects in which the applicant was examined, the grades given thereon and the general average attained.

470—135.107(147) License—expiration—renewal—due date. Beginning July 1, 1983, a license to practice medicine and surgery, osteopathic medicine and surgery, and osteopathy shall expire biennally on the first day of the month of birth of the licensee with regard to odd and even years and may be renewed as determined by the board upon application by the licensee, without examination. Application for renewal is due and shall be made in writing to the department accompanied by the required fee at least thirty days prior to the expiration of the license. Every renewal shall be displayed in connection with the original license.

135.107(1) The department shall notify each licensee by mail sixty days prior to the expiration of a license. Failure to renew the license within four months after the expiration date shall invalidate the license. A penalty of twenty-five dollars per month beginning thirty days after the due date may be assessed by the board. However, such penalty shall not exceed one hundred dollars.

135.107(2) Beginning July 1, 1983, a permanent license issued during a calendar year shall be valid for a period not to exceed two years as determined by the board in accordance with the physician's month and year of birth.

135.107(3) The renewal fee for a permanent license issued during a calendar year shall be prorated on a monthly basis according to the date of issue and the physician's month and year of birth.

470—135.108(147) License—examination—renewal fees. The following fees shall be collected by the board and shall not be refunded except by board action in unusual instances such as documented illness of the applicant, death of the applicant, inability of the applicant to comply with the rules of the board, or withdrawal of application provided such withdrawal is received in writing forty-five days prior to the examination date. Examination fees shall be nontransferable from one examination to another. Refunds of examination fees shall be subject to a nonrefundable administrative fee of one hundred dollars per application. The administrative fee shall be deducted by the board prior to actual refund.

135.108(1) For a license to practice medicine and surgery or osteopathic medicine and surgery issued upon the basis of examination given by the medical examiners prior to January 1, 1987, three hundred fifty dollars. For a license to practice medicine and surgery or osteopathic medicine and surgery issued upon the basis of examination given by the medical examiners subsequent to January 1, 1987, five hundred twenty-five dollars.

Fees for taking Component I, Component II, or both Components are as follows:

1. For an application to take Component I, the fee shall be three hundred twenty-five dollars.
2. For an application to take Component II, the fee shall be three hundred eighty dollars.
3. For an application to take both Components in one sitting the fee shall be five hundred twenty-five dollars.

135.108(2) Beginning July 1, 1983, a license to practice medicine and surgery or osteopathic medicine and surgery or osteopathy issued by endorsement or under a reciprocal agreement, or the issuance of a special license, two hundred dollars.

A fee of one hundred dollars shall be collected for the endorsement of individual component scores passed in another state or territory.

135.108(3) For a renewal of a license to practice medicine and surgery, osteopathic medicine and surgery, osteopathy, or a special license, one hundred dollars per biennial period or a prorated portion thereof for a period of less than two years as determined by the board to facilitate biennial renewal according to month and year of birth.

136.108(4) For a certified statement that a licensee is licensed in this state or a certified statement of grades attained or an examination in this state, twenty dollars.

135.108(5) For a duplicate license, which shall be so designated on its face, upon satisfactory proof the original license issued by the department of health has been destroyed or lost, ten dollars.

135.108(6) For license to practice as a resident physician, fifty dollars.

135.108(7) For the renewal of a license to practice as a resident physician, ten dollars.

135.108(8) For a temporary license, one hundred fifty dollars.

135.108(9) For the renewal of a temporary license, one hundred fifty dollars.

Rules 135.101(147,148,150A) to 135.108(147) are intended to implement Iowa Code sections 147.2, 147.10, 147.29, 147.34, 147.36, 147.47, 147.49, 147.53, 147.54, 147.76, 147.80, 147.82, 147.102, 148.3, 148.4, 148.5, 148.10, 148.11, 150A.3 and 150A.7.

470—135.109(17A) Specified forms to be used. All applications for examinations, certificates and licenses shall be on forms prescribed by the board. These forms may include, but not be limited to, the following, and where practicable, any one or more of the following forms may be consolidated into a single form.

made, available at all times, reasonably satisfactory evidence of such compliance.

135.506(2) The licensee shall maintain a file in which records of the activities are kept, including dates, subjects, duration of programs, registration receipts where appropriate and other appropriate documentations for a period of three years after the date of the program.

470—135.507(258A) Attendance record. The board shall monitor licensee attendance at approved programs by random inquiries of accredited sponsors.

470—135.508(258A) Exemptions for inactive practitioners. A licensee who is not engaged in practice in the state of Iowa may be granted a waiver of compliance and obtain a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not engage in the practice of medicine and surgery, osteopathy and osteopathic medicine and surgery in Iowa, without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon the form provided by the board.

470—135.509(258A) Reinstatement of inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with these regulations and obtained a certificate of exemption shall, prior to engaging in the practice of medicine and surgery, osteopathy and osteopathic medicine and surgery in the state of Iowa satisfy the following requirements for reinstatement:

135.509(1) Submit written application for reinstatement to the board upon forms provided by the board; and

135.509(2) Furnish in the application evidence of one of the following:

a. The practice of medicine and surgery, osteopathy and osteopathic medicine and surgery in another state of the United States, District of Columbia, territory or foreign country and completion of continuing education for each year of inactive status substantially equivalent in the opinion of the board to that required under these rules; or

b. Completion of a total number of hours of accredited continuing education computed by multiplying twenty by the number of years a certificate of exemption shall have been in effect for such applicant; or

c. Successful completion of the Iowa state license examination conducted within one year immediately prior to the submission of such application for reinstatement.

470—135.510(258A) Exemptions for active practitioners. A physician licensed to practice medicine and surgery, osteopathy and osteopathic medicine and surgery shall be deemed to have complied with the continuing education requirements of this state during period that the licensee serves honorably on active duty in the military services, or for periods that the licensee is a resident of another state or district having a continuing education requirement for the profession and meets all requirements of that state or district for practice therein, or for periods that the licensee is a government employee working in his or her licensed specialty and assigned to duty outside of the United States, or for other periods of active practice and absence from the state approved by the board.

470—135.511(258A) Physical disability or illness. The board may, in individual cases involving physical disability or illness, grant waivers of the minimum education requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor shall be made on forms provided by the board and signed by the licensee and his or her attending physician. Waiver of the minimum educational requirements may be granted by the board for any period of time not to exceed one calendar year. In the event that the physical disability or illness upon which a waiver has been granted continues beyond the period of waiver, the licensee must reapply for an extension of the waiver. The board may,

as a condition of any waiver granted, require the applicant to make up a certain portion of all of the minimum educational requirements waived by such methods as may be prescribed by the board.

470—135.512(258A) Noncompliance. A licensee who in the opinion of the board does not satisfy the requirements for license renewal stated in this chapter will be placed on probationary status and notified of the fact within thirty days after the renewal date. Within ninety days after such notification, the licensee must submit evidence to the board demonstrating that the deficiencies have been satisfied. If the deficiencies are not made up within the specified period of time, the licensee's license will be classified as lapsed without further hearing.

These rules are intended to implement Iowa Code sections 147.36, 148.3 and 150A.3.

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152.214(7) Renewal of instructor's license for biennial is seventy dollars ($70).

152.214(8) License for new barbershop is fifty dollars ($50).

152.214(9) Renewal of barbershop license is twenty-five dollars ($25). Penalty for late renewal is ten dollars ($10), in addition to renewal fee.

152.214(10) Transfer of barbershop or barber school license is twenty-five dollars ($25).

152.214(11) An original barber assistant license is twenty-five dollars ($25).

152.214(12) Renewal of barber assistant license is five dollars ($5).

152.214(13) Temporary permit to practice barbering is ten dollars ($10).

152.214(14) Certified statement that a licensee is licensed in this state is five dollars ($5).

152.214(15) Duplicate license is five dollars ($5).

This rule is intended to implement Iowa Code section 147.80.

152.215 to **152.299** Reserved.

PROCEDURES FOR USE OF CAMERAS AND RECORDING DEVICES AT OPEN MEETINGS

470—152.300(28A) Conduct of persons attending meetings.

152.300(1) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

152.300(2) Cameras and recording devices may be used at open meetings provided they do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding may request the person to discontinue use of the camera or device. If the person persists in use of the device or camera, that person shall be ordered excluded from the meeting by order of the board person presiding at the meeting.

This rule is intended to implement Iowa Code section 28A.7.

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*See Public Health, Department of[641], IAB

CHAPTER 153
SANITARY CONDITIONS FOR BARBERSHOPS AND BARBER SCHOOLS

470—153.1(158) Rules posted. The manager of each barbershop shall keep a copy of these rules posted in a conspicuous place in the shop.

470—153.2(158) License. Barbers shall display at their work cabinet the original license, with the annual renewal certifying the practitioner is a licensed barber. Barbershop licenses shall be in the name of the licensed operator and posted therein. All temporary permits shall be posted.

470—153.3(158) Sanitation. Every barbershop shall be well lighted, properly ventilated and kept in clean, sanitary and orderly condition. All shops or schools shall have handwashing and toilet facilities accessible within the building.

470—153.4(158) Quarters. Barbering shall not be practiced in a residence unless the shop is completely separated from living quarters by a solid permanent partition. A solid door leading to residence shall be permitted providing it remains closed during business hours except during ingress and egress. An outside entrance shall be provided.

470—153.5(158) Quarters adjacent to other business. A barbershop located in a room adjacent to a food service establishment, tavern or grocery shall be in a completely separate room and doors between shall be rendered unusable except for emergencies. A barbershop may be operated in conjunction with a cosmetology establishment provided it meets all the requirements of the law pertaining to barbering.

470—153.6(158) Plumbing. Barbershops shall have an adequate supply of potable hot and cold water under pressure.

470—153.7(158) Equipment.

153.7(1) A barbershop owner shall provide each chair in the shop equipment for sterilizing as required by law. Equipment shall include a container filled with germicidal solution of sufficient depth to fully immerse all tools or implements coming in contact with patrons. Electric clipper plates shall be sterilized by the open flame method.

153.7(2) Barber, styling and hair cutting tools and equipment which come into contact with a patron's hair or skin in a barbershop or barber school shall be sanitized before use on each client by wiping clean and by either of the following methods.

a. Immersion in a solution with germicidal effect before using. The solution shall be seventy to and including ninety percent isopropyl alcohol in water, quaternary ammonium compounds in one to five hundred solution in water, or other equivalent germicidal solutions approved by the State Department of Health; or

b. Use of an alcohol burner.

153.7(3) A barbershop owner shall provide closed cabinets or drawers for the keeping of all tools and towels when they are not in use.

153.7(4) A barbershop owner shall provide a minimum of one washbasin or lavatory for each two barber chairs in use. The washbasins or lavatories shall be so situated that one is readily accessible to the operator of each barber chair.

470—153.8(158) Workstands. All workstands shall be covered with some nonabsorbent, washable material. All bottles, jars, receptacles, compartments, and containers of all kinds shall be properly labeled at all times and all barbering equipment shall be maintained in a sanitary condition.

470—153.9(158) Dusters and brushes. The common neck duster or brush and the common shaving mug, soap and brush shall not be used in any barber shop or school.

470—153.10(158) Hands. Every barber shall wash his or her hands thoroughly with soap and water before serving a patron.

470—153.11(158) Headrest. Each barber chair headrest shall be provided with a mechanical paper container and clean shaving paper or clean towel.

470—153.12(158) Towels. Freshly laundered towels shall be used for each patron. In haircutting, shampooing, or similar activities, a freshly laundered towel or new neck strip shall be used to prevent the hair cloth from directly contacting the skin of the patron. Soiled towels shall not be left on lavatory or workstand but shall be immediately disposed of in a container for that purpose.

470—153.13(158) Styptic powder and alum. Alum or other material used to stop the flow of blood shall be used only in liquid or powder form.

470—153.14(158) Communicable diseases. A barber shall not practice who is infected with a communicable disease.

470—153.15(158) Other disease carriers. No pets of any kind shall be permitted in a licensed barbershop or school except guide dogs.

470—153.16(158) Supervisor duty. It shall be the responsibility and duty of each supervisor of a barbershop to see that all employees observe all applicable rules.

470—153.17(158) Inspection report posted. Barbers shall post in a conspicuous place, the prior inspection report for each respective shop.

These rules are intended to implement Iowa Code sections 147.76, 158.5, and 158.15.

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CHAPTER 154
BARBER ASSISTANTS

470—154.1(158) Course of study. Each Iowa school of barbering licensed by the Iowa board of barber examiners shall conduct a course of study for the barber assistant not to exceed 160 hours. Such course of study shall include the following:

154.1(1) Supervised practical instruction. The following shall be included:

Shampooing	80 hours
Rinses	
Hair treatments	

154.1(2) Demonstrations and lectures. The following shall be included:

Scalp care rinses, treatments	80 hours
Anatomy of scalp and hair	
Sanitation and sterilization	

Human Services Department[498]

Rules transferred from Human Services Department[498] to Human Services Department[441], to conform with the reorganization number scheme in general.

CHAPTER 5
Reserved

CHAPTER 6
LICENSURE STANDARDS FOR CORRECTIONAL FACILITIES

805—6.1(125) Definitions. Unless otherwise indicated, the following definitions shall apply to the specifc terms used in these rules:

"Admissions" means the point in a substance abuser's relationship with the program at which the intake process has been completed and the individual is to receive treatment services.

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

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

"Assessment" means the process of evaluating an individual's strengths, weaknesses, problems, current status, and needs so that a treatment plan, if appropriate, can be developed.

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

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

"Commission" means the Iowa commission on substance abuse within the department.

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

"Correctional substance abuse treatment facilities" means those correctional specialized unit facilities and OWI programs that provide twenty-four (24)-hour live-in seven (7)-days-a-week substance abuse treatment services. Inmates must participate in at least two hundred twenty (220) hours of structured chemical dependency rehabilitation services which must include at least ten (10) hours of counseling services per week during the primary treatment stay. If additional services are provided after primary treatment, there must be a mixture of counseling, educational, or self-help group services totaling at least ten (10) hours per week.

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

"Department" means the Iowa department of public health.

"Detoxification" means the withdrawal of an inmate from a physiologically addicting substance.

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

"Division" means the division of substance abuse.

"Facility" means a hospital, correctional institution, judicial district, or detoxification center, or installation providing care, maintenance, and treatment for substance abusers and licensed by the department under Iowa Code section 125.13.

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

"Inmate" means a person confined in a correctional institution or under the supervision of the Department of Corrections or a Judicial District Department of Correctional Services as a result of a conviction of a public offense.

"Intake" means the process of collecting and assessing information to determine the appropriateness of admitting or retaining an inmate in a substance abuse treatment program.

"Licensee" means any program licensed by the department.

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

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

"Outpatient program" means a nonspecialized correctional unit substance abuse program available to the general inmate population. Treatment or rehabilitation services to substance abusers will be offered on a scheduled or nonscheduled basis.

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

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

"Referral agreement" means a written document defining a relationship between the program and an outside resource for the provision of inmate services not available within the substance abuse treatment program.

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

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

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

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

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

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

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

"Treatment" means the broad range of planned and continuing inpatient, outpatient, residential or intermediate care services, including diagnostic evaluation, counseling, medical, psychiatric, psychological, and social service care which may be extended to substance abusers and which is geared towards influencing their behavior to achieve a state of rehabilitation.

"Treatment plan" means a written plan which specifies the goals, activities, and services determined through process of assessment appropriate to meet the objective needs of the inmate.

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

This rule is intended to implement Iowa Code section 125.2.

805—6.2(125) Inspection. Upon approval of warden, superintendent or district director, each applicant or licensee agrees as a condition of license to permit properly designated representatives of the department to enter into and inspect any and all premises of facilities for which a license has been either applied or issued to verify information contained in the application or to assure compliance with all laws, rules, and regulations during all hours of operation of the facility and at any other reasonable hour. Further, each licensee agrees to permit properly designated representatives of the department to audit and collect statistical data from all records maintained by the licensee. Right of entry and inspection shall, under due process of law, extend to any premises on which the department has reason to believe a program is being operated in violation of these rules. A facility shall not be licensed which does not permit inspection by the department or examination of all records, including financial records, methods of administration, general and special dietary programs, the disbursement of drugs and methods of supply, and any other records the commission deems relevant to the establishment of a system.

805—6.3(125) General standards for all correctional substance abuse treatment programs. The following standards shall apply to all correctional substance abuse treatment programs in the state of Iowa regardless of the category of treatment services provided by the programs. In situations where differences between general standards for all treatment programs and specific standards occur, both general and specific standards must be met.

6.3(1) *Procedures manual.* All programs shall develop and maintain a procedures manual. This manual shall define the program's policies and procedures to reflect the program's activities. Revisions shall be entered with the date, name, and title of the individual making the entries. This manual shall contain all of the required written policies, procedures, definitions, and all other documentation required by these standards in the following areas:

a. Organization and management of the program;
b. Personnel policies;
c. Medical services/detoxification;
d. Staff training;
e. Intake and initial assessment;
f. Treatment planning;
g. Inmate case records;
h. Discharge planning;
i. Follow-up services;
j. Inmate rights;
k. Confidentiality of inmate records; and
l. Medication control.

Policies and procedures manual for OWI programs shall be approved on an annual basis by the governing authority.

6.3(2) *Personnel.* Written personnel policies and procedures shall be developed by all programs. Merit rules may be utilized in lieu of specific program personnel policies and procedures.

a. These policies and procedures shall address the following areas:
(1) Recruitment and selection of staff members and volunteers;
(2) Wage and salary administration;
(3) Promotions;
(4) Employee benefits;
(5) Working hours;
(6) Vacation and sick leave;
(7) Lines of authority;
(8) Rules of conduct;
(9) Disciplinary actions and termination of employees;
(10) Methods for handling cases of inappropriate client care;
(11) Work performance appraisal;

(12) Employee accidents and safety;
(13) Arbitration of employee grievances;
(14) Policy on staff persons suspected of using or abusing substances;
(15) Training and staff development which will include, but not be limited to orientation of new staff members or volunteers, ongoing training laws, rules and regulations, and confidentiality regulations.

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

c. There shall be written merit job descriptions for all positions. Each job description shall identify specifically:
(1) Job title;
(2) Tasks and responsibilities of the job;
(3) The skills, knowledge, training, education, and experience required for the job; and
(4) Lines of authority.

d. Section A Merit Performance Plan or job description shall accurately reflect the actual job situation and shall be reviewed at least annually by the supervising authority or whenever there is a change in required qualifications of duties.

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

f. There shall be a personnel record kept on each staff member. These records shall contain as applicable:
(1) Section A Merit Performance Plan or job description;
(2) The application for employment;
(3) Documentation of a criminal records check with the Iowa division of criminal investigation;
(4) Wage and salary information, including all changes;
(5) Job performance evaluation;
(6) Incident reports;
(7) Disciplinary actions taken; and
(8) Documentation of review and adherence to confidentiality laws and regulations at least during orientation.

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

6.3(3) *Medical services.* All inmates shall undergo a medical history and physical examination within twenty-one (21) days of admission to the treatment facility. Laboratory examinations may be done as deemed necessary by the physician.

The program shall have written policies and procedures defining the appropriate action to be taken when a medical emergency arises and the detoxification of an inmate is necessary.

OWI facilities shall ensure by contract or affiliation agreement that emergency medical services at a general hospital are available on a twenty-four (24)-hour, seven (7)-day-a-week basis.

6.3(4) *Confidentiality.* All inmate records shall be kept confidential and shall be handled in compliance with the federal confidentiality regulations (Department of Health, Education and Welfare, Public Health Services—Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR, Part 2, effective August 1, 1975), and with applicable federal and state rules. When a conflict occurs with state and federal confidentiality laws, the federally funded program will comply with federal confidentiality laws while state funded programs must minimally comply with state statutes and rules.

a. Disclosure of benefits. If the inmate gives specific written consent, the content of the record may be disclosed to legal counsel upon written endorsement by the attorney to nongovernmental personnel for the purpose of collecting health insurance claims or other benefits

or to a present or potential employer when employment is conditioned upon the status or progress in a treatment program.

b. Disclosure for evaluation. Disclosure of information for research, management, audit, or evaluation purposes must be specifically authorized by the warden, superintendent or district director.

c. Consent storage. The inmate's written release of information shall be kept in the inmate's record.

d. Confidentiality orientation. A program shall ensure that all staff and inmates, as a part of their initial orientation are made aware of these requirements. Any decision to disclose inmate information under any provision of Iowa Code chapter 125 as amended, or other applicable federal or state rule which permits disclosure, shall be made only by the warden, superintendent or district director.

6.3(5) *Treatment supervisor services.* The program shall have available consultation from a treatment supervisor. The treatment supervisor will assist in the training of the staff, reviewing of case records, and providing assistance to the clinical staff in inmate treatment.

6.3(6) *Staff development and training.* There shall be written policies and procedures that establish a staff development program. One (1) individual shall be designated to supervise staff development activities. The staff development program shall include orientation for entry-level staff, on-the-job training, in-service education, and opportunities for continuing job-related education.

a. Initial training of each treatment staff member shall include, but not be limited to, structured, scheduled orientation relating to the psychosocial, medical, pharmacological, and legal aspects of substance abuse prevention activities; an orientation to the program and community resources; and counseling skill development.

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

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

d. In-service training programs shall be instituted when program operations or functions are changed, and shall be designed to allow staff members to develop new skills.

e. Staff development activities and participation in state, national, and regional training shall be planned and scheduled. These activities shall be documented in order to evaluate the scope, effectiveness, attendance, and amount of time spent. The training plan for on-site staff development and activities for professional growth and development of program personnel shall be based on the Merit Confidentiality Performance Review/Evaluation Form, Section C, or annual needs assessment.

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

(1) Date of the meeting;

(2) Names of persons attending;

(3) Topics discussed.

6.3(7) *Intake and assessment.* There shall be clearly stated written criteria for determining the eligibility of inmates for admission.

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

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

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

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

b. The following information shall be collected and recorded on standardized formats developed by the program on all inmates applying for services prior to or at the time of admission and shall become part of that inmate's case record:

(1) Identifying information which includes name, home address, telephone number;
(2) Demographic information which includes date of birth, sex, race or ethnicity;
(3) Presenting problem;
(4) Substance abuse history, including type, amount, frequency, and duration of substance use;
(5) Family history, describing the family composition and dynamics;
(6) Education status and history, describing levels of achievement;
(7) Vocational, employment status and history, describing skills or trades learned; record of jobs held, duration, reasons for living;
(8) Peers and friends, describing interpersonal relationships and interaction with persons and groups outside of the home, if available;
(9) Legal history, describing involvement with the criminal justice system;
(10) Medical and health history, including any incidences of overdoses and any physical indicators of contagious diseases with necessary action as required by the Iowa Code;
(11) Psychological history and mental status;
(12) Any other relevant information which will assist in formulating an initial assessment of the inmate; and
(13) A financial evaluation.

c. Each new admission, readmission, or transfer admission shall be interviewed by a treatment supervisor or designee, with a treatment supervisor reviewing all intake information. When a review is conducted, the treatment supervisor shall document all clinical observations and recommendations in the applicant's case record. If, in the judgment of the treatment supervisor, psychological, psychiatric, or further medical examinations are indicated, assistance shall be obtained and documented in the case record.

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

e. During the intake process, documentation shall be made that the inmate has been informed of the following:
(1) General nature and goals of the correctional substance abuse program.
(2) Rules governing conduct and infractions that can lead to disciplinary action or discharge from the program;
(3) Inmate's rights and responsibilities;
(4) Confidentiality laws, rules, and regulations; and
(5) Treatment costs to be borne by the inmate, if any.

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

g. A complete assessment of the inmate's status shall be developed, which shall be an analysis and synthesis of the intake data and shall address the inmate's strengths, problems, and areas of clinical concern.

h. If the initial intake and assessment was developed by personnel of the Iowa Medical and Classification Center (IMCC) or other correctional institution personnel, the substance abuse treatment program must document review of information in the inmate's record and provide updates or amendments as applicable.

6.3(8) *Treatment plans.* Based upon the initial assessment, a written treatment plan shall be developed and recorded in the inmate's case record.

a. A comprehensive treatment plan shall be developed as soon after the inmate's admission to the substance abuse program as is clinically feasible, but no later than thirty (30) days following admission.

b. The culturally and environmentally specific treatment plan shall minimally contain the following:
(1) A clear and concise statement of inmate's current strengths and needs;

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

(3) A delineation of primary and support services to be provided the inmate;

(4) The staff person(s) to be responsible for the inmate's treatment.

c. Treatment plans shall be developed in conjunction with the inmate. Treatment plans shall be reviewed by the primary counselor and the inmate as often as necessary, but no less than every sixty (60) days. Treatment plans shall be reviewed by a treatment supervisor regularly and revised as often as necessary, but no less than at a frequency of sixty (60) days.

d. The reviews shall consist of a reassessment of the inmate's current status to include accomplishments and needs and a redefining of treatment goals when appropriate. The date of the review and any change, as well as the persons involved in the review, shall also be recorded.

e. The use of abstract terms, technical jargon, or slang should be avoided in the treatment plan, and the plan should be written in a manner readily understandable to the average inmate, or assistance available to illiterate, handicapped, or impaired inmates. The program should provide the inmate with a copy of all treatment plans.

6.3(9) *Progress notes.* An inmate's progress and current status in meeting the goals set in the treatment plan, as well as efforts by staff members to help the inmate achieve these stated goals, shall be recorded in the inmate's case record. Information will be noted following each counseling session and summarized at least monthly for each inmate receiving group counseling services at an outpatient program. Group summaries will be completed at least weekly for correctional substance abuse treatment facilities.

a. All progress notes shall be dated and initialed or signed by the individual providing the service.

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

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

d. All clinical staff shall use a uniform progress note format.

6.3(10) *Release planning/referral.* The substance abuse program shall participate in release planning, which shall include community-based correctional programs.

The program shall maintain a list of all substance abuse resources available within the state. The list of resources shall minimally contain the following:

a. The name and location of the resource;

b. The types of services provided by the resource.

6.3(11) *Followup.* The program shall establish and maintain policies and procedures for the purpose of providing follow-up services to referred inmates. For work release or parolees, follow-up services shall be based on initial contact with community-based substance abuse treatment programs to verify inmates' initial treatment appointment with copy to community-based correctional program as appropriate.

a. The results of the follow-up activity shall be documented to indicate the following:

(1) Date of contact;

(2) Staff person responsible for initiating the contact; and

(3) Results of the contact.

b. These policies and procedures shall be in compliance with DHEW, 42 CFR, Part 2, effective August 1, 1975, Regulations on Confidentiality of Alcohol and Drug Abuse Client Records.

6.3(12) *Inmate case records.* There shall be written policies and procedures governing the compilation, storage, and dissemination of inmate case records.

a. These policies and procedures shall ensure that:

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

(2) Content and format of records are kept uniform; and
(3) Entries in the case record are signed and dated.

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

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

d. There shall be a written policy governing the disposal and maintenance of inmate case records. Inmate case records shall be maintained for not less than five (5) years from the date the record is officially closed.

e. All inmate case records shall be marked "CONFIDENTIAL," or bear a similar cautionary statement. Each file cabinet or storage area containing inmate case records shall be locked and be conspicuously marked "CONFIDENTIAL INFORMATION," or bear a similar cautionary statement.

f. The governing body shall establish policies that specify the conditions under which information may be released and the procedures to be followed for releasing information. Even if a program is not federally funded, all policies and procedures shall be in accordance with applicable provisions of section 408 of Public Law 92-255, the Drug Abuse Office and Treatment Act of 1972 (21 U.S.C. 1175) as amended by section 303 of Public Law 93-282, the Comprehensive Alcohol Abuse and Rehabilitation Act amendments of 1974 (88 Stat, 137), the federal confidentiality regulations issued, and state confidentiality laws and regulations.

g. An inmate's written authorization shall appear on a consent form containing the following:
(1) The name of the program which is to make the disclosure;
(2) The name or title of the person or organization to which disclosure is to be made;
(3) The name of the inmate;
(4) The purpose or need for the disclosure;
(5) The extent or nature of information to be disclosed; and
(6) Except where the inmate is a mandatory criminal justice system referral, a statement that the consent is subject to revocation at any time and date, event or condition upon which it will expire without express revocation.

h. Where participation by an inmate in a treatment program is made a condition of the inmate's release from confinement, the disposition or status of any criminal proceedings against the inmate, or the execution or suspension of any sentence imposed upon the inmate, the inmate may consent to unrestricted communication between any program in which the inmate is enrolled in fulfillment of a condition and (1) the court granting probation or other posttrial or retrial conditional release, (2) the parole board or other authority granting parole, or (3) probation or parole officers responsible for the inmate's supervision. In addition, where consent is given for disclosures in this manner, consent shall expire sixty (60) days after it is given or when there is substantial change in the inmate's status, whichever is later.

i. All policies related to confidentiality shall apply even after the inmate has terminated active involvement with the program.

j. In a life-threatening situation, or where an inmate's condition or situation precludes the possibility of obtaining written consent, the program may release pertinent medical information to the medical personnel responsible for the inmate's care without an inmate's authorization and without the authorization of the warden, superintendent or district director or designee if obtaining authorization would cause an excessive delay in delivering treatment to the inmate.

k. When information has been released without the inmate's authorization under these standards, the staff member responsible for the release of information shall enter into the inmate's case record all details pertinent to the transaction, which shall include at least:
(1) The date the information was released;
(2) To whom the information was released;

(3) The reason the information was released; and

(4) The nature and details of the information given.

l. As soon as possible after the release of information, the inmate should be informed that it was released.

m. There shall be a record for each inmate that contains the following:

(1) Results of all examinations, tests, and intake and assessment information;

(2) Reports from referring sources;

(3) Treatment plans;

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

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

(6) Multidisciplinary case conference and consultation notes, including the date of the conference or consultation, recommendations made, and action taken;

(7) Correspondence related to the inmate, including all letters and dated notations of telephone conversations relevant to the inmate's treatment;

(8) Treatment consent forms, if applicable;

(9) Information release forms;

(10) Progress notes. Entries shall be filed in chronological order and shall include the date any relevant observations were made, the date the entry was made, and the signature and staff title of the person rendering service;

(11) Records of service provided. Summaries of services provided shall be sufficiently detailed to identify the types of services the inmate has received and action taken to address specific problems identified. General terms such as "counseling" or "activities" shall be avoided in describing services;

(12) Discharge summary; and

(13) Follow-up information.

6.3(13) *Inmate rights.* The program shall maintain written policies and procedures that ensure that the legal rights of inmates participating in the program shall be observed and protected.

a. There shall be procedures to inform all inmates of legal rights at the time of admission into the program.

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

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

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

6.3(14) *Medication control.* Policies and procedures shall be developed to ensure that all medications are administered or self-administered safely and properly in accordance with federal, state, and local laws and regulations. OWI facilities shall be in compliance with subrule 3.22(19).

805—6.4(125) Specific standards for correctional substance abuse program. A correctional substance abuse program shall be designed to provide comprehensive diagnostic, treatment, and rehabilitation services on a scheduled or nonscheduled basis.

6.4(1) *Written plan.* This component shall have a written plan.

a. This plan shall include, but not be limited to the following:
(1) Treatment philosophy;
(2) Objectives;
(3) Organizational structure;
(4) The role of the coordinator/director in charge of this service;
(5) Specifications of the lines of authority and staff responsibility;
(6) Admission criteria; and
(7) Interrelationship with other service components and providers.

b. There shall be documentation that this plan is reviewed and updated at least annually and that it has been approved by the warden/superintendent/district director or OWI facility governing authority.

6.4(2) *Facilities.*

a. The facilities shall comply with rule 805—3.24(125), subrules 3.24(3) to 3.24(14) or ACA standards or other standards established by the Iowa department of corrections.

b. The facilities shall comply with rules 805—3.2(125) to 805—3.20(125).

6.4(3) *Chemical dependency rehabilitation services.* Inmates must participate in at least two hundred twenty (220) hours of structured chemical dependency rehabilitation services which must include at least ten (10) hours of counseling services per week during the primary stay. If additional services are provided after primary treatment, there must be a mixture of counseling, educational or self-help group services totaling at least ten (10) hours per week.

These rules are intended to implement 1986 Iowa Acts, chapter 1246, section 402 and chapter 1220, section 2.

[Filed emergency 10/3/86—published 10/22/86, effective 10/3/86]
[Filed 1/23/87, Notice 10/22/86—published 2/11/87]

CHAPTERS 17 and 18
Reserved

CHAPTER 19
Reserved

07 MOTOR VEHICLES

ARTICLE A
MOTOR VEHICLE OPERATION OF GENERAL APPLICABILITY

CHAPTER 1
DESIGNATED HIGHWAY SYSTEM

[07,A]1.1(321) Designated system for length and width of vehicles
[07,A]1.2(321) Applicable vehicles and dimensions
[07,A]1.3(321) Other vehicles
[07,A]1.4(321) Access
[07,A]1.5(321) Requesting access routes
[07,A]1.6(321) Changes to designated system

ARTICLE B
MOTOR VEHICLE ADMINISTRATION
Reserved

ARTICLE C
DRIVER LICENSING

CHAPTERS 1 to 5
Reserved

CHAPTER 6
DENIALS, CANCELLATIONS, SUSPENSIONS AND REVOCATIONS

[07,C]6.1 to 6.21 Reserved
[07,C]6.22(321) Suspension for nonpayment of fine, penalty, surcharge or court costs
[07,C]6.23 to 6.36 Reserved
[07,C]6.37(321) Service of denial, cancellation, suspension or revocation notice
[07,C]6.38(321) Hearing and appeal process

CHAPTERS 7 to 10
Reserved

CHAPTER 11
OWI AND IMPLIED CONSENT

[07,C]11.1(71GA,HF2493) Definitions
[07,C]11.2(71GA,HF2493) Information
[07,C]11.3(71GA,HF2493) Issuance of temporary restricted license
[07,C]11.4(71GA,HF2493) Hearings and appeals
[07,C]11.5(71GA,HF2493) Reinstatement

CHAPTER 12
NONOPERATOR'S IDENTIFICATION

[07,C]12.1(321) Eligibility
[07,C]12.2(321) Proof of age and identity
[07,C]12.3(321) Application and issuance
[07,C]12.4(321) Duplicate nonoperator's identification card

CHAPTER 13
DRIVERS'LICENSES

[07,C] 13.1(321) Persons exempt
[07,C] 13.2(321) Persons not to be licensed
[07,C] 13.3(321) Driver license examinations

when operating in a truck-tractor, semitrailer-trailer combination.

1.2(3) Truck-tractor, semitrailer overall length and truck-tractor, semitrailer-trailer overall length not restricted.

1.2(4) Tractor or trailer width, unladen or with load, not to exceed 8 feet 6 inches. Certain devices determined by the Secretary of the United States Department of Transportation to be necessary for safe and efficient operation may extend beyond this width.

1.2(5) Power units designed to carry cargo, when used in combination with a trailer or semitrailer, not to exceed 65 feet in overall length for the combination.

1.2(6) Kingpin setting unrestricted.

820—[07,A]1.3(321) Other vehicles. If not specified in rule 820—[07,A]1.2(321), the width provisions of Iowa Code subsection 321.454(1) and the length provisions of Iowa Code subsections 321.457(1), (2), and (4) shall apply to the designated system.

820—[07,A]1.4(321) Access.

1.4(1) Access to and from designated highways shall be as follows:

a. Five (5) road miles from the interstate system for access to terminals or facilities for food, fuel, repairs and rest.

b. Points of loading and unloading for household goods carriers.

c. All roads and streets within connected cities and within the following distances from such cities for access to terminals or facilities for food, fuel, repairs and rest:

Population	Distance
Less than 2500	3 miles
2500 - 25,000	4 miles
25,000 - 100,000	6 miles
100,000 - 200,000	8 miles
Over 200,000	10 miles

d. On routes designated by the department solely for the purpose of access to points of loading and unloading, and within cities connected by such routes.

1.4(2) Cities and counties may restrict truck operation on any road or street under their jurisdiction by local ordinance.

820—[07,A]1.5(321) Requesting access routes. A person may request that a route be designated solely for the purpose of access to points of loading and unloading, as permitted in paragraph 1.4(1)*"d,"* by submitting a written request to: Director, Motor Vehicle Division, 5268 N.W. 2nd Ave., Des Moines, Iowa 50313. The request shall specify the access route requested and the reasons for the request.

These rules are intended to implement Iowa Code subsections 321.454(2) and 321.457(3).

820—[07,A]1.6(321) Changes to designated system. A change to the designated highway system for the movement of vehicles of the specified lengths and widths shall be processed as follows:

1.6(1) *Addition.*

a. Persons requesting an addition shall submit a written request to: Director, Motor Vehicle Division, Iowa Department of Transportation, 5268 N.W. 2nd Ave., Des Moines,

Iowa 50313. The request shall specify the additonal route being requested and the reasons for the request.

b. Within fifty days after receipt of the request, the staff of the department shall prepare a recommendation and present the recommendation to the transportation commission.

c. If the transportation commission approves an addition to the system, the route shall be submitted to the secretary of the United States Department of Transportation for review and possible incorporation into the designated system.

1.6(2) *Deletion.* A request for the deletion of a route from the Iowa designated system shall be processed according to the procedure in subrule 1.6(1). However, if the commission approves the deletion, notice of the commission action shall be forwarded to the secretary of the United States Department of Transportation for review and possible deletion by the secretary.

1.6(3) *Notification.*

a. The department shall notify the requester of the action taken by the transportation commission on the request for an addition or a deletion.

b. If applicable, the department shall also notify the requester of the action taken by the secretary of the United States Department of Transportation.

c. The department shall publish additions and deletions to the designated system in a newspaper with statewide circulation and the department's "NewsRig" publication.

This rule is intended to implement Iowa Code subsections 321.454(2) and 431.457(3).

[Filed 6/15/83—published 7/6/83, effective 4/6/83]*
[Filed 9/8/83, Notice 7/20/83—published 9/28/83, effective 11/2/83]
[Filed 1/21/87, Notice 12/3/86—published 2/11/87, effective 3/18/87]

*Not subject to Iowa Code chapter 17A.

WATER, AIR AND WASTE MANAGEMENT[900]

Renamed by 1986 Iowa Acts, Senate File 2175, Environmental Protection Commission[567] under the "umbrella" of Natural Resources Department[561]

TITLE I
GENERAL

Dickinson, Emmet, Ida, Lyon, O'Brien, Osceola, Palo Alto, Plymouth, Pocahontas, Sac, Sioux and Woodbury.

1.4(5) Regional Office No. 4 is located at 316 Walnut, Atlantic, Iowa. The mailing address is 316 Walnut, Atlantic, Iowa 50022 and the telephone number is 712/243-1934. The following southwest Iowa counties are served: Adair, Adams, Audubon, Carroll, Cass, Crawford, Fremont, Greene, Guthrie, Harrison, Mills, Monona, Montgomery, Page, Pottawattamie, Ringgold, Shelby, Taylor and Union.

1.4(6) Regional Office No. 5 is located at the Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa. The mailing address is Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319 and the telephone number is 515/281-3622. The following south central Iowa counties are served: Appanoose, Boone, Clarke, Dallas, Decatur, Jasper, Lucas, Madison, Mahaska, Marion, Marshall, Monroe, Polk, Poweshiek, Story, Tama, Warren and Wayne.

1.4(7) Regional Office No. 6 is located at 117 N. 2nd Avenue, Washington, Iowa. The mailing address is P.O. Box 27, Washington, Iowa 52353 and the telephone number is 319/653-2135. The following southeast Iowa counties are served: Cedar, Clinton, Davis, Des Moines, Henry, Iowa, Jefferson, Johnson, Keokuk, Lee, Louisa, Muscatine, Scott, Van Buren, Wapello, and Washington.

900—1.5(455B) Business hours.

1.5(1) *Normal business hours.* The normal business hours of the central office and the regional offices are 8:00 a.m. to 4:30 p.m., Monday to Friday, except holidays.

1.5(2) *Emergency incident reports.* The twenty-four hour emergency telephone number for the reporting of hazardous conditions (see Title X), radiation incidents, and air pollution emergency episodes is 515/281-8694. During nonbusiness hours this number is answered by staff of the department of public safety, who will obtain the caller's name, telephone number, and information relating to the incident. This information will be forwarded to staff of the department of water, air and waste management who will contact the caller.

These rules are intended to implement Iowa Code sections 17A.3(1)"a" and 455B.105.

[Filed emergency 6/3/83 — published 6/22/83, effective 7/1/83]
[Filed 12/2/83, Notice 6/22/83—published 12/21/83, effective 1/25/84]

CHAPTER 2
OPERATION OF COMMISSION

Rescinded, effective 1/7/87. See Environmental Protection Commission[567], Ch 1.

CHAPTER 3
OVERVIEW OF WAWM PERMITS AND JURISDICTION

Reserved

CHAPTER 4
PUBLIC INFORMATION/CONFIDENTIALITY OF INFORMATION—SUBMISSION OF COMPLAINTS

Rescinded, effective 3/18/87. See Environmental Protection Commission[567], Chs 2 and 3.

CHAPTER 5
RULEMAKING PROCEDURE
[PRIOR RULES ON THE SUBJECT, DEQ CH 53]

900—5.1(455B) Procedure for adoption of rules.

5.1(1) *Generally.* The commission shall conduct rulemaking in accordance with the terms of the Iowa administrative procedure Act and Iowa Code chapter 455B.

5.1(2) *Notice.* The commission shall give notice of its intended action in accordance with the requirements contained in 5.1(1). The notice shall include the time and place of any opportunity for oral presentation pursuant to 5.1(3).

5.1(3) *Opportunity for oral presentation.* The commission normally will provide an opportunity for oral presentation prior to the adoption of any rule unless the provisions of Iowa Code section 17A.4(2) are utilized. In instances where the commission determines that a proposed rule is not likely to generate significant public comment, it may only provide notice under 17A.4(1) and provide opportunity for oral presentation only if requested thereunder.

a. Prior to such an opportunity, an interested person may indicate a desire to make an oral presentation by submitting a written request to the executive director. At such a proceeding, any interested person may indicate a desire to make an oral presentation by signing a sheet or card distributed for that purpose. The presiding officer shall allow persons so indicating the opportunity to make oral presentation and shall then allow any other interested person attending such opportunity, provided, however, that the presiding officer may exercise discretion to limit the time for each speaker to ten minutes and the total time of the proceeding to three hours.

b. Whenever possible, a speaker should also submit his or her comments in written form.

5.1(4) *Written submissions.* Any interested person may submit data, opinions, or arguments in writing on proposed rules within the time specified in the notice of intended action, which time shall not be less than twenty days from publication of the notice of intended action given pursuant to 5.1(2), at the opportunity for oral presentation on the proposed rules, if any, and up to ten days after the opportunity for oral presentation, if any. These should be submitted to the executive director who shall either transmit them to department staff for review and summarization of substance to the commission, or directly transmit them to the commission.

5.1(5) *Request for statement of reasons.* Any interested person may, either prior to the adoption of the rule or within thirty days after adoption, request the commission to issue a

CHAPTERS 1 to 8
Reserved

CHAPTER 9
ON-SITE CONTAINMENT OF PESTICIDES, FERTILIZERS AND SOIL CONDITIONERS

PESTICIDES

21—9.1(206) Definitions. Where used in these rules:

Bulk pesticide. Bulk pesticide means any registered pesticide which is transported or held in an individual container in undivided quantities of greater than fifty-five (55) U.S. gallons liquid measure or one hundred (100) pounds net dry weight.

Bulk repackaging. Bulk repackaging means the transfer of a registered pesticide from one bulk container (containing undivided quantities of greater than fifty-five (55) U.S. gallons liquid measure or one hundred (100) pounds net dry weight) to another bulk container (containing undivided quantities of greater than fifty-five (55) U.S. gallons liquid measure or one hundred (100) pounds net dry weight) in an unaltered state in preparation for sale or distribution to another person.

Mobile containers. Containers designed and used for transporting pesticide materials.

Nonmobile containers. All containers not defined as mobile.

Permanent pesticide storage and mixing site. Site where pesticides are being stored for more than thirty (30) days per year and at which more than three hundred (300) gallons of liquid pesticide or three hundred (300) pounds of dry pesticide are being mixed, repackaged or transferred from one container to another within a thirty (30)-day period.

Secondary containment. Any structure used to prevent runoff or leaching of pesticide materials.

21—9.2(206) On-site containment of pesticides. Commencing two (2) years after the adoption of these rules, all nonmobile bulk pesticide storage containers shall be located within a watertight secondary containment facility.

Commencing two (2) years after the adoption of these rules, all mixing, repackaging and transfer of pesticides from one container to another performed at a permanent pesticide storage and mixing site shall be done within a containment area. The designated site shall be paved with asphalt or concrete and be elevated above surrounding area or curbed so as not to receive runoff from surrounding areas that would overload recovery system and shall slope to a discharge point that allows materials to flow to a watertight containment structure in compliance with rule 21—9.10(206).

21—9.3(206)* Design plans and specifications. Design plans and specifications for facilities required under these rules shall be submitted to the Iowa department of agriculture and land stewardship prior to the start of construction, along with certification from an Iowa registered engineer (as defined in Iowa Code chapter 114) that the designed facilities will comply with all requirements of these rules.

A person may deviate from the requirements of these rules if such deviations are clearly noted on the design plans and specifications, along with certification from an Iowa registered engineer that these deviations will not reduce the effectiveness of the facilities in protecting surface or groundwaters.

21—9.4(206) Certification of construction. Upon completion of construction, certification by the owner or owner's agent shall be made to the Iowa department of agriculture and land stewardship that the facilities were constructed in accordance with rules 9.2(206) to 9.11(206). If departmental investigation, subsequent to the completion of construction, determines the constructed facilities were not constructed in accordance with the submitted plans and specifi-

* Effective date of 11/12/86 delayed seventy days by the administrative rules review committee at its 11/11/86 meeting.

cations or the requirements of these rules, the owner shall correct any deficiencies in a timely manner as set forth by the department.

The department may exempt any person from a requirement under rules 21—9.2(206) to 21—9.11(206) if an engineering justification is provided demonstrating variations from the requirements will result in at least equivalent effectiveness.

21—9.5(206) New pesticide storage and mixing site location. New permanent storage and mixing sites as defined in subrule 9.1(3) shall be selected in accordance with requirements of the Iowa department of natural resources. The new site, if located in a flood plain, shall be protected from inundation from floods. New permanent pesticide storage and mixing sites shall be located a minimum of four hundred (400) feet from public water supply wells or below ground level finished water storage facilities and a minimum of one hundred fifty (150) feet from private water supply wells.

21—9.6(206) Pesticide storage and mixing site. Each site shall comply with those ordinances and regulations enacted by the city or county affected by such location that related to the location of such sites. All sites and facilities where flammable pesticides are stored shall comply with state and federal fire protection rules and regulations, including the National Fire Protection Standards (Standard 30) for storage of flammable liquids.

21—9.7(206)* Secondary containment for nonmobile bulk pesticide storage and mixing. Base and walls of secondary containment facilities must be constructed of concrete, steel or other impervious materials which are compatible with the pesticides being stored and will maintain their integrity under fire conditions. Storage containers must be anchored, as necessary, to prevent flotation or instability in the event of discharge into the secondary containment facility. Routine inspection is required to ensure against cracks or other conditions that may reduce the effectiveness of the containment facility. Cracks that occur in a secondary containment structure must be repaired with an acceptable sealant, and other repairs shall be made as needed to maintain the effectiveness of the containment facility.

The diked area shall not have a relief outlet and valve. The base shall slope to a collecting spot where precipitation water may be pumped out, provided the liquid is not contaminated with pesticides. If contaminated with a pesticide, the liquid shall be disposed of in accordance with applicable hazardous or solid waste requirements or field applied according to the pesticide label instructions.

9.7(1) Secondary containment for nonmobile bulk pesticide storage located in other than an enclosed structure shall be constructed with a volume sufficient to contain a minimum of one hundred ten percent (110%) of the capacity of the largest single container, plus the space occupied by other tanks located within the secondary containment structure.

9.7(2) Secondary containment for nonmobile bulk pesticide storage located in an enclosed structure shall be constructed with a volume sufficient to contain a minimum of one hundred percent (100%) of the capacity of the largest single container, plus the space occupied by other tanks located within the secondary containment structure.

9.7(3) Precipitation must not be allowed to accumulate in the secondary containment facility. Failure to properly maintain secondary containment facilities may subject the firm to state and federal regulations related to hazardous waste generators.

9.7(4) Discharges into a secondary containment facility must be promptly recovered to the maximum extent possible. Failure to properly manage discharge may subject the firm to pesticide misuse regulations and possibly to regulations related to hazardous waste generators.

9.7(5) Pesticides must be handled in a manner that minimizes the movement of pesticide dusts, aerosols and vapors from the pesticide storage and mixing site.

9.7(6) Discharge of pesticides from a secondary containment facility shall be recovered to the maximum extent possible. The Iowa department of natural resources, the county sheriff or local police shall be contacted as soon as possible, but not later than six hours of onset or discovery of spill.

*Objection imposed 1/19/87, see "Objection, 9.7" following.

Re: OBJECTION—ARC 7020, rule 21—9.7(206) relating to the on-site containment of pesticides.

At a special meeting held January 19, 1987, the Administrative Rules Review Committee voted to object to the provisions of 21 I.A.C. rule 9.7 on the grounds that it is unreasonable. The committee is specifically concerned with the provision in rule 9.7 which provides that the containment facility must be constructed of material which "will maintain [its] integrity under fire conditions..." This requirement precludes the use of plastic diking materials. In the opinion of the committee it is more environmentally sound to allow a chemical to burn than it is to attempt to contain it. It has been argued that under heat a concrete containment facility will crack and allow the chemical to seep down into the soil; with the result that the subsequent clean-up operation will be more expensive than if the chemical was simply allowed to burn off. The committee believes that the department's rule is overly restrictive and places undue emphasis on the use of concrete.

This rule appears as part of ARC 7020 and is published in IAB, Vol. IX, No. 8 (10-8-86).

INSURANCE DIVISION[191]

[Prior to 10/22/86, see Insurance Department(510), renamed Insurance Division[191] under the "umbrella" of Department of Commerce by the 1986 Iowa Acts, Senate File 2175]

ORGANIZATION AND PROCEDURES

CHAPTER 1
ORGANIZATION OF DIVISION

CHAPTER 2
PETITION FOR DECLARATORY RULINGS
(Uniform Rules)

CHAPTER 3
ADMINISTRATIVE HEARINGS OF CONTESTED CASES

CHAPTER 4
PETITION FOR RULE MAKING
(Uniform Rules)

GENERAL RULE MAKING PROCEDURES

REGULATION OF INSURERS

CHAPTER 5
REGULATION OF INSURERS—GENERAL PROVISIONS

DISCLOSURE OF MORTGAGE LOAN APPLICATIONS

CHAPTER 2
PETITION FOR DECLARATORY RULINGS
[Prior to 2/11/87, see 191—2.6]

The commissioner of insurance hereby adopts the petition for declaratory rulings segments of the Uniform Administrative Rules which are printed in the front of Volume I of the Iowa Administrative Code, with the following amendments.

191—2.1(17A) Petition for declaratory rulings. In lieu of the words "AGENCY NAME," the heading on the petition form should read:

BEFORE THE COMMISSIONER
OF INSURANCE FOR THE STATE OF IOWA

191—2.3(17A) Inquiries. Inquiries concerning the status of a petition for a declaratory ruling may be made to the Commissioner of Insurance, Lucas Building, Des Moines, Iowa 50319.

[Filed 1/1/75]
[Filed 3/2/79, Notice 1/10/79—published 3/21/79, effective 4/26/79]
[Editorially transferred from (510) to (191), IAC Supp 10/22/86, see IAB 7/30/86]
[Filed 1/23/87, Notice 11/5/86—published 2/11/87, effective 3/18/87]

CHAPTER 3
ADMINISTRATIVE HEARINGS OF CONTESTED CASES

[Prior to 10/22/86, Insurance Department(510)]

191—3.1(17A,502,505) Scope of rules. The rules contained in this chapter and in Iowa Code chapter 17A shall govern all administrative hearings, and all matters related thereto, and are designed to implement the requirements of and aid in the efficient and effective administration and enforcement of the insurance and securities laws of this state. These rules shall govern the practice, procedure and conduct of informal proceedings, contested case proceedings, licensing, and reviews including but not limited to:

3.1(1) Securities (Blue Sky Law)—Iowa Code sections 502.204, 502.209, 502.304, 502.607.
3.1(2) Unauthorized insurers—Iowa Code section 507A.7.
3.1(3) Insurance trade practices—Iowa Code section 507B.6.
3.1(4) Insurers supervision—Iowa Code sections 507C.2, and 507C.5.
3.1(5) Insurance assistance Act—Iowa Code section 507D.2.
3.1(6) Conversion—Iowa Code section 508B.7.
3.1(7) Health maintenance organizations—Iowa Code section 514B.26.
3.1(8) Insurance other than life—Iowa Code section 515.133.
3.1(9) Fire and casualty insurance—Iowa Code section 515A.18.
3.1(10) Automobile insurance cancellation control—Iowa Code section 515D.10.
3.1(11) Mutual fire, tornado, hail storm and other assessment insurance asociations—Iowa Code section 518A.43.
3.1(12) Medical malpractice insurance—Iowa Code section 519A.10.
3.1(13) Reciprocal or interinsurance contracts—Iowa Code section 520.15.
3.1(14) Insurance holding company systems—Iowa Code section 521A.12.
3.1(15) Licensing of insurance agents—Iowa Code section 522.3.
3.1(16) Business opportunity promotions—Iowa Code section 523B.8.

191—3.2(17A,502,505) Definitions. As used in the rules contained herein, the following definitions apply, unless the context otherwise requires:

"Commission" means the Iowa division of insurance, of the department of commerce.

"Commissioner" means the commissioner of insurance, an appointee or delegatee.

"Contested case" means a proceeding, including licensing, in which the legal rights, duties or privileges of a party are required by constitution or statutes to be determined by an agency after an opportunity for an evidentiary hearing.

"Hearing officer" means the person assigned to preside over a proceeding whether that be the commissioner or an administrative hearing officer appointed according to Iowa Code chapter 17A.

"License" means the whole or a part of any permit, certificate, approval, registration, charter, or similar form of permission required by statute.

"Party" means any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, including intervenors.

"Person" means any individual, estate, trust, fiduciary, partnership, corporation, association, a governmental subdivision or agency, or public or private organization of any character or any other person covered by the Iowa administrative procedure Act other than an agency.

"Proceeding" means licensing, rule making, declaratory ruling, contest cases, review, formal or informal procedures allowed by law.

191—3.3(17A,502,505) Informal settlement. A party to a controversy that may culminate in contested case proceedings may attempt to settle it informally by complying with the procedures as set forth in this rule. No party to such a controversy shall be required to settle the controversy by submitting to informal settlement procedures.

3.3(1) Parties desiring to informally settle a controversy shall set forth in writing the various points of a proposed settlement which may include a stipulated statement of facts.

CHAPTER 4
PETITION FOR RULE MAKING

The commissioner of insurance hereby adopts the petition for rule-making segments of the Uniform Administrative Rules which are printed in the front of Volume I of the Iowa Administrative Code, with the following amendments.

191—4.1(17A) Petition for rule making. In lieu of the words "AGENCY NAME" the heading on the petition form should read:

BEFORE THE COMMISSIONER
OF INSURANCE FOR THE STATE OF IOWA

191—4.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Commissioner of Insurance, Lucas Building, Des Moines, Iowa 50319.

GENERAL RULE MAKING PROCEDURES

[Rules 4.5 to 4.7 previously 2.3 to 2.5, see IAB 2/11/87]

191—4.5(502,505) Public hearings. Prior to adoption, amendment or repeal of any rule the division shall give notice of intended action by causing said notice to be published in the Iowa Administrative Bulletin. A public hearing for the purpose of making oral presentations about proposed new rules or rule changes shall be held prior to the adoption, amendment or repeal of any rule if a request for hearing is made by twenty-five (25) interested persons, by a governmental subdivision, by the Administrative Rules Review Committee, by an agency, or by an association having not less than twenty-five (25) members. The division may, in its discretion, schedule public hearings and request oral presentations whenever the above requirements have not been met.

4.5(1) Any person wishing to make an oral presentation shall request to do so in writing and address the request to the same person specified in the notice of intended action for receiving data, views, or arguments.

4.5(2) A separate request shall be made for each proposed rule under each notice of intended action.

4.5(3) A request shall be considered timely when received within thirty (30) days following the date of publication of the notice of intended action.

4.5(4) The department may decline to accept requests for oral presentations received after the deadline.

191—4.6(502,505) Notice of public hearing. Notice of the public hearing shall be published in the Iowa Administrative Bulletin. Such notice shall include the date, time and location of the oral presentation(s) and shall be given not less than twenty (20) days prior to the time of the hearing.

191—4.7(502,505) Presiding officer. The commissioner or a presiding officer appointed by the commissioner shall preside over the public hearing. During the hearing the commissioner or presiding officer is authorized to:

4.7(1) Open the hearing and receive oral presentations.

4.7(2) Review rule(s) under adoption, amendment or repeal and provide a rationale for the proposed action of the division including the intended effect or purpose of proposed rule changes.

4.7(3) Set a time limit on oral presentations if necessary.

4.7(4) Exclude any individual who is either disruptive or obstructive to the hearing.

4.7(5) Rule on the relevancy of an oral presentation or discussion.

4.7(6) Place into the official public record written comments which are or will be submitted.

4.7(7) Adjourn the hearing.

4.7(8) Take any other action necessary to properly conduct the hearing.

Whenever possible a speaker should also submit in written form that testimony given in an oral presentation.

These rules are intended to implement Iowa Code sections 502.2, 505.8 and 17A.7.

[Filed July 1, 1975]

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REGULATION OF INSURERS

CHAPTER 5
REGULATION OF INSURERS—GENERAL PROVISIONS

[Prior to 10/22/86, Insurance Department(510)]

191—5.1(507) Examination reports. Upon the completion of an examination a copy of the report will be furnished the company, association or society examined, whereupon the company, association or society will have twenty (20) days in which to determine whether or not it will demand a hearing before the commissioner of insurance. If a hearing is desired, then and in that event the company, association or society shall, within said twenty (20) days file with the commissioner of insurance a written application, attaching thereto the specific grounds upon which a hearing is desired. Within a reasonable time after the receipt of said application, the commissioner will fix a date for the hearing and notify the company, association or society thereof. Upon the completion of the hearing, or as soon as convenient thereafter, the commissioner shall render the commissioner's decision, either orally or in writing at the commissioner's discretion and file said report as part of the records in the division.

This rule is intended to implement Iowa Code sections 505.8 and 507.2.

191—5.2(505,507) Examination for admission. Any foreign or alien insurance company seeking to be admitted to do business in the state of Iowa shall, at the discretion of the division of insurance, be subject to either or both of the following:

1. An on-site examination by the division;
2. A desk examination, if the applicant provides a financial examination report prepared by the insurance regulatory body of the applicant's state or country of domicile. The examination report must be certified by the issuing regulatory body and must have an effective date of not more than two (2) years prior to the date of application for admission.

This rule is intended to implement Iowa Code section 507.2.

191—5.3(507) Submission of quarterly financial information. All insurers, corporations, associations, and other entities required to submit annual financial statements to the commissioner shall also submit a short form quarterly financial statement within forty-five (45) days of the close of each calendar quarter on a form as specified by the commissioner. Included in the quarterly report shall be an exhibit showing a count of policies in force by line of business as of the close of the quarter.

This rule is intended to implement Iowa Code section 507.2.

5.4 to 5.9 Reserved.

191—5.10(511) Life companies—investment in preferred stocks. The phrase "preferred dividend requirements as of the date of acquisition" is construed to include the dividend requirements of a new issue. Consequently, a new preferred issue will qualify if the net earnings of the corporation for each of the five (5) preceding years have been not less than one and one-half times the sum of the annual fixed charges, contingent interest and the annual preferred dividend requirements including the new issue.

191—5.11(511) Investment of funds.

Ruling No. R21. By Division.

The Forty-first General Assembly of Iowa amended [508 & 511](511.8) of the Code of 1924, relating to the investment of funds by life insurance companies organized in this state, by adding to paragraph one (1) of said section the following:

"Or federal farm loan bonds issued under the Act of Congress, approved July 17, 1916."

Doubt has arisen in the minds of company officials as to whether or not the amendment in question authorizes life insurance companies organized in Iowa to invest their funds in bonds issued by joint stock land banks.

In a written opinion of the attorney general of Iowa, bearing date May 25, 1925, it is held that, inasmuch as joint stock land banks were created under the Act of Congress approved July 17, 1916, bonds issued by such banks are included in the amendment aforesaid.

Therefore, it is the ruling of this division that such bonds are a legal investment for life insurance companies organized in this state. However, said amendment is not effective until July 4, 1925 and until said date no such investments should be made.

191—5.12(515) Collateral loans. The collateral pledged to secure a loan must qualify as a legal investment for insurance companies before the loan it secures may so qualify [section 515.35(7)]. The statute provides that a company may not invest in excess of thirty percent (30%) of its capital and funds in stocks and not more than ten percent (10%) of its capital and surplus in the stock or bonds, or both, of any one corporation.

Normally, a loan is little better than the collateral securing it. Therefore, in order to conform to the intent and purpose of the legislature it would appear that the same limitations should likewise be applied to the stock securing a collateral loan. The statute also provides that the value of the collateral must exceed the amount of the loan by ten percent (10%).

191—5.13(508,515) Loans to officers, directors, employees, etc. No insurance company or association of any kind, domiciled in the state of Iowa, shall loan any portion of its funds to an officer, director, stockholder, employee or any relative or immediate member of the family of an officer or director.

The provisions of Iowa Code sections 508.8 and 511.12 shall likewise be applicable to fire and casualty companies.

191—5.14(515) Salvage as an asset. As to domestic and authorized foreign insurers, anticipated salvage and subrogation recoveries cannot be deducted from loss reserves nor reflected as an asset in annual statements or interim statements filed with the division until such time as the recovery has been reduced to money, money's equivalent, or converted to assets recognized under Iowa Code chapter 515. This rule shall be construed to have both retroactive and prospective effect.

5.15 to 5.19 Reserved

191—5.20(508) Computation of reserves. Iowa life insurance companies may report the nonadmitted excess item to this division on the basis of the true reserve instead of the mean reserve as has been the practice in the past. Under the true reserve system there will be no excess excepting in the case of indebtedness in excess of policy liabilities. The true reserve system eliminates all excess on account of due and deferred premiums, but there may be an excess equal to or in excess of the loading depending upon what premium the note represents, and how long it has been running when a premium note is taken for the gross premiums or when there is an overloan.

This concession is made to Iowa companies with the conviction that it removes many of the defects and disadvantages of the present practice of requiring the excess of the mean reserve.

191—15.92(507B) Applicability. This rule shall apply to all contracts delivered or issued for delivery in this state on or after the effective date of this rule and to all existing contracts which are amended or renewed on or after the effective date of this rule.

191—15.93(507B) Unfair discriminatory acts or practices. The following is hereby identified as an act or practice which constitutes unfair discrimination between insureds of the same class: Providing, under a contract, any benefit for services received by a resident in a "skilled nursing facility" as defined in Iowa Code section 135C.1(3) if the same benefit is not also provided for the same services when received by a resident in an "intermediate care facility" as defined in Iowa Code section 135C.1(2).

191—15.94(507B)◊ Procedure for filing complaint. All complaints relating to matters involving insurance practices shall be in writing before the insurance division will initiate formal investigation of such complaints. The written complaint shall contain the name and address of the complainant along with information specific enough to identify the insurance company, insured party, insurance policy or agent involved, and a brief description of the facts surrounding the insurance practice complained of. The complaint should be addressed to the insurance division and may either be mailed or hand delivered to the division.

These rules are intended to implement Iowa Code subsection 507B.4(7).

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*The Administrative Rules Review Committee at their February 13, 1979 meeting delayed the effective date of rules 15.90 to 15.93 seventy days.

**Effective date (12/31/81) of rules 15.9 and 15.31 delayed seventy days by the Administrative Rules Review Committee.

◊Prior to 2/11/87, rule 2.1.

CHAPTER 16
REPLACEMENT OF LIFE INSURANCE AND ANNUITIES

[Prior to 10/22/86, Insurance Department(510)]

191—16.1(507B) Purpose and authority.

16.1(1) The purpose of these rules is:

a. To regulate the activities of insurers, agents and brokers with respect to the replacement of existing life insurance and annuities; and

b. To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement transactions by:

(1) Assuring that purchasers receive information with which a decision can be made in the best interests of the purchasers;

(2) Reducing the opportunity for misrepresentation and incomplete disclosures; and

(3) Establishing penalties for failure to comply with requirements of this chapter.

16.1(2) These rules are authorized by Iowa Code section 507B.12 and are intended to implement Iowa Code section 507B.4.

191—16.2(507B) Definition of replacement. "Replacement" means any transaction in which new life insurance or a new annuity is to be purchased, and it is known or should be known to the proposing agent or broker or to the proposing insurer if there is no agent, that by reason of such transaction, existing life insurance or annuity has been or is to be:

16.2(1) Lapsed, forfeited, surrendered, or otherwise terminated;

16.2(2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

16.2(3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

16.2(4) Reissued with any reduction in cash value; or

16.2(5) Pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding twenty-five percent (25%) of the loan value set forth in the policy.

191—16.3(507B) Other definitions.

16.3(1) *"Conservation"* means any attempt by the existing insurer or its agent or broker to dissuade a policyowner from the replacement of existing life insurance or annuity. Conservation does not include such routine administrative procedures as late payment reminders, late payment offers or reinstatement offers.

16.3(2) *"Direct-response sales"* means any sale of life insurance or annuity where the insurer does not utilize an agent in the sale or delivery of the policy.

16.3(3) *"Existing insurer"* means the insurance company whose policy is or will be changed or terminated in such a manner as described within the definition of "replacement."

16.3(4) *"Existing life insurance or annuity"* means any life insurance or annuity in force, including life insurance under a binding or conditional receipt or a life insurance policy or annuity that is within an unconditional refund period.

16.3(5) *"Replacing insurer"* means the insurance company that issues or proposes to issue a new policy or contract which is a replacement of existing life insurance or annuity.

16.3(6) *"Registered contract"* means variable annuities, investment annuities, variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account, or any other contracts issued by life insurance companies which are registered with the Federal Securities and Exchange Commission.

191—16.4(507B) Exemptions.

16.4(1) Unless otherwise specifically included, this chapter shall not apply to transactions involving:

a. Credit life insurance;

b. Group life insurance or group annuities;

(4) If there is a failure to select, in order, the first four (4) greyhounds, the pool shall be divided among holders of superfecta tickets selecting the first three (3) greyhounds, in order; failure to select the first three (3) greyhounds, the pool shall be divided among holders of superfecta tickets selecting the first two (2) greyhounds, in order; failure to select the first two (2) greyhounds, the pool shall be divided among holders of superfecta tickets selecting the winner to win; failure to select the winner to win the pool shall be divided among holders of superfecta tickets selecting the greyhound finishing second to place; failure to select the greyhound finishing second to place, the pool shall be divided among holders of superfecta tickets selecting the greyhound finishing third to show; failure to select the greyhound finishing third to show, the pool shall be divided among holders of superfecta tickets correctly selecting the greyhound finishing fourth.

(5) In the event of a dead heat or dead heats, all tickets selecting the correct order of finish, counting a greyhound in a dead heat as finishing in either position dead heated, shall be winning tickets, and distribution shall be made in accordance with the rules in this chapter relative to dead heats.

(6) If only three (3) greyhounds finish the race, the pool shall be divided among the holders of superfecta tickets selecting the first three (3) greyhounds, in order, ignoring the greyhound selected to finish fourth. If less than three (3) greyhounds finish the race, a complete refund of the superfecta pool shall be made (see subrule 7.14(11)).

195—8.3(99D) Refunds.

8.3(1) If after win, place, or show wagering has commenced, a runner not coupled with another as a betting interest is excused by the stewards or is prevented from racing because of failure of the starting gate/box to open properly, the wagers on such runner shall be deducted from the win, place, and show pools, as the case may be, and refunded upon presentation and surrender thereof. If more than one runner represents a single betting interest by reason of coupling as a mutuel entry or mutuel field, such single betting interest being the sole subject of a wager or part of a combination in a daily double, exacta, quiniela, quiniela double, or pic-six wager, then there shall be no refund unless all of the runners representing such single betting interest are excused by the stewards or are prevented from racing runners because of failure of the starting gate/box to open properly.

8.3(2) If after exacta, quiniela, and quiniela double wagering has commenced, a runner not coupled with another as a betting interest is excused by the stewards or is prevented from racing because of failure of the starting gate/box to open properly, then exacta, quiniela, and quiniela double wagers combining such runner with any other runner or betting interest shall be deducted from the exacta, quiniela, and quiniela double pool and refunded upon presentation and surrender of exacta, quiniela, and quiniela double tickets thereon.

195—8.4(99D) Race canceled. If for any reason a race is canceled or declared "no race" by the stewards after wagering has commenced on that race, then all wagering shall be refunded upon presentation and surrender of pari-mutuel tickets; except as otherwise provided for in these rules.

195—8.5(99D) Totalizator breakdown. In the event of an irreparable breakdown of the totalizator during the wagering on a race, the wagering on that race shall be declared closed and the payoff shall be computed on the sums wagered in each pool up to the time of the breakdown.

195—8.6(99D) Minimum wager and payoff. For all wagers except the trifecta and the superfecta, the minimum wager to be accepted by any licensed association shall be two dollars ($2). The minimum payoff on a two dollar ($2) wager shall be two dollars and twenty cents ($2.20). The licensed association may set the minimum wager for the trifecta and superfecta or combinations thereof at one dollar ($1). The minimum payoff for a one dollar ($1) wager shall be one dollar and ten cents ($1.10).

195—8.7(99D) Minors prohibited from wagering. No minor shall be permitted by any licensed association to purchase or cash a pari-mutuel ticket.

195—8.8(99D) Odds or payoffs posted. Approximate odds, based on win pool betting for finishing first for each betting interest, shall be posted on one or more boards or television screens within view of the wagering public, at intervals of not more than ninety (90) seconds. If daily double wagering is conducted, before off-time of the second daily double race, the possible payoff for each two dollar ($2) daily double wager combining the winner of the first daily double race with every runner or betting interest in the second daily double race shall be posted or announced; excepting that, in the event of a dead heat for first in the first daily double race, or a scheduled starter in the second daily double race is excused so as to cause a consolation daily double pool, then posting of all possible payoffs shall not be mandatory, but the association shall make every effort to compute daily double prices and advise the public of them by posting or public address announcement as soon as possible and prior to the running of the second daily double race.

195—8.9(99D) Betting explanation. Each association shall cause to be published in the daily race program a general explanation of pari-mutuel betting and an explanation of each type of betting pool offered; the explanation shall be posted in conspicuous places about the association grounds so as to adequately inform the public. Such explanation shall be submitted to the state steward prior to publication so as to ensure an absence of conflict with these rules.

The association shall post a copy of the commission rules regarding the calculation and distribution of the wagering pools in a conspicuous place.

195—8.10(99D) Prior approval required for betting pools. Each association desiring to offer daily double, quiniela, or quiniela double wagering, shall first apply in writing to the commission and obtain specific approval as to number of betting races and type of wagering to be offered on a single day.

195—8.11(99D) Pools dependent upon entries.

8.11(1) Unless the commission approves a prior written request from the association to alter wagering opportunities for a specific race, each association shall offer win, place, and show wagering on all programmed races involving six (6) or more betting interests.

8.11(2) If runners representing five (5) or fewer betting interests qualify to start in a race, then the association may prohibit show wagering on that race; if runners representing four (4) or fewer betting interests qualify to start in a race, then the association may prohibit multiple and both place and show wagering on that race.

8.11(3) If, by reason of a runner being excused by the stewards after wagering has commenced or a runner is prevented from racing because of failure of a starting gate/box to open properly, the number of actual starters representing different betting interests is:

a. Reduced to five (5), then the association may cancel show wagering on that race and that entire show pool shall be refunded upon presentation and surrender of show tickets;

b. Reduced to four (4) or fewer, then the association may cancel both place and show wagering on that race and the entire place pool and show pool shall be refunded upon presentation and surrender of such place and show tickets.

195—8.12(99D) Pari-mutuel ticket sales.

8.12(1) No pari-mutuel tickets shall be sold except by the association conducting the races on which wagers are made, and tickets shall be sold only at regular "seller" windows properly designated by signs showing the type and denomination of tickets to be sold at such windows. No pari-mutuel ticket may be sold after the totalizator has been locked and no association shall be responsible for ticket sales entered into but not completed by issuance of a ticket before the totalizator has been locked.

8.12(2) Any claim by a person that the person has been issued a ticket other than that requested, must be made before that person leaves the seller window and before the totalizator is locked.

8.12(3) After purchasing a ticket and after leaving a ticket window, a person shall not be entitled to enter for issuance an incorrect ticket, or claim refund or payment for tickets discarded, or lost, or destroyed, or mutilated beyond identification.

8.12(4) Payment on valid pari-mutuel tickets shall be made only upon presentation and surrender to the association where the wager was made within sixty (60) days following the close of the meet during which the wager was made. Failure to present any such ticket within sixty (60) days shall constitute a waiver of the right to receive payment.

8.12(5) Payment of valid pari-mutuel tickets shall be made on the basis of the order of finish as purposely posted on the infield results board and declared "official" by the stewards; and subsequent change in the order of finish or award of purse money as may result from a subsequent ruling by the steward or commission, shall in no way affect the pari-mutuel payoff.

8.12(6) The association shall be responsible for the correctness of all payoff prices posted as "official" on the infield results board. If an error is made in posting the payoff figures on the public board, and ascertained before any tickets are cashed, then the posting error may be corrected accompanied by a public address announcement, and only the correct amounts shall be used in the payoff, irrespective of the initial error on the public board.

8.12(7) Prior to posting payoffs, the pari-mutuel manager shall require each of the computer printout sheets (calculating sheets) of the race to be proven by the computer (calculator) and the winners verified. This proof shall show the amounts for commission, breakage, and payoffs, which added together shall equal the total pool. All pay slips are to be checked with computer printout sheets (calculating sheets) as to winners and prices before being issued to cashiers, and all board prices are to be rechecked with the computer printout sheet (calculator) before released to the public.

8.12(8) Whenever the recapitulation of the sales registered by each ticket issuing machine subsequently proves that the actual amount in the pool, or pools, is less than the amount used in calculating the payoff, the deficiency shall be deposited in the pool or pools by the association. Should the recapitulation of sales prove that the actual amount in the pool or pools is greater than the amount used in calculating the pay-off due to a mechanical error of the totalizator, resulting in underpayment to the public, then the aggregate or the underpayments shall be paid into the corresponding pool of the next race or races, in amounts determined by the state steward and the pari-mutuel manager. If any error should occur in computing the daily double, quiniela double or pic-six pool, the underpayment shall be added to the daily double, quiniela double or pic-six pool of the following day. Overpayments and underpayments subsequently discovered upon recapitulation after the close of a meeting may be adjusted, and any underpayment resulting from the final adjustment shall be paid to the state as provided in Iowa Code chapter 556.

195—8.13(99D) Betting interests involving more than one runner. When two (2) or more runners entered for the same race are determined by the stewards to have common ties through ownership or training and are joined by the stewards as a "mutuel entry," the mutuel entry shall become a single betting interest and a wager on one (1) runner in a mutuel entry shall be a wager on all runners in the same entry. When the number of runners competing in a race exceeds the numbering capacity of the totalizator, the racing secretary shall assign the highest pari-mutuel numbers to runners so that the highest numbered runner within the numbering capacity of the totalizator, together with runners of higher numbers, shall be grouped in the "mutuel field" as a single betting interest, and a wager on one (1) runner in the mutuel field shall be a wager on all runners in the same field.

195—8.14(99D) Emergency situation. In the event any emergency arises in connection with the operation of the pari-mutuel department not provided for by these rules, then the pari-mutuel manager, after consultation with the mutuels supervisor, shall make a decision and render a full report to the commission.

195—8.15(99D) Commission mutuels supervisor. The commission may employ a mutuels supervisor with accounting experience to serve as the commission's designated representative at each race meeting as provided in Iowa Code section 99D.19.

8.15(1) The mutuels supervisor shall be responsible for ascertaining whether the proper amounts have been paid from pari-mutuel pools to the betting public, to the association, and to the appropriate levels of government, by checking, auditing, and filing with the commission verified reports accounting for daily pari-mutuel handle distribution and attendance for each preceding racing day and the final report at the conclusion of each race meeting.

a. Daily reports to the commission shall show for each race the number of starters, number of betting interests, total money wagered in each betting pool, refunds, purses, distance, conditions, or grade, and any minus pools resulting, with an explanation.

b. Daily reports shall also show the sum of all betting pool, total refunds, total pari-mutuel handle for the comparable racing day for the preceding year, cumulative total and daily average pari-mutuel handle for the race meeting, amount of pari-mutuel tax due the state, county and city, taxable admissions and total admissions, temperature, weather, track conditions, and post time of first race.

8.15(2) The commission mutuels supervisor shall submit to the commission on or before seven (7) days after the close of each race meeting a final verified report giving in summary form a recapitulation of the daily reports for each race meeting and other information the commission may require.

8.15(3) The commission mutuels supervisor shall have full access to all the books, records, papers and pari-mutuel equipment of the licensee and to all places within the enclosure of the meeting at all times. The officers and employees of the licensee shall promptly give the commission mutuels supervisor information requested, and shall cooperate with the supervisor in the performance of the supervisor's duties.

8.15(4) A licensee shall keep its books and records so as to clearly show the following:

a. The total number of admissions to races conducted by it on each racing day, including the number of admissions upon free passes or complimentary tickets.

b. The amount received daily from admission fees.

c. The total amount of money wagered during the race meet.

The commission mutuels supervisor shall supervise and check the admissions to determine if the licensee is complying with the provisions of Iowa Code section 99D.19.

These rules are intended to implement Iowa Code chapter 99D.

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area, and not more than one business party shall be connected to any line within the base rate area. It shall also be the objective of telephone companies to ultimately provide one-party service to all business customers.

22.3(4) *Class of service.* No utility shall serve business and residential subscribers on the same subscriber line. The one exception to this rule is where the owner or employee of a business subscribes to bridged or combination service to his own residential service in accordance with the utility's filed tariff.

22.3(5) *Compliance.* All telephone utilities shall comply with board subrules 22.3(3) and 22.3(4) by January 1, 1982, except that, in complying with the grade and class of service requirements of subrules 22.3(3) and 22.3(4) no utility shall be required to add more than ten percent (10%) of its net plant-in-service per year nor shall any utility be permitted to add less than five percent (5%) of its net plant-in-service per year.

22.3(6) *Pay telephone services and facilities.* All telephone utilities shall make available to customers provisions for the interconnection of pay telephone equipment.

22.3(7) *Extension plan.* Each utility shall develop a plan, acceptable to the board, for the extensions of facilities, where they are in excess of those included in the regular rates for service and for which the customer shall be required to pay all or part of the cost. This plan must be related to the investment that prudently can be made for the probable revenue. No utility shall make or refuse to make any extensions except as permitted by the approved extension plan.

22.3(8) *Exchange area boundary maps.* Each telephone utility shall maintain in a current status exchange area boundary maps and shall file them with the board as specified in Appendix A of the board order of December 29, 1972, in Docket No. U-358, "In Matter Of: Study Of Dual Telephone Service And Boundary Line Disputes," copies of which have been served upon all affected utilities and are on file and available for public inspection at the board offices.

22.3(9) *Traffic rules.*

a. Suitable practices shall be adopted by each telephone utility concerning the operating methods to be employed by operators with the objective of providing efficient and pleasing service to the customers.

b. Telephone operators shall be instructed to be courteous, considerate and efficient in the handling of all calls, and to comply with the provisions of the Communications Act of 1934 in maintaining the secrecy of communications.

c. All operator-handled calls shall be carefully supervised and disconnects made promptly.

d. When an operator is notified by a customer that he has reached a wrong number on a direct dialed call, the customer shall be given credit on his bill when the claim has been substantiated.

22.3(10) *"Directory assistance."* A telephone utility may charge a customer of a telephone exchange or service for directory assistance calls. This charge must be included in the telephone utility's tariff and approved by the board subject to the following limitations:

a. An application for new or changed rates, charges, schedules, or regulations filed on or after July 1, 1984, shall include in its schedule of directory assistance charges a provision that residential customers be provided a record of the date and time of each directory assistance call made from their residence.

b. A customer shall not be charged for the first seven (7) directory assistance calls from a customer's station each month for the first twelve (12) months that the tariff is in effect. After the first twelve (12) months of directory assistance charges, the number of directory assistance calls from the customer's station for which no charge shall be assessed shall be reduced to two (2) per month.

c. There shall be no charge for telephone directory assistance calls originating from hotels and motels, or hospitals.

d. Any customer who is visually, physically or mentally handicapped in a way that makes the customer unable to use a telephone directory shall be exempt from charges for directory assistance at both the customer's residence and place of employment. Each telephone utility shall, in its tariff filing, outline its method for certifying those persons eligible for the exemption.

e. Telephone directories shall be made available without charge to customers of a telephone utility and at a nominal charge for noncustomers.

22.3(11) *Nonworking numbers.* All nonworking numbers shall be placed upon an adequate intercept where existing equipment allows.

22.3(12) *Assignment of numbers.*

a. No telephone number shall be reassigned to a different customer within sixty (60) days from the date of permanent disconnect.

b. For customers assigned a new number within the exchange, the former working number intercept shall provide the new number to a calling party for not less than sixty (60) days or until the issuance of a new directory. No new number information shall be provided if the customer so requests.

Exception: When a change in number is required by a telephone utility due to nonpayment of yellow page advertising, the intercept is not required to volunteer the new number to callers. The new number shall be provided to callers of the directory assistance operator.

c. If the number assigned a customer results in wrong number calls sufficient in volume to be a nuisance, the number shall be changed at no charge.

22.3(13) *Ordering and transferring of service.* Telephone utilities shall permit the ordering and transferring of transmission service to be accomplished by telephone. A utility shall not volunteer prices or otherwise attempt to promote terminal equipment which is offered by an affiliated company when transmission service is ordered. A utility may not require customers to order transmission service through a company affiliated with that utility.

22.3(14) *Basic local service.* Telephone utilities shall make available, at such time as the board may implement rules concerning end-user toll network access charges, basic local service to all residential customers in exchanges technically capable of blocking access to the toll network on a reasonably economical basis. Telephone utilities shall not assess any access charge to the long-distance network for the provision of basic local service.

199—22.4(476) Customer relations.

22.4(1) *Customer information.*

a. Each utility shall:

(1) Maintain up-to-date maps, plans, or records of its entire exchange systems, together with such other information as may be necessary to enable the utility to advise prospective customers, and others entitled to the information, as to the facilities available for serving prospective customers in its service area.

(2) Prior to processing a request for transmission service, new inside station wiring or new or additional terminal equipment, inform the requesting party, whenever relevant, of: The nature of and rates for the lowest priced single and multiparty transmission service available at the relevant location, the customer's right to provide and own terminal equipment and new inside station wiring, the availability of information on new inside station wiring and the rate for transmission service and all other rates or charges that will be incurred after processing the request, both initially and on a continuing basis. The telephone utility shall also inform the party that the rate for transmission service is the same whether or not terminal equipment is provided by the customer.

(3) Notify customers affected by a change in rates or schedule classification.

(4) Post notices in a conspicuous place in each office of the utility where applications for service are received, informing the public that copies of the rate schedules and rules relating to the service of the utility, as filed with the board, are available for inspection and that customers have the right to own their own terminal equipment and that this will not affect the rate for transmission service.

a. Whether the reseller is, in fact, a local exchange carrier in its own right, as demonstrated by limitations on access to the original local exchange carrier, the geographical area of the offering, or other relevant factors; and

b. Whether the reseller is allowing access to the local exchange carrier on reasonable terms.

These rules are intended to implement Iowa Code sections 476.1, 476.2, 476.5, 476.6, 476.8, 476.9, and 1986 Iowa Acts, Senate File 2175, section 707.

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*Effective date of 12/1/83 of subrules 22.1(3), 22.2(5)"*v*", and 22.3(14) delayed seventy days by the administrative rules review committee on 11/8/83.
◊Two ARCs.

343—4.37(86,17A) Waiver of contested case provisions. The parties who wish to waive the contested case provisions of chapter 17A, shall file a written stipulation of such waiver with the industrial commissioner before such waiver shall be recognized. The waiver shall specify the provisions waived such as a consent to delivery, waiver of original notice, or waiver of hearing.

343—4.38(17A) Self-disqualification. Any individuals presiding over contested cases before the industrial commissioner shall disqualify themselves from conducting a hearing on the merits or deciding any contested case in which such individual has substantial prior contact or interest or is so related to or connected with any party or attorney thereto so as to give, in the opinion of the person presiding, even the appearance of impropriety for such individual to conduct such hearing or decide such case.

This rule is intended to implement Iowa Code section 17A.17.

343—4.39 Rescinded, effective 12/11/86.

These rules are intended to implement Iowa Code section 82.26 as amended by 1986 Iowa Acts, House File 2066, section 47, and Senate File 2175, section 902.

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CHAPTER 5
PETITION FOR DECLARATORY RULINGS

The division of industrial services adopts the petition of declaratory rulings segment of the Uniform Administrative Rules which are printed in the front of Volume I of the Iowa Administrative Code with the following amendments:

343—5.1(17A) Petition for declaratory rulings.

In lieu of the words "designate office" insert "the Division of Industrial Services, Department of Employment Services, 1000 East Grand Avenue, Des Moines, Iowa 50319."

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

BEFORE THE DIVISION OF INDUSTRIAL SERVICES

343—5.3(17A) Inquiries. Inquiries concerning the status of a petition for a declaratory ruling may be made to the Division of Industrial Services, Department of Employment Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code section 17A.9 and 1986 Iowa Acts, ch 1245, section 902.

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CHAPTER 7
PETITION FOR RULE MAKING

The division of industrial services adopts the petition for rule-making segments of the Uniform Administrative Rules which are printed in the front of Volume I of the Iowa Administrative Code, with the following amendments.

343—7.1(17A) Petition for rule making.

In lieu of the words "designate office" insert "the Division of Industrial Services, Department of Employment Services, 1000 East Grand Avenue, Des Moines, Iowa 50319."

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

BEFORE THE DIVISION OF INDUSTRIAL SERVICES

343—7.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Division of Industrial Services, Department of Employment Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

These rules implement Iowa Code chapters 85, 85A, 85B, 86, and 87, and specifically Iowa Code sections 85.27, 85.45, 85.48, 86.36, 17A.3(2) and 17A.12, respectively as amended by the 1986 Iowa Acts, chapter 1245, section 902.

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CHAPTER 8
SUBSTANTIVE AND INTERPRETIVE RULES

343—8.1(85) Transportation expense. Transportation expense as provided in Iowa Code sections 85.27 and 85.39 shall include but not be limited to the following:

1. The cost of public transportation if tendered by the employer or insurance carrier.
2. All mileage incident to the use of a private auto. The per mile rate for use of a private auto shall be the same as the state of Iowa reimburses its employees for travel.
3. Meals and lodging if reasonably incident to the examination.
4. Taxi fares or other forms of local transportation if incident to the use of public transportation.
5. Ambulance service or other special means of transportation if deemed necessary by competent medical evidence or by agreement of the parties.

Transportation expense in the form of reimbursement for mileage which is incurred in the course of treatment or an examination, except under Iowa Code section 85.39, shall be payable at such time as fifty miles or more have accumulated or upon completion of medical care, whichever occurs first. Reimbursement for mileage incurred under Iowa Code section 85.39 shall be paid within a reasonable time after the examination.

The industrial commissioner or a deputy commissioner may order transportation expense to be paid in advance of an examination or treatment. The parties may agree to the advance payment of transportation expense.

This rule is intended to implement Iowa Code sections 85.27 and 85.39.

343—8.2(85) Overtime. The word "overtime" as used in section 85.61(12) of the Code means amounts due in excess of the straight time rate for overtime hours worked. Such excess amounts shall not be considered in determining gross weekly wages within section 85.36 of the Code. Overtime hours at the straight time rate are included in determining gross weekly earnings.

This rule is intended to implement Iowa Code sections 85.36 and 85.61.

8.3 Rescinded, effective July 1, 1982.

343—8.4(85) Salary in lieu of compensation. The excess payment made by an employer in lieu of compensation which exceeds the applicable weekly compensation rate shall not be construed as advance payment with respect to either future temporary disability, healing period, permanent partial disability, permanent total disability or death.

This rule is intended to implement Iowa Code sections 85.31, 85.34, 85.36, 85.37 and 85.61.

343—8.5(85) Appliances. Appliances are defined as hearing aids, corrective lenses, orthodontic devices, dentures, orthopedic braces, or any other artificial device used to provide function or for therapeutic purposes.

Appliances which are for the correction of a condition resulting from an injury or appliances which are damaged or made unusable as a result of an injury or avoidance of an injury are compensable under Iowa Code section 85.27.

343—8.6(85,85A) Calendar days—decimal equivalent. Weekly compensation benefits payable under chapters 85 and 85A are based upon a seven-day calendar week. Each day of

HUMAN SERVICES DEPARTMENT[441]

Rules transferred from Social Services Department[770] to Human Services Department[498], see 1983 Iowa Acts, Senate File 464, effective July 1, 1983. Rules transferred from agency number [498] to [441] to conform with the reorganization numbering scheme in general, IAC Supp. 2/11/87.

TITLE VII
FOOD STAMP PROGRAM

CHAPTER 65
ADMINISTRATION

CHAPTERS 66 to 72
Reserved

CHAPTER 73
FEDERAL SURPLUS FOOD PROGRAM

CHAPTER 74
INSTITUTIONAL FOOD PROGRAM

TITLE VIII
MEDICAL ASSISTANCE

CHAPTER 75
CONDITIONS OF ELIGIBILITY

CHAPTER 85
INPATIENT PSYCHIATRIC SERVICES FOR INDIVIDUALS AGE 65 AND OVER AND UNDER AGE 21

CHAPTER 86
MEDICALLY NEEDY

CHAPTER 87
MEDICAID PROVIDER AUDITS

CHAPTER 88
HEALTH MAINTENANCE ORGANIZATIONS

CHAPTER 89
Reserved

TITLE IX
WORK INCENTIVE DEMONSTRATION

CHAPTER 90
WORK INCENTIVE DEMONSTRATION PROGRAM (WIN/CMS)

CHAPTERS 91 to 94
Reserved

TITLE X
SUPPORT RECOVERY

CHAPTER 95
COLLECTIONS

CHAPTER 96
NONASSISTANCE CHILD SUPPORT RECOVERY PROGRAM

CHAPTERS 97 to 99
Reserved

TITLE XI
CHILDREN'S INSTITUTIONS

CHAPTER 100
Reserved

CHAPTER 101
IOWA STATE JUVENILE HOME

CHAPTER 102
Reserved

CHAPTER 103
ELDORA TRAINING SCHOOL

CHAPTER 115
LICENSING AND REGULATION OF COMPREHENSIVE RESIDENTIAL FACILITIES FOR CHILDREN

CHAPTER 116
LICENSING AND REGULATION OF RESIDENTIAL FACILITIES FOR MENTALLY RETARDED CHILDREN

CHAPTER 117
FOSTER PARENT TRAINING

CHAPTERS 118 to 129
Reserved

TITLE XIII
SERVICE ADMINISTRATION

CHAPTER 130
GENERAL PROVISIONS

CHAPTER 131
CLIENT ASSESSMENT/CASE MANAGEMENT SERVICES

CHAPTERS 132 to 141
Reserved

CHAPTER 142
INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

CHAPTER 143
INTERSTATE COMPACT ON JUVENILES

CHAPTERS 144 to 149
Reserved

TITLE XIV
GRANT/CONTRACT/PAYMENT ADMINISTRATION

CHAPTER 150
PURCHASE OF SERVICE

TITLE I
GENERAL DEPARTMENTAL PROCEDURES

CHAPTER 1
DEPARTMENTAL ORGANIZATION AND PROCEDURES

[Prior to 7/1/83, Social Services (770), Ch 1]
[Prior to 2/11/87, Human Services(498)]

MISSION STATEMENT

The Iowa department of human services exists to provide a continuum of integrated human services to Iowans who experience personal, economic, and social problems in order to relieve their constraining conditions and develop and enhance their individual productivity and family life.

The department is dedicated to improving the well-being of Iowa's poor, neglected, abused, handicapped, and ill. The primary responsibility of the department is to help individuals or families become self-sustaining. Staff provide a "continuum of services" so that services are available to help clients at all levels and stages of their problems. The department strives to maintain cooperative relationships with community-based providers to ensure that clients receive care close to their homes.

441—1.1(17A) Commissioner. All operations of the department of human services are, by law, the responsibility of the commissioner. The commissioner's responsibilities include:

1.1(1) The formulation of department policy within the limits set forth in the statutes of the State of Iowa;

1.1(2) Establishing standards of performance for all divisions and offices of the department;

1.1(3) Maintaining liaison with the governor, other agencies of the state, and public and private agencies outside of state government on behalf of the department;

1.1(4) Fully informing the public of department programs;

1.1(5) Serving as principal agent for the department in all legal matters and development of legislative programs to support and improve agency efforts.

This rule is intended to implement Iowa Code section 17A.3(1)*"a."*

441—1.2(17A) Council. The commissioner of the department has, by statute, the advice and counsel of the council on human services. This seven (7)-member council is appointed by the governor with consent of two-thirds (⅔) of the Senate and its powers and duties are policymaking and advisory with respect to the services and programs operated by the department.

1.2(1) A quorum shall consist of two-thirds (⅔) of the membership appointed and qualified to vote.

1.2(2) Where a quorum is present, a position is carried by a majority of the qualified members of the council.

1.2(3) Copies of administrative rules and other materials considered are made a part of the minutes by reference.

1.2(4) Copies of the minutes are kept on file in the commissioner's office.

1.2(5) Tentative approval of departmental actions may be given by telephone when approval is needed prior to a formal meeting. A memorandum shall be kept of the approval and formal action taken at the next scheduled meeting.

1.2(6) At each meeting the council shall set the date and location of the next meeting.

a. The communications media shall be notified at least one (1) week in advance of the meeting.

b. When it is necessary to hold an emergency meeting, the communications media shall be notified as far in advance of the meeting as time allows. The nature of the emergency shall be stated in the minutes.

1.2(7) In cases not covered by these rules, Robert's Rules of Order shall govern.

1.2(8) The department of inspections and appeals shall be the authorized representative to conduct hearings and appeals for the council on human services.

This rule is intended to implement Iowa Code section 17A.3(1)*"a."*

441—1.3(17A) Organization at state level.

1.3(1) The commandant has responsibility for veterans' services for the department including the Iowa Veterans Home, Marshalltown, which receives honorably discharged veterans for care who have served in the armed forces of the United States and spouses or surviving spouses of qualified veterans if they meet the admission criteria as adopted by the Iowa department of human services.

1.3(2) The division director, who has been assigned the responsibility for the division of management and budget, shall provide primary support and monitoring services to all line elements of the department in the general area of data processing, statistical reporting, purchase of service, accounting and budgeting, personnel and training, office support services, evaluations, quality control, affirmative action, legal services, and commodities distribution.

1.3(3) The deputy commissioner, who has been assigned the responsibility for the division of organizational planning, shall provide support services to line elements of the department in areas of planning, administrative policy and procedures, grants, federal/state coordination, appeals, and public information and communications.

1.3(4) Rescinded, effective January 15, 1987.

1.3(5) The deputy commissioner, who has been assigned responsibility for the division of mental health/mental retardation/developmental disabilities, directs the administration of the following institutions and facilities:

a. Cherokee Mental Health Institute.

b. Clarinda Mental Health Institute, located on the grounds of the Clarinda Treatment Complex Institute Campus.

c. Independence Mental Health Institute.

d. Mount Pleasant Mental Health Institute, located on the grounds of the Mount Pleasant Treatment Center Complex.

e. Glenwood State Hospital-School.

f. Woodward State Hospital-School.

g. Departmental relationship with county care facilities, certain county officers, and organizations relating to mental health, mental retardation, and developmental disabilities.

1.3(6) The deputy commissioner, who has been assigned responsibility for the division of social services, directs the delivery of departmental community based programs and services. The division is responsible for the following institutions and programs:

a. The state juvenile home, Toledo, which is for the care of children who have been removed from their own homes by the court.

b. The training school, Eldora, which provides care for legally designated juvenile delinquents.

c. Medical service programs including Title XIX (MEDICAID).

d. Assistance payments and food programs.

e. The development and direction of all social service programs for children and their families, licensing, day care, child development, and services to adults.

1.3(7) Rescinded, effective November 16, 1983.

1.3(8) The deputy commissioner, who has been assigned responsibility for the division of community services, shall provide primary support services to all line elements of the department in the areas of child support and foster care collections, refugee services, and volunteer services. The division is also responsible for the management of local offices of the department aligned with district subdivisions. The division delivers community-based programs and services through these offices.

This rule is intended to implement Iowa Code section 17A.3(1)"*a*".

441—1.4(17A) Organization at local level.

1.4(1) The department's community service delivery system functions through district offices, each headed by an administrator. Each district system is composed of local offices strategically located for purposes of client accessibility.

1.4(2) The district administrator shall be responsible for managing all department offices at the local level and directing all local and district personnel within the geographic boundaries of the district; and for implementing policies and procedures, within departmental priorities, to provide effective social services to those persons who need them, and the development of social service resources within the community, human services planning, complaints about local offices, and technical support to local offices. The districts have supervisory responsibilities for protective service investigation, day care licensing, foster care licensing, adoptions, purchase of service, and youth services. District offices are located in major population centers. Persons interested in contacting a district office may inquire at the local office for the location of the one serving their county.

1.4(3) There shall be at least one (1) local office in each county. Local offices are generally located in the county seat in each county, but may be located in the major population center within each county. The local office has the responsibility to implement all financial assistance and human service programs as designated by the department of human services. The local office, in a majority of counties, has the responsibility to administer the county general relief program. Persons interested in the general relief program may inquire at the local office on whether the program is administered in that county.

This rule is intended to implement Iowa Code section 17A.3(1)"*a*".

441—1.5(17A) Certain rules exempted from public participation. The department finds that certain rules should be exempted from notice and public participation as being in a very narrowly tailored category of rules for which notice and public participation is unnecessary as provided in Iowa Code section 17A.4(2). These rules shall be those that are mandated by federal law or regulation; where the department has no option but to adopt the rule as specified; where federal funding is contingent upon the adoption of the rule; and the rules are promulgated in accordance with Title IV, XIX, or XX of the Social Security Act or the federal Food Stamp Act.

Notice and public participation would be unnecessary since the provisions of the law or regulation must be adopted in order to maintain federal funding and the department would have no option in the rule which was adopted.

This rule is intended to implement Iowa Code section 17A.3(1)"*a*".

441—1.6(17A) Mental health and mental retardation commission. The director of the division of mental health, mental retardation, and developmental disabilities has, by statute, the advice and counsel of the mental health and mental retardation commission. This fifteen (15)-member commission is appointed by the governor with confirmation by two-thirds of the members of the senate. The commission's powers and duties are policymaking and advisory with respect to mental health and mental retardation, services and programs administered by the division of mental health, mental retardation, and developmental disabilities.

1.6(1) A quorum shall consist of two-thirds of the membership appointed and qualified to vote.

1.6(2) Where a quorum is present, a position is carried by a majority of the qualified members of the commission.

1.6(3) Copies of administrative rules and other materials considered are made a part of the minutes by reference.

1.6(4) Copies of the minutes are kept on file in the office of the director of the division of mental health, mental retardation, and developmental disabilities.

1.6(5) At each meeting the commission shall determine the next meeting date. Special meetings may be called by the chair or at the request of the majority of commission members.

1.6(6) Any person wishing to make a presentation at a commission meeting shall notify the Director, Division of Mental Health, Mental Retardation, and Developmental Disabilities, Hoover State Office Building, Des Moines, Iowa 50319, (515) 281-5874 at least fifteen (15) days prior to the commission meeting.

1.6(7) In cases not covered by these rules, Robert's Rules of Order shall govern.

1.6(8) The department of inspections and appeals shall be the authorized representative to conduct hearings and appeals for the mental health and mental retardation commission.

This rule is intended to implement Iowa Code section 17A.3.

441—1.7(17A) Governor's planning council for developmental disabilities (GPCDD). Pursuant to the Developmental Disabilities Act of 1984 (P.L. 98-527) as codified in 42 U.S. Code, section 6000, as amended in 1984, each state shall establish a state planning council to serve as an advocate for persons with developmental disabilities. This twenty-four (24)-member advisory council is appointed by the governor.

1.7(1) *Council responsibilities.* The GPCDD shall:

a. Advise the governor on policy recommendations that affect individuals in Iowa who have developmental disabilities.

b. Develop a state plan which:

(1) Describes the extent and scope of services for persons with developmental disabilities and sets forth objectives to be achieved.

(2) Establishes a state planning council.

(3) Designates the state agency or agencies which shall administer or supervise the administration of the state plan.

(4) Provides for the maintenance of records of activities of the council.

(5) Provides fiscal control and fund accounting procedures necessary to assure proper disbursement of and accounting for funds paid to the state.

c. Recommend to the commissioner the allocation of dollars to be utilized for the project portion and the planning and administrative portion of the federal grant.

1.7(2) *Council membership.* Council membership shall include:

a. Representatives of:

(1) The principal state agencies.

(2) Higher education training facilities.

(3) Each university affiliated facility.

(4) The state protection and advocacy system.

(5) Local agencies and nongovernmental agencies and private, nonprofit groups concerned with services to persons with developmental disabilities in the state.

b. Consumers. At least one-half of the membership of the council shall consist of persons who have developmental disabilities or parents or guardians of the persons, or immediate relatives or guardians of persons with mentally impairing developmental disabilities, subject to the following conditions:

(1) At least one-third shall be persons with developmental disabilities.

(2) At least one-third shall be immediate relatives or guardians of persons with mentally impairing developmental disabilities.

(3) At least one of the persons shall be an immediate relative or guardian of an institutionalized person with a developmental disability.

1.7(3) *Council action.*

a. A quorum shall consist of two-thirds of the members eligible to vote.

b. Where a quorum is present, a position is carried by a majority of the members eligible to vote.

1.7(4) *Council minutes.* Copies of minutes are kept on file in the office of the Division of Mental Health, Mental Retardation, and Developmental Disabilities, Hoover State Office Building, Des Moines, Iowa 50319-0114.

1.7(5) *Council meetings.* The GPCDD will meet at least four (4) times a year. Dates will be determined by the chair. Special meetings may be called by the chair or upon the written request of a majority of council members.

a. Any person wishing to make a presentation at a council meeting shall notify the Council Coordinator, Division of Mental Health, Mental Retardation, and Developmental Disabilities, Hoover State Office Building, Des Moines, Iowa 50319-0114, 515/281-7632, at least fifteen (15) calendar days prior to the council meeting.

b. The governor's planning council for developmental disabilities shall meet with the mental health and mental retardation commission at least twice a year for the purpose of coordinating mental health, mental retardation, and developmental disabilities planning and funding.

1.7(6) *Council committees.* The council shall have two (2) standing committees whose members are council members. The committees are as follows:

a. Executive committee. The purpose of the executive committee is to provide direction and leadership for the full council. When it is not possible to convene a meeting of the full council, the executive committee is empowered to make final decisions.

b. Grants review committee. The purpose of the grants review committee is to oversee the grants program of the GPCDD.

The DD council has the authority to create other committees as deemed necessary and to create terms of office for officers, committees, and committee chairs.

1.7(7) In cases not covered by these rules, Robert's Rules of Order shall govern.

This rule is intended to implement Iowa Code sections 217.6 and 225C.3.

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CHAPTER 2
[Ch 2, 1973 IDR, renumbered as (770) Ch 76]
Reserved

CHAPTER 3
[Ch 3, 1973 IDR, renumbered as (770), Ch 77]
ORAL PRESENTATIONS ON PROPOSED RULES
[Prior to 7/1/83, Social Services(770), Ch 3]
[Prior to 2/11/87, Human Services(498)]

441—3.1(17A) Requests. Persons as described in Iowa Code section 17A.4(1)*"b,"* who request oral presentations on a proposed rule, shall address such request to the same addressee specified in the notice of intended action for receiving written data, views, or arguments.

3.1(1) A separate request shall be made for proposed rules or rules under each notice.

3.1(2) A request shall be considered timely when received by the date specified in the notice of intended action for submission of written data, views, or arguments. Such date shall provide a minimum of twenty (20) days from the date of publication for requests.

3.1(3) Requests for oral presentations received after the deadline shall not be accepted and shall be returned to the requester.

This rule is intended to implement Iowa Code section 17A.4(1)*"b"*.

441—3.2(17A) Location of oral presentations.

3.2(1) *Presentations scheduled by the department prior to a request for oral presentations.* Oral presentations shall be held in the districts as defined in rule 441—1.4(17A). Once an oral presentation has been scheduled, any association or group of not fewer than twenty-five (25) persons shall be allowed, upon a request pursuant to rule 441—3.1(17A), to participate in the oral presentation at a local office through use of the department's central information delivery system (CIDS).

The department will determine for each rule for which oral presentations are scheduled whether it will be necessary to hold presentations in all districts, based on client impact. Anyone may object to the department's decision prior to the date of the presentation(s) by writing the same addressee specified in the notice of intended action for receiving written data, views, or arguments. The department will review the adequacy of the number of locations in light of the comments received.

3.2(2) *Presentations scheduled by the department after a request for oral presentations is received.* When a request pursuant to rule 441—3.1(17A) is received from an association or group of not fewer than twenty-five (25) persons and the department has not previously scheduled oral presentations, an oral presentation shall be scheduled in the county or district where the principal administrative headquarters of the association is located, where the majority of the persons requesting a hearing reside, or in an alternate county or district when specifically requested by the association or group.

This rule is intended to implement Iowa Code section 17A.4.

441—3.3(17A) Notice of oral presentations. Notice of oral presentations shall be published in the Iowa Administrative Bulletin.

441—3.4(17A) Conduct of oral presentations. Oral presentations shall be conducted by a presiding officer designated by the commissioner of the department of human services.

3.4(1) A member of the department shall make a statement concerning the intended effect and purposes of the proposed rule changes, their necessity, their relation to any federal laws or rules or regulations, and any other matter relevant to the proposed rule changes.

3.4(2) At the time of oral presentations, each person wishing to speak shall make such intent known by signing a sheet or card. The presiding officer shall allow those persons an

opportunity to make their presentations and then shall allow any other person in attendance to make presentations.

3.4(3) The presiding officer may exercise discretion to limit the time of each presentation to five minutes.

3.4(4) Whenever possible a speaker should submit testimony in written form.

3.4(5) A record shall be made of oral presentations either in the form of minutes or written or mechanical recording. A summary of the comments will be sent to individuals upon request. Copies of the minutes, transcripts, or summaries from the districts will be available to individuals at the cost of reproduction.

This rule is intended to implement Iowa Code section 17A.4(1)*"b."*

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CHAPTER 4

[Ch 4, 1973 IDR, renumbered as (770), Ch 78]

PETITION FOR ADOPTION OF RULES

[Prior to 7/1/83, Social Services(770), Ch 4]
[Prior to 2/11/87, Human Services(498)]

441—4.1(17A) Request. Any person requesting the promulgation, amendment, or repeal of a rule shall submit such request in writing to the Department of Human Services, ACT Unit, Hoover State Office Building, Des Moines, Iowa 50319.

441—4.2(17A) Form. Although the request need not follow any prescribed form, it shall clearly state:

4.2(1) The current rule, if one exists.

4.2(2) The proposed rule, amendment to such existing rule, or the action desired by the petitioner.

4.2(3) The pertinent facts and reasons in support of the petitioner's position.

441—4.3(17A) Disposition. The ACT unit shall refer such request to the appropriate departmental unit for consideration within the statutory time limit imposed.

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

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CHAPTER 5

[Ch 5, 1973 IDR, renumbered as (770), Ch 79]

DECLARATORY RULINGS

[Prior to 7/1/83, Social Services(770), Ch 5]
[Prior to 2/11/87, Human Services(498)]

441—5.1(17A) Request. Any person requesting a declaratory ruling shall submit such request in writing to the Department of Human Services, ACT Unit, Hoover State Office Building, Des Moines, Iowa 50319.

441—5.2(17A) Form. Although the request need not follow any prescribed form, it shall clearly state:

5.2(1) The statutory provision, rule or other written statement of law or policy, decision, or order of the agency in question.

5.2(2) A full statement of the facts being presented for the department's consideration.

441—5.3(17A) Disposition. The ACT Unit shall refer such request to the appropriate departmental unit for consideration of such request and disposition thereof.

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CHAPTER 6

[Ch 6, 1973 IDR, renumbered as (770) Ch 80]

Reserved

CHAPTER 7

[Ch 7, July 1973 IDR Supplement, renumbered as Ch 81]

FAIR HEARINGS AND APPEALS

[Prior to 7/1/83, Social Services(770), Ch 7]
[Prior to 2/11/87, Human Services(498)]

441—7.1(217) Definitions.

"Agency" means both the Iowa department of human services and the local office of the department of human services.

An *"aggrieved person"* is one:

a. Whose claim for financial assistance, medical assistance, or services has been denied; or

b. Whose application has not been acted upon with reasonable promptness; or

c. Who has been notified that there will be a suspension, reduction, or discontinuation of assistance, medical assistance, or services; or

d. Who has been aggrieved by a failure to take account of recipient's choice in assignment to a program; or

e. For whom it is determined that protective or vendor payment will be established; or

f. For whom it is determined that the individual must participate in a service program.

A vendor, payee, parent of child(ren) in foster home or group care, licensee, adoptive applicant, certified adoptive home investigator or applicant for certification, an applicant for state community mental health and mental retardation services funds, a person who has received a pre-setoff notice that the department is placing a claim on their Iowa income tax refund, and a person who has been denied expungement for correction of child abuse registry information may be an aggrieved person in certain situations.

"Appeal" denotes a review requested by an appellant of a decision made by the agency or its designee. An appeal shall be considered a contested case within the meaning of Iowa Code chapter 17A.

"Appellant" denotes the person who claims or asserts a right or demand or the party who takes an appeal from a fair hearing to an Iowa district court.

"Claimant" denotes the person who claims or asserts a right or demand; also referred to as the appellant.

"Department" means the Iowa department of human services.

"Department of inspections and appeals" means the state agency which contracts with the department to conduct fair hearings.

"Due process" denotes the rights of a person affected by an agency decision to present a complaint at a fair hearing and to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the questions of the individual's rights in the matter involved without undue delay or hindrance.

"Fair hearing" or *"hearing"* denotes a hearing in which authority is fairly exercised consistently where the fundamental principles of justice are embraced within the conception of due process of law.

"Hearing officer" means an employee of the department of inspections and appeals who conducts fair hearings.

"Issues of fact or judgment" denotes disputed issues of facts or of the application of state or federal law or policy to the facts of the individual's personal situation.

"Issues of policy" denotes issues of the legality, fairness, equity, or constitutionality of state or federal law or agency policy where the facts and applicability of the law or policy are undisputed.

"Joint or group hearings" denotes an opportunity for several persons to present their case jointly when all have the same complaint against agency policy.

"Local office" means the local or district office of the department of human services.

"Presumption" denotes an inference drawn from a particular fact or facts or from particular evidence, which stands until the truth of the inference is disposed.

"Timely notice period" is the time from the date a notice is mailed to the effective date of action. That period of time shall be at least ten (10) calendar days, except in the case of probable fraud of the recipient. When probable fraud of the recipient exists, "timely notice period" shall be at least five (5) calendar days from the date a notice is sent by certified mail. When a license issued by the department is to be revoked, timely notice period is thirty (30) calendar days from the date a notice is mailed.

"Vendor" means a provider of health care under the medical assistance program or a provider of services under a service program.

441—7.2(217) Application of rules. Appeals and fair hearings for the food stamp program are governed by rules 7.21(217) and 7.22(217). All other appeals and fair hearings are governed by rules 7.1(217) to 7.20(217) and 7.22(217).

441—7.3(217) The hearing officer. Fair hearings shall be conducted by an administrative hearing officer appointed by the department of inspections and appeals pursuant to Iowa Code section 17A.11. The hearing officer shall not be connected in any way with the previous actions or decisions on which the appeal is made. Nor shall the hearing officer be subject to the authority, direction, or discretion of any person who has prosecuted or advocated in connection with that case, the specific controversy underlying that case, or pending factually related contested case or controversy, involving the same parties.

441—7.4(217) Publication and distribution of hearing procedures. Hearing procedures shall be published and widely distributed in the form of rules or a clearly stated pamphlet, and shall be made available to all applicants, recipients, claimants, appellants, and other interested groups and individuals.

441—7.5(217) The right to appeal.

7.5(1) *When hearing is granted.* A hearing shall be granted to any person aggrieved by an action of the department of human services when the right to a hearing is granted by state or federal law or Constitution, except that a hearing will not be granted when a state or federal law or regulation provides for a different forum for appeals. The commissioner of the department of human services shall decide whether to grant a hearing when either state or federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual appeal is incorrect grant computation. A prematurely filed appeal may be dismissed.

7.5(2) *Group hearings.* The department may respond to a series of individual requests for hearings by requesting the department of inspections and appeals to conduct a single group hearing in cases in which the sole issue involved is one of state or federal law or policy or changes in state or federal law. In all group hearings, the policies governing hearings shall be followed. Thus each individual claimant shall be permitted to present the individual's own case or be represented by an authorized representative. The hearing officer may limit the appeal hearing to discussion of the sole issue under appeal, hence, when an individual's request for a fair hearing involves issues in addition to one serving as a basis for the group hearing, that appeal shall be severed from the group and handled separately. A claimant scheduled for a group hearing may withdraw and request an individual hearing.

7.5(3) *Time limit for request.* Subject to the provisions of subrule 7.5(1), when a request for a fair hearing is made, the granting of a hearing to that request shall be governed by the following timeliness standards:

a. If the request is made within thirty (30) days after official notification of an action, or before the effective date of action, a hearing shall be held.

b. When the request for a hearing is made more than thirty (30) days, but less than ninety (90) days after notification, the commissioner shall determine whether a hearing shall be held. The commissioner may grant a hearing if one or more of the following conditions existed:

(1) There was a serious illness or death of the appellant or a member of the appellant's family.

(2) There was a family emergency or household disaster, such as a fire, flood, or tornado.

(3) The appellant offers a good cause beyond the appellant's control.

(4) There was a failure to receive the department's notification for a reason not attributable to the appellant. Lack of a forwarding address is attributable to the appellant.

c. The time in which to appeal an agency action shall not exceed ninety (90) days. Appeal requests made more than ninety (90) days after notification shall not be heard.

d. The day after the official notice is mailed is the first day of the time period within which an appeal must be filed. When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

7.5(4) *Informal settlements.* The time limit for submitting a request for a hearing is not extended while attempts at informal settlement are in progress. Prehearing conferences are provided for at 7.7(4) and 7.8(4).

7.5(5) *Where no hearing is granted.* No hearing will be granted on the following issues:

a. When services are changed from one plan year to the next in the social service block grant pre-expenditure report and as a result the service is no longer available.

b. When service has been time-limited in the social service block grant pre-expenditure report and as a result the service is no longer available.

c. When payment has been made in accordance with the Medicaid payment schedule for the service billed because there is no adverse action.

d. The removal of children from or placement in a specific foster care setting.

e. When, upon review, it is determined that the appellant does not meet the criteria of an aggrieved person as defined in 7.1(15)

This rule is intended to implement Iowa Code sections 17A.10 and 17A.22.

441—7.6(217) Informing persons of their rights.

7.6(1) *Written and oral notification.* It shall be the duty of all local offices to advise each applicant and recipient of the right to appeal any adverse decision affecting the person's status.

Written notification of the right to and procedure for requesting a fair hearing before the department, of the right to be represented by others at the hearing, and of any provision for payment of legal fees by the department shall be given at the time of application and at the time of any agency action affecting the claim for assistance.

Written notification shall be given on the application form and pamphlets prepared by the agency for applicants and recipients. Explanation shall be included in the agency pamphlets explaining the various provisions of the program. Oral explanation shall also be given regarding the policy on hearings during the application process and at the time of any contemplated action by the agency when the need for an explanation is indicated. Persons not familiar with English shall be provided a translation into the language understood by them in the form of a written pamphlet or orally. In all cases when a person is illiterate or semi-literate, the person shall, in addition to receiving the written pamphlet on rights, be advised of each right to the satisfaction of the person's understanding.

7.6(2) *Representation.* All persons shall be advised that they may be represented at fair hearings by others, including legal counsel, relatives, friends, or any other spokesperson of choice. The agency shall advise the persons of any legal services which may be available and assist in securing the services if the persons desire.

441—7.7(217) Notice of intent to terminate, reduce, suspend or deny reinstatement of assistance.

7.7(1) Whenever the local office proposes to terminate, reduce, or suspend food stamps financial or medical assistance, or services, it shall give timely and adequate notice of the pending action, except when a service is deleted from the state's comprehensive annual service plan in the social services block grant program at the onset of a new program year.

a. Timely means that the notice is mailed at least ten (10) calendar days before the date the action would become effective. The timely notice period shall begin on the day after the notice is mailed.

b. Adequate means a written notice that includes:
(1) A statement of what action is being taken,
(2) The reasons for the intended action,
(3) The manual chapter number and subheading supporting the action,
(4) An explanation of the recipients' right to request a fair hearing, and
(5) The circumstances under which assistance is continued when a hearing is requested.

7.7(2) Timely notice may be dispensed with, but adequate notice shall be sent no later than the date benefits would have been issued when:

a. There is factual information confirming the death of a recipient or of the aid to dependent children payee when there is no relative available to serve as a new payee.

b. The recipient provides a clear written, signed statement that the recipient no longer wishes assistance, or gives information which requires termination or reduction of assistance, and the recipient has indicated, in writing, that the recipient understands this must be the consequence of supplying the information.

c. The recipient has been admitted or committed to an institution which does not qualify for payment under an assistance program.

d. The recipient has been placed in skilled nursing care, intermediate care, or long-term hospitalization.

e. The recipient's whereabouts are unknown and mail directed to the recipient has been returned by the post office indicating no known forwarding address. When the recipient's whereabouts become known during the payment period covered by the returned warrant, the warrant shall be made available to the recipient.

f. The county establishes that the recipient has been accepted for assistance in a new jurisdiction.

g. Cash assistance or food stamps are changed because a child is removed from the home as a result of a judicial determination or voluntarily placed in foster care.

h. A change in the level of medical care is prescribed by the recipient's physician.

i. A special allowance or service granted for a specific period is terminated and the recipient has been informed in writing at the time of initiation that the allowance or service shall terminate at the end of the specified period.

j. Rescinded, effective 2/1/84.

k. The agency terminates, reduces, or suspends benefits or makes changes based on the completed monthly report form.

l. The agency terminates benefits for failure to return a completed monthly report form.

7.7(3) When the agency obtains facts indicating that assistance should be discontinued, suspended, terminated, or reduced because of the probable fraud of the recipient, and, where possible, the facts have been verified through collateral sources, notice of the grant adjustment shall be timely when mailed at least five (5) calendar days before the action would become effective. The notice shall be sent by certified mail, return receipt requested.

7.7(4) During the timely notice period, the recipient may have a conference to discuss the situation and the agency shall provide a full explanation of the reasons for the pending action and give the recipient an opportunity to offer facts to support the contention that the pending action is not warranted. The recipient may be accompanied by a representative, legal counsel, friend or other person who may represent the recipient when the recipient is not able to be present.

7.7(5) *Notification is not required in the following instances:*

a. When services in the social service block grant pre-expenditure report is changed from one plan year to the next, or when the plan is amended because funds are no longer available.

b. When service has been time-limited in the social service block grant pre-expenditure report, and as a result the service is no longer available.

c. When the placement of a person(s) in foster care is changed.

d. When payment has been in accordance with the Medicaid payment schedule for the service billed because there is no adverse action.

7.7(6) *Reinstatement.* Whenever the local office determines that a previously canceled case must remain canceled for a reason other than that covered by the original notice, timely and adequate notice shall be sent except as specified in subrule 7.7(2). Whenever the local office determines that a previously canceled case is eligible for reinstatement at a lower level of benefits, for a reason other than that covered by the original notice, timely and adequate notice shall be sent except as specified in subrule 7.7(2). Food stamp cases are eligible for reinstatement only in circumstances found in subrule 65.19(13). Aid-to-dependent-children cases are eligible for reinstatement only in circumstances found in subrule 40.2(5).

This rule is intended to implement Iowa Code section 217.6.

441—7.8(17A) Opportunity for fair hearing.

7.8(1) *Initiating a request.* When an individual, or the individual's authorized representative, expresses in writing to the local office or the office that took the adverse action, dissatisfaction with any decision, action, or failure to act with reference to the case, the agency shall determine from the nature of the complaint whether the individual wishes to appeal and receive a fair hearing before a hearing officer.

7.8(2) *Filing the appeal.* The claimant shall be encouraged to complete the request for a fair hearing on Form PA-3138-0, part I, Appeal Request and Information Sheet, and the worker shall provide any instructions or assistance required in completing the form. When the claimant is unwilling to complete or sign this form, nothing in this rule shall be construed to preclude the right to perfect the appeal, as long as the desire for a fair hearing is in writing and has been communicated to the department by the claimant or representative. A written request for an appeal is filed on the date postmarked on the envelope sent to the local, district, or central office, or on the date the appellant brings the appeal request form to the local, district, or central office.

7.8(3) *Prompt response.* Persons who have requested a fair hearing and who are entitled thereto under subrule 7.5(1), are entitled to a response within two (2) weeks of receipt acknowledging the request for a fair hearing.

7.8(4) *Conference.* When desired by the appellant, a conference with a representative of the local office shall be held as soon as possible after the request for a fair hearing has been filed. An appellant's representative shall be allowed to attend and participate in the conference. The purpose of the conference is to provide information as to the reasons for the intended adverse action, to answer questions, to explain the basis for the adverse action, to provide an opportunity for the appellant to explain such appellant's action or position, and to provide an opportunity for the appellant to examine the contents of the case record plus all documents and records to be used by the department at the hearing in accordance with rules chapter 9. A conference need not be requested for the appellant to have access to the records as provided in subrule 7.13(1) and rules chapter 9.

7.8(5) *Interference.* The conference shall never be used to discourage claimants from proceeding with their appeals. The right of appeal shall not be limited or interfered with in any way, even though the person's complaint may be without basis in fact, or because of the person's own misinterpretation of law, agency policy, or methods of implementing policy. The department has the right to deny or dismiss a request for a hearing when it has been withdrawn by the claimant in writing, when the sole issue is one of state or federal law requiring automatic grant adjustments for classes of recipients, or when it has been abandoned. Abandonment may be deemed to have occurred when the claimant, without good cause, or the claimant's authorized representative fails to appear at the hearing. Facts of harassing, threats of prosecution, denial of pertinent information needed by the claimant in preparing the appeal, as a result of the claimant's communicated desire to proceed with the appeal shall be taken into consideration by the hearing officer in reaching a proposed decision. The evidence will raise a presumption of denial of due process, and will be referred to the proper official of the agency for appropriate administrative action.

7.8(6) *Withdrawal.* When the appellant desires to voluntarily withdraw the appeal, the worker shall request the appellant to sign Form PA-3161-0, Request for Withdrawal of Appeal.

7.8(7) *Local worker's responsibilities.* Unless the appeal is voluntarily withdrawn, the local office worker shall immediately complete part II of Form PA-3138-0, Appeal Request and Information Sheet, and shall forward that form together with a copy of the notification of the proposed adverse action under appeal and a summary of the worker's factual basis for the proposed action to the department of inspections and appeals. The claimant may request copies of this information prior to the hearing.

This rule is intended to implement Iowa Code section 17A.22.

441—7.9(217) Request and continuation of assistance. When the recipient requests a hearing within the timely notice period, assistance shall not be suspended, reduced, discontinued, or terminated, unless the recipient directs the worker to proceed with the intended action or a food stamp certification period ends, until a decision is rendered after a hearing. Continued assistance is subject to recovery by the agency if its action is sustained.

7.9(1) Assistance will also be continued, unless the appellant directs the worker to proceed with the intended action or a food stamp certification period ends, when the appellant requests a hearing within ten (10) days from the date adequate notice is sent for termination, reduction, or suspension of benefits, food stamps, aid to dependent children and medical, based on the completed monthly report.

7.9(2) When the agency action is sustained, excess assistance paid pending a hearing decision will be recovered to the date of the decision. When the recipient's benefits are changed prior to a decision due to one of the following reasons, recovery of excess assistance paid will be made to the date of the change which affects the improper payment.

a. Issue. A determination is made at the hearing that the sole issue is one of state or federal law or policy or change in state or federal law and not one of incorrect grant computation, and the grant is adjusted, or

b. Change. A change affecting the recipient's grant occurs while the hearing decision is pending and the recipient fails to request a hearing after notice of the change.

441—7.10(217) Procedural considerations. Upon receipt of the notice of appeal, the department of inspections and appeals shall:

7.10(1) *Registration.* Register the appeal.

7.10(2) *Acknowledgment.* Send an acknowledgment of receipt of the appeal to the appellant, representative, or both, advising that the hearing will be scheduled within a reasonable time and that notification will be forthcoming as to the date, time, place, and other pertinent information with due regard for the convenience of the appellant.

a. When the appellant is residing outside the state, advice will also be given that the appellant may return to Iowa and arrangements will be made for the hearing in the local office returned to or a representative may be designated to represent the appellant in the Iowa county responsible for the case and in which the appellant resided before leaving the state.

b. A copy of the acknowledgment of receipt of appeal will also be sent to the local office, including copies of any correspondence with an appellant who is outside the state, regarding arrangements for the hearing.

7.10(3) *Hearing scheduled.* The department of inspections and appeals shall establish the date, time, method and place of the hearing, with due regard for the convenience of the appellant.

a. In cases involving individual recipients of assistance or services, the hearing shall be held in the appropriate local office, provided that when the recipient is incapacitated due to illness or other disability and is housebound, hospitalized, or in a nursing home, the place of the hearing shall be at the convenience of the appellant even to the extent of holding the hearing in the appellant's home.

b. In cases of appeals by vendors, the hearing shall be scheduled at the most appropriate agency office, giving due consideration to the convenience of the vendor and availability of agency employees.

7.10(4) *Notification.* The department of inspections and appeals shall send a letter to the appellant, as prescribed in Iowa Code section 17A.12(2), setting forth the date, time, and place of the hearing, the manner in which the hearing will be conducted, that any evidence may be presented orally or documented in any way desired, and that the appellant may bring witnesses of the appellant's choice and be represented by others, including an attorney.

a. A copy of this letter will be forwarded to the local administrator, the district office, and other individuals when circumstances peculiar to the case indicate that the notification may be desirable.

b. The letter may be served upon the appellant by personal service as in civil actions, or by certified mail, return receipt requested, or by first-class mail, postage prepaid, addressed to the appellant at the last known address.

441—7.11(217) Information and referral for legal services. The local office shall advise persons appealing any agency decision of legal services in the community that are willing to assist them.

441—7.12(217) Subpoenas. The department shall have all subpoena power conferred upon it by statute. Departmental subpoenas shall be issued to a party on request or will be served by the department when requested at least one (1) week in advance of the hearing date.

441—7.13(217) Rights of appellants during hearings.

7.13(1) *Examination of evidence.* A local office shall provide the appellant, or representative, opportunity prior to as well as during the hearing, to examine all materials permitted under rule 9.1(217) or to be offered as evidence. Off the record, or confidential information which the appellant or representative does not have the opportunity to examine shall not be included in the record of the proceedings or considered in reaching a decision.

7.13(2) *Conduct of hearing.* The hearing shall be conducted by a hearing officer designated by the department of inspections and appeals. It shall be an informal rather than a formal judicial procedure, and shall be designed to serve the best interest of the appellant. The appellant shall have the right to introduce any evidence on points at issue believed necessary, and to challenge and cross-examine any statement made by others, and to present evidence in rebuttal. A verbatim record shall be kept of the evidence presented.

7.13(3) *Opportunity for response.* Opportunity shall be afforded all parties to respond and present evidence and arguments on all issues involved and to be represented by counsel at their own expense.

7.13(4) *Failure to appear.* When a party fails to appear at a hearing after proper service of notice, the hearing officer may reschedule the hearing, or proceed with the hearing in the absence of that party and make a decision, or consider the appeal abandoned and dismiss it.

441—7.14(217) Limitation of persons attending. The hearing shall be limited in attendance to the following persons: Appellant, appellant's representative, agency employees, agency's legal representatives, other persons present for the purpose of offering testimony pertinent to the issues in controversy, and others upon mutual agreement of the parties. The hearing officer may sequester witnesses during the hearing.

Nothing in this rule shall be construed to allow members of the press, news media, or any other citizens' group to attend the hearing without the written consent of the appellant on Form PA-3160-0, Acknowledgement and Waiver.

This rule is intended to implement Iowa Code section 17A.22.

441—7.15(217) Medical examination. When the hearing involves medical issues, a medical assessment or examination by a person or physician other than the one involved in the decision under question shall be obtained and the report made a part of the hearing record when the hearing officer or claimant considers it necessary. Any medical examination required shall be performed by a physician satisfactory to the claimant and the department at agency expense. Forms PA-5113-0, Authorization for Examination and Claim for Payment, and PA-2126-5, Report on Incapacity shall be utilized in obtaining medical information to be used in the appeal and to authorize payment for the examination.

441—7.16(217) The appeal decision.

7.16(1) *Record.* The record in a contested case shall include, in addition to those materials specified in Iowa Code section 17A.12(6):

a. The notice of appeal.

b. All evidence received or considered and all other submissions, including the verbatim record of the hearing.

7.16(2) *Findings of fact.* Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record.

7.16(3) *Proposed decision.* Following the reception of evidence, the hearing officer shall issue a proposed decision, consisting of findings of fact and conclusions of law, separately stated.

7.16(4) *Appeal of proposed decision.* After issuing a proposed decision to the parties, the hearing officer shall submit it to the department, with copies to the appeals advisory committee. The appeals advisory committee acts as an initial screening device for the commissioner and may recommend that the commissioner review a proposed decision. That recommendation is not binding upon the commissioner, and the commissioner may decide to review a proposed decision without that committee's recommendation. The appellant may appeal the proposed decision to the commissioner within ten (10) calendar days of the date on which the proposed decision was signed and mailed. When a recommendation for review is made by the appeals advisory committee, that recommendation shall also be made within ten (10) calendar days of the date on which the proposed decision was signed and mailed. The day upon which the proposed decision is signed and mailed is the first day of the ten (10)-day period. When a review of a proposed decision is not granted by the commissioner and when the appellant has not appealed the proposed decision, the proposed decision shall become the final decision.

An appeal from or review of the proposed decision shall be on the basis of the record as defined in subrule 7.16(1), except that the commissioner need not listen to the verbatim record of the hearing in reviewing the appeal. The review shall be limited to issues raised prior to that time and specified by the party requesting the review. In cases where there is an appeal from a proposed decision or where a proposed decision is reviewed on motion of the agency, an opportunity shall be afforded to each party to file exceptions, present briefs, and, with the consent of the commissioner, present oral arguments. A party wishing oral argument shall specifically request it. When granted, all parties shall be notified in advance of the time and place.

7.16(5) *Limit of findings.* The findings of fact and conclusions of law in the proposed or final decision may be limited to contested issues of fact or policy.

7.16(6) *Time limit.* Prompt, definitive and final administrative action to carry out the decision rendered shall be taken within ninety (90) days from the date of the appeal. Should the appellant request a delay in the hearing in order to prepare the case or for other essential reasons, reasonable time, not to exceed thirty (30) days except with the approval of the department of inspections and appeals, a delay will be granted and the extra time may be added to the maximum time for final administrative action. Immediately upon receipt of a copy of the final decision, the local office shall take the action required by the decision and submit a report of that action to the department of inspections and appeals.

When the hearing decision is favorable to the claimant, or when the agency decides in favor of the claimant prior to the hearing, corrective payments, retroactive to the date of the incorrect action shall be made.

This rule is intended to implement Iowa Code sections 17A.12, 17A.15 and 17A.22.

441—7.17(217) Exhausting administrative remedies. To have exhausted all adequate administrative remedies, a party need not request a rehearing under Iowa Code section 17A.16(2) where the party accepts the findings of fact as prepared by the hearing officer, but wishes to challenge the conclusions of law, or departmental policy.

441—7.18(217) Ex parte communications and separation of functions.

7.18(1) *Communication of the hearing officer or commissioner.* The hearing officer or commissioner may communicate with any person or party concerning any appeal issue provided that the substance of the communication and any information received in reply are presented to all parties, allowing them an adequate opportunity to respond.

However, persons assigned to render a proposed or final decision or to make findings of fact and conclusions of law in a contested case may, without notice to the parties, communicate with members of the department, and may have the aid and advice of persons other than those with a personal interest in, or those engaged in prosecuting or advocating, either the case under consideration or a pending factually related case involving the same parties.

7.18(2) *Communication with hearing officer or commissioner.* Parties or their representatives may communicate with the hearing officer or commissioner concerning any appeal issue provided that the substance of the communication and any information received in reply are presented to all parties, allowing them an adequate opportunity to respond. The recipient of a prohibited communication shall submit the communication if written or a summary of the communication if oral for inclusion in the record of the proceeding, and shall send copies to all parties and allow an opportunity to respond. Where prohibited communications are directed to the hearing officer or commissioner, the hearing officer or commissioner may take whichever of the following sanctions are deemed necessary.

a. Provide for a decision against the party who violates the rules.

b. Censor, suspend or revoke a privilege to practice before the department.

c. Recommend that any agency personnel who violate this rule should be censored, suspended, or dismissed.

441—7.19(217) Accessibility of hearing decisions. Summary reports of all hearing decisions shall be made available to local offices and the public. The information shall be presented in a manner consistent with requirements for safeguarding personal information concerning applicants and recipients.

441—7.20(217) Right of judicial review. The hearing decision shall advise the claimant of the right to judicial review by the district court. When the claimant is dissatisfied with the hearing decision, and appeals the decision to the district court, the department shall furnish copies of the documents or supporting papers which the appellant and legal representative may need in order to perfect the appeal to district court.

441—7.21(217) Food stamp fair hearings and appeals.

7.21(1) All fair hearings in the food stamp program shall be conducted in accordance with federal regulation, Title 7, section 273.15, as amended to February 15, 1983.

7.21(2) All administrative disqualification hearings shall be conducted in accordance with federal regulation, Title 7, section 273.16, as amended to February 15, 1983. Alleged intentional program violation shall be referred to the department of inspections and appeals by the local county human service office.

a. Hearings over disqualification for intentional program violation will be conducted by state hearing officers.

b. A form letter, Advance Notice Of Your Administrative Disqualification Hearing, FNS 396 (3-83) will be sent by certified mail thirty (30) days prior to the hearing date. The hearing may be scheduled as an in-person hearing or as a teleconference hearing. The teleconferencing rules at 441—7.22(217) apply.

This rule is intended to implement Iowa Code section 17A.22.

441—7.22(217) Teleconference hearing. A teleconference hearing is an appeal hearing conducted by a hearing officer over the telephone.

7.22(1) *Determination.* The department of inspections and appeals shall determine whether the appeal hearing is conducted in person or by teleconference call.

7.22(2) *Notice of teleconference hearing.* All parties shall be notified in writing at least ten (10) calendar days in advance of the time and date scheduled for a teleconference hearing, in addition to the notification required by 7.10(4).

7.22(3) *Reschedule.* The appellant may request the teleconference hearing be rescheduled as an in-person hearing. All requests made to the department for a teleconference hearing to be rescheduled as an in-person hearing will be granted.

7.22(4) *Rights.* All parties shall be granted the same rights during a teleconference hearing as specified in 441—7.13(217).

These rules are intended to implement Iowa Code chapter 17A and 1986 Iowa Acts, chapter 1245, sections 501 to 508.

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CHAPTER 8
PAYMENT OF SMALL CLAIMS

[Prior to 7/1/83, Social Services (770), Ch 8]
[Prior to 2/11/87, Human Services(498)]

441—8.1(217) Authorization to reimburse. The department is authorized to expend moneys as reimbursement for replacement or repair of personal items of the department's employees damaged or destroyed by clients of the department during the employee's tour of duty. The following requirements shall apply for filing small claims with the employee's agency:

8.1(1) Claimant shall provide the supervisor with a detailed written account of incident, and when possible include a name of a witness.

8.1(2) Written reports shall be supplemented with vendors estimate of repair or replacement cost when practical. Replacement items shall be of similar quality or cost.

8.1(3) The supervisor shall review all reports and approve or deny the claim based on available information.

8.1(4) Claims which are approved for payment shall be paid from the support allocation of the department and shall not exceed one hundred fifty dollars ($150) per item.

8.1(5) Vouchers submitted for payment of claims shall be supported with a vendor's invoice of claimant's receipt for expense.

This rule is intended to implement Iowa Code section 217.23 and 1985 Iowa Acts, chapter 259, section 12.

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CHAPTER 9
CONFIDENTIALITY AND RECORDS OF THE DEPARTMENT

[Prior to 7/1/83, Social Services (770), Ch 9]
[Prior to 2/11/87, Human Services(498)]

441—9.1(125,217,229,232) Definitions.

"Archival" refers to those records no longer kept at a local, district, or other office, institution, or other department of human services work site.

"Authorization to release information" means a written statement, signed and dated by the person empowered to authorize release of confidential information by the rules of this chapter, such as the client or the institutional administrator. The statement shall specify to whom information is to be released, what information is to be released, and the period of time for which the authorization to release information is to be effective. The statement may be provided by the client or the client may sign Form 470-2115, Authorization for the Department to Release Information. A letter from a client to a state or United States legislator, the citizens' aide office, or other public official which seeks the addressee to intervene on behalf of the client in a matter that involves the client and the department, shall be construed as authorizing the department to release sufficient information to the addressee to resolve the matter.

"Authorized representative" means the client's parent(s), legal guardian, next of kin, or other person responsible for the client when the client is not a competent adult. This definition pertains to rule 441—9.5(217,229,125).

"Client" means an individual applying for or receiving services, assistance, or treatment from the department or who is residing in one of the department's institutions. The term "client" shall include former clients and denied applicants of the department whose files or records are retained by the department. The term "client" does not include the absent parent in a child support recovery case unless the absent parent is otherwise covered by this definition.

"Client's representative" may be anyone the client designates. The term representative does not necessarily mean a legal representative. The designee may be a parent, legal guardian, friend, doctor, attorney, guardian ad litem, or other designated person.

"Confidential information" means those personal facts or conditions pertaining to a client's life which the department has in its records and files, or which are known by department staff, and which contain name, identifying number, symbol, or other identifying particular. Finger or voice prints, photographs, audio and video recordings, and computerized data come under the scope of confidential information.

"Confidentiality" means the safeguarding of confidential information about an individual. It allows releasing information about a client only to the persons or entities and under the circumstances specified by the policies in this chapter.

"Informed consent" means the request for release of information has been explained to or for the benefit of the signer and the consent is given freely and voluntarily without fear of retribution or withdrawal of services. Informed consent will be shown by signing Form MH-2201-0, Written Consent for Release of Confidential Information. This definition pertains to rule 441—9.5(217,229,125).

"Juvenile justice records" are all records held by the department which are developed for or during the involvement of a juvenile court pursuant to Iowa Code chapter 232. They include court records and law enforcement records, medical, psychiatric, and social data.

"Release of information" unless otherwise expressly defined in this chapter, means both:

1. Providing facts or summaries of information, whether written or oral or copies of information to other persons or entities by a department staff member, and;

2. Granting access to, and allowing the copying or photocopying of a file or record in the presence of a designated department employee in the office of the department in which the file or record is stored. Copying of a file or record shall be done at the expense of the person requesting the copy.

This rule is intended to implement Iowa Code sections 217.6, 217.30, 125.37, 229.25, and 232.147.

441—9.2(217,229) Confidentiality rules for all department records except adult corrections, child abuse and adoption records.

9.2(1) *Staff affected.* All department staff, including professional or administrative staff, secretarial, clerical, maintenance, and all other staff, shall follow the policies in this chapter. Also bound by the confidentiality policies of this chapter are county-paid staff working under the direction of the department, private providers from whom services are purchased by the department, volunteers, consultants, field work students, and others providing services to or on behalf of the department or its clients.

9.2(2) *Guidelines for gathering materials for records.*

a. Employees shall gather and keep only that confidential information which is relevant and necessary to provide, monitor, and evaluate services, treatment, or assistance to clients of the department.

b. To obtain information needed for medical, psychiatric, or psychological treatment of a client in a department institution, an employee may assure a source that part or all of the information solicited from that source will not be released to the client by the department. The source shall be made aware of access provisions of 441—9.5(217,229,125). When information is solicited for other purposes by department staff, no assurances of confidentiality will be made.

c. Information from a volunteer third-party informant shall be accepted without verifying or denying that the subject is a client. While information from a volunteer third-party informant shall not be used in determining eligibility for, or the amount of, assistance or services, it may be used as a basis for further investigation or verification.

9.2(3) *Releasing confidential information without client authorization.*

a. Confidential information shall be released only with the client's consent unless release is prescribed by 9.3(3), 9.4(3), and 9.5(3) or release is authorized by the department staff member designated in the following circumstances or release is otherwise authorized by federal or state statute:

(1) The appropriate division director shall receive requests for release of confidential information from federal staff of programs administered by the department. When the request is for purposes directly connected with the administration of department of human services programs; for example, the auditing of programs; and when release is authorized by the appropriate division director or a designee, the information shall be released by the local office or institution without the consent of the client. The division director shall specify the confidential information to be released.

(2) The appropriate division director shall receive requests for release of confidential information from other state and federal agencies. The division director or designee shall decide whether or not to release the information on the basis of existing laws and rules. The division director shall require assurance from the requesting agency that the information shall be used solely for the purpose for which it was provided and that the information shall not be released to other persons or agencies. The division director shall specify to the institution, local or district or other office which information is to be released.

(3) The appropriate division director shall receive requests for release of confidential information for research, and the division director or designee shall investigate the credentials of the researcher. Information shall be provided in a way that does not disclose the names or otherwise disclose the identity of past or current clients of a mental health institute. Access may be granted by the division director for a bona fide researcher who provides assurance that the information shall be used solely for the purpose for which it was provided and that the information shall not be released to other persons or agencies. The division director shall specify to the institution or local or district office which information is to be released to the researcher.

(4) The appropriate district administrator or institutional administrator or a designee shall authorize the release of confidential information in response to a valid court order or a validly served federal subpoena.

(5) The appropriate institutional administrator or designee may authorize release of confidential information from the division of mental health/mental retardation/developmental disabilities to medical personnel without the client's consent in a medical emergency. As soon as possible after the release of information, the client or the authorized representative shall be advised of the release.

(6) The appropriate institutional administrator or designee or the local office director shall ensure that information which was obtained from a source under an assurance that the information would not be released to the client, unless the client has an issue under appeal according to 9.3(1)*"b"*, is not to be released to the client or to any other person except to a qualified health professional giving psychiatric or psychological treatment to the client.

b. Reserved.

9.2(4) *Releasing confidential information from archives.* All requests for archival information shall be submitted to the commissioner unless other methods for access are prescribed by law or rule. Each request shall indicate the reason access is requested and the proposed use of the information. Upon a showing of cause, the commissioner or designee will determine whether to allow access, the party allowed access, and the amount of access.

9.2(5) *Distribution of informational materials.* All material sent or distributed to applicants, recipients, vendors, and providers shall:

a. Directly relate to the administration of the program or to the health and welfare of clients;

b. Have no political implications;

c. When names are included, contain the names of only those individuals directly connected with the administration of the program;

d. Identify those individuals only in their official capacity with the state or local agency; and

e. Not contain items like the following: "holiday" greetings, general public announcements, voting information, alien registration notices.

This rule is intended to implement Iowa Code sections 217.6, 217.30 and 229.25.

441—9.3(217) Releasing records compiled for programs of services and assistance. The following rules do not apply to child abuse, adoptions, and juvenile justice records.

9.3(1) *Releasing confidential information to the client.*

a. Information to be released to the client when the client does not have an issue under appeal. Upon the client's request, all records and files pertaining directly to the client shall be released to the client with the following four exceptions. When information covered in exception 1 and exception 2 is in the client's file, the client shall be informed of its existence in the file and shall be directed to the originating source to request release.

(1) Exception 1: Mental health/mental retardation information from another division of the department.

(2) Exception 2: Medical information from a source outside of the department unless the source is informed that the information will be released to the client upon request. Medical information includes psychological and psychiatric evaluations and information, I.Q. scores, and scores on various education type tests.

(3) Exception 3: The name of the source and any information that was provided by that source with an assurance that the information would not be shared with the client.

(4) Exception 4: Materials and records concerning current or pending litigation or fraud investigation which involve the client and the department.

b. Information to be released to the client when the client has an issue under appeal. All records and files pertaining directly to the client shall be released to the client upon request during the time period beginning with the request for appeal and ending with the receipt of the final decision on the appeal with the exception of materials and records concerning current or pending litigation or fraud investigation involving the client and the department.

c. Client's right to append record. The client has the right to have a written statement which explains or refutes information in the client's file entered into the file.

9.3(2) *Releasing confidential information with the client's authorization.*

a. Confidential information shall be released only with the authorization of the client or person legally responsible for the client, unless release is otherwise provided for by law or rule.

b. The client shall have the right to authorize the release of confidential information to the client's representative. The client shall authorize the types of information to be released and, when the client so authorizes, the representative shall have the same access as the client.

9.3(3) *Releasing confidential information without the client's authorization.*

a. Guardians, conservators, and protective payees. Legal guardians shall have the same access to the client's file as the client has. Court appointed conservators and protective payees and conservators appointed by the department shall have access to this information:

(1) Name and address of client.

(2) Amounts of assistance received.

(3) Information about the economic conditions or circumstances of the client.

(4) Type of services received.

b. Releasing information contained in the quarterly list. The quarterly list of names, last known addresses, and amounts of assistance received by aid to dependent children and certain state supplementary assistance recipients shall be available for inspection by any person during regular office hours. A person who wishes to inspect the list shall first sign a statement specifying that the information obtained will not be used for political or commercial purposes, and that lists or names of applicants or recipients will not be published or distributed by the inspector or given or sold by the inspector to another for publication or distribution.

c. Release of information to medical assistance providers. Only the following information shall be released to bona fide providers of medical services in the event that the provider is unable to obtain it from the client and is unable to complete the medical assistance claim form without it:

(1) Patient identification number.

(2) Health coverages code as reflected on client's medical card.

(3) The client's date of birth.

(4) The client's eligibility status for the month that the service was provided.

d. Release of confidential information to agencies providing services to or for the department under a contract or other agreement. Case and medical information shall be shared with foster family homes, group homes, and residential treatment facilities and other persons or entities which are providing services to the department's clients under a purchase of service contract or other agreement with the department according to the confidentiality provisions of the contract or agreement. The release of information to other professionals from whom the department is not purchasing services shall require the consent of the client or parent or guardian when the client is a minor.

e. Verification with refugee's sponsor and local sponsoring resettlement agency. Confidential information may be released without authorization from the refugee when the contacts with both sponsor and resettlement agency are made as a part of the verification process to determine eligibility or the amount of assistance. Regardless of whether the refugee is determined to be eligible for cash assistance, or not, the resettlement agency shall be made aware of a family's or individual's desire to have assistance by the worker.

f. Release of information regarding fugitive felons. The address of a current recipient of aid to dependent children benefits may be released to a state or local law enforcement officer if all of the following conditions are met:

(1) The officer provides the name and social security number of the recipient, and

(2) The officer demonstrates that the recipient is a fugitive felon as defined by the Fugitive Felon Act, 18 U.S.C. 1073 (1982), and

(3) The location or apprehension of the felon is within the officer's official duties, and

(4) The request is made in the proper exercise of the officer's official duties.

g. Exchange of information with agencies under agreement. The department shall obtain information regarding persons, whose income or resources are considered in determining eligi-

bility and the amount of benefits for aid to dependent children, refugee cash assistance, food stamps, medical assistance, state supplementary assistance and foster care from the Iowa Department of Employment Services, the United States Internal Revenue Service and the United States Social Security Administration. Identifying information regarding applicants for and recipients of benefits under these department programs and any other persons whose income or resources are considered in determining eligibility or the amount of benefits shall be released to these agencies and the information received may be used for eligibility and benefit determinations.

This rule is intended to implement Iowa Code sections 217.6 and 217.30.

441—9.4(217,232) Releasing confidential information from juvenile justice records.

9.4(1) *Releasing confidential information to the client.*

a. Upon the client's request, all records and files pertaining directly to the client shall be released to the client with the exceptions listed below. The client shall be informed of the existence of psychiatric, psychological and medical information in the file and may request and receive a synopsis of psychiatric or psychological information that originated in the department. The client will be referred to the originating source for other psychiatric, psychological, or medical information.

(1) Exception 1: Psychiatric and psychological information.

(2) Exception 2: Medical information from a source outside of the department.

(3) Exception 3: Materials and records concerning current or pending litigation or fraud investigation which involve the client and the department.

(4) Exception 4: Materials and information, which in the judgment of the district administrator or institutional administrator, would be harmful to the client or the client's treatment mode.

(5) Exception 5: Information which was provided by a third-party with an assurance that the information would not be released to the client.

b. Client's right to append record. The client shall have the right to have a written statement which explains or refutes information in the file entered into the file.

9.4(2) *Releasing confidential information with authorization of the client, parent(s) or legal guardian.*

a. Information to be released with authorization of the client, parent(s) or legal guardian. Confidential information shall only be released with the written authorization of the client or person responsible for the client when the client is not a competent adult, unless release of information is prescribed elsewhere by law or rule. The parent or legal guardian (when other than the department of human services) may not authorize release of information to self.

b. Information to be released to parent(s) or legal guardian. When the client refuses to authorize access to the parents or legal guardian (when the guardian is not the department of human services) under 9.4(2)*"a,"* the parent or guardian of a client under the age of eighteen (18) may nominate an impartial person who would act as an intermediary; the client may choose to authorize release to one (1) or more intermediary(ies) under the condition that the intermediary will exercise judgment in releasing information to the parents and will not release information to the parents that would be harmful to the client's relationship with the parents or place the client in jeopardy.

c. Information to be released to client's representative. The client may authorize the release of confidential information to the client's representative. The client shall authorize the types of information to be released and, when the client so authorizes, the representative shall have the same access as the client.

9.4(3) *Releasing confidential information without an authorization in order to locate a placement.* The client's name shall be removed from records, forms, and any other confidential material before the materials are released to other agencies when the purpose of release is to refer the client to another agency for services.

This rule is intended to implement Iowa Code sections 217.6, 217.30 and 232.147.

441—9.5(217,229,125) Releasing confidential information in mental health and mental retardation records.

9.5(1) *Releasing confidential information to the client.*

a. Access to record. The client shall have access to the mental health/mental retardation record unless information in the record has been provided by a third party with an assurance of confidentiality, or when in the opinion of the health professional responsible for the mental health/mental retardation services concerned, access would be detrimental to the client.

b. Access by a third party. When the health professional responsible for the client's treatment determines that access would be detrimental to the client, the mental health/mental retardation record will be made available to a licensed health professional selected by the client who may, in the exercise of professional judgment, provide the client access to any or all parts of the record or otherwise disclose information contained in the material.

c. Summary of record. An oral or written summary of mental health/mental retardation information contained in the client's case records shall be available to the client after termination of treatment in the form, written or oral, requested by the client. The summary will contain the dates of entrance and discharge, condition upon entrance and prognosis upon discharge, general descriptions of the client's observed behavior, and the method of treatment used.

9.5(2) *Releasing confidential information with the client's or authorized representative's authorization.* Unless release is otherwise allowed by law or rule, confidential information shall only be released when the following three (3) conditions are met:

a. The release is authorized by the informed consent of the client or the authorized representative when the client is a minor, is incapable of signing, or is adjudicated incompetent. When the client is a chemical substance abuse client, only the client can authorize release.

b. The information to be released is determined to be appropriate information and the release is approved by the chief medical officer.

c. The information is to be released to one (1) of the following parties.

(1) Licensed physician of the client.

(2) Attorney of the client.

(3) Court appointed advocate of a mental health client to determine the nature of, impact of, and continuing need for treatment.

(4) Advocate of a mental retardation client pursuant to the appeal of a proposed placement.

9.5(3) *Releasing confidential information without the client's authorization.* An authorized representative may exercise the right of access to the case records for a client when the client is a minor, is incapable of signing or is adjudicated incompetent, unless the client is being treated for chemical substance abuse. The authorized representative shall have access in the same manner as provided for the client.

This rule is intended to implement Iowa Code sections 217.6, 217.30, 125.37, and 229.25.

441—9.6(217) Obtaining information from a third party. The client shall give written permission for a third party to release information to the department when the information is needed to establish eligibility or the amount of benefits. Written permission shall be given on one of the following forms:

9.6(1) Form PA-2206-O, Authorization for Release of Information.
9.6(2) Form 470-1630, Household Member Questionnaire.
9.6(3) Form 470-1631, Financial Institution Questionnaire.
9.6(4) Form 470-1632, Landlord Questionnaire.
9.6(5) Form 470-1638, Request for School Verification.
9.6(6) Form 470-1639, Earned Income Verification.
9.6(7) Form 470-1640, Verification of Educational Financial Aid.

This rule is intended to implement Iowa Code section 217.6.

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CHAPTER 10
IOWA VETERANS HOME

[Previously appeared as Ch 134—renumbered IAB 2/29/84]
[Prior to 2/11/87, Human Services(498)]

441—10.1(219) Application for admission. Persons who are eligible for admission to the Iowa veterans home in accordance with Iowa Code chapter 219 may apply for admission through the county commission of veteran affairs in the person's county of residence.

10.1(1) Application shall be made on Form V-1966AA which may be obtained at a county commission of veteran affairs office, a veterans administration hospital located in the state of Iowa, or a mental health institute. Separate applications shall be required for an eligible veteran and the person's spouse.

10.1(2) The applicant shall be scheduled for a physical examination by the applicant's personal physician and the results of the examination shall be entered on the application form by the examining physician.

10.1(3) An income affidavit indicating the applicant's income and assets and two (2) copies of the veteran's honorable discharge from the armed forces of the United States, and two (2) copies of the marriage certificate when the applicant is the spouse or surviving spouse of an eligible veteran, must be attached to the application form.

10.1(4) The application form must be certified by two (2) members of the county commission of veteran affairs, in accordance with rule 10.1(219) and forwarded to the adjutant's office, Iowa veterans home.

10.1(5) The applicant shall be a resident of Iowa. Residence shall be determined by an investigation which shall not exceed ninety (90) days. The following factors may be investigated and considered along with any other pertinent facts, while not conclusive, in determining residence:

a. Statement of intent to acquire a domicile in Iowa.
b. Payment of Iowa taxes.
c. Establishment of local bank accounts.
d. Possession of an Iowa driver's license.
e. Automobile registration in Iowa.
f. Enrollment of children in local schools.
g. Ownership of home or property in Iowa.
h. Local employment.
i. Admission to a licensed practicing profession in Iowa.
j. Voting or registration for voting.
k. Previous domicile in Iowa and maintenance of significant contacts therein while absent.

10.1(6) All applicants shall inform the veterans home of any health insurance coverage, and shall apply for Medicare if not already covered by that program. The veterans home will pay the Medicare premium upon billing by the social security administration. The applicant will be responsible for payment of any other premiums. Any insurance payments shall be applied toward the cost of medical care before veterans home funds are expended.

10.1(7) Spouses of veterans and veterans who have no income and who have been admitted to the Iowa veterans home and assigned to the Title XIX certified unit shall apply for medical assistance under 441—chapter 75.

This rule is intended to implement Iowa Code section 219.3.

441—10.2(219) Admission procedures. Applications received by the adjutant's office shall be reviewed by an Iowa veterans home staff physician for determination of the level of care required by the applicant.

10.2(1) When space is not available in the level of care indicated by the Iowa veterans home staff physician, the applicant's name shall be placed on a waiting list for the level of care in order of date of receipt of the application. The applicant shall be notified by the adjutant,

through the county commission of veteran affairs, of the applicant's placement on the designated waiting list.

10.2(2) An applicant scheduled for nursing care or hospital care may request that the applicant's name be additionally placed on the waiting list for dormitory care when the applicant may function in that level of care.

10.2(3) When space is available at the time of application, or when space becomes available in accordance with the designated waiting list, the applicant shall be scheduled for admittance to the Iowa veterans home as follows:

a. An applicant whose physical examination was completed more than one (1) year prior to the scheduled date of admittance shall be required to obtain another physical examination by the applicant's personal physician. The physical examination shall be reviewed by an Iowa veterans home staff physician to determine that the applicant is capable of functioning in the scheduled level of care.

b. An applicant for dormitory care shall be scheduled for a preadmission interview and a final assessment of the applicant's health care needs shall be made.

c. An applicant who requires a different level of care than initially determined shall be admitted to the level of care required or have the applicant's name placed on the waiting list for the level of care in order of the date of the applicant's original application.

10.2(4) The Iowa veterans home shall determine the level of care required by an applicant. An applicant who does not wish to be admitted to the designated level of care may withdraw the application.

10.2(5) The applicant shall sign a contractual agreement in accordance with Iowa Code chapter 135C.

10.2(6) The applicant shall be given a copy of the resident's bill of rights and the grievance procedure.

441—10.3(219) Maintenance of order and control of the buildings and grounds. The Iowa veterans home shall be maintained for the purpose of providing health care and auxiliary services to the residents of the Iowa veterans home. Visitors are welcome subject to the following conditions.

10.3(1) Visiting hours are from 8 a.m. to 11 p.m. each day. Visiting hours may be extended on an individual basis with the approval of the commandant, adjutant or officer of the day.

10.3(2) Firearms, drugs or alcoholic beverages are permitted on the grounds only with permission of the adjutant.

10.3(3) Any disruptive behavior on the part of a visitor shall result in denial or termination of visit.

10.3(4) Posted traffic and parking signs must be strictly observed.

10.3(5) Any visitor who violates rules 10.3(1), 10.3(2), 10.3(3) or 10.3(4) may be restricted from the grounds of the Iowa veterans home for a period of time as determined by the commandant.

10.3(6) Persons wishing to use the buildings and grounds for civic purposes, programs for residents, meetings, and similar purposes, must contact the director of volunteer services at least two (2) weeks in advance of the requested date. The commandant may disapprove a request when the requested facilities are scheduled for use by or for the residents, or when the activity would disrupt the normal operation of the facility. Previous arrangements to use the buildings or grounds may be canceled by the commandant in the event of an emergency or when changes in the schedule require the use of the facility for the residents. Persons who use the facility shall be held responsible for leaving the facility in satisfactory condition and for any damages caused or resulting from their use.

10.3(7) Tours of the Iowa veterans home may be arranged by contacting the director of volunteer services.

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CHAPTER 11
OVERPAYMENTS
[Prior to 2/11/87, Human Services(498)]

441—11.1(217,421) Definitions.

"Current" shall mean that amount which is due and owing within the previous twelve (12) months from the date of submission to the department of revenue and finance or that amount which is due and owing from the date the repayment agreement or court order is implemented, if less than twelve (12) months, prior to the date of submission to the department of revenue and finance.

"Current repayment" shall mean that payment of the cumulative sum due and owing in accordance with a repayment agreement or court order for the preceding twelve (12) months or the date of the order or agreement if the order or agreement is more recent.

"Debtor" shall mean a current or former recipient of public assistance (usually the head of the household) that has been determined by the department to be responsible for the repayment of a particular overpayment.

"Department" shall mean the department of human services.

"Overpayment" shall mean the dollar amount of public assistance by program received by or on behalf of a person which is in excess of what is allowed by law for any given month(s).

"Public assistance" shall mean aid to families with dependent children, food stamps, medical assistance, and state supplemental assistance.

"Repayment agreement" shall mean an agreement entered into voluntarily between the department and the debtor for the repayment of an overpayment(s).

Agreements shall be made on Form PA-3164-0, Agreement to Repay Overpayment, Form PA-3167-0, Agreement to Repay Overpayment after Probation, and Form FP-2322-0, Demand Letter for Overissuance.

"Written notification" shall refer to the written notification sent to a current or former recipient of public assistance by the department on Form PA-3168-0, "Pre-Debt Setoff Letter" and PA-3169-0, "Debt Setoff Letter."

441—11.2(217,421) Accounts. The department shall maintain an account for each overpayment that has occurred for each debtor. The account shall contain the following:

11.2(1) Debtor name and account number.
11.2(2) Program in which the overpayment occurred.
11.2(3) Date overpayment was discovered.
11.2(4) Inclusive dates of the overpayment.
11.2(5) Total dollar amount of each overpayment.
11.2(6) Primary cause of the overpayment.
11.2(7) Any transaction applied to this overpayment.

441—11.3(217,421) Application of payment. The department shall apply any payment received to the debtor's overpayment(s) as follows:

11.3(1) *Application of payment to single program area.* If there is more than one overpayment in a program, the payment shall be applied to the overpayment which was established first. Any remaining amount shall be applied to the next overpayment(s) in chronological order of discovery until all overpayments have been paid in full or the full payment amount has been exhausted.

11.3(2) *Application of payment to multiple program areas.* If there are overpayments in more than one program area of public assistance, payments received shall be applied to those program areas as indicated by the mode of repayment (food stamp coupons, ADC benefits) or as indicated by the client at the time of payment.

11.3(3) *Application of undesignated cash payment.* If an undesignated cash payment is received it shall be applied to each program area proportionally based on the percentage to the cumulative balance of all overpayments in all program areas combined.

11.3(4) *Application of payment prohibited.* No payments shall be applied to an overpayment(s) that is under investigation for fraud or is in an appeal status.

441—11.4(217,421) Setoff against state refund or rebate.

11.4(1) *Criteria for setoff against state income tax refund or rebate.*

a. A claim against a debtor's state income tax refund or rebate will be made by the department for public assistance overpayments when:

(1) A debtor has failed to negotiate a repayment agreement for that program area of public assistance, or

(2) A repayment agreement is not current, and

(3) The cumulative balance of the applicable overpayments in 11.4(1)*"a"*(1) and (2) exceeds $50.

b. A claim against a debtor's state income tax refund or rebate will not be made by the department for overpayments when:

(1) The overpayment is under investigation for fraud or is in an appeal status, or

(2) The overpayment is being recovered through grant or benefit reduction.

11.4(2) *Frequency of submission.* The department shall submit to the department of revenue and finance on or about the first working day of the month a list of those debtors who have an overpayment(s) meeting the criteria in subrule 11.4(1).

11.4(3) *Pre-setoff notice.* The department shall mail a Pre-Debt Setoff Letter, Form PA-3168-0, to a debtor to inform the debtor of the amount the department intends to claim and apply to overpayment(s) in each program when:

a. The department is notified by the department of revenue and finance that the debtor is entitled to a state income tax refund or rebate;

b. The department makes claim to the debtor's state income tax refund or rebate.

11.4(4) *Method for division of joint returns.* When either spouse wishes to request a division of a jointly filed return, a written request shall be submitted to the department within fifteen (15) days after the Pre-Debt Setoff Letter, Form PA-3168-0 is mailed. When the request is received within the fifteen (15)-day limit, the spouse's proportionate share of a joint return filed with a debtor, as determined by the department of revenue and finance, shall be released by the department of revenue and finance unless:

a. Other claims are made on that portion of the joint income tax refund or rebate, or

b. That spouse was also a member of the same household and the spouse's income and resources were or should have been considered in the calculation of public assistance.

11.4(5) *Appeal rights.* When a debtor wishes to contest the claim of the department to the debtor's refund or rebate, a written request shall be submitted to the department within fifteen days (15) after the Pre-Debt Setoff Letter, Form PA-3168-0 is mailed. When the request is received within the fifteen (15)-day limit, a hearing shall be granted pursuant to rules in 441—chapter 7.

If the department is upheld in the hearing, the setoff process shall continue and the refund or rebate shall be applied to the appropriate delinquent overpayment(s). If the department is reversed in the hearing, the debtor's refund or rebate shall be released to the debtor by the department of revenue and finance.

11.4(6) *Debt setoff.* If the department has not received a request for an appeal hearing or a request for division of a joint return within fifteen (15) days after the date the Pre-Debt Setoff Letter, Form PA-3168-0 is mailed, the department shall notify a debtor of the final decision regarding the claim against the tax refund or rebate by mailing the Debt Setoff Letter, Form PA-3169-0 to the debtor.

11.4(7) *Application of refund or rebate.* The department shall apply any refund or rebate received from the department of revenue and finance as a result of this rule to the debtor's overpayment(s) as indicated on the Pre-Debt Setoff Letter, Form PA-3168-0, mailed to the debtor and in accordance with rule 441—11.3(217,421).

Any remaining amount of the debtor's refund or rebate shall be released back to the debtor.

These rules are intended to implement Iowa Code sections 217.34 and 421.17, subsection 21.

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CHAPTER 12
VOLUNTEER SERVICES
[Prior to 2/11/87, Human Services(498)]

Preamble

The department of human services' volunteer program is designed as a method of enhancing services provided to Iowans who reside in state institutions and to those who experience personal economic and social problems in order to relieve their constraining conditions and develop and enhance their individual productivity and family life.

Examples of roles volunteers assume include parent aides, friendly visitors, commodity distributors, guardians, protective payees and medical transporters. The program allows services to be delivered in a manner most appropriate for individual counties and institutions, recognizing that the needs for volunteer services vary from county to county and from institution to institution.

441—12.1(234) Definition. "Volunteer" means a person registered with the department who provides services to clients without wages.

441—12.2(234) Allocation of block grant funds. Volunteer services in the eight (8) department districts are funded with federal social services block grant funds and state-appropriated funds. An equal amount of money is allocated to each district. Costs incurred in providing volunteer services to the department's nine (9) institutions are included in the institution's budgets and are not block grant funds.

The districts enter into administrative support contracts either with individuals or agencies for volunteer services. These contracts list the specific jobs to be performed by volunteers and determine allowable expenses. Rules governing these contracts are found in rule 441—153.5(234).

441—12.3(234) Eligibility.

12.3(1) Anyone who desires to become a volunteer for the department must complete Form 470-0649, Volunteer Registration.

12.3(2) All volunteers must comply with the confidentiality requirements of the department. Breach of confidentiality is a violation of the criminal law and reason for immediate termination as a department volunteer.

12.3(3) The volunteers are expected to adhere to the general rules and regulations in the local offices in which they may be working, such as hours of work and completing reports. Failure to comply with the rules and regulations may lead to dismissal as a volunteer.

441—12.4(234) Volunteer service programs. Programs for the use of volunteer services may be established by the district administrator, county director, and institution superintendent or their designees to broaden and strengthen the delivery of services to department clients. Volunteers may be used to supplement, but not to take the place of, personnel whose services are obtained through the usual employment procedures.

441—12.5(234) Services and benefits available to volunteers.

12.5(1) Volunteers are entitled to liability protection on the same basis as state employees under Iowa Code chapter 25A.

12.5(2) Volunteers may also be provided other benefits which would be set forth in the district's volunteer contract or in the institution's volunteer handbook.

These rules are intended to implement Iowa Code section 234.6.

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CHAPTERS 13 and 14
Reserved

TITLE II
Reserved

CHAPTERS 15 to 27
Reserved

TITLE III
MENTAL HEALTH

CHAPTER 28
POLICIES FOR ALL INSTITUTIONS

[Prior to 7/1/83, Social Services (770), Ch 28]
[Prior to 2/11/87, Human Services (498)]

441—28.1(218) Definitions. Reserved.

441—28.2(218) Voluntary admissions to mental health institute.

28.2(1) Any person who has symptoms of mental illness may apply for voluntary admission on Form MH-1101-0, Application for Voluntary Admission at a Mental Health Institute.

28.2(2) A parent or guardian of a minor may make application for voluntary admission on Form MH-1102-0, Application for Voluntary Admission for Patients Under the Age of Eighteen. When a minor objects to the admission and the chief medical officer of the mental health institute determines the admission appropriate, the parent or guardian shall petition the juvenile court for approval of admission prior to admission.

28.2(3) When the person making application for voluntary admission to the mental health institute or those responsible for the person are unable to pay costs of care, application for admission shall be made to any clerk of the district court on Form MH-1103-0, Application for Authorization for Voluntary Admission to a Public Hospital, before application for admission is made to the mental health institute.

Those persons requesting voluntary admission, without going through the county, shall be required to pay, in advance, the cost of hospitalization. This cost shall be computed at thirty (30) times the last per diem rate and shall be collected weekly in advance upon admission. The weekly amount due shall be determined by dividing the monthly rate by 4.3.

28.2(4) The rates for cost of hospitalization, established by the state director, shall be available by contacting the business manager of the mental health institute which serves that particular district in which the county of residence is located.

28.2(5) Any person requesting drug treatment shall complete Form MH-1104-3, Application for Voluntary Admission—Drug Treatment at the Mental Health Institute.

28.2(6) A parent or guardian of a minor or a minor on the minor's own behalf, may make application for voluntary admission for drug treatment on Form MH-1105-3, Application for Voluntary Admission—Drug Treatment for Patients Under Eighteen Years of Age at the Mental Health Institute.

28.2(7) Any person requesting treatment for alcoholism shall complete Form MH-1106-2, Application for Voluntary Admission—Treatment of Alcoholism at the Mental Health Institute.

28.2(8) A physician, spouse, guardian, relative or any other responsible person wishing to make application for the emergency admission of a person for treatment of substance abuse and whose admission is necessary because the intoxicated person has threatened, attempted or inflicted physical harm to self or another shall make application on Form MH-1109-0, Application for Emergency Commitment of a Substance Abuser.

28.2(9) A person wishing to receive voluntary outpatient or day treatment shall make application on Form MH-1110-0, Application as an Outpatient/Day Patient.

28.2(10) No inpatient or outpatient either on a voluntary or involuntary basis shall be provided treatment other than what is necessary to preserve life or protect others from physical injury unless:

a. The person has given consent by signing Form MH-2101-0, Consent to Treatment;

b. A court has ordered treatment; or

c. The next of kin of an involuntary patient has given consent by signing Form MH-2101-0, Consent to Treatment.

This rule is intended to implement Iowa Code sections 217.30 and 218.4.

441—28.3(218) Admission to hospital-schools.

28.3(1) Applications for the care, treatment, or evaluation of a person by a hospital-school shall be made by the board of supervisors of either the county of legal settlement or the county of residence of the person for whom application is made. The application shall be made using Form MR-1101, Application for Services to State Hospital-School. The application shall be accompanied by completed Form MR-1301, Physicians Report; Form MR-1401, Consent and Agreement Authorization; a full length picture of the person for whom application is made; a complete social history using Form MR-1302, Social Case History Outline; and other information specifically requested in writing by the hospital-school.

28.3(2) When the application is for a readmission, the hospital-school may waive the resubmittal of any information already in the files other than Form MR-1101, Application for Services to State Hospital-School.

28.3(3) Upon receipt of an application, the hospital-school may admit a person on a temporary basis for either a preadmission diagnostic evaluation to determine whether the person would be appropriate to admit to the regular program or a diagnostic evaluation to assist in planning for community based services or respite care.

28.3(4) Upon receipt of an application, the hospital-school may provide a person with outpatient evaluation treatment, training, or habilitation services.

28.3(5) Eligibility for admission shall be determined by:

a. A preadmission diagnostic evaluation,

b. An established diagnosis of mental retardation,

c. The availability of an appropriate program, and

d. The availability of space at the institution.

28.3(6) Express written consent of the individual or parent, guardian, or other person responsible shall be secured before admission.

This rule is intended to implement Iowa Code sections 217.30 and 218.4.

441—28.4(229) Patients' rights for the mentally ill.

28.4(1) The recipient of mental health services shall have the right to every consideration of privacy and individuality.

28.4(2) In order to preserve the patients' self-respect and dignity, to assure optimum care and treatment, and to guarantee constitutional and civil rights, the patient shall have the following rights:

a. The patient has the right to be evaluated promptly following admission and shall receive emergency service appropriate to the patient's needs.

b. The patient shall have the right to be informed as to treatment plans and hospital rules and regulations applying to individual conduct as a patient.

c. The patient shall be provided with complete and current information concerning patient diagnosis, treatment and progress in terms and language understandable to the patient. When it is not feasible to give this information directly to the patient, the information shall be made available to an immediate family member, guardian or person in charge on behalf of the patient.

28.4(3) An individualized written plan of services shall be developed for each patient. The plan shall be kept current and will be modified when indicated.

28.4(4) The patient shall have the right to receive prompt and adequate treatment of physical and psychological ailments.

28.4(5) The patient has the right not to receive treatment procedures such as surgery, electro-convulsive therapy, or unusual treatment procedures, without the patient's expressed, informed consent or that of next kin or legally constituted guardian. Any unusual treatment shall be fully explained to the patient in language the patient can reasonably be expected to understand.

28.4(6) The patient shall have the right to the least restrictive conditions necessary to achieve the purposes of treatment. The patient shall be free from restraint or seclusion, except when necessary to prevent harm to the patient, harm to others, or damage to property.

28.4(7) The patient shall have the right to be free from unnecessary or excessive medication or treatment intervention.

28.4(8) Medical records, ward charts and information regarding the evaluation, diagnosis, care and treatment shall be considered private and confidential.

28.4(9) The voluntary mentally ill patient shall be entitled to obtain discharge by submitting a written notice to the superintendent or chief medical officer. The patient may be discharged immediately, on request, except when the superintendent or chief medical officer intends to institute judicial procedures.

28.4(10) An individual post hospitalization plan shall be developed for each patient.

28.4(11) When the patient is assigned to industrial therapy, the specific assignment shall be an integrated part of the treatment plan and the patient shall be appropriately supervised. The patient shall be compensated in accordance with federal and state laws for any work assignment.

28.4(12) The patient shall retain all the rights of full citizenship except as may be specifically limited by the constitution or statute.

28.4(13) The patient, next of kin, or the legal guardian shall have the right to be advised of the provisions of the law pertaining to admissions and discharge.

28.4(14) The patient shall have the right to file application for a writ of habeas corpus and the right to petition the court for release.

28.4(15) The patient has the right to an attorney of choice and to judicial review of the hospitalization. When the patient does not have an attorney, legal counsel shall be obtained through public resources available for legal assistance. The patient has the right to consult privately with counsel at any reasonable time.

28.4(16) The patient has the right to wear personal clothing, and keep and use a reasonable amount of money as appropriate to the treatment program. The hospital shall make provision for the laundering of patient clothing and will provide a reasonable amount of storage space for clothing and personal storage.

28.4(17) When the patient does not have personal clothing or resources to purchase clothing, the institution shall furnish clothing which is clean, neat, and seasonally suitable.

28.4(18) The patient shall be entitled to a safe, sanitary, and humane living environment which affords comfort, promotes dignity, and ensures privacy as is appropriate to the patients' treatment plans.

28.4(19) The patient shall have the right to the opportunity for educational, vocational, rehabilitational, and recreational programs as compatible with the patient's needs.

28.4(20) The patient shall have access to current informational and recreational media, e.g., newspapers, television, or periodicals, in keeping with the patients treatment program.

28.4(21) The patient has the right to religious worship of the patient's choice in accordance with individual treatment programs. Pastoral counseling shall be available if desired.

28.4(22) The patient shall have the right to unimpeded, private, and uncensored communication with others by mail and telephone and with persons of the patient's choice except when therapeutic or security reasons dictate otherwise. Any limitations or restrictions imposed shall be approved by the superintendent or designee, and the reasons noted shall be made a part of the patient's record.

28.4(23) The patient or representative shall be advised of these rights at the time of hospitalization.

28.4(24) These patient rights shall be publicly posted in each institution.

441—28.5(218) Photographing and recording of patients and use of cameras.

28.5(1) Use of cameras and recorders shall be allowed within the institution only with the prior authorization of the superintendent or designee. Permission to photograph and record shall be granted for one specific use, and the authorization shall not extend to any other use.

28.5(2) Photographs and recordings of a voluntary patient of legal age shall be taken for publication only with a signed release from the patient.

28.5(3) Photographs and recordings of a patient who is a minor, committed mental patient, mentally retarded, or ward of the state shall be taken for publication only with a signed release from the parent or legal guardian.

28.5(4) Every effort shall be made to preserve the inherent dignity of the patient and to preclude exploitation or embarrassment of the patients or the family of the patients.

28.5(5) Pictures and recordings of patients are not to be altered to prevent identification in any manner that would tend to perpetrate the stigma attached to the public image of mental illness or mental retardation.

441—28.6(218) Interviews and statements.

28.6(1) Releases to the news media shall be the responsibility of the superintendent. Authority for dissemination and release of information shall be designated to other persons at the discretion of the superintendent.

28.6(2) When news media or other outside groups ask to interview patients within the hospital, either singly or as part of a group, written informed consent of the patient involved and prior consent of the superintendent shall be required. Permission for these interviews shall be granted only when not in conflict with federal or state laws or regulations on confidentiality.

441—28.7(218) Use of grounds, facilities, or equipment.

28.7(1) The superintendent or designee may grant permission for temporary use of assembly halls, auditoriums, meeting rooms, or institutional grounds to an organization or group of citizens when the facility is available and is not needed for regular scheduled departmental services.

28.7(2) Members of outside organizations permitted to a facility shall observe the same rules as visitors to the institution.

441—28.8(218) Tours of institution. Groups or individuals shall be permitted to tour the institution only with approval of the superintendent or designee.

441—28.9(218) Donations. Donations of money, clothing, books, games, recreational equipment or other gifts shall be made directly to the superintendent or designee. The superintendent or designee shall evaluate the donation in terms of the nature of the contribution to the hospital program. The superintendent or designee shall be responsible for accepting the donation and reporting the gift to the director, division of mental health/mental retardation/developmental disabilities, department of human services. All monetary gifts shall be acknowledged in writing to the donor.

441—28.10(218) Resident's rights for the mentally retarded.

28.10(1) The recipient of mental retardation services shall be treated with consideration, respect, and full recognition of the recipient's dignity and individuality.

28.10(2) In order to preserve each resident's self-respect and dignity, to assure optimum care and treatment, and to prevent physical and psychological abuse, the resident shall be afforded the following considerations:

a. The resident shall be evaluated promptly following admission and shall receive emergency services appropriate to the person's needs.

b. The resident may participate in the development of treatment plans and shall be advised of hospital rules and regulations applying to individual conduct as a resident.

c. The resident shall be provided with current information concerning diagnosis, treatment and progress in terms and language understandable to the resident. When it is not feasible to give this information directly to the resident the information shall be made available to an immediate family member, guardian, or person in charge on behalf of the resident.

28.10(3) Each resident and the parent or guardian may participate in the planning and decision-making with regard to the resident and be informed in writing of progress at reasonable intervals. Whenever possible, the resident shall be given the opportunity to decide which of several appropriate alternative services to receive.

28.10(4) An individual written plan of services shall be developed for each resident. The plan shall be implemented through prompt treatment of identified ailments, shall be kept current, and shall be modified when indicated.

28.10(5) The resident shall not receive unusual treatment procedures such as surgery, electroconvulsive therapy or aversive therapy without the resident's expressed, informed consent or that of the legally constituted guardian. Any unusual treatment shall be fully explained to the resident in language that the resident can reasonably be expected to understand.

28.10(6) The resident shall have the least restrictive conditions necessary to achieve the purposes of treatment. The resident shall be free from restraint or seclusion except when necessary to prevent harm to the resident or others or damage to property, or when utilized as a treatment method in which case the procedures in subrule 28.4(5) will apply.

28.10(7) The resident shall be free from unnecessary or excessive medication or treatment intervention.

28.10(8) Medical records, ward charts and information regarding the evaluation, diagnosis, care and treatment shall be considered private and confidential.

28.10(9) An individual postinstitutional plan shall be developed for each resident when release becomes an immediate goal.

28.10(10) When the resident is assigned to industrial therapy, the specific assignment shall be an integrated part of the treatment plan and the resident shall be appropriately supervised. The resident shall be compensated in accordance with federal and state laws for any work assignment.

28.10(11) The resident shall retain all the rights of full citizenship except as may be specifically limited by the constitution, statute, or court order.

28.10(12) The resident, parent, or legal guardian shall be advised of the provision of the law pertaining to admissions and discharge.

28.10(13) The resident may file application for a writ of habeas corpus and petition the court for release.

28.10(14) The resident may wear personal clothing and keep and use a reasonable amount of money as appropriate to the treatment program. The institution shall make provision for the laundering of the resident's clothing and will provide a reasonable amount of storage space for clothing and personal property.

28.10(15) When the resident does not have personal clothing or resources to purchase clothing, the institution shall furnish clothing which is clean, neat and seasonally suitable.

28.10(16) The resident shall have the opportunity for educational, vocational, rehabilitational and recreational programs as compatible with the resident's needs.

28.10(17) The resident shall have access to current informational recreational media, e.g., newspapers, televisions, or periodicals in keeping with the resident's treatment program.

28.10(18) The resident may participate in religious worship of personal choice in accordance with individual treatment program. Pastoral counseling shall be available when desired.

28.10(19) The resident shall be accorded privacy and uncensored communication with others by mail and telephone and with persons of the resident's choice except when therapeutic or security reasons dictate otherwise. Any limitations or restrictions imposed shall be approved by the superintendent or designee and the reasons noted shall be made a part of the resident's record.

28.10(20) The resident or any person acting on behalf of the resident may submit to the appropriate human rights committee in the institution or other appropriate authority for investigation and appropriate action complaints or grievances against any person, group of persons, organization, or business regarding infringement of the benefits of the mentally retarded person and delivery of the mental retardation services.

28.10(21) The rules for mentally retarded residents shall be publicly posted in each facility.

28.10(22) All rights and responsibilities of the resident shall devolve to the resident's guardian, next of kin, or sponsoring agency when:

a. A resident is adjudicated incompetent in accordance with state law.

b. A resident's physician has documented in the resident's record the specific impairment that has rendered the resident incapable of understanding the rights for the mentally retarded.

441—28.11(218) Catchment areas.

28.11(1) The catchment areas for the four (4) mental health institutes shall be made up of the following counties:

a. Cherokee:

Buena Vista	Franklin	Marshall	Sioux
Calhoun	Hamilton	Monona	Story
Cerro Gordo	Hancock	O'Brien	Webster
Cherokee	Hardin	Osceola	Winnebago
Clay	Humboldt	Palo Alto	Woodbury
Crawford	Ida	Plymouth	Worth
Dickinson	Kossuth	Pocahontas	Wright
Emmet	Lyon	Sac	

b. Clarinda:

Adair	Dallas	Mills	Taylor
Adams	Decatur	Montgomery	Union
Audubon	Fremont	Page	Warren
Boone	Greene	Polk	Wayne
Carroll	Guthrie	Pottawattamie	
Cass	Harrison	Ringgold	
Clarke	Madison	Shelby	

c. Independence:

Allamakee	Butler	Fayette	Jones
Benton	Chickasaw	Floyd	Linn
Black Hawk	Clayton	Grundy	Mitchell
Bremer	Delaware	Howard	Tama
Buchanan	Dubuque	Jackson	Winneshiek

d. Mt. Pleasant:

Appanoose	Iowa	Louisa	Poweshiek
Cedar	Jasper	Lucas	Scott
Clinton	Jefferson	Mahaska	Van Buren

Davis	Johnson	Marion	Wapello
Des Moines	Keokuk	Monroe	Washington
Henry	Lee	Muscatine	

28.11(2) The catchment areas for the two (2) state hospital-schools shall be made up of the following counties:

a. Glenwood:

Adair	Decatur	Lee	Pottawattamie
Adams	Des Moines	Linn	Ringgold
Appanoose	Fremont	Louisa	Sac
Audubon	Greene	Lucas	Scott
Benton	Guthrie	Lyon	Shelby
Carroll	Harrison	Mahaska	Sioux
Cass	Henry	Mills	Taylor
Cedar	Ida	Monona	Union
Cherokee	Iowa	Monroe	Van Buren
Clarke	Jefferson	Montgomery	Wapello
Clinton	Johnson	Muscatine	Washington
Crawford	Jones	Page	Wayne
Davis	Keokuk	Plymouth	Woodbury

b. Woodward:

Allamakee	Dallas	Howard	Pocahontas
Black Hawk	Delaware	Humboldt	Polk
Boone	Dickinson	Jackson	Poweshiek
Bremer	Dubuque	Jasper	Story
Buchanan	Emmet	Kossuth	Tama
Buena Vista	Fayette	Madison	Warren
Butler	Floyd	Marion	Webster
Calhoun	Franklin	Marshall	Winnebago
Cerro Gordo	Grundy	Mitchell	Winneshiek
Chickasaw	Hamilton	O'Brien	Worth
Clay	Hancock	Osceola	Wright
Clayton	Hardin	Palo Alto	

28.11(3) Application for voluntary admission to an institution shall be made to the institution in the catchment area within which the person, for whom admission is sought, is residing.

28.11(4) Court commitment of a person shall be made to the institution within the catchment area within which the court is located.

28.11(5) The state director shall give consideration to granting exceptions to the established catchment areas when requested by the person seeking a voluntary admission or the committing court. The state director's decision shall be made within forty-eight (48) hours of receipt of the request. The decision shall be based on the clinical needs of the patient, the availability of appropriate program services, available bed space within the program at the requested institution and the consent of the superintendents of both institutions involved.

28.11(6) For the purpose of treating a minor from the Clarinda catchment area who requires admission or commitment to a mental health institute adolescent or children's treatment program, the Clarinda catchment area is deemed to be a part of the Cherokee catchment area. For a minor in the Mt. Pleasant catchment area, the Mt. Pleasant catchment area is deemed to be a part of the Independence catchment area.

This rule is intended to implement Iowa Code section 218.4.

441—28.12(217) Release of confidential information.

28.12(1) Information defined by statute as confidential concerning current or former patients or residents of the mental health institutes or hospital-schools, shall not be released to a person, agency or organization, who is not authorized by law to have access to the information, unless the patient or resident authorizes the release. Authorization shall be given by using Form MH-2201-0.

28.12(2) Persons admitted or committed to a mental health institute or a hospital-school and who are not able to pay their own way in full, shall authorize the department to obtain information necessary to establish whether they have legal settlement in Iowa or in another state. Authorization shall be given using Form MH-2203-0, Authorization to Release Information for Settlement.

This rule is intended to implement Iowa Code section 217.30.

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CHAPTER 29
MENTAL HEALTH INSTITUTES
[Prior to 7/1/83, Social Services (770), Ch 29]
[Prior to 2/11/87, Human Services(498)]

441—29.1(218) Visiting.

29.1(1) Visiting hours Monday through Friday are from 12 noon to 8 p.m., and 10 a.m. to 8 p.m. on Saturday, Sunday, and holidays. Exceptions for special hours may be designated by the physician on an individual or ward basis. Therapy for the patient shall take precedence over visiting and visiting shall not interfere with the patient's treatment program or meals. Visiting hours shall be posted in each institution.

29.1(2) A visit shall be terminated when behavior on the part of the patient or visitor is disruptive to the patient's treatment plan.

29.1(3) Reserved.

29.1(4) Persons wishing to visit patients shall be approved by the patient's attending physician or designee.

29.1(5) Visiting on grounds shall be permitted when the patient has a ground pass.

29.1(6) Visitors wishing to take a patient off grounds shall receive prior approval from the attending physician.

29.1(7) All visitors shall obtain a visitor's pass at the switchboard or another area as designated by the superintendent and posted. The pass shall be given to the ward personnel before the visitor is allowed on the ward.

29.1(8) Persons under twelve (12) years of age shall not visit patients on the wards.

This rule is intended to implement Iowa Code section 218.4.

441—29.2(230) Direct medical services. In determining the charges for services as specified in Iowa Code section 230.20, direct medical services shall include:

29.2(1) X-ray services
29.2(2) Laboratory services
29.2(3) Dental services
29.2(4) Electroconvulsive treatment (ECT)
29.2(5) Electrocardiogram (EKG)
29.2(6) Basal metabolism rate (BMR)
29.2(7) Pharmaceutical services
29.2(8) Physical therapy
29.2(9) Electroencephalograph (EEG)

This rule is intended to implement Iowa Code section 230.20(1)*"b"*.

441—29.3(230) Liability for support. The liability of a person legally liable for support of a mentally ill person after one hundred twenty (120) days of hospitalization shall be standard for one person in the aid to dependent children program as established in subrule 41.8(2).

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CHAPTER 30
STATE HOSPITAL-SCHOOLS

[Prior to 7/1/83, Social Services(770), Ch 30]
[Prior to 2/11/87, Human Services(498)]

441—30.1(218) Visiting.

30.1(1) The visiting hours at the state hospital-schools shall be 9 a.m. to 11 a.m.; 1 p.m. to 4 p.m. for on-ward visit; 8:30 a.m to 8:30 p.m. for off-campus visit. Visiting hours may be extended at the superintendent's or designee's discretion when visitors are from great distances or when able to make only rare visits.

30.1(2) Persons wishing to visit residents must be approved by the resident's treatment team social worker designee prior to the visit.

30.1(3) The resident shall only be available when the resident is not actively involved in a scheduled treatment activity.

30.1(4) A visit shall be terminated when behavior on the part of the resident or visitor is disruptive to the resident's treatment plan.

30.1(5) Visitors wishing to take a resident off grounds shall obtain prior approval from the resident's treatment team social worker or designee.

This rule is intended to implement Iowa Code section 218.4.

441—30.2(222) Liability for support. The liability of any person, other than the patient, who is legally bound for the support of any patient under eighteen (18) years of age shall be determined in the same manner as parent liability in rule 441—156.3(252C), except that the maximum liability shall not exceed the standards for personal allowances established by the department under the aid to dependent children program.

This rule is intended to implement Iowa Code section 222.78.

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CHAPTER 31
REIMBURSEMENT TO COUNTIES FOR LOCAL COST OF INPATIENT MENTAL HEALTH TREATMENT

[Prior to 7/1/83, Social Services(770), Ch 31]
[Prior to 2/11/87, Human Services(498)]

441—31.1(68GA,Ch 1001) Definitions.

"Designated mental health program" means the hospital has a ward, unit or specific beds identified to be and used primarily for a psychiatric treatment program and the hospital is accredited by the joint commission on accreditation of hospitals.

"Inpatient" means a person who is admitted and remains in the hospital overnight.

"Preliminary diagnostic evaluation" means a diagnostic evaluation in accordance with Iowa Code sections 255B.4 through 255B.7.

"Psychiatric treatement" means the provision of services by or under the direction of a qualified mental health professional. The services include, but are not limited to, individual counseling, group counseling, activities, occupational therapy, and vocational rehabilitation in addition to daily supervision and maintenance.

"State director" means the director of the division of mental health/mental retardation/developmental disabilities.

441—31.2(68GA,Ch 1001) Eligible persons.

31.2(1) Eligibility of the county for reimbursement shall be based on individual persons who are admitted as hospital inpatients for psychiatric treatment to a designated mental health program in a hospital other than a state mental health institute.

31.2(2) The admission shall be as a result of a preliminary diagnostic evaluation which determined that inpatient admission to a hospital for psychiatric treatment was appropriate to the person's needs. The findings and recommendations of the diagnosis and evaluation shall be in writing and signed by the person doing the evaluation.

31.2(3) The preliminary diagnosis and evaluation shall be done by a facility in accordance with the board of supervisors resolution pursuant to Iowa Code sections 225B.5 through 225B.7.

31.2(4) The person's hospital care shall have been paid for by the county from funds in the county mental health and institutions fund authorized by Iowa Code section 444.12.

This rule is intended to implement Iowa Code section 225C.12.

441—31.3(68GA,Ch 1001) Persons specifically ineligible.

31.3(1) The county shall not be eligible for reimbursement for any costs incurred in connection with the hospitalization of a person who is eligible to have all or part of the cost of hospitalization paid for by the medical assistance program under Iowa Code chapter 249A.

31.3(2) The county shall not be eligible for reimbursement for any costs incurred in connection with the hospitalization of a person who is entitled to payment of these costs from any public or private third party payor.

31.3(3) The county shall not be eligible for reimbursement for any hospital inpatient costs incurred prior to the date a preliminary diagnostic evaluation is completed.

441—31.4(68GA,Ch 1001) Filing claim.

31.4(1) The county auditor shall file a claim for reimbursement using Form MH-5102-0, Application for Reimbursement for Local Cost of Inpatient Mental Health Treatment. The county auditor shall sign the form certifying that the costs claimed are true and correct.

31.4(2) The application shall be filed with the state director quarterly for the calendar quarters ending March 31, June 30, September 30 and December 31. The application shall be filed by the last day of the month following the end of the quarter. Any applications received subsequent to that date shall be processed as claims for the calendar quarter in which they are received.

31.4(3) Any claim or portions of a claim not payable because of errors in the information provided by the county shall be paid as a claim in the quarter in which the correct information is submitted.

31.4(4) The first claim filed with the state director shall have attached, a copy of the resolution passed by the board of supervisors requiring a preliminary diagnosis and evaluation. Any subsequent changes to the resolution shall be filed with the state director with the next claim filed subsequent to the change.

441—31.5(68GA,Ch 1001) Rate of reimbursement.

31.5(1) The rate of reimbursement to the county shall be twenty percent (20%) of the average program cost for the mental health institute program in which the person would have been treated had they been admitted to the mental health institute. The average program cost shall be the average of the individual per day program costs for the mental health institutes for the quarter for which the claim is filed. In no case shall the reimbursement exceed the actual cost of care to the county.

31.5(2) The classification of programs used for reimbursement is:

a. Adult psychiatric. Persons eighteen (18) and over generally receiving psychiatric treatment for an acute phase of a psychiatric disorder from which the person is likely to recover and move to a lower level of care or return home.

b. Geriatric. Persons age sixty (60) and over who are suffering from a chronic disease or degenerative organic disorders who require long-term support and supervision.

c. Alcohol/substance abuse. Persons whose primary problem is alcohol/drug abuse or addiction and whose treatment plan is directed toward treatment of the abuse or addiction.

d. Adolescent. Persons age thirteen (13) through seventeen (17).

e. Children. Persons under the age of thirteen (13).

31.5(3) The average program cost shall be the average of the individual per day program costs as determined by the mental health institutes under Iowa Code section 230.20.

31.5(4) In any quarter in which there are insufficient appropriated funds to pay in full the reimbursements applied for, the amount of reimbursement actually paid shall be prorated equally among the claims submitted for that quarter so that an equal proportion of each county's claim is paid.

441—31.6(68GA,Ch 1001) Audit records.

31.6(1) For each person for whom reimbursement is received, the county shall have available for audit purposes a record containing:

a. The date and place of hospitalization.

b. Evidence of a determination that the person was not eligible for medical assistance or other third party payment.

c. A copy of the dated and signed preliminary diagnostic evaluation.

d. The person's name, social security number and date of birth.

31.6(2) The county shall also maintain records for audit purposes showing:

a. The cost of care for each individual for whom reimbursement is sought.

b. The amount of payment made by the county.

c. To whom payment was made.

d. The fund in which any reimbursement received is deposited.

e. The fund from which the cost was paid.

These rules are intended to implement Acts of the Sixty-eighth General Assembly, chapter 1001, section 56.

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CHAPTER 32
STATE COMMUNITY MENTAL HEALTH AND MENTAL RETARDATION SERVICES FUND

[Prior to 7/1/83, Social Services(770), Ch 32]
[Prior to 2/11/87, Human Services(498)]

441—32.1(225C) Definitions.

"Applicant." Under the general allocation fund an applicant is the county board of supervisors from a single county or combination of counties. In the case of the special allocation funds applicant can also mean a county's(ies') designee which is a person or agency authorized in writing by a county or multicounty board of supervisors.

"Commission" means the mental health and mental retardation commission.

"Comprehensive services" means the mental health and mental retardation services as defined in Iowa Code section 225C.2.

"Coordinating board" means the county mental health and mental retardation coordinating board.

"Director" means the director of the division of mental health, mental retardation and development disabilities.

"Recipient" means an applicant who has received a special allocation grant.

"Services fund" means the state community mental health and mental retardation services fund.

"State plan" means the state mental health and mental retardation plan.

441—32.2(225C) General allocation distribution. For any year in which the legislature appropriates funds, the director shall receive and approve or disapprove applications for a share of the general allocation portion of the services funds.

32.2(1) *Application.* The application shall consist of the county's annual plan for the provision of comprehensive mental health and mental retardation services. The plan shall be submitted on Form 470-0890, County Application for General Allocation Funds, and shall include the following information:

a. Name and address of the applicant.

b. Composition and organization of the coordinating board and advisory board, when required under Iowa Code section 225C.18.

c. Identification and utilization of the comprehensive mental health and mental retardation services currently available.

d. Description of the need for comprehensive services.

e. Plan of action for the development and provision of comprehensive services.

f. Description of how the applicant will evaluate the services funded by the general allocation funds.

g. Budget information relating to maintenance of effort as required in Iowa Code section 225C.10.

h. Budget information relating to the expenditure of the general allocation funds.

32.2(2) *Application approval.*

a. The director shall determine an application is acceptable when it contains all of the required information and meets the following criteria.

(1) The application was received by October 15 of the year preceding the fiscal year for which funds are requested.

(2) Services for which general allocation funds will be used are comprehensive services or services mandated or authorized by law.

(3) Providers receiving general allocation funds are accredited or licensed where accreditation or licensure standards are applicable.

(4) The applicant has met the requirements of Iowa Code section 225C.10, relating to the maintenance of effort for expenditures.

(5) The applicant has begun to implement or has implemented the fiscal recording procedures for the general allocation funds in accordance with Iowa Code section 225C.10.

b. The director may determine an application is unacceptable when it does not meet one or more of the above criteria.

c. When an application has deficiencies, the director may grant provisional approval to an applicant when a plan of corrections has been agreed to by the applicant and the director.

32.2(3) *Notification.* The director shall notify the applicant in writing of the decision on the application by November 15 of the year in which the application is received.

32.2(4) *Waiver request.* Applicants not established or affiliated with a community mental health center under Iowa Code chapter 230A are required to expend a portion of the money received from the general allocation portion of the services fund to contract with a community mental health center for services. When an applicant determines that a contractual arrangement is undesirable or unworkable, it may request a waiver from the commission. The waiver request and justification shall be submitted with the application for general allocation funds on Form 470-0887, Waiver Questionnaire. The commission may grant a waiver request when the plan successfully demonstrates that mental health service(s) will be offered by a provider that is accredited by the commission as a mental health service provider pursuant to 441—chapter 35 and that one or more of the following applies:

a. Mental health service(s) offered by the community mental health center in closest proximity would require the majority of residents to travel more than one hour to receive services.

b. Mental health service(s) offered by the community mental health center costs more per service than those of another eligible provider and does not compare favorably with other costs for similar services offered by mental health centers around the state.

c. Mental health service(s) is already being provided by another source and the mental health center service would be a duplication.

441—32.3(225C) Special allocation distribution. For any year in which the legislature appropriates funds, the commission shall, consistent with the state plan, award grants from the special allocation funds for projects that will establish one or more comprehensive services not currently provided in the area or expand an existing comprehensive service. Applications for capital expenditures or capital renovations are not eligible for funding.

32.3(1) *Application.*

a. Grant cycle. The director will announce through public notice the opening of an application period. Applicants for grants shall submit first a letter of intent and then a grant proposal by the deadlines specified in the announcement.

b. Letter of intent. Letters of intent should be no longer than three (3) typed pages and must:

(1) Identify the applicant.

(2) State the need, problem, or issue the project would address.

(3) Identify the service(s) to be provided.

(4) Identify the objectives to be accomplished.

(5) Estimate the project budget.

Only letters of intent received by the deadline specified in the public notice will be considered. Applicants will be given a written acknowledgment of the letter of intent which includes comments on the project outlined in the letter.

c. Grant proposal. Applicants shall submit the proposal to the director on Form 470-1461, Mental Health, Mental Retardation and Developmental Disabilities Application Package. If a proposal does not contain the information specified in the application package or if it is late it will be disapproved. Proposals shall contain the following information:

(1) General agency information.

(2) Specific project information.

(3) A summary of the project.

(4) An introductory section outlining agency background information.

(5) A problem statement outlining the need or problem to be addressed.

(6) Project goals and objectives.
(7) Project methodology.
(8) An evaluation plan.
(9) A plan for future project funding.
(10) A line item budget.
(11) Assurances.
(12) Letters of support. County designees must have a letter of authorization from the county board(s) of supervisors and a letter of endorsement from the county mental health and mental retardation coordinating board.

32.3(2) *Project review.*

a. All proposals meeting the minimum criteria above will be evaluated by members of the division and a committee of the commission who shall make recommendations of approval or disapproval to the full commission. The commission may use an advisory committee to assist with project review. The review criteria is contained in the application package, Form 470-1461. The commission shall award the grants.

b. The following factors will be considered in selecting proposals.
(1) The demonstrated experience and expertise of the applicant.
(2) The demonstrated and justified need for services.
(3) The relationship of the project purpose, goal(s), and objectives with the identified need.
(4) The measurability of objectives.
(5) The adequacy of project design and methodology.
(6) The process and instruments for project evaluation.
(7) The efforts to secure future funding.
(8) The appropriateness of the project budget in relation to the project methodology.

32.3(3) *Notification.* Notification of acceptance or denial of the proposal will be sent to each applicant.

32.3(4) *Contracts.* The funds for approved projects will be awarded through a contract entered into by the director and the applicant. The contract may cover a period not to exceed twenty-four (24) months.

32.3(5) *Records.* Recipients shall keep statistical and financial records of services provided and any other records as required by the director and specified in the contract.

32.3(6) *Evaluation.* The division shall monitor the program while in progress and shall evaluate the project at the end of the contract period.

441—32.4(225C) Appeals. Applicants dissatisfied with the director's decision on an application for general allocation funds, the commissions' decision on an application for special allocation funds, or the commission's decision on a request for a waiver may file an appeal with the commissioner. The letter of appeal must be submitted within ten (10) working days of the date of the notice of decision and must include a request for the commissioner to review the decision and the reasons for dissatisfaction. Within ten (10) working days of the receipt of the appeal the commissioner will review both the appeal request and evidence provided by the director and will issue a final decision.

These rules are intended to implement Iowa Code section 225C.11.

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CHAPTER 33
COMMUNITY MENTAL HEALTH CENTER STANDARDS

[Prior to 7/1/83, Social Services(770), Ch 33]
[Prior to 2/11/87, Human Services(498)]

441—33.1(225C,230A) Definitions.

"Accreditation" means the decision made by the commission that the center has met conditions of subrule 33.5(7) *"a"* or *"b"* or 33.5(13).

"Affiliate" means an agency which has a written agreement with the community mental health center for the delivery of one or more of the community mental health center's service elements, e.g., inpatient, partial hospitalization, or emergency services.

"Center" means a community mental health center which is established pursuant to Iowa Code section 230A.1.

"Chief administrative officer" means the individual appointed by the governing body to act on its behalf in the overall administration of a center. Job titles may include administrator, chief executive officer, director, executive director.

"Commission" means the mental health and mental retardation commission.

"Consultant" means a person hired on a contractual basis to perform professional services. Consultants are usually paid on an hourly basis, receive no fringe benefits, and are responsible for their own mandatory salary deductions.

"Consumer" means a person or a group utilizing the services of the center.

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

"Employee" means a person paid by the center to perform duties and responsibilities defined in the job description.

"Evaluation activities" means the assessment of a person's mental health problems and needs including a diagnostic formulation, in order to determine the most appropriate service for the person and to provide the information necessary for the preparation of an appropriate service plan. The evaluation includes, but is not limited to, an assessment of the individual's needs, abilities, disabilities, and relevant environmental factors. Where possible, there is collaboration with the individual's family or significant others as appropriate.

"Informed consent" means an agreement by a person, or by a legal guardian in consultation with that person, to participate in an activity based upon understanding of:

1. A full explanation of the procedures to be followed, including an identification of those that are experimental.
2. A description of the attendant discomforts and risks.
3. A description of benefits to be expected.
4. A disclosure of appropriate alternative procedures that would be advantageous for the individual.

"Mental health professional" means a person who:

1. Holds at least a master's degree in a mental health field, including, but not limited to, psychology, counseling and guidance, nursing, and social work; or is a doctor of medicine (M.D.) or doctor of osteopathic medicine and surgery (D.O.); and
2. Holds a current Iowa license when required by the Iowa licensure law; and
3. Has at least two (2) years of post-degree experience, supervised by a mental health professional, in assessing mental health problems and needs of individuals and in providing appropriate mental health services for those individuals.

"Mental health service area" means the defined geographic area for which there is designated responsibility for the delivery of community mental health services to persons residing within the area.

"Needs assessment" means the use of a variety of indicators and measurement and research techniques to enumerate and estimate the extent of mental health needs and to prioritize them in order of importance according to some rational process.

"Paraprofessional" means a person who does not meet the eligibility criteria for a mental health professional but who performs treatment or psychosocial support and rehabilitation activities.

"Program" means a set of related organizations, resources, or services directed to the accomplishment of a fixed set of goals and objectives for a special target population or specified geographic area(s).

"Program administration" means the process of planning, organizing, and directing overall operations, resources, and activities of a center to facilitate the attainment of goals and objectives.

"Program evaluation" means the process of determining the degree to which a program of the center is meeting its mission, goals, and objectives. It involves continuous assessment of resources and program activities in order to attain the goals and objectives. Examples include quality assurance programs, information systems monitoring, and community satisfaction studies.

"Provider" means a person whose primary activity is the provision of health/mental health services to individuals or the administration of facilities or institutions in which these services are provided.

"Psychosocial support and rehabilitation activities" means activities which are designed to maximize a person's level of functioning, including personal and social adjustment and independent living and work skills.

"Service records" means the written documentation of services provided by the center. Types of records include:

1. A record of each recipient of consultation and education services;
2. A record of emergency services;
3. A record for each consumer admitted for clinical services.

"Treatment activities" means psychotherapies and somatic therapies which are designed to limit or reverse the effects of mental health problems and mental disorders by increasing the person's adaptive capacity to the maximum extent possible.

441—33.2(225C,230A) Governance.

33.2(1) Each community mental health center established under Iowa Code section 230A.3, subsection 2, shall have a board of directors that complies with the Iowa Code and that is the ultimate authority for determining overall center policies.

a. The board shall be representative of the center's mental health service area.

(1) The interests of the following groups shall be represented: High, medium, and low-income levels; children, adolescents, adults, and the elderly; developmentally disabled persons; consumers of the center's services; and minority populations or other cultural groups which constitute two percent (2%) or more of the mental health service area population.

(2) There shall be at least one representative from each county served by the center.

(3) Interested professions shall be represented.

(4) At least fifty-one percent (51%) of the board members shall be persons who are not providers.

(5) Board members should be residents of the mental health service area.

b. The board shall develop and adopt written bylaws for its own guidance which shall minimally specify the following:

(1) The number of board members.

(2) Pursuant to Iowa Code section 504A.23, the duties of officers which shall include, at a minimum, a president, vice president, secretary, and treasurer. The president shall preside over all meetings, shall appoint the members of committees, and shall serve as chairperson of the executive committee when it is established. The vice president shall perform the duties of the president in the absence of the president. The secretary shall be responsible for the minutes of all meetings of the board and executive committee when it is established. The treasurer shall be responsible for full and accurate account of all receipts and disbursements in books belonging to the corporation.

(3) The manner in which officers are elected or appointed and removed. Officers should be elected at an annual business meeting for a specified term; officer vacancies should be filled by a vote of the board; officers may be removed for cause by a vote of the board.

(4) The frequency of meetings and procedures for calling meetings. Time, place, and notice of regular meetings shall be included. Time, place, and notice of the annual business meeting shall be included. Time, place, and notice of an annual public meeting for the purpose of providing information on board policies, presenting the mental health program and obtaining input from the community shall be included. Requirements for convening special meetings shall be included. Procedures for conducting meetings, including at least the definition of a quorum, the rules and order of business, and the vote required for board action, shall be included.

(5) The manner in which renewal and continuity of board membership shall be provided. Board members should have staggered terms of office. Board members should be periodically replaced and serve no more than six (6) consecutive years. Vacancies between annual meetings should be filled by a vote of the board. Board members may be removed for cause by a vote of the board.

(6) Definition of a conflict of interest. Center employees and consultants shall not serve on the board. No board member shall receive any compensation for services in office, with the exception of reimbursement for actual necessary expenses incurred in the performance of board duties. If the board wishes to purchase a service from or buy or utilize property of one of its members, the individual receiving the remuneration shall not vote on the issue. The board shall be authorized to define a nonfinancial conflict of interest situation involving its member(s) and to take action regarding the voting rights of the member(s) in question.

(7) The procedures necessary to amend the bylaws. The bylaws shall be reviewed at least annually and the bylaws shall reflect amendments within three (3) months of the revisions approved by the board.

(8) The composition and duties of standing and special committees. Where there is an executive committee, the bylaws shall describe it in the following manner: The executive committee shall report its actions to the board at the next meeting; the executive committee should include at least the president, vice president, secretary, and treasurer; during intervals between meetings, the executive committee may exercise the authority of the board. The bylaws shall describe standing committees and the procedures for establishing special committees. Standing committees should include at least a personnel/finance committee and a planning committee.

c. Minutes of all meetings of the board of directors, and committees with the authority of the board shall be kept.

(1) Minutes shall be approved by the board and shall include, at a minimum, the date of the meetings, names of individuals in attendance, topics discussed, decisions reached, actions taken, and a summary of all reports presented to the board.

(2) All committees shall keep minutes of their meetings and submit these to the board for review.

(3) Minutes shall be maintained in the perpetuity, and unless specified by board exception, shall be available to staff and the general public.

d. The duties of the board of directors shall include, at a minimum:

(1) Establishment of center policies.

(2) Adoption of the center program plan.

(3) Appointment, evaluation, and removal, if necessary, of a chief administrative officer.

(4) Establishment of effective fiscal control.

(5) Authorization and approval of all contracts and agreements to which the center is a party.

(6) Preparation and approval of the center's annual budget.

(7) Submission of the budget to the auditor(s) and board(s) of supervisors of the county or counties served by the center.

33.2(2) Each center established under Iowa Code section 230A.3, subsection 1, shall have a board of trustees which complies with Iowa Code sections 230A.4 to 230A.11.

33.2(3) Each center board of directors/trustees shall establish and maintain an orientation program for incoming board members. Components of the orientation program shall include, at a minimum:

a. A discussion of board member's responsibilities.

b. An introduction to the structure, goals, and scope of the services operated by the board.

c. A discussion of state and federal laws pertaining to community mental health centers.

d. A discussion of the center's relationships to other human service providers in the community and to governmental bodies at the local, state, and federal level.

33.2(4) The center shall provide educational information to the board at least quarterly. Information should include such things as current concepts of mental health; current methods of program evaluation; the history and organization of community mental health on federal and state levels; confidentiality and consumer rights; the center programs; board responsibilities; funding sources; types of funds available; and the activities of the division.

a. Each board member shall have a board manual which is kept current and which shall include the following: Articles of incorporation; current bylaws; brief history of the center; most recent auditor's report; current annual budget; current table of organization; a description of the current board membership including names, addresses, phone numbers, office held, and length of term; most recent annual report; current program plan; board minutes; brief description of the state mental health delivery system; and a copy of the standards used in the accreditation of the center.

b. Reserved.

33.2(5) The board shall ensure input from center employees/consultants at least annually to exchange information and ideas about board policies and center programs and about coordination with other human service providers. This input shall be documented in the board meeting minutes.

33.2(6) The board shall develop and annually update a program plan for the provision of services based upon an assessment of the mental health needs and resources of the center's service area. Each plan shall be consistent with the county's(ies') mental health and mental retardation plan(s) and shall include at a minimum:

a. A needs assessment based at a minimum on the demographic characteristics of the service area.

b. A listing of the other mental health services in the service area.

c. An evaluation of how effective the center's current services are at meeting the estimated need.

d. A description of the services the center will provide.

e. The goals and objectives of each service provided.

f. A summary of how the center will coordinate with other resources providing the same service to the service area population.

g. A description of the resources needed for the service including staff, facilities, and funds.

h. A description of the hours of operation.

i. A description of limitations on consumer eligibility.

441—33.3(225C,230A) Administration.

33.3(1) The board of directors/trustees shall appoint a chief administrative officer who shall have primary responsibility for the overall program operations in accordance with the policies established by the board.

a. The responsibilities of the chief administrative officer shall include, at a minimum, the following:

(1) The development and organization of administrative and procedural functions of the center.

(2) Development and enhancement of public relations.

(3) Personnel administration.
(4) Management and conservation of the physical and fiscal assets of the center.
(5) Liaison between the board and center employees/consultants.
(6) Assistance to the board in preparing policies by preparing reports showing the service and financial activities of the center, the nature and extent of mental health problems in the service area, and other areas identified by the board.

b. The chief administrative officer shall be a person who:

(1) Holds at least a master's degree in a mental health/administration field, such as health administration, psychology, counseling and guidance, nursing, social work, public administration; or is a medical doctor or doctor of osteopathic medicine and surgery, and
(2) Holds a current Iowa license when required by Iowa licensure law, and
(3) Has at least three (3) years of post-degree clinical or administrative experience in the delivery of human services.

33.3(2) The center shall have a policy and procedures manual with policy guidelines and administrative procedures for all aspects of program operation.

a. The policy and procedures manual shall be available to all staff.

b. The policies and procedures in the manual shall be current.

c. Written policies and procedures shall be maintained and followed for the areas specified below:

(1) Fiscal administration as outlined in 33.3(3).
(2) Personnel administration as outlined in 33.3(4).
(3) Management information system as outlined in 33.3(5).
(4) Evaluation activities as outlined in 33.3(6).
(5) Safety and security procedures as outlined in 33.3(7).
(6) Insurance protection as outlined in 33.3(8).
(7) Consumer rights as outlined in 33.4(1)*"b"*.
(8) Coordination of services as outlined in 33.4(1)*"c"*.
(9) Medication administration as outlined in 33.4(1)*"e"*.
(10) Service records as outlined in 33.4(1)*"f"*, *"g"*, *"h"*.
(11) Service record confidentiality as outlined in 33.4(1)*"i"*.
(12) Assessment and improvement for quality care as outlined in 33.4(1)*"j"*.
(13) Research projects involving human subjects as outlined in 33.4(1)*"k"*.
(14) Other written policies and procedures which are required in these standards.

33.3(3) The center shall have policies and procedures to ensure proper fiscal management which shall include:

a. The preparation and maintenance of a board-approved operating budget which includes a total center line item budget, as well as a program budget for each center service.

b. The provision for an alteration of budget allocation after the board has approved the budget.

c. The utilization of an accounting system in accordance with sound accounting practices and which allows for the identification of cost centers in accordance with the center budget, the provision of cost data on a timely basis, timely preparation of financial reports, and consistent identification of costs and receipts.

d. The establishment and operation of mechanisms to maximize collection of fees from service recipients and third party insurers or payers.

(1) There shall be written procedures for the credit and collection of consumer accounts, including designation of the authority to write off uncollectible accounts.
(2) There shall be written procedures for billing third-party payers.
(3) The rates shall be reviewed on at least an annual basis.
(4) The center shall utilize a sliding fee schedule based on the consumer's ability to pay.
(5) Rates shall be set for services based on cost-finding procedures.

e. The provision for monthly budget reports to the board including a list of income and expenses and a comparison to the actual budgeted figures.

f. The purchase of equipment and supplies.

g. The guidelines for acceptance of and handling of gratuities and gifts by the center.

h. A complete inventory to be conducted at least biannually.

i. The provision for an independent fiscal audit of the center to be performed annually by the state auditor's office or a certified public accountant. Copies of the auditor's report shall be submitted to the board, the board(s) of supervisors, and director of the division.

33.3(4) The center shall have written personnel policies and procedures which at a minimum provide for:

a. Written job descriptions for all employees/consultants, which shall include duties and responsibilities; education, experience, licensure or certification requirements; and, supervisory relationships.

b. An annual performance evaluation of all employees/consultants, which is dated and signed by the supervisor and the employee/consultant. The evaluation shall include an assessment of the performance of duties and responsibilities stated in the job description and a discussion and re-evalution of the employee's staff development plan.

c. Personnel records which are kept up-to-date, accurate, complete, and contain each employee's:

(1) Application and supporting materials.
(2) Job description.
(3) Copies of current licenses and certificates.
(4) Staff development plan.
(5) Annual performance evaluations, dated and signed.
(6) Statements of benefits earned and taken.
(7) Documentation of any disciplinary action and grievance.
(8) Current consultant contracts.

d. Each employee to receive a copy of the job description with the employee's written acknowledgment that the employee understands the responsibilities and duties of the position and the center's personnel policies.

e. An orientation program for all newly hired employees/consultants which shall include information regarding the following topics if pertinent to the performance of the new employee's/consultant's job:

(1) A discussion of the relationship of the center to the community, county board(s) of supervisors, the division, and other agencies with whom the employee/consultant will be relating.
(2) An introduction to the center; its organizational structure, procedures, and services.
(3) A discussion of the center's personnel policies and procedures.
(4) A discussion of the center's safety plan.

f. An ongoing education program for all professional/paraprofessional employees designed to meet the goals and programmatic needs of the center which at a minimum provides for:

(1) A written individualized staff development plan developed, dated, and signed by both the employee and the employee's supervisor which shall include the identification of the center's programmatic needs, the identification of the individual's educational needs, and the specification of objectives for meeting mutual educational needs.
(2) Information about staff development opportunities to be disseminated to all employees.

g. The recruitment and employment of center employees/consultants.

(1) The center shall be an equal opportunity/affirmative action employer and shall have nondiscriminatory employing practices with regard to race, creed, age, gender, disabilities, color, religion, and national origin.
(2) Notice of openings shall be provided to the public media and organizations officially engaged in securing employment opportunities, subject to collective bargaining agreements and affirmative action plans.
(3) Qualified current employees shall be given information about vacant positions and shall be given equal consideration with all other applicants.
(4) Limitations on employee participation in activities which may cause conflict of interest shall be stated.

(5) The extent and nature of probationary employment periods for newly hired, promoted, or transferred employees should be stated.

(6) Benefits the center provides to full- and part-time employees should be stated.

(7) Reimbursement of work-related expenses incurred by employees should be stated.

h. The roles of trainees and volunteers at the center.

(1) There shall be criteria for selecting, training, and supervising trainees and volunteers.

(2) Responsibilities, privileges, and limitations of trainees and volunteers shall be stated, including accessibility to consumer records.

(3) The center's responsibility to ensure trainees and volunteers against liabilities shall be described.

i. The procedure to be used when disciplining a center employee; the procedure a center employee may use to grieve a personnel decision against the employee; the procedure used to document all disciplinary actions and grievances; and the establishment of the board of directors as the final authority in the grievance procedure.

33.3(5) There shall be policies and procedures relating to the center's management information system. The system shall gather information on the center's manpower, service, and fiscal conditions.

a. The manpower component of the system shall provide information on staff qualifications, hours, salaries, and activities.

b. The statistical component of the system shall provide information on consumers and service utilization.

c. The fiscal component of the system shall provide information on income, by source, and expenditures by category, on a monthly basis.

33.3(6) There shall be written policies and procedures for systematic evaluation activities to ensure that center programs are appropriate and effective. There shall be ongoing program evaluation activities which should focus on the following areas:

a. Patterns of use of service by age, race, sex, and income level, and disability.

b. Analyses of availability, awareness, acceptability, and accessibility of services.

c. Cost analyses including cost-outcome and cost-effectiveness.

d. Consumer-oriented outcome and community indices of impact including institutionalization.

e. Effectiveness of consultation and education services. Program evaluation findings shall be used in management decision-making and shall be shared with the board in support of planning activities.

33.3(7) The center shall have written policies and procedures to ensure the safety and security of employees, consumers, volunteers and facilities used and which, at a minimum, shall provide that:

a. Facilities used for center services meet all applicable safety, health, fire, and sanitation requirements (federal, state, local).

b. There be a center safety plan which identifies potential hazards, defines the tasks and responsibilities to be carried out by specific staff in the event of an emergency situation, and calls for an annual review of the procedures by the chief administrative officer and employees.

3.33(8) The center shall maintain an insurance program to protect its physical assets and its employees, which at a minimum includes:

a. Malpractice insurance.

b. Worker's compensation insurance for all employees.

c. Physical damage insurance of the contents.

d. Public liability insurance.

33.3(9) There shall be a written contract with the county board(s) of supervisors of the center's service area for the delivery of mental health services to residents/nonresidents. The contract shall specify at a minimum:

a. The length of time the contract shall be in effect.

b. The types of direct and indirect services to be delivered by the center.

c. An assurance that legal and human rights of consumers will be protected.

d. A statement that the center's fees are based on the consumer's ability to pay and the standards used to determine the fee.

e. A statement describing the availability of emergency and elective services to residents of counties that have not contracted with the center and a description of those service fees.

33.3(10) There shall be a written agreement, updated annually, between the center and its related mental health institute which outlines the responsibilities of the respective parties.

33.3(11) There shall be written service agreements with any affiliate agencies.

a. The nature and extent of direct/indirect services provided shall be specified.

b. There shall be an assurance that legal and consumer rights will be protected.

c. Responsibilities of both parties for ensuring continuity of care shall be delineated.

d. There shall be provisions for monitoring, modifying, and terminating the agreement by either party in the relationship.

e. If services are being purchased, the following additional components shall be incorporated into the agreement:

(1) Statements about the cost of the service, the arrangements for payment and the time schedule for payment.

(2) Estimate of cost to be given at the end of each fiscal year for continued service.

(3) Procedures for furnishing an accounting of fee revenue, including that received from consumers or persons/companies paying on behalf of the consumer.

f. The agreement shall be evaluated and renewed annually.

441—33.4(225C,230A) Services.

33.4(1) *General standards.* In order for a center to receive accreditation for any service, the following standards shall be met:

a. Services shall be delivered in a manner which minimizes barriers to the receipt of services.

(1) There shall be a written statement made available to the public of the services available to the residents of the service area.

(2) The center, through the use of such items as signs, stationery, and telephone directories, shall assure that the means of gaining access to services are well publicized and highly visible.

(3) The facilities in which services are provided shall accommodate the physical needs of consumers, particularly the special needs of children, elderly, and handicapped persons.

(4) Center facilities shall allow for privacy of conversation.

(5) When a racial or cultural population subgroup constitutes two percent (2%) or more of the service area population, service employees/consultants shall be familiar with the special needs of that population subgroup. If the subgroup has limited English-speaking ability, the center shall make every effort to recruit a service employee/consultant who is fluent in the appropriate language, and the efforts shall be documented.

(6) Standardized written procedures for screening/intake, evaluation, and referral shall be developed and followed.

(7) Consumers shall have the opportunity for contact with a service employee/consultant within ten (10) working days after their initial contact.

b. The center shall have written policies to protect consumer rights. The policies shall be posted in the facility and shall be available to all consumers. The policies shall assure that:

(1) The center shall obtain written, informed consent from the consumer or legal guardian for participation in any experimental treatment or procedure; any procedure that carries an intrinsic risk such as convulsive therapy, psychosurgery, or aversive conditioning; and education demonstration programs involving audiovisual equipment or one-way mirrors.

(2) All consumer information shall be kept confidential and released only as provided for in the standards relating to records (33.4(1)*"i"*).

(3) The consumer has the right to appeal agency actions and there are procedures for the appeals to follow.

c. The center shall have written procedures consistent with the county's(ies') mental health and mental retardation plan(s), for service coordination with the services of other relevant

provider agencies in the service area which include written agreement with the center's related mental health institute(s) which shall outline the responsibilities of both parties regarding evaluation, referral and aftercare, and shall be annually reviewed by both parties.

d. The center shall employ a sufficient number of employees/consultants with the appropriate qualifications to carry out the center's programs.

(1) The employees/consultants shall represent more than one of the disciplines included in the definition of mental health professionals.

(2) Any employees/consultant providing evaluation, treatment, or psychosocial support and rehabilitation activities who does not meet the qualifications of a mental health professional shall be supervised by a mental health professional who gives professional direction and active guidance to the employees/consultant and who retains responsibility for consumer care. The supervision shall be timely, regular, and documented.

(3) Employees/consultants who are responsible for the medical care provided as a part of the center's services shall have a current license to practice medicine in the state of Iowa. There shall be at least one employee/consultant who is certified or eligible for certification by the American board of psychiatry and neurology.

(4) The center shall employ a sufficient number of administrative support staff to assure the efficient operation of the center.

e. The center, if applicable, shall have procedures for the storage, handling, prescription, dispensing, and administration of medication at the center. These shall include procedures which are in accordance with chapter 8, controlled substances, of the board of pharmacy examiners' rules appearing in the Iowa Administrative Code. Physicians prescribing medications at the center shall review their prescribed medication regime as described in the treatment plan and no less than once every six (6) months.

f. There shall be policies and procedures for maintaining records of all consultation or education services provided by the center which shall include, at a minimum, the name of the consumer, the name(s) of employee(s)/consultant(s) providing the service, a fee statement when applicable, and a summary of information presented. In the case of an ongoing service, the record shall also include a description of the need for the service, a plan of service and a copy of the letter of agreement when applicable.

g. There shall be policies and procedures for maintaining records of all emergency services provided by the center, which shall include the type of contact (telephone or face-to-face), time and date of contact, name of consumer, the nature of the consumer's needs, the name of the employees or consultant providing the services, and a description of the action taken.

h. There shall be policies and procedures for maintaining complete records for each consumer who has received evaluation, treatment, or psychosocial and rehabilitation activities from the center. Reasonable and appropriate actions shall be taken to protect these records against tampering, damage, loss, and unauthorized use. Each service record shall:

(1) Contain all necessary consumer identifying information.

(2) Have documentation and evaluation of the presenting problem; an assessment of the consumer's role performance in terms of abilities and disabilities; an assessment of mental health status, health status, and social cultural factors related to presenting problems; a brief history of mental disability including previous services; finding of any examinations made and tests given; summary of any input from collaterals; and a clear impression or diagnosis of the consumer's problem.

(3) Contain an identifiable, current treatment plan which has been collaboratively developed with the consumer and appropriate others, which shall include: a reference to the consumer's problems/needs, strengths and weaknesses; a statement of treatment goals with time frames; an identification of the services to be directly provided and specific treatment; and identification of the center employees/consultants who will provide the treatment.

(4) Contain a descriptive report of consumer progress in relation to the consumer's treatment plan, including all diagnostic and treatment services rendered and their results, which shall include: time and duration of services rendered; documentation of case management or planning activities for consumer, if applicable; documentation of changes in the consumer's level of functioning; and the signature of staff member responsible for the services rendered.

(5) Contain a discharge summary upon termination of services, which shall include: the reason for termination; a brief summary of diagnosis and treatment services provided; the course and results of treatment in relation to presenting problem(s); final impression or diagnosis; and follow-up plans, and referral information, and other recommendations.

(6) Contain a description of all medications taken by the consumer during the time the consumer is receiving center services, which shall include: the name, dosage, frequency, route of administration of prescribed and nonprescribed drugs taken at the time of referral; a history of drug allergies and sensitivities; the date the medication was discontinued or changed; and the findings of the medication review when drugs are prescribed by the center's physician.

i. The center shall have written policies and procedures which assure the confidentiality of service records, which at a minimum provide:

(1) That, with exceptions noted in 33.4(1)*"i"*(3), no information personally identifying the consumer will be released or disclosed without the written consent of the consumer or legally designated others; that the consumer has the right to refuse the release of information to be given, to determine to whom it will be released, and to know why it is being requested.

(2) That authorized staff having access to records are aware of the need to maintain confidentiality and take measures to ensure protection.

(3) That exceptions to these policies will be permitted only for disclosures required by law, bona fide medical and psychological emergencies and center accreditation purposes.

(4) In the case of accreditation, the release of information shall be authorized by the chief administrative officer and shall be noted in the consumer's record. The chief administrative officer shall require, prior to the release of information, that the outside party sign a written statement which shall state that the information is essential to the performance of the outside party's work, the outside party recognizes that the information to be released is confidential, and the outside party shall not disclose any information which personally identifies the consumer.

j. The center shall have written policies and procedures for the assessment and improvement of the quality of care which at a minimum provide for:

(1) The establishment of an interdisciplinary quality assurance committee with defined roles and responsibilities.

(2) The establishment of written review criteria for the evaluation of records and service delivery.

(3) An annual review of records and service delivery based on the criteria.

k. The center shall have written policies and procedures for research involving human subjects which at a minimum provide for:

(1) The establishment of an interdisciplinary research review committee with defined roles and responsibilities.

(2) The establishment of written review criteria for evaluating research proposals which ensure the protection of the rights of the consumers involved.

(3) The selection and monitoring of all research projects involving consumers.

l. The center's service(s) should meet the needs of children, adolescents, adults, and elderly. If the center is not designed to provide services to all age groups, it should coordinate efforts with the county mental health and mental retardation coordinating board to ensure that the needs of all age groups are met.

33.4(2) *Specific service standards.* In order for a center to receive accreditation for each of the following services, the respective service standards shall be met.

a. Outpatient services. Outpatient services shall be evaluation and treatment activities provided on an ambulatory basis for persons with mental health problems and mental disorders.

(1) Services shall be available at least five (5) days per week, eight (8) hours per day, during the day, evening, or weekend to allow for minimal disruption of the consumer's working/schooling schedules.

(2) No more than ten percent (10%) of the service area residents shall have to drive more than sixty (60) miles one way to receive services.

(3) Services shall be provided by or supervised by a mental health professional.

b. Intermediate care/partial hospitalization services. Intermediate care/partial hospitalization services shall be evaluation, treatment, and psychosocial support and rehabilitation activities provided within a structured group setting for persons with mental health problems and mental disorders requiring more than outpatient services but less than twenty-four (24)-hour care.

(1) Services shall be available at least three (3) hours per day, three (3) days per week, during the day, evening, or weekend as determined by the needs of consumers.

(2) No more than ten percent (10%) of the service area residents shall have to drive more than one hundred and twenty (120) miles one way to receive services.

(3) Services shall be provided by an interdisciplinary team of mental health professionals, professional or paraprofessional in accordance with an individualized mental health treatment plan developed under the supervision of a mental health professional. Where the services constitute partial hospitalization, all care shall be supervised by a medical doctor or doctor of osteopathic medicine and surgery certified, or eligible for certification, by the American board of psychiatry and neurology.

c. Inpatient services. Inpatient services shall be evaluation, treatment, psychosocial support and rehabilitation activities provided in a hospital or other twenty-four (24)-hour treatment setting for persons with mental health problems and mental disorders requiring that treatment.

(1) Services shall be provided on a twenty-four (24)-hour per day, seven (7)-day-per week basis within a hospital or other twenty-four (24)-hour treatment setting licensed by the department of public health.

(2) No more than ten percent (10%) of the service area residents shall have to drive more than one hundred and twenty (120) miles one way to receive services.

(3) Services shall be provided by an interdisciplinary team of mental health professionals, other appropriate professionals, and mental health paraprofessionals. All care shall be supervised by a medical doctor or doctor of osteopathic medicine and surgery certified, or eligible for certification, by the American board of psychiatry and neurology.

d. Residential services. Residential services shall be psychosocial support and rehabilitation activities provided for persons with mental health problems and mental disorders who require a specialized living arrangement in a variety of settings, ranging from minimal supervision to twenty-four (24)-hour care.

(1) Services shall be provided at a minimum of five (5) hours per week.

(2) No more than ten percent (10%) of the service area residents shall have to drive more than one hundred and twenty (120) miles one way to receive services.

(3) Services shall be provided by a mental health professional or by another appropriate professional or paraprofessional in accordance with a mental health treatment plan or component developed by or under the supervision of a mental health professional.

e. Community support services. Community support services shall be those activities necessary to facilitate the assessment, development, and delivery of a system of services to meet the needs of chronically mentally disabled persons. These activities include, but are not limited to, case management and interagency program planning and coordination.

(1) The community support services shall be designed to meet the needs of the target population which is operationally defined as adults who have a psychiatric diagnosis of organic mental disorder; or schizophrenic, paranoid, or psychotic disorder not elsewhere classified; or affective disorder (Diagnostic and Statistical Manual of Mental Disorders, Third Edition, May 1980); and who: Have a relatively poor employment history resulting from the behaviors associated with the preceding diagnoses and related episodes of hospitalization; or have the absence or impairment of a functional natural support system such as family or friends; or have a low level of functioning which interferes with the person's abilities to live independently.

(2) The community support service shall include at least one case manager to coordinate the activities provided for each consumer and who shall be in continuing contact with the assigned consumers. The following activities shall be available: case finding; evaluation; assisting the consumer in meeting basic human needs by linking with or referring to the appro-

priate community human services agency; treatment; twenty-four (24)-hour crisis assistance; identification of and encouragement to the consumer's natural support system; consultation and education to other individuals or agencies involved with the consumer; and psychosocial support and rehabilitation.

(3) Services shall be provided in accordance with the mental health treatment plan developed by or under the supervision of a mental health professional.

f. Emergency services. Emergency services shall be evaluation and treatment activities available on a twenty-four (24)-hour per day, seven (7)-day-per week basis to persons with mental health problems and mental disorders requiring immediate attention.

(1) Services shall be available on a twenty-four (24)-hour per day, seven (7)-day-per week basis.

(2) When the center office is closed, access to its service shall be available through the telephone, and face-to-face intervention shall be available, when needed.

(3) Services shall be provided by a mental health professional, or by a paraprofessional who has received appropriate training from a mental health professional and who has immediate telephone access to a mental health professional.

g. Evaluation services. Evaluation services shall be evaluation activities made available to courts, schools, other agencies, and to individuals upon request, which assess, plan for, and link individuals with appropriate services. Included are preliminary diagnostic evaluations for those seeking voluntary admission to the state mental health institutes.

(1) Preliminary diagnostic evaluations of persons seeking voluntary admission to a mental health institute in accordance with a resolution passed by a county board of supervisors pursuant to Iowa Code section 225C.14 shall be performed by a mental health professional within a reasonable time frame, not to exceed forty-eight (48) hours. When the results of the evaluation indicate that admission to the mental health institute is appropriate, the evaluator shall inform the institute of same. When the evaluator determines that another treatment program is more appropriate, and the individual agrees, the evaluator shall make arrangements with the alternative program to accept the referral. The center shall report the findings of the evaluation to the selected treatment resource in a timely manner.

(2) Evaluations performed for the court pursuant to Iowa Code sections 229.10 and 812.3, shall be performed by a licensed physician who may utilize the results of evaluations performed by mental health professionals during the same time period. Evaluations performed for the court pursuant to Iowa Code section 232.49 shall be performed by a mental health professional. Court evaluations pursuant to this section shall be completed within the time frames agreed to by the center and the court. Results shall be reported to the proper authority within twenty-four (24) hours of completion.

(3) All other evaluations shall be performed by mental health professionals within the time frames agreed to by the center and the requesting party or parties.

h. Consultation services. Consultation services shall be services which provide professional assistance and information about mental health or mental illness to individuals, groups, or organizations to increase the recipients' effectiveness in carrying out their service responsibilities.

(1) Case, program, and community consultation shall be available.

(2) Consultation shall be provided to a range of individuals and groups, such as health professionals, schools, courts, state and local law enforcement and correctional agencies, clergy, public welfare agencies, health service agencies, civil defense and disaster offices, and case work agencies.

(3) When consultation is provided to a particular recipient on an ongoing basis, the effectiveness of the service shall be evaluated jointly at least annually.

(4) Consultation services shall be provided by an employee/consultant who has sufficient education and experience in the particular subject matter covered in the consultation. Case consultation shall be provided by a mental health professional.

i. Education services. Education services shall be services which provide information and training concerning mental health, mental illness, the availability of services, the promotion of

mental health and the prevention of mental illness to community leaders and organizations and the general public.

(1) At a minimum public mental health education and skill training shall be available.

(2) When education is provided to a particular recipient on an ongoing basis, the effectiveness of the service shall be jointly evaluated at least annually.

(3) Educational materials shall be developed by or under the supervision of mental health professionals.

441—33.5(225C,230A) Review and evaluation.

33.5(1) *Schedule.* The division shall review and evaluate centers at least every three (3) years. When the division schedules a visit to a center which has received a federal construction grant, the division shall notify the department of health and human services. The date chosen for review and evaluation of a center shall be mutually acceptable to the center and the survey team and shall be established at a reasonable time prior to the review.

33.5(2) *Survey.* The division review and evaluation of centers shall include an on-site visit performed by division staff. At least ninety (90) days prior to the on-site visit, the division shall notify the center in writing of the on-site visit. The letter shall state:

a. The purpose and objectives of the visit;

b. The date, time, and place of the visit;

c. The names of the survey team members;

d. The names of board and center representatives requested to be available;

e. The agenda for the on-site visit;

f. A request of the center to submit the following written material to the division no later than thirty (30) days prior to the visit: the board manual; the name, address, occupation, and county of residence of each board member; contracts and agreements; the fee schedule, any chart forms, any brochure(s); the policy and procedures manual; the referral forms and release of information forms; the staff credential forms; and other materials specified by the survey team which may be required for review prior to the site visit.

33.5(3) All members of the survey team shall independently review and evaluate the written material for completeness and for determination of the center's compliance with the standards.

33.5(4) The on-site visit of the survey team shall include, but not be limited to, review and evaluation of center governance and administration as well as those services outlined in the program plan. The survey team shall examine center records and documents; hold discussions with the center executive director, board, and staff; hold discussions with affiliate agency personnel; receive input from the general public and consumers of center services; and examine the physical facility.

33.5(5) The survey team shall evaluate the center's compliance with the standards. Where deficiencies are found in a center program, the survey team shall discuss with the center executive director, board, and staff a plan for corrective action. If the compliance schedule is determined at that time, it shall be included in the division's survey report. Otherwise the center may submit the plan for corrective action and time frame for completion of corrective action to the division within forty-five (45) days from the date the report is mailed to the center. The compliance schedule shall be included in the division's survey report.

33.5(6) *Report.* Within a reasonable time following the completion of the on-site visit, the division shall send copies of the written report of the survey findings to the center board president and executive director. The original report shall be maintained at the division office for at least five (5) years and shall be available for inspection pursuant to Iowa Code chapter 22. Copies shall be made upon request and at the expense of the person requesting them. The report shall include the survey team's observations regarding: strengths and deficiencies, and a recommendation to the commission for an accreditation decision. Within ten (10) days from receipt of the report, a center may send a written request to the director of the division asking for an interview with one or more members of the survey team to discuss, clarify, or correct any information presented in the report.

33.5(7) *Accreditation decision.* The director shall submit the accreditation evaluation report and one of the following recommendations to the commission:

a. No instances of noncompliance with the standards were found in the data reviewed, and the center should be accredited.

b. Instances of noncompliance with the standards were found in the data reviewed, but the center has submitted a plan of corrective action and implementation acceptable to the division director, and the center should be accredited.

c. Instances of noncompliance with the standards were found in the data reviewed. The center has not submitted a plan of corrective action and implementation which is acceptable to the division director and should not be accredited.

The commission shall review the director's report and recommendation and shall make an accreditation or nonaccreditation decision.

33.5(8) *Period of accreditation.* Center accreditation shall become effective on the date the commission grants accreditation and shall terminate three years from that date unless revoked or extended by the commission. The commission may grant an extension to the period of accreditation upon request by the division. The division may request an extension for the following reasons:

a. There has been a delay in scheduling the review and evaluation of the center and the delay is beyond the control of the center or the division.

b. The center has requested an extension to permit the center to prepare and obtain approval of a corrective action plan.

The length of the extension shall be established by the commission on a case-by-case basis.

33.5(9) *Center self-evaluation.* At the end of a center's second year of accreditation, a self-evaluation report will be due. The division shall notify the center at least ninety (90) days prior to the due date of the content of the report.

33.5(10) *Notification.* When the commission makes the accreditation decision regarding a center, the commission shall request the director to communicate the decision in writing to the center board president and executive director; Community Mental Health Centers Association of Iowa, Inc.; all appropriate public and private third-party payers; and the county board(s) of supervisors. If a center has received a federal construction grant, the division shall also communicate the accreditation decision in writing to the department of health and human services. The written communication shall indicate the reasons for the accreditation or nonaccreditation decision.

33.5(11) The commission may request the division to re-evaluate a center on the basis of the following criteria: turnover of key staff members; a major change in the service area population; a major change in the center's budget; a reduction in the service(s) offered; a discontinuance of a county contract; significant consumer complaints; or other significant factors.

The commission may, at any time, request the division to assess the center's progress in implementing the corrective action plan submitted in response to the findings of the review and evaluation conducted pursuant to 33.5(2) to 33.5(7); re-evaluation conducted pursuant to 33.5(11); or evaluation of an additional service conducted pursuant to 33.5(12). Re-evaluation or assessment may be made through request for submission of written material or a follow-up visit.

The division shall notify the center at least thirty (30) days prior to the re-evaluation or assessment. Written notification shall identify the information to be made available by the center. Re-evaluation or assessment conducted pursuant to this subrule will not extend the original period of accreditation.

33.5(12) *Accreditation of an additional service.* An accredited center may request the division to assess the center's compliance with applicable standards for provision of a service for which the center was not previously accredited. Upon receipt of application submitted pursuant to subrule 33.6(1)"*c*," the division shall notify the center of information to be made available for the assessment.

33.5(13) The commission shall accept the accreditation of a community mental health center by the joint commission on the accreditation of hospitals (JCAH) as a community mental health service program in lieu of accreditation based on review and evaluation of the center by the division.

33.5(14) A center which has received accreditation from the committee on mental hygiene prior to January 1, 1982, shall remain accredited until it has been surveyed by the division and the commission makes a decision based on the survey report or until the commission has accepted the JCAH accreditation report.

33.5(15) *Revocation of accreditation.* The commission may revoke a center's accreditation on the grounds that the center has failed to provide documentation of implementation of the corrective action plan submitted in response to the findings of the:

a. Review and evaluation conducted pursuant to 33.5(2) to 33.5(7);

b. Re-evaluation conducted pursuant to 33.5(11); or

c. Evaluation of an additional service conducted pursuant to 33.5(12).

441—33.6(225C,230A) Application for accreditation.

33.6(1) The center shall submit an application to the division in order to be considered for accreditation by the commission, using Form number MH-5302-0, Application for Accreditation as a Community Mental Health Center. The application shall be submitted whether the center wants to be considered for accreditation based on the review and evaluation by the division or based on the JCAH accreditation report. The application shall state the service(s) for which the center wants to be accredited.

a. Application by a center not accredited by the committee on mental hygiene or the commission. A center which has not been accredited by either of these two (2) bodies shall apply to the division for accreditation by the commission when the center makes the decision to be considered for accreditation.

b. Application by a center accredited by the committee on mental hygiene prior to January 1, 1982 or by the commission after October 6, 1982. A center which has been accredited shall apply to the division for accreditation upon receipt of notice from the division of the site survey schedule within the time frames specified in the notice. The division shall be notified immediately if an accredited center decides not to apply for accreditation.

c. Application for accreditation of an additional service. An accredited center shall apply to the division for accreditation of a service for which it has not previously been accredited. Application shall be made when the center makes the decision to have the additional service considered for accreditation by the commission.

d. Application after expiration or denial of accreditation. The center shall apply to the division for accreditation if the center's accreditation has expired or the center has been denied accreditation by the commission. Application shall be made when the center makes the decision to be reconsidered for accreditation by the commission.

33.6(2) Reserved.

441—33.7(225C,230A) Provisional accreditation.

33.7(1) The commission may grant provisional accreditation to a center which has not been previously accredited by the commission or to an accredited center for the provision of an additional service.

a. A center wishing provisional accreditation shall submit an application for accreditation pursuant to subrule 33.6(1).

b. The division, upon receipt of the application, shall notify the center of the written material to be submitted to the division.

(1) A center not previously accredited shall submit bylaws, program plan, policies and procedures as required by this chapter, written description of services to be provided and staff credential forms for all employees and consultants.

(2) A center requesting accreditation of an additional service shall submit written description of the additional service and staff credential forms for employees or consultants who will be providing the service.

c. The division shall review the written material and assess compliance with the applicable standards and develop a recommendation to the commission regarding provisional accreditation. The review findings and recommendation shall be in writing, and a copy of the findings and recommendation shall be provided to the center. The commission shall review and evaluate the findings and recommendations and shall make a decision whether or not to grant provisional accreditation.

33.7(2) The provisional accreditation shall be retroactive to the date the application for accreditation was received by the division and shall be in effect until nonprovisional accreditation is granted or denied by the commission or the center fails to comply with a request made pursuant to 33.5(2)*"f"* of this chapter.

33.7(3) The accreditation process delineated in 441—33.5(225C,230A) shall be initiated by the division within six (6) months of the effective date of the provisional accreditation.

These rules are intended to implement Iowa Code sections 225C.6 and 230A.16.

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CHAPTER 34
ALTERNATIVE DIAGNOSTIC FACILITIES

[Prior to 8/18/82, Mental Health Advisory Council(566), Ch 2]
[Prior to 7/1/83, Social Services(770), Ch 34]
[Prior to 2/11/87, Human Services(498)]

441—34.1(225C) Definitions. Unless otherwise indicated, the following definitions shall apply to the specific terms used in these rules:

"Alternative diagnostic facility" means any organization or individual designated by the county board of supervisors to implement the preliminary diagnostic evaluation policy (Iowa Code section 225C.14) when a county is not served by a community mental health center capable of the diagnostic evaluations. An alternative diagnostic facility may be the outpatient service of a state mental health institute or any organization or individual able to furnish the requisite skills and to meet the standards set forth in this chapter by the mental health and mental retardation commission.

"Mental health professional" means a person who:

1. Holds at least a master's degree in a mental health field, including, but not limited to, psychology, counseling and guidance, nursing and social work; or is a doctor of medicine (M.D.) or doctor of osteopathic medicine and surgery (D.O.); and,
2. Holds a current Iowa license when required by Iowa licensure law; and,
3. Has at least two (2) years of post-degree experience, supervised by a mental health professional, in assessing mental health problems and needs of individuals and in providing appropriate mental health services for those individuals.

"Preliminary diagnostic evaluation" means an assessment of a person's mental health problems and needs in order to determine the most appropriate service for the person. The evaluation includes, but is not limited to, an assessment of the individual's needs, abilities, disabilities, and relevant environmental factors. Where possible, there is collaboration with the individual's family or significant others as appropriate.

441—34.2(225C) Function. An alternative diagnostic facility shall:

34.2(1) Perform a preliminary diagnostic evaluation of a person who is being considered for admission to a state mental health institute on a voluntary basis pursuant to Iowa Code chapter 229 in order to:

a. Confirm that admission of the person to a state mental health institute is appropriate to the person's mental health needs, and that no suitable alternative method of providing the needed services in a less restrictive setting, in or nearer to the person's home community, is currently available. When results of the evaluation indicate that admission to the mental health institute is appropriate, the evaluator shall inform the institute of the results.

b. Confirm that admission to a state mental health institute is not appropriate to the person's mental health needs. When results of the evaluation indicate that a treatment program, other than that of a state mental health institute, is more appropriate, and the individual agrees, the evaluator shall make arrangements with the alternative program to accept the referral.

34.2(2) Assist the court and, insofar as possible, provide or designate a physician to perform a prehearing examination of a respondent required under Iowa Code section 229.8, subsection 3, paragraph "*b*."

441—34.3(225C) Standards. In order to be designated as an alternative diagnostic facility, a facility shall meet the following standards:

34.3(1) The facility shall have clearly defined lines of authority and accountability so that a contractual agreement may be entered into with a county for the provision of preliminary diagnostic evaluations.

34.3(2) The preliminary diagnostic evaluation shall be performed by a mental health professional within a reasonable time frame, not to exceed forty-eight (48) hours.

34.3(3) The mental health professional shall be familiar with the mental health institute serving the area and with the treatment resources of the community served.

34.3(4) The facility shall have written procedures for timely reporting of results of evaluations to the selected treatment resource.

34.3(5) The facility shall have written policies and procedures to safeguard the consumer's right to treatment, confidentiality, and freedom of choice. The policies and procedures shall be in conformance with federal and state laws and rules.

34.3(6) The facility shall have written procedures for fees for services.

34.3(7) The facility shall comply with procedures for uniform reporting of statistical data as established by the division of mental health, mental retardation, and developmental disabilities.

34.3(8) The facility shall comply with the standards for the maintenance and operation of public and private facilities offering services to mentally ill persons as adopted by the mental health and mental retardation commission.

These rules are intended to implement Iowa Code sections 225C.4 and 225C.17.

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*As Agency 566—Chapter 2

CHAPTER 35
MENTAL HEALTH SERVICE PROVIDER STANDARDS

[Prior to 2/11/87, Human Services(498)]

441—35.1(225C) Definitions.

"Accreditation" means the decision made by the commission that the facility has met conditions of subrule 35.8(1), paragraph *"a"* or *"b"* or rule 441—35.12(225C).

"Affiliate" means an agency which has a written agreement with the facility for the delivery of one or more of the facility's services, e.g., inpatient, partial hospitalization, or emergency services.

"Chief administrative officer" means the individual who has the responsibility for the overall administration of the facility. Job titles may include administrator, chief executive officer, director, executive director.

"Commission" means the mental health and mental retardation commission.

"Consultant" means a person hired on a contractual basis to perform professional services. Consultants are usually paid on an hourly basis, receive no fringe benefits, and are responsible for their own mandatory payroll taxes.

"Consumer" means a person or a group utilizing the services of the facility.

"Deemed status" means acceptance by the commission of accreditation or licensure of a facility by an agency in lieu of accreditation based on review and evaluation of the facility by the division.

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

"Employee" means a person paid by the facility to perform duties and responsibilities defined in the job description.

"Evaluation activities" means the assessment of a person's mental health problems and needs including a diagnostic formulation of the consumer's problem, in order to determine appropriate service(s) for the person and to provide the information necessary for the preparation of an appropriate treatment plan. The evaluation includes, but is not limited to, an assessment of the person's needs, abilities, and relevant environmental factors. Where possible, there is collaboration with the person's family or significant others as appropriate.

"Facility" means the personnel, program, physical plant, and equipment of the service provider.

"Informed consent" means an agreement by a person, or by a legal guardian in consultation with the person, to participate in an activity based upon understanding of:

1. A full explanation of the procedures to be followed, including an identification of those that are experimental.
2. A description of the attendant discomforts and risks.
3. A description of benefits to be expected.
4. A disclosure of appropriate alternative procedures that would be advantageous for the individual.

"Mental health professional" means a person who:

1. Holds at least a master's degree in a mental health field, including, but not limited to, psychology, counseling, nursing, and social work; or is a doctor of medicine (M.D.) or doctor of osteopathic medicine and surgery (D.O.); and
2. Holds a current Iowa license when required by Iowa licensure law; and
3. Has at least two (2) years of postdegree experience, supervised by a mental health professional, in assessing mental health problems and needs of individuals and in providing appropriate mental health services for those individuals.

"Mental health service areas" means the defined geographic area for which there is designated responsibility for delivery of mental health services to persons residing in the area.

"Needs assessment" means the use of a variety of indicators and measurement and research techniques to enumerate and estimate the extent of mental health needs and to rank them in order of importance according to some rational process.

"Policies" means the principles and statements of intent which determine the planning and procedures of a facility.

"Procedures" means the steps to be taken to implement the policies.

"Program" means a set of related resources and services directed to the accomplishment of a fixed set of goals and objectives (1) for the population of a specified geographic area(s) or (2) for special target populations.

"Program administration" means the process of planning, organizing, and directing overall operations, resources, and activities of a facility to facilitate the attainment of goals and objectives.

"Program evaluation" means the process of determining the degree to which a program of the facility is meeting its mission, goals, and objectives. Examples include quality assurance programs, information systems monitoring, and community satisfaction studies.

"Provider" means a person whose primary activity is the provision of health or mental health services to individuals or the administration of facilities or institutions in which these services are provided.

"Psychosocial support and rehabilitation activities" means activities which are designed to maximize a person's level of functioning, including personal and social adjustment and independent living and work skills.

"Service records" means the written documentation of services provided by the facility.

"Treatment activities" means psychotherapies and somatic therapies which are designed to limit or reverse the effects of mental health problems or mental disorders by increasing the person's adaptive capacity to the maximum extent possible.

441—35.2(225C) Governance.

35.2(1) If the facility is not incorporated as a nonprofit corporation, the facility shall establish an advisory board which shall work with the county coordinating board to assure that the facility's services address mental health needs of the service area.

a. The advisory board shall develop a facility program plan.

b. At least fifty-one percent (51%) of the members of the advisory board shall be persons who are not providers.

c. The advisory board shall have at least three (3) members.

d. The advisory board shall meet at least quarterly.

e. The advisory board shall have a written statement of its roles, responsibilities and policies for its own guidance and be given an orientation to its duties.

f. The advisory board shall keep minutes of all meetings of the board.

g. Facility employees and consultants shall not serve on the advisory board.

35.2(2) If the facility is incorporated as a nonprofit corporation, the board of directors shall have policies which specify the composition of the board and how the board is representative of the facility's service area.

a. At least fifty-one percent (51%) of the members of the governing board shall be persons who are not providers.

b. The governing board shall have at least three (3) members.

c. The governing board shall meet at least quarterly.

d. The governing board shall have a written statement of its roles, responsibilities and policies for its own guidance, and be given an orientation to its duties.

e. The governing board shall keep minutes of all meetings of the board.

f. A facility incorporated as a nonprofit corporation shall be in compliance with Iowa Code chapter 504A.

g. The duties of the governing board shall include, at a minimum:

(1) Establishment of the facility's policies.

(2) Development and adoption of the facility's program plan.

(3) Appointment, evaluation, and removal, if necessary, of the chief administrative officer.

(4) Establishment of effective fiscal control.

(5) Authorization and approval of all contracts and agreements to which the facility is a party.

(6) Preparation and approval of the facility's annual budget.

h. Facility employees and consultants shall not serve on the board of directors.

441—35.3(225C) Administration.

35.3(1) The chief administrative officer shall be a person who meets the qualifications of education, experience, and skills as specified in written policy of the facility, and in accordance with existing laws. (Refer to subrule 35.4(3) for additional requirements on qualifications.) The responsibilities of the chief administrative officer shall include, at a minimum, the following:

a. The development and organization of administrative and procedural functions of the facility.

b. Development and enhancement of public relations.

c. Personnel administration.

d. Management and conservation of the physical and fiscal assets of the facility.

e. Liaison between the board and facility employees or consultants.

f. Assistance to the board in establishing policies by preparing reports showing the service and financial activities of the facility, the nature and extent of mental health problems in the service area, and other areas identified by the board. This shall include assistance to the board in the development of the facility's program plan and provision of educational information to the board at least quarterly.

35.3(2) The facility shall maintain a policies and procedures manual.

a. The manual shall contain an annual program plan which reviews previous performance and establishes future program needs. The provision of services shall be based on an assessment of the service needs and resources of the facility's service area and shall be consistent with the county's(ies') mental health and mental retardation services plan. The program plan shall describe the services to be offered by the facility and identify goals and objectives for each service.

b. The manual shall contain policies and procedures for fiscal administration which shall address the following:

(1) Preparation, maintenance and administration of an annual budget approved by the governing board, if applicable. The facility budget shall include a total facility line item budget. The facility shall have a program budget for each facility service as defined by the commission. The program budget shall be developed no later than July 1, 1986.

(2) The provision for an amendment of budget allocation after the board has approved the budget.

(3) Utilization of an accounting system in accordance with sound accounting practices.

(4) Establishment of fees for services, to be reviewed on an annual basis.

(5) The purchase of equipment and supplies.

(6) A complete inventory to be conducted at least biennially.

(7) The guidelines for acceptance and handling of gifts and gratuities by the facility.

(8) The provision for an independent fiscal audit of the facility to be performed annually.

c. The manual shall contain policies and procedures for personnel administration which at a minimum shall provide for the following:

(1) Written job descriptions for all employees and consultants, which shall include duties and responsibilities; education, experience, licensure or certification requirements; and supervisory relationships.

(2) An annual performance evaluation of all employees and consultants which is dated and signed by the supervisor and the employee or consultant. The evaluation shall include an assessment of the performance of duties and responsibilities stated in the job description and a reevaluation of the employee's staff development plan.

(3) Personnel records which are kept up-to-date, accurate, and complete.

There shall be a personnel record for each employee, which shall contain application requesting employment and supporting materials; job description; copies of current licenses and certificates, where applicable; staff development plan; annual performance evaluations, dat-

ed and signed; and documentation of any disciplinary action and grievance.

There shall be a personnel record for each consultant which shall contain a job description; copies of current licenses and certificates, where applicable; annual performance evaluations, dated and signed; and current consultant contracts.

(4) Each employee or consultant to receive a copy of the job description with written acknowledgment of understanding of the responsibilities and duties of the position and the facility's personnel policies and procedures.

(5) An orientation program for all newly hired employees and consultants which includes an introduction to the facility's organizational structure, procedures, and services; a discussion of the personnel policies and procedures, and of the safety plan.

(6) An in-service training program for all employees which provides for a written, individualized staff development plan for each employee, taking into consideration the needs of the facility.

(7) The recruitment of facility employees and consultants in accordance with equal opportunity and affirmative action employment practices.

(8) Limitations on employee participation in activities which may cause conflict of interest.

(9) The extent and nature of probationary employment periods for newly hired, promoted, or transferred employees.

(10) Benefits the facility provides to full- and part-time employees.

(11) Reimbursement of work related expenses incurred by employees or consultants.

(12) Procedures to be used when disciplining an employee including documentation of actions, grievance procedures, and establishment of final authority in grievance procedure.

(13) The roles of trainees and volunteers at the facility.

There shall be criteria for selecting, training, and supervising trainees and volunteers. Responsibilities, privileges, and limitations of trainees and volunteers shall be stated, including access to consumer records. The facility's responsibility to insure trainees and volunteers against liabilities shall be described.

(14) Employee benefits and a record to be kept of benefits earned and taken.

d. The manual shall contain policies and procedures relating to the facility's management information system. The system shall gather information on the facility's manpower, services, and fiscal conditions.

e. The manual shall contain policies and procedures for systematic evaluation activities to ensure that facility programs are appropriate and effective.

f. The manual shall contain policies and procedures for the assessment of the quality of care which at a minimum provide for:

(1) The establishment of written review criteria for the evaluation of records and service delivery.

(2) An annual review of records and service delivery based on the criteria.

g. The manual shall contain policies and procedures in accordance with applicable laws or standards to ensure the safety and security of employees, consumers, and volunteers.

h. The manual shall contain policies and procedures which specify the insurance program to be maintained by the facility to protect its physical assets and its employees. The facility's insurance program shall include:

(1) Malpractice insurance.

(2) Worker's compensation insurance for all employees.

(3) Physical damage insurance of the contents.

(4) Public liability insurance.

i. The manual shall contain policies and procedures for screening and intake, evaluation, and referral. This standard does not apply to facilities which offer only consultation or education services.

j. The manual shall contain policies and procedures for the protection of consumer rights. The policies shall be posted in the facility and shall be available to all consumers. The policies shall assure that:

(1) The facility shall obtain written, informed consent from the consumer or legal guardian

for participation in any experimental or controversial treatment or procedure; any procedure that carries an intrinsic risk such as convulsive therapy, psychosurgery, or aversive conditioning; and education demonstration programs involving audiovisual equipment or one-way mirrors.

(2) All consumer information shall be kept confidential and released only as provided for in the standards relating to records (35.3(2)"*p*").

(3) The consumer has the right to appeal agency actions and there are procedures for the appeals to follow.

k. The manual shall contain policies and procedures, consistent with the county's(ies') mental health and mental retardation plan(s), for coordination of services with those of other relevant agencies in the service area including the facility's related mental health institute(s).

l. If applicable, the manual shall contain policies and procedures for the storage, handling, prescription, dispensing, and administration of medication at the facility. These shall include procedures which are in accordance with chapter 8, controlled substances, of the board of pharmacy examiners' rules appearing in the Iowa Administrative Code. Physicians prescribing medications in the performance of their duties as facility employees or consultants shall review their prescribed medication regime as described in the treatment plan and no less often than once every six (6) months.

m. The manual shall contain policies and procedures for maintaining records of all consultation or education services provided by the facility, if applicable, which shall include, at a minimum, the name of the recipient, the name(s) of the employee(s) or consultant(s) providing the service, a fee statement when applicable, and a summary of information presented. In the case of an on-going service, the record shall also include a description of the need for service, a plan of service and a copy of the letter of agreement when applicable.

n. The manual shall contain policies and procedures for maintaining records of all emergency services provided by the facility, if applicable, which shall include the type of contact (telephone or face-to-face), time and date of contact, name and needs of the consumer, the name of the employee or consultant providing the services, and a description of the action taken.

o. The manual shall contain policies and procedures for maintaining complete records for each consumer who has received evaluation, treatment, or psychosocial support and rehabilitation from the facility. Reasonable and appropriate actions shall be taken to protect these records against tampering, damage, loss, and unauthorized use. Each record shall:

(1) Contain all necessary consumer identifying information.

(2) Have documentation of evaluation activities.

(3) Contain an identifiable, current treatment plan which has been collaboratively developed with the consumer and others as appropriate which shall include: a reference to the consumer's problems and needs, strengths and weaknesses; a statement of treatment goals and objectives with time frames; an identification of the services to be directly provided and specific treatment; and identification of the facility's employees or consultants who will provide the treatment. The treatment plan shall be reviewed no less often than every six (6) months, and the review shall be documented.

(4) Contain a descriptive report of consumer progress in relation to the treatment plan, including all evaluation and treatment services rendered and their results, which shall include: date(s) and duration of services rendered, documentation of case management or planning activities for the consumer, if applicable; documentation of changes in the consumer's level of functioning; and the signature of the staff member responsible for the services rendered.

(5) Contain a discharge summary upon termination of services, which shall include: the reason for termination; activities provided; course and result of activities provided in relation to presenting problem(s); final impression or diagnosis; and follow-up plans, referral information, and recommendations, where applicable.

(6) Contain a description of all medications, prescription and nonprescription, taken by the consumer while receiving facility services. The following information shall be documented: the name, dosage, frequency, route of administration of prescribed and nonprescribed

drugs being taken by the consumer; a history of drug allergies and sensitivities; the date(s) medication is prescribed, discontinued or changed by the facility's physician, and the findings of each medication review. Documentation of the medication review shall include name and route of all medications currently prescribed for the consumer by the facility's physician, and the current effects and desired results of the medication.

p. The manual shall contain policies and procedures which assure the confidentiality of service records, which at a minimum provide:

(1) That, with exceptions noted in subrule 35.3(2), paragraph *"p,"* subparagraph (3), no information personally identifying the consumer will be released or disclosed without the written consent of the consumer or legally designated others. The consumer or legally designated other has the right to refuse the release of information. A release of information form shall be utilized which specifies to whom the information will be released, the information to be released, the reason the information is being requested, and the time limitation. Provision of services shall not be contingent upon the consumer's decision concerning authorization for the release of information.

(2) That authorized staff having access to records are aware of the need to maintain confidentiality and take measures to ensure protection.

(3) That exceptions to these policies will be permitted only for disclosures required by law and bona fide medical and psychological emergencies.

q. The manual shall contain policies and procedures for research, if the facility conducts research involving human subjects. These policies and procedures, at a minimum, shall provide for:

(1) The establishment of written review criteria for evaluating research proposals which ensure the protection of the rights of the consumers involved.

(2) The selection and monitoring of all research projects involving consumers.

35.3(3) There shall be a written contract with the county board of supervisors of each county which provides funds to the facility for the provision of mental health services. The contract shall specify at a minimum:

a. The length of time the contract shall be in effect.

b. The types of direct or indirect services to be delivered by the facility.

c. An assurance that legal and human rights of consumers will be protected.

d. A statement that the facility's fees for services to residents of that county are based on the consumer's ability to pay and a statement of the criteria for determining ability to pay.

e. A statement describing the availability of emergency and elective services to residents of counties that have not contracted with the facility and a description of those service fees.

35.3(4) There shall be written service agreements with affiliate agencies.

a. The nature and extent of direct or indirect services provided shall be specified.

b. There shall be an assurance that legal and consumer rights shall be protected.

c. Responsibilities of both parties for ensuring continuity of care shall be delineated.

d. There shall be provisions for monitoring, modifying, and terminating the agreement by either party in the relationship.

e. If services are being purchased, the following additional components shall be incorporated into the agreement:

(1) Statements about the cost of the service, the arrangements for payment and time schedule for payment.

(2) Estimate of cost for continued service to be given at the end of each fiscal year.

(3) Procedures for furnishing an accounting of fee revenue, including that received from consumers or persons or companies paying on behalf of the consumer.

f. The agreement shall be evaluated and renewed annually.

441—35.4(225C) General service standards.

35.4(1) Services shall be delivered in a manner which minimizes barriers to the receipt of services.

a. There shall be a written statement made available to the public of the services available

to the residents of the service area.

b. The facility, through the use of such items as signs, stationery, and telephone directories, shall assure that the means of gaining access to services are well publicized and highly visible.

c. The facility shall ensure that services are physically accessible to consumers, particularly children, the elderly, and handicapped persons.

d. The facility shall allow for privacy of conversation.

e. When a racial or cultural population subgroup constitutes two percent (2%) or more of the service area population, service employees and consultants shall be familiar with the special needs of that population subgroup. If the subgroup has limited English-speaking ability, the facility shall make every effort to recruit a service employee or consultant who is fluent in the appropriate language, and such efforts shall be documented.

f. Consumers shall have the opportunity for contact with a service employee or consultant within ten (10) working days after their initial contact. This standard does not apply to facilities which offer only consultation or education services.

35.4(2) The facility shall employ a sufficient number of employees and consultants with the appropriate qualifications to carry out the facility's programs.

a. The employees and consultants shall represent more than one of the disciplines included in the definition of mental health professional. This standard does not apply to facilities which offer only education services.

b. Any employee or consultant providing evaluation or treatment activities who does not meet the qualifications of a mental health professional shall be supervised by a mental health professional who gives professional direction and active guidance to the employee or consultant and who retains responsibility for consumer care. The supervision shall be timely, regular, and documented. Any employee or consultant providing psychosocial support and rehabilitation activities who does not meet the qualifications of a mental health professional shall provide those activities in accordance with a current treatment plan developed by or in consultation with a mental health professional who retains responsibility for consumer care.

c. Any employee or consultant who is responsible for the medical care provided as part of the facility's services shall have a current license to practice medicine in the state of Iowa.

d. Services of a medical doctor or doctor of osteopathic medicine and surgery who meets the qualifications of a mental health professional shall be available to consumers of the facility's services.

e. The facility shall employ a sufficient number of administrative support staff to assure the efficient operation of the facility.

35.4(3) The chief administrative officer shall meet the following qualifications:

a. The chief administrative officer of facilities offering outpatient, intermediate care and partial hospitalization, inpatient, community support, emergency, evaluation or consultation services shall be a person who:

(1) Holds at least a master's degree in a mental health or administration field, such as health administration, psychology, counseling, nursing, social work, public administration; or is a medical doctor or doctor of osteopathic medicine and surgery, and,

(2) Holds a current Iowa license when rquired by Iowa licensure law, and

(3) Has at least three (3) years of postdegree clinical or administrative experience in the delivery of human services.

b. The chief administrative officer of facilities offering residential or education services shall be a person who has experience in program administration and whose skills and competencies are suitable to the type of program and number of persons served.

441—35.5(225C) Specific service standards.

35.5(1) *Outpatient services.* Outpatient services shall be evaluation and treatment activities provided on an ambulatory basis for persons with mental health problems or mental disorders.

a. The facility shall have an employee or consultant who is a medical doctor or doctor of osteopathic medicine who meets the qualifications for a mental health professional.

b. Services shall be provided by or supervised by a mental health professional.

c. Consumers shall be able to contact the facility to make an appointment at least five (5) days per week, eight (8) hours per day.

d. Services shall be available in such a way as to allow for minimal disruption of the consumer's working or schooling schedules.

e. No more than ten percent (10%) of the service area residents shall have to drive more than sixty (60) miles one way to receive services.

35.5(2) *Intermediate care and partial hospitalization services.* Intermediate care and partial hospitalization services shall be evaluation, treatment, and psychosocial support and rehabilitation activities provided within a structured group setting for persons with mental health problems or mental disorders requiring more than outpatient services but less than twenty-four (24)-hour care.

a. The facility shall have an employee or consultant who is a medical doctor or doctor of osteopathic medicine who meets the qualifications of a mental health professional.

b. Services shall be provided by a mental health professional or by another appropriate person in accordance with an individualized mental health treatment plan developed under the supervision of a mental health professional who retains responsibility for consumer care. When the services constitute partial hospitalization, all care shall be supervised by a medical doctor or doctor of osteopathic medicine and surgery who meets the qualifications of a mental health professional.

c. Services shall be available at least three (3) hours pay day, three (3) days per week, during the day, evening, or weekend as determined by the needs of consumers.

d. No more than ten percent (10%) of the service area residents shall have to drive more than sixty (60) miles one way to receive services.

35.5(3) *Inpatient services.* Inpatient services shall be evaluation, treatment, and psychosocial support and rehabilitation activities provided in a hospital or other twenty-four (24)-hour treatment setting for persons with mental health problems or mental disorders requiring that treatment.

a. Services shall be provided on a twenty-four (24)-hour-per-day, seven (7)-day-per-week basis within a hospital or other twenty-four (24)-hour treatment setting licensed by the department of public health.

b. Services shall be provided by an interdisciplinary team of mental health professionals and other appropriate persons. All care shall be supervised by a medical doctor or doctor of osteopathic medicine and surgery who meets the qualifications of a mental health professional.

c. No more than ten percent (10%) of the service area residents shall have to drive more than one hundred and twenty (120) miles one way to receive services.

35.5(4) *Residential services.* Residential services shall be psychosocial support and rehabilitation activities provided for persons with mental health problems or mental disorders who require specialized living arrangements in a variety of settings, ranging from minimal supervision to twenty-four (24)-hour care.

a. Services shall be provided by a mental health professional or by another appropriate person in accordance with a current treatment plan developed by or under the supervision of a mental health professional who retains responsibility for consumer care.

b. Psychosocial support and rehabilitation activities shall be provided at a minimum of five (5) hours per week.

c. No more than ten percent (10%) of the service area residents shall have to drive more than one hundred and twenty (120) miles one way to receive services.

35.5(5) *Community support services.* Community support services shall be those activities necessary to facilitate the assessment, development, and delivery of a system of services to meet the needs of chronically mentally disabled persons. These activities include, but are not limited to, case management and interagency program planning and coordination.

a. The facility shall have an employee or consultant who is a medical doctor or doctor of osteopathic medicine and surgery who meets the qualifications of a mental health professional.

b. The community support service shall be designed to meet the needs of the target population which is operationally defined as adults who have a psychiatric diagnosis of organic mental

disorder or schizophrenic, paranoid, or psychotic disorder not elsewhere classified, or affective disorder. (Diagnostic and Statistical Manual of Mental Disorders, Third Edition, May 1980); and who have a relatively poor employment history resulting from the behaviors associated with the preceding diagnoses and related episodes of hospitalization; or have the absence or impairment of a functional natural support system such as family or friends; or have a low level of functioning which interferes with the person's abilities to live independently.

c. The community support service shall include at least one case manager. The responsibilities of the case manager shall include, but need not be limited to: coordination of the activities for each consumer and continuing contact with the assigned consumers. The following activities shall be available: case finding; evaluation; assisting the consumer in meeting basic human needs by linking with or referring to the appropriate community human service agencies, treatment, twenty-four (24)-hour crisis assistance; identification of and encouragement to the consumer's natural support system; consultation and education to other individuals or agencies involved with the consumer; and psychosocial support and rehabilitation.

d. Services shall be provided in accordance with the current mental health treatment plan developed by or under the supervision of a mental health professional who retains responsibility for consumer care.

35.5(6) *Emergency services.* Emergency services shall be evaluation and treatment activities available on a twenty-four (24)-hour-per-day, seven (7)-day-per-week basis to persons with mental health problems or mental disorders requiring immediate attention.

a. The facility shall have an employee or consultant who is a medical doctor or doctor of osteopathic medicine and surgery who meets the qualifications of a mental health professional.

b. Services shall be provided by a mental health professional, or by another person who has received appropriate training from a mental health professional and who has immediate telephone access to a mental health professional.

c. Access to services shall be available through telephone with face-to-face intervention to be available when needed.

35.5(7) *Evaluation services.* Evaluation services shall be evaluation activities made available to courts, schools, other agencies, and to individuals upon request, which assess, plan for, and link individuals with appropriate services. Included are preliminary diagnostic evaluations for those seeking voluntary admission to the state mental health institutes.

a. The facility shall have an employee or consultant who is a medical doctor or doctor of osteopathic medicine and surgery who meets the qualifications of a mental health professional.

b. Preliminary diagnostic evaluations of persons seeking voluntary admission to a mental health institute in accordance with a resolution passed by a county board of supervisors pursuant to Iowa Code section 225C.14 shall be performed by a mental health professional within a reasonable time frame, not to exceed forty-eight (48) hours. When the results of the evaluation indicate that admission to the mental health institute is appropriate, the evaluator shall inform the institute of same. When the evaluator determines that another treatment programs more appropriate, and the individual agrees, the evaluator shall make arrangements with the alternative program to accept the referral. The facility shall report the findings of the evaluation to the selected treatment resource in a timely manner.

c. Evaluations performed for the court pursuant to Iowa Code section 229.10 shall be performed by a licensed physician who may utilize the results of evaluations performed by mental health professionals during the same time period. Evaluations performed for the court pursuant to Iowa Code section 232.49 shall be performed by a mental health professional. Court evaluations performed pursuant to this section shall be completed within the time frames agreed to by the facility and the court. Results shall be reported to the proper authority within twenty-four (24) hours of completion.

d. All other evaluations shall be performed by mental health professionals within the time frames agreed to by the facility and the requesting party or parties.

35.5(8) *Consultation services.* Consultation services shall be services which provide professional assistance and information about mental health or mental illness to individuals, groups or organizations to increase the recipients' effectiveness in carrying out their service

responsibilities.

a. Case, program, and community consultation shall be available.

b. Consultation shall be provided to a range of individuals and groups, such as health professionals, schools, courts, state and local law enforcement and correctional agencies, clergy, public welfare agencies, health service agencies, civil defense and disaster offices, and case work agencies.

c. When consultation is provided to a particular recipient on an on-going basis, the effectiveness of the service shall be evaluated jointly at least annually.

d. Consultation shall be provided by an employee or consultant who has sufficient education and experience in the particular subject matter covered in the consultation. Case consultation shall be provided by a mental health professional.

35.5(9) *Education services.* Education services shall be services which provide information and training concerning mental health, mental illness, the availability of services, the promotion of mental health and the prevention of mental illness to community leaders and organizations and the general public.

a. Educational materials shall be developed by or approved by a mental health professional.

b. At a minimum, public mental health education and skill training shall be available.

c. When education is provided to a particular recipient on an on-going basis, the effectiveness of the service shall be jointly evaluated at least annually.

441—35.6(225C) Application for accreditation. The facility shall submit an application to the division in order to be considered for accreditation by the commission, using form number MH-5303-0, Application for Accreditation as a Mental Health Service Provider. The division shall supply this form to the facility upon request. The application shall be submitted whether the facility wants to be considered for accreditation based on the division's assessment of the facility's compliance with the standards set forth in this chapter or based on deemed status granted pursuant to rule 441—35.12(225C). The application shall state the service(s) for which the facility wants to be accredited. The facility shall apply for accreditation of all mental health services as defined in the standards which are provided by the facility.

35.6(1) *Application by a facility which has not previously been accredited by the commission as a mental health service provider.* A facility which has not been accredited by the commission shall apply to the division for accreditation by the commission when the facility makes the decision to be considered for accreditation.

35.6(2) *Application for renewal of accreditation by the commission.* A facility which has been accredited by the commission shall apply to the divison for renewal of accreditation upon receipt of notice from the division within the time frames specified in the notice. The divison shall be notified immediately if an accredited facility decides not to apply for renewal of accreditation.

35.6(3) *Application for accreditation of an additional service.* An accredited facility shall apply to the divison for accreditation of a service for which it has not previously been accredited. Application shall be made when the facility makes the decision to have the additional service considered for accreditation by the commission and in accordance with rule 441—35.11(225C).

35.6(4) *Application after expiration or denial of accreditation.* The facility shall apply to the division for accreditation if the facility's accreditation has expired or the facility has been denied accreditation by the commission. Application shall be made when the facility makes the decision to be reconsidered for accreditation by the commission.

441—35.7(225C) Assessment of compliance with standards. Assessment of compliance with the standards set forth in this chapter shall be made by review of material submitted by the facility to the division or by a site visit conducted by division staff.

35.7(1) Upon receipt of an application submitted pursuant to rule 441—35.6(225C,) the division shall inform the facility, in writing, of the information to be submitted to the division. The information shall include, at a minimum:

a. The facility's program plan.

b. The completed self-survey form.

c. A narrative which sets forth a plan of corrective action with time frames for implementation for each standard with which the facility indicates on the self-survey form that it is out of compliance.

d. A statement dated and signed by the chief administrative officer and president of the board of directors or advisory board that all information submitted to the division is accurate and complete.

35.7(2) The division may request the facility to provide subsequent reports on implementation of a corrective action plan submitted pursuant to subrule 35.7(1), paragraph *"c."*

35.7(3) The division may conduct a site visit to the facility to verify all or part of the information submitted pursuant to subrule 35.7(1) or 35.7(2). A site visit may be conducted at the discretion of the division. The division will provide the facility with notice appropriate to the reason for the visit.

a. The division shall provide the facility with a minimum of thirty (30) days' written notice of the site visit.

b. The notice of the site visit shall inform the facility of information to be made available at the time of the site visit.

441—35.8(225C) Accreditation recommendation and decision.

35.8(1) The division shall review the material submitted by the facility and develop one of the following recommendations:

a. Information submitted by the facility indicates that it is in compliance with the standards, and the facility should be accredited.

b. Information submitted by the facility indicates that there are instances of noncompliance with the standards, but the facility has submitted a plan of corrective action with time frames for implementation which is acceptable to the division and the facility should be accredited.

c. Information submitted by the facility indicates that there are instances of noncompliance. The facility has not submitted a plan of corrective action which is acceptable to the division and should not be accredited.

35.8(2) The commission shall review the division's recommendation and shall make an accreditation or nonaccreditation decision.

441—35.9(225C) Notification. When the commission makes the accreditation or nonaccreditation decision regarding the facility, the director of the division shall communicate the decision in writing to the facility.

441—35.10(225C) Period of accreditation. Facility accreditation shall become effective on the date the commission grants accreditation and shall terminate three (3) years from that date unless extended or revoked by the commission.

35.10(1) The commission may grant an extension to the period of accreditation upon request by the division. The division may request an extension for the following reasons:

a. There has been a delay in the division's development of an accreditation recommendation to the commission which is beyond the control of the facility or the division.

b. The facility has requested an extension to permit the facility to prepare and obtain division approval of a corrective action plan.

The length of the extension shall be established by the commission on a case by case basis.

35.10(2) The commission may, at any time, revoke the facility's accreditation for the following reasons:

a. Findings of a site visit indicate that there are instances of noncompliance with the standards which were not identified on the self-survey form or that the facility has failed to implement the corrective action plan submitted pursuant to subrule 35.7(1).

b. The facility has failed to provide information requested pursuant to subrule 35.7(2).

c. The facility refuses to allow the division to conduct a site visit pursuant to subrule 35.7(3).

441—35.11(225C) Accreditation of an additional service. An accredited facility may request the division to assess the facility's compliance with applicable standards for provision of a service for which the facility was not previously accredited. Upon receipt of application submitted pursuant to subrule 35.6(3), the division shall notify the facility in writing of information to be made available for the assessment.

441—35.12(225C) Deemed status. The commission shall grant deemed status to a facility which has been accredited or licensed by an agency in instances where the agency's standards are comparable to the commission's standards for mental health service providers.

a. Deemed status will be granted when the facility has been accredited by the Joint Commission on the Accreditation of Hospitals (JCAH) as a community mental health service program or by the Council on Accreditation of Services for Families and Children, Inc. for the provision of mental health service for families and individuals. Deemed status may be given to accreditation by other nationally recognized accrediting agencies on a case-by-case basis. The division shall identify the services to which deemed status applies in all instances in which granting of deemed status is requested.

b. Deemed status will be granted for governance and administration when the facility is licensed by the department of human services as a group living foster care facility or as a child placing facility. The divison shall assess the facility's compliance with the standards for mental health services.

c. Deemed status will be granted for governance and administration when the facility is accredited by a nationally recognized accrediting agency for services other than those defined by the commission as mental health services. The division shall assess the facility's compliance with the standards for mental health services.

d. The division shall coordinate with the division of community services for assessment of those facilities under purchase of service contract with the department of human services. The purpose of coordination shall be to avoid duplicative assessment of the facility by the two (2) divisions.

e. The facility seeking accreditation through deemed status shall submit the following to the division:

(1) A copy of the findings of the review and evaluation by the accrediting or licensing agency.

(2) Application for accreditation as described in subrule 35.6(1).

f. If the accrediting or licensing agency did not review and evaluate the facility for the provision of all services for which the facility is requesting accreditation by the commission, the division shall assess the facility's compliance with the relevant standards for provision of those mental health services not specifically evaluated by the other agency.

These rule are intended to implement Iowa Code sections 225C.4(1)*"t"* and 225C.6(1)*"e."*

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CHAPTER 36
COMMUNITY SUPERVISED APARTMENT LIVING ARRANGEMENTS

[Prior to 2/11/87, Human Services (498)]

PREAMBLE

These rules set minimum standards for community supervised apartment living arrangements. This is a program consisting of services for adults with mental illness, mental retardation, or developmental disabilities who need some assistance to enable them to live in the community but do not require the level of care and supervision provided in licensed residential care facilities. The rules allow for the flexible delivery of services and supervision necessary to meet the varied needs of these persons in a setting least restrictive to the persons being served. The intent of these rules is to allow the persons in the program to develop to their fullest potential by encouraging the availability of a normalized environment and needed services.

These rules also outline procedures for the approval of providers of this program. Providers are subject to approval under these rules in order to receive any public funding. Approval under these rules does not assure the receipt of funding. Providers must subsequently meet the requirements of the funding program to which they will be applying.

441—36.1(225C) Definitions.

"Academic services" are those activities provided to assist a person to acquire general information and skills which establish the basis for subsequent acquisition and application of information.

"Chief administrative officer" or a related title means the person with responsibility for the overall administration of the program.

"Community living skills training services" are those activities provided to assist a person to acquire and sustain the knowledge and skills essential to the person's independent functioning in the physical and social environment. These services may focus on the following areas:

1. Independent living skills. The skills necessary to sustain oneself in the physical environment and essential to the management of one's personal property and business.
2. Socialization skills. Those skills that include self-awareness and self-control, social responsiveness, group participation, social amenities, and interpersonal skills.
3. Communication skills. Those skills that include expressive and receptive skills in verbal and nonverbal language including reading and writing.
4. Leisure time and recreational skills. The skills necessary for a person to use leisure time in a manner which is satisfying and constructive to the person within the normal patterns of the community.

"Department" means the Iowa department of human services.

"Developmental disabilities" are those conditions resulting from a physical or mental impairment which occur before the age of twenty-two (22) and which substantially limit a person's ability to carry out major life activities and which are severe enough that services will probably be needed throughout the person's life. Persons with developmental disabilities experience more difficulty in reaching an independent level of existence because of the severity and early onset of the conditions.

"Diagnostic and evaluation services" are those activities designed to identify a person's current functioning level and those factors which are barriers to maintaining the current level or achieving a higher level of functioning. These activities provide sufficient information in order to identify appropriate services and service settings necessary to assist the person to maintain the current level or achieve a higher level of functioning. These services may focus on the following:

1. Screening. The identification of the possible existence of conditions, situations, or problems which are barriers to a person's ability to function.
2. Diagnosis. The investigation and analysis of the cause or nature of a person's condition, situation or problem.

3. Evaluation. The determination of the effects of a condition, situation or problem on a person's level of functioning and the appropriate services and service settings to assist the person to maintain or achieve a higher level of functioning.

"Individual program plan" means a written goal-oriented plan of services developed for a consumer by the consumer's interdisciplinary team.

"Individual service plan" means a plan developed by a referral agency of the general type of program needed by a consumer which includes the identification of services and types of living arrangements appropriate to the person's level of functioning and needs.

"Interdisciplinary team" means the group of persons with varying skills, perspectives and knowledge, who cooperatively work to develop and evaluate the consumer's individual program plan. The interdisciplinary team consists of, at a minimum, the consumer, the consumer's guardian or legally designated other, if applicable, referral agency representative, the service coordinator, other appropriate staff members, and other providers of services. Other persons relevant to the consumer's needs may be included.

"Least restrictive environment" means the environment in which effective service intervention into the life of a person is least intrusive, least disruptive of the person's life, and that represents the least departure from normal patterns of living.

"Legal services" are those services designed to assist persons to exercise their constitutional and legislatively enacted rights.

"Mental illness" is a substantial disorder of thought or mood which significantly impairs judgment, behavior, or the capacity to recognize reality or the ability to cope with the ordinary demands of life. Mental disorders include the organic and functional psychoses, neuroses, personality disorders, alcoholism and drug dependence, behavioral disorders, and other disorders as defined by the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders (DSM III).

"Mental retardation" refers to significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the development period. Mental retardation is a lifelong condition which originates at birth or in early childhood and also varies by degree of dysfunction. The four commonly used mental retardation classifications of mild, moderate, severe and profound, are based on intelligence quotient scores, psychological testing and social adjustment.

"Normalization" means providing assistance to a person to obtain an existence as close to the norm as possible by making available to the person patterns and conditions of everyday life that are as close as possible to the norms and patterns of mainstream society or that which is usual for a given region, community, or ethnic group.

"Self-administer medication" means the consumer retains the responsibility for taking the medication.

"Self-care training services" are those activities provided to assist a person to acquire and sustain the knowledge, habits and skills essential to the daily care of the person.

"Service coordination services" are those activities provided to assure that sufficient information has been obtained to identify appropriate services and service settings, to provide assistance to a person in obtaining appropriate services, to coordinate the delivery of services, and to provide monitoring to assure the continued appropriate provision of services. This service includes personal advocacy activities which assist the person to realize the rights to which the person is entitled and remove barriers to meeting the person's needs. (These services are also known as case management.)

"Service coordinator" is the person designated to provide service coordination services for a given consumer. (This person is also known as a case manager.)

"Support services" are those activities which provide personal care and assistance, and property maintenance in order to allow a person to live in the most appropriate setting.

"Transportation services" are those activities designed to assist a person to travel from one place to another to obtain services or carry out life's activities.

"Treatment services" consist of those services designed to assist a person to maintain or improve physical, emotional, and behavioral functioning or to prevent conditions that would

present barriers to a person's functioning. These services may focus on the following:

1. Psychotherapeutic treatment. Those activities provided to assist a person in the identification or modification of beliefs, emotions, attitudes, or behaviors in order to maintain or improve the person's functioning in response to the physical, emotional, and social environment.

2. Physical-physiological treatment. Those activities designed to prevent, halt, control, relieve, or reverse symptoms or conditions which interfere with the physical or physiological functioning of the human body.

"Vocational training services" are those activities designed to familiarize a person with production requirements and to maintain or develop the person's ability to function in a work setting. This service may include activities which allow or promote the development of skills, attitudes, and personal attributes appropriate to the work setting.

441—36.2(225C) Community supervised apartment living arrangement. A community supervised apartment living arrangement is the provision of, or assistance to secure, a residence and supervision to one or more persons who have mental illness, mental retardation, or a developmental disability and are capable of living semi-independently in a community setting. The persons do not need the level of care and supervision provided in a licensed residential care facility.

36.2(1) Facilities providing group living arrangements in such a manner that the state department of public health has determined that licensure under Iowa Code chapter 135C for health care facilities is not required, shall be considered incorporated within this definition and shall comply with rules of this chapter.

36.2(2) The type and number of hours of supervision provided to each consumer residing in a community supervised apartment living arrangement shall be determined by the abilities and needs of the consumer. The consumer shall be informed of the type and schedule of supervision.

a. The provider shall ensure that every consumer is receiving proper nutrition, adequate shelter, clothing, physical and emotional protection, and medical care.

b. The provider shall ensure that twenty-four (24) hour assistance is available to each consumer in the event of an emergency.

441—36.3(225C) Community supervised apartment living arrangement program of services. A community supervised apartment living arrangement program of services is those services provided in accordance with the consumer's individual program plan, to assist consumers in achieving their highest potential in self-sufficiency and independence in the least restrictive environment. The provider may deliver needed services or use services available from other providers.

36.3(1) Service coordination and diagnostic and evaluation services shall be provided to each consumer. The provider shall ensure the following services are available to each consumer according to individual needs:

a. Academic.
b. Community living skills training.
c. Legal.
d. Self-care training.
e. Support.
f. Transportation.
g. Treatment.
h. Vocational training.

36.3(2) If needed services are not available and accessible to the consumers, the provider shall document the actions which were taken to locate and access or deliver those services. The documentation shall include the identification of the type of consumers' needs which will not be met due to the lack of availability of services. The documentation shall be submitted to the department.

441—36.4(225C) Governance.

36.4(1) The provider shall be a provider in the public sector or established and operating as a legal entity in the private sector.

36.4(2) The provider's governing body, when applicable, shall provide oversight, guidance and policy direction for the operation of the provider's program. The roles and responsibilities of the governing body and the policies of the governing body shall be specified in writing.

441—36.5(225C) Administration.

36.5(1) The provider shall have a chief administrative officer who meets qualifications of education, experience, personal factors and skills as specified in written policy of the provider or governing body when applicable, and in accordance with any existing laws which may apply.

36.5(2) The provider shall have a written annual operating plan which reviews previous performance of the provider and establishes future program needs and services to be provided, and provides information on how the provider coordinates services with other relevant providers. If the services identified in the plan to be provided in the program are to be delivered by a subcontractor, an agreement shall be negotiated which outlines responsibilities and requires that services are provided in accordance with the standards of this chapter. The plan shall address the fiscal and personnel resources necessary to implement the program.

36.5(3) The provider shall have written policies and procedures for personnel administration which shall provide for the following:

a. Written job descriptions or agreements for all employees and consultants, which include duties and responsibilities; education, experience, or other requirements; and supervisory relationships.

b. Annual performance evaluation of all employees and consultants which is dated and signed by the employee or consultant and the supervisor.

c. Personnel records which are current, accurate, and complete and confidential to the extent allowed by law.

d. Roles, responsibilities, and limitations of student interns and volunteers.

e. An orientation program for all newly hired employees and consultants which includes an introduction to the provider's organizational structure, procedures and services, a discussion of the provider's personnel policies and procedures, and a discussion of the provider's safety plan.

f. An orientation program for new volunteers and student interns.

g. An ongoing continuing education or in-service program for all employees.

h. Equal opportunity and affirmative action employment practices.

i. Procedures to be used when disciplining an employee including documentation of actions, grievance procedures and establishment of final authority in the grievance procedure. Disciplinary procedures shall address discipline in the event of abuse of consumers by employees.

36.5(4) The provider shall have written policies and procedures for fiscal administration which shall address the following:

a. Preparation, maintenance, and administration of an annual budget approved by the governing board, if applicable.

b. Utilization of an accounting system in accordance with sound accounting practices.

c. Establishment of rates for services.

d. Provision for an annual independent fiscal audit of the provider or for an annual detailed financial statement prepared by the provider or an independent fiscal agent that provides a review of receipts and disbursements, and a statement of fund balances.

e. Establishment of an insurance program which includes a statement of the provider's responsibility relative to professional liability insurance for employees and consultants.

36.5(5) The provider shall have written policies and procedures for the reporting of dependent adult abuse to the department. (See 441—chapter 176)

36.5(6) The provider shall have written policies and procedures for promoting the exercise and protection of the consumer's human and civil rights, which shall be available to the con-

sumer, guardian or legally designated other, if applicable, referral agencies, and the general public.

a. The consumer's rights shall include, but need not be limited to:

(1) Freedom from unlawful discrimination based on race, color, creed, citizenship, national origin, sex, age, religion, or disability.

(2) Freedom to communicate by letter, telephone, in person, or by other means, and to visit and to receive visitors.

(3) Freedom of choice to include movement, self-determination in activities of daily living, and the right to refuse services.

(4) Freedom to exercise one's rights as a citizen, including voting.

(5) The right to manage one's own finances and possessions.

(6) The right to practice one's own religion.

(7) The right to privacy.

(8) The right to be treated with respect and addressed in a manner which is appropriate to the consumer's chronological age.

(9) The right to appeal any provider or staff action.

(10) The right to have all consumer records kept confidential and released only as provided by law or similar rules or regulations.

(11) The right to enter into contracts.

b. All rights are limited only to the extent determined by a court of law or that the consumer, when exercising these rights, unduly infringes upon the rights of others.

36.5(7) The provider shall have written policies and procedures that provide for the establishment of an agreement between the consumer and the provider outlining the consumer's responsibilities in abiding by the rules and expectations of the community supervised apartment living arrangement. The policies and procedures shall also define the responsibilities of the provider and provide for a written contract between the provider and the consumer or guardian or legally designated other which specifies the services to be provided to the consumer by the provider, the cost of those services, the fee to be charged to the consumer, and the source(s) of payment.

36.5(8) The provider shall have written policies and procedures that provide that all consumers or their guardians or legally designated others, if applicable, are informed of their right to appeal the provider's policies, procedures or any staff action and that written appeal procedures are established.

36.5(9) The provider shall have written policies and procedures for maintaining complete consumer records and for ensuring the confidentiality of the records. The policies and procedures shall at a minimum provide that:

a. The consumer record shall be kept in a location which assures the confidentiality of the information contained therein.

b. No information personally identifying the consumer will be released or disclosed without the written consent of the consumer or guardian or legally designated other.

(1) The consumer has the right to refuse to give the release of information.

(2) Services will not be contingent upon the consumer's decision concerning authorization of release of information.

(3) A release of information form shall be used which specifies to whom the information shall be released, what is to be released, the reason for the information being released and how the information is to be used, and the period of time for which the release is in effect.

(4) Exceptions to these policies will be permitted only for disclosures required by law, bona fide medical and psychological emergencies, and provider approval, certification, or licensure purposes.

c. Authorized staff having access to records shall be trained in and aware of the need to maintain confidentiality and abide by confidentiality requirements.

d. The service coordinator pursuant to subrule 36.6(4) shall be responsible for ensuring that information contained in the record is complete, current, and accurate. The consumer record shall minimally contain:

(1) Consumer identifying information.
(2) Name, address, and telephone number of the next of kin or guardian or legally designated other.
(3) Name, address, and telephone number of the person to be notified in case of emergency.
(4) Name, address, and telephone number of physician and hospital of choice.
(5) Source(s) of income.
(6) Legal status.
(7) Results of diagnoses and evaluations.
(8) Individual program plan, progress reports, and related entries.
(9) Social history.
(10) Medical information to include drug and food allergies and current prescribed and nonprescribed medications being taken by the consumer.
(11) Other personal identifying information which would be helpful in the case of a search for a consumer or other emergency, (i.e., distinguishing physical or behavioral characteristics, patterns, habits, preferences, places frequented, etc.).

36.5(10) The provider shall have written policies and procedures to include periodic review and evaluation of services and service provision, including the annual development of the operating plan incorporating the results of the evaluation. The evaluation shall include, but is not limited to, an evaluation of the following:
a. Type and number of services provided.
b. Staffing patterns.
c. Measures of consumer outcome.

441—36.6(225C) Program and services.

36.6(1) Each provider of a community supervised apartment living arrangement program shall have a sufficient number of qualified staff available to carry out all aspects of the program. The number and qualifications of staff shall be consistent with the consumers' needs and reflected in the provider's operating plan and personnel policies and procedures.

36.6(2) Each provider of a community supervised apartment living arrangement program shall have written policies and procedures for preadmission and admission which shall be available to referral sources and the general public. The policies and procedures shall address each of the following:
a. The requirement that only persons eighteen (18) years of age or older or minors who have attained their majority by marriage shall be admitted.
b. The requirement that only persons shall be admitted who need the level and type of supervision and services which can be provided in a community supervised living arrangement program.
c. The prerequisite consumer skills for admission.
d. Other admission criteria (i.e., age, type, and degree of disability).
e. Nondiscriminatory admissions without regard to race, color, creed, national origin, sex, or religion.
f. A description of services.
g. Cost rates for services and service-related activities and arrangements available to the consumer for payment.
h. The requirement that each consumer shall have a current medical and dental examination, completed by or under the supervision of a physician or dentist, within twelve months prior to admission, which includes a re-examination date or schedule.
i. The requirement that each consumer shall have a current evaluation of skills and needs pursuant to subrule 36.6(3) and an individual program plan developed pursuant to subrule 36.6(6).
j. Waiting lists and selection priorities.
k. Referral of those not appropriate for admission.
l. Receipt of individual service plan from the referring agency when applicable.
m. The requirement that written policies and procedures governing the methods of hand-

ling prescriptions and over-the-counter medications will be developed by the provider before admitting any consumer who is unable to self-administer medications. The policies and procedures shall minimally include the following:

(1) The process for identifying consumers who are unable to self-administer medication.

(2) Provisions for the provider to meet all federal, state, and local laws or regulations relating to the procurement, storage, dispensing, administration, and disposal of medications.

(3) Provisions for prescribed medications to be administered only in accordance with the instructions of the attending physician, dentist, podiatrist, or optometrist.

(4) Provision for the documentation of the administration of medication, to minimally include the type and amount of medication, the time and date, the route the medication was administered, and the signature of the person administering the medication.

(5) The process for administering PRN medication.

(6) The process for reporting errors in the administration of medication including early or late medication times.

(7) The process for identifying and the immediate reporting of suspected adverse reactions to medications.

(8) Provisions for the training of all staff who deal with or administer medications in the areas identified above.

36.6(3) Diagnostic and evaluation services shall be provided to each consumer. An annual evaluation or re-evaluation of each consumer shall be completed no later than twelve (12) months from the date of the last available evaluation. The evaluation or re-evaluation shall be completed by an interdisciplinary team composed of representatives from professions, disciplines, or service areas relevant to the particular evaluation. The evaluation or re-evaluation shall be of sufficient detail to identify the consumer's current level of functioning and need for services in the following areas: Self-care training, treatment, vocational, academic, and community living skills to include the consumer's need for services to develop the skills necessary to obtain and maintain living arrangements and to learn the rights and responsibilities of community living.

a. If an evaluation is available from the referral source, the evaluation results shall be secured by the provider prior to the admission of the consumer. The evaluation shall meet the requirements of subrule 36.6(3).

b. If an evaluation is not available from the referral source, or if the available evaluation does not contain all the required information, the provider shall ensure the consumer is evaluated to the extent necessary to determine if the consumer meets the criteria for admission. For those admitted, the remainder of the evaluation shall be completed prior to the development of an individual program plan pursuant to subrule 36.6(6).

c. Additional diagnostic and evaluation services determined by the interdisciplinary team to be needed shall be delivered or arranged by the provider.

36.6(4) Service coordination services shall be provided to each consumer.

a. Service coordination services shall be provided by a service coordinator designated for each consumer. The provider shall specify in written policies and procedures the qualifications required of the service coordinator. Minimal qualifications shall be one of the following:

(1) A bachelor's degree from an accredited college or university in the social or behavioral sciences and one year of post-degree experience in the delivery, planning, coordination or administration of human services.

(2) A high school diploma (or its equivalent) and five (5) years of post-degree experience in the delivery, planning, coordination or administration of human services.

(3) A combination of post-high school experience in the delivery, planning, coordination or administration of human services and post-high school education in the social or behavioral sciences which totals five (5) years. One of the five (5) years must be experience.

b. The service coordinator shall be responsible for the coordination of services to the consumer to include coordination of the following:

(1) Social history development pursuant to subrule 36.6(5).

(2) Individual program planning pursuant to subrule 36.6(6) and to ensure availability, implementation, and coordination of services delivered by other providers.

(3) Transfer or discharge as required pursuant to subrule 36.6(7).

(4) Any other activities needed to provide service coordination services as defined.

36.6(5) A social history shall be completed for each consumer.

a. The service coordinator shall secure or compile a social history on each consumer within thirty (30) days of the consumer's admission.

b. If the social history was secured from another provider, the information contained shall be reviewed within thirty (30) days of the consumer's admission. The date of the review, signature of the staff reviewing the history and summary of significant changes to the information shall be entered in the consumer's record.

c. Incorporated within the individual program plan process shall be an annual review of the information contained within the social history.

(1) Significant changes to the information shall be noted and documented in an addendum to the social history, dated, and signed by the person writing the addendum.

(2) The coordination of all reviews shall be the responsibility of the service coordinator.

d. The social history shall address the following areas:

(1) Legal status of the consumer.

(2) A description of previous living arrangements.

(3) A description of previous services received and a summary of current service involvements.

(4) A summary of significant medical conditions, including, but not limited to, illnesses, hospitalizations, past and current drug therapies, and special diets.

(5) Substance abuse history.

(6) Work history.

(7) Educational history.

(8) Relationship with family, significant others, and other support systems.

(9) Cultural and ethnic background and religious affiliation.

(10) Hobbies and leisure time activities.

36.6(6) An individual program plan (IPP) for each consumer shall be developed by an interdisciplinary team. The IPP shall be based on the individual service plan of the referring agency, if available, the information contained in the social history, the need for services identifed in the evaluation, and any other pertinent information. Additional consideration shall be given to the need for legal, support, or transportation services. Services to the consumer shall be provided in the least restrictive environment and shall incorporate the principle of normalization.

a. The service coordinator shall be responsible for coordinating the development, implementation and review of the IPP.

b. The IPP shall be developed within thirty (30) days following the consumer's admission to the program and no less than annually thereafter.

(1) The IPP shall be in writing, dated, signed by the interdisciplinary team members and maintained in the consumer's record.

(2) Written notice of the IPP development shall be sent to all persons included in the interdisciplinary team two (2) weeks in advance of the scheduled meeting.

c. The IPP shall include the following:

(1) Goals which are general statements of expected accomplishments to be achieved in meeting identified needs.

(2) Objectives which are specific, measurable and time-limited statements of outcomes or accomplishments which are necessary for progress toward the goal.

(3) The specific service(s) to be provided to achieve the objectives, the person(s) or agency(ies) responsible for providing the service(s), and the date of initiation and anticipated duration of service(s).

d. The IPP shall state the evaluation procedure for determining if objectives are achieved which shall include the incorporation of a continuous process for review and revision.

(1) There shall be a review of the IPP by the service coordinator, other staff and the consumer at least semiannually.

(2) The review shall contain: A written report of the consumer's progress toward objec-

tives; the need for continued services and any recommendation concerning alternative services or living arrangements; any recommended change in guardianship or conservatorship status, if applicable.

(3) The written report of the review shall reflect those involved in the review, and the date of the review, and shall be maintained in the consumer's record.

e. There shall be procedures for recording the activities of each service provider toward assisting the consumer in achieving the objectives in the IPP and the consumer's response. The procedures shall include a mechanism for coordination of all service providers.

(1) An entry into the consumer's record shall be made by staff whenever possible at the time of service provision but no later than seven (7) days from service provision.

(2) The entry shall be dated and signed by the person providing service.

(3) When the service includes ongoing activities which occur more than once a week, a summarized entry may be made weekly by staff in the consumer's record.

(4) The entry shall be written in terms of behavioral observations and specific activities. Entries that involve subjective interpretations of a consumer's behavior or progress shall be clearly identified and shall be supplemented with the behavioral observations which were the basis of the interpretation.

(5) The service coordinator shall obtain quarterly verbal or written progress reports from other service providers and this information shall be entered in the consumer's record.

36.6(7) Each provider shall have written policies and procedures regarding transfer of a consumer to another program or discharge from the community supervised living arrangement program.

a. The policies and procedures shall provide for assurances that any transfer or discharge is in the best interest of the consumer and that the consumer's needs will be met by the transfer or discharge in the least restrictive manner as defined by the consumer's needs.

b. The policies and procedures shall ensure that discharge planning is incorporated within the individual program plan development and review process.

c. The policies and procedures shall incorporate a mechanism providing for continuity of program and services to the consumer upon transfer or discharge.

441—36.7(225C) Living arrangements.

36.7(1) For programs providing the residence as part of the community supervised apartment living arrangement program, the residence shall meet all applicable health, fire, safety, sanitation, and zoning codes.

a. Each residence shall be clean, well maintained, safe, free from obvious hazards, provide proper heating, cooling and ventilation, and be of sufficient size and design to accommodate the needs of the consumer in conformance with the consumer's individual program plan.

b. Each residence shall provide for all the functions characteristic of a normal home including, but not limited to, meal preparation, sleeping, bathing, mail, and access to telephone.

c. The layout of the rooms shall permit ready access to common areas while guarding the privacy of bedroom and bathroom areas.

d. For residences constructed after the implementation of these rules:

(1) The residence shall be located in an area in the community that allows for consumer access to community services and resources or public transportation.

(2) The residence shall not be constructed in a design or location in the community that readily identifies its occupants as different from any other citizen, or that isolates, stigmatizes, or devalues the occupants within the community in any way.

e. For residences constructed prior to the implementation of these rules, subrule 36.7(1), paragraph *"d,"* shall apply only to the extent that the location or construction of the residence does not pose a threat or risk to the health, safety, or welfare of the occupants or unduly interfere with the occupants' programmatic needs.

If the residence does not allow the consumer access to community services and resources or public transportation, transportation services in compliance with Iowa Code chapter 601J shall be provided.

36.7(2) For community supervised apartment living arrangement programs which do not provide the residence, the program shall provide assistance to the consumer to obtain a residence which is comparable with the requirements of subrule 36.7(1).

36.7(3) Safety plan.

a. The provider shall have written policies and procedures to establish a safety plan for each living arrangement provided which identifies potential hazards and reduces or eliminates the hazards, and defines the tasks and responsibilities of staff and consumers in the event of an emergency situation. The plan shall be reviewed with the consumer at least quarterly.

b. Where the living arrangement is not provided, the provider shall have written policies and procedures for the development by staff and the consumer of a plan to be followed in the event of an emergency. The plan shall also identify potential hazards and actions to reduce or eliminate the hazards. The plan shall be reviewed with the consumer at least quarterly.

441—36.8(225C) Application for approval and renewal of approval. The provider shall submit an application to the department for consideration for approval or renewal of approval using Form 470-2070, Application for Approval of a Community Supervised Apartment Living Arrangement Program. The department shall supply this form to the provider upon request. The application shall be submitted whether the provider wants to be considered for approval or renewal of approval based on the department's assessment of the provider's compliance with the standards set forth in this chapter or based on deemed status granted pursuant to rule 441—36.12(225C).

36.8(1) The provider shall apply no less than ninety (90) days prior to the date the provider desires an approval decision. A provider who decides to withdraw an application shall immediately notify the department. A previously approved provider who decides not to apply for renewal of approval shall notify the department of that decision.

36.8(2) The department may determine that a review of approval is necessary prior to the annual review. The department may at any time review an approved program if there has been consumer or public complaints or for other significant reasons. The review may include a site visit.

441—36.9(225C) Assessment of compliance with standards. Assessment of compliance with the standards set forth in this chapter shall be made by review of material submitted by the provider to the department or by a site visit conducted by department staff.

36.9(1) Upon receipt of an application submitted pursuant to rule 441—36.8(225C), the department shall inform the provider, in writing, of the information to be submitted to the department. The information shall be received by the department no less than sixty (60) days but no more than ninety (90) days prior to the date the provider desires an approval decision. The information shall include, at a minimum:

a. The provider's operating plan.

b. A completed Self-Survey Form, Form 470-2068.

c. A narrative which sets forth a plan of corrective action with time frames for implementation for each standard that the provider indicates on the self-survey form is out of compliance.

d. A statement dated and signed by the chief administrative officer and president or chairperson of the governing body, if applicable, that all information submitted to the department is accurate and complete.

36.9(2) The department may request the provider to supply subsequent reports on implementation of a corrective action plan submitted pursuant to subrule 36.9(1), paragraph *"c."*

36.9(3) The department may conduct a site visit to verify all or part of the information submitted pursuant to subrule 36.9(1) or 36.9(2). A site visit may be conducted at the discretion of the department. The department will furnish the provider with notice appropriate to the reason for the visit. This does not preclude unannounced site visits.

441—36.10(225C) Notification. Within sixty (60) days of receipt of the information submitted by the provider pursuant to subrule 36.9(1), the department shall review the material

and communicate one of the following decisions in writing to the provider:

36.10(1) Information submitted by the provider indicates that the provider is in compliance with the standards and the program is approved.

36.10(2) Information submitted by the provider indicates that there are instances of noncompliance with the standards, but the provider has submitted a plan of corrective action with time frames for implementation which is acceptable to the department and the program is approved.

36.10(3) Information submitted by the provider indicates that there are instances of noncompliance. The provider has not submitted a plan of corrective action with time frames for implementation which is acceptable to the department and the program is not approved.

441—36.11(225C) Period of approval. Provider approval shall become effective on the date the department grants approval and shall terminate one (1) year from that date unless extended or revoked by the department.

36.11(1) The department may grant an extension to the period of approval for the following reasons:

a. There has been a delay in the department's development of an approval decision which is beyond the control of the provider or the department.

b. The provider has requested an extension to permit the provider to prepare and obtain department approval of a corrective action plan.

The length of the extension shall be established by the department on a case-by-case basis.

36.11(2) The department may, at any time, revoke the provider's approval for any of the following reasons:

a. Findings of a site visit indicate that there are instances of noncompliance with the standards which were not identified on the self-survey form or that the provider has failed to implement the corrective action plan submitted pursuant to subrule 36.9(1).

b. The provider has failed to provide information requested pursuant to subrule 36.9(2).

c. The provider refuses to allow the department to conduct a site visit pursuant to subrule 36.8(2) or 36.9(3).

441—36.12(225C) Deemed status. The department may grant deemed status on a case-by-case basis to providers who have been accredited by a nationally recognized accrediting agency or accredited or approved by a state agency in instances where the agency's standards are comparable to the standards in this chapter.

36.12(1) The provider seeking approval through deemed status shall submit the following to the department:

a. A copy of the findings of the review and evaluation by the accrediting or state agency.

b. Application for approval as described in rule 441—36.8(225C)

36.12(2) If the accrediting or state agency did not review and evaluate the provider for the provision of all components of the community supervised living arrangement program, the department shall assess the provider's compliance with the relevant standards not specifically evaluated by the other agency.

441—36.13(225C) Adverse action.

36.13(1) Notice of adverse action and the right to appeal the actions (denial or effective date of the approval decision, and revocation) shall be given to applicants and approved providers in accordance with 441—chapter 7.

36.13(2) An applicant or approved provider affected by an adverse action may request a hearing by means of a written request directed to the division of mental health, mental retardation and developmental disabilities of the department within thirty (30) days after the date the official notice was mailed containing the nature of the adverse action.

These rules are intended to implement 1985 Iowa Code supplement section 225C.19.

[Filed 4/4/86, Notice 1/29/86—published 4/23/86, effective 6/1/86]
[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]

CHAPTER 37
Reserved

CHAPTER 38
DEVELOPMENTAL DISABILITIES BASIC GRANT PROGRAM

[Prior to 2/11/87, Human Services (498)]

PREAMBLE

Pursuant to the Developmental Disabilities Act of 1984 (P.L. 98-527), formerly P.L. 95-602 (1978), and Iowa Code section 225C.3, the department of human services' division of mental health, mental retardation and developmental disabilities has been designated as the administering agency of the developmentally disabled (DD) program in Iowa since 1981.

The purpose of this chapter is to define and structure the developmental disabilities basic grant program. This grant program is designed to assist persons with developmental disabilities to receive the care, treatment, and other services necessary to enable them to achieve their maximum potential through increased independence, productivity, and integration into the community.

Funding priorities for services and research projects are established by the governor's planning council for developmental disabilities on an annual basis.

441—38.1(225C,217) Definitions.

"Commissioner" means the commissioner of the department or successor agency.

"Council" means the governor's planning council for developmental disabilities.

"Department" means the Iowa department of human services.

"Developmental disability" means a severe, chronic disability of a person which is attributed to a mental or physical impairment or a combination of mental and physical impairments, is manifested before the person attains age twenty-two (22), is likely to continue indefinitely, substantially limits the person's ability to carry out major life activities, and is severe enough that services will probably be needed throughout the person's life.

"Division" means the division of mental health/mental retardation/developmental disabilities of the department.

"Major life activities" means those activities involved in self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency.

"Research project" means proposals submitted to the division that will make studious inquiry or examinations of facts, theories or other data to assist in analysis of the needs of persons with developmental disabilities and make this information available for planning purposes.

"Service project" means proposals designed to address:

1. The priority services, as established in P.L. 98-527, and

2. Any other specialized services or special adaptations of generic services for persons with developmental disabilities, including diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training, education, sheltered employment, recreation and socialization, counseling of the person with such disability and the family of the person, protective and other social and sociolegal services, information and referral services, follow-along services, nonvocational social developmental services, transportation services necessary to assure delivery of services to persons with developmental disabilities, and services to promote and coordinate activities to prevent developmental disabilities.

441—38.2(225C,217) Program eligibility. For any year in which Congress appropriates funds, council shall, consistent with the state plan and the priorities established under P.L. 98-527, make recommendations to the commissioner for those grants to be awarded under the developmental disabilities basic grant program. Funding priorities will be established by the council on an annual basis and will be consistent with the priorities established in P.L. 98-527. Application for capital expenditures or capital renovations are not eligible for funding.

441—38.3(225C,217) Application.

38.3(1) *Grant cycle.* The commissioner will announce, through public notice, the openings of an application period for either service or research projects. Applicants for grants shall submit first a letter of intent and then a grant proposal by deadlines specified in the announcement.

38.3(2) *Letter of intent.* The letter of intent must clearly identify the applicant and specify the category or service to be addressed in the project. Only letters of intent received by the deadline specified in the public notice will be considered. Applicants will be given a written acknowledgment of their letter of intent and a grant application packet.

38.3(3) *Grant proposal.* Applicants shall submit the proposal to the commissioner on Form 470-1641, "Mental Health, Mental Retardation and Developmental Disabilities Application Package." If a proposal does not contain the information specified in the application package or if it does not arrive by the due date specified in the announcement, it will be disapproved.

a. Proposals for service and research grants shall contain the following:

(1) General agency information.
(2) Specific project information.
(3) A summary of the project.
(4) An introductory section outlining agency background information.
(5) A problem statement outlining the need or problem to be addressed.
(6) Project goals and objectives.
(7) Project methodology.
(8) An evaluation plan.
(9) A line item budget.

b. Proposals for service grants shall contain in addition the following information:

(1) A plan for future funding.
(2) Assurances.
(3) Letters of support.

If additional application information is viewed as necessary by the council, it will be specified in the application packet.

441—38.4(225C,217) Project review and selection.

38.4(1) *Service project review and selection.*

a. All service proposals meeting the minimum criteria above shall be evaluated by the members of the council grants review committee, division staff, and other members of the council as deemed necesssary. The council may use advisory task forces, committees, and other persons with expertise, as requested by the grants review committee. The review criteria will be contained in the application packet, Form 470-1461. The grants review committee shall make recommendations for project funding to the full council for consideration. The council's recommendation shall be forwarded to the commissioner who will award the grants.

b. Based on the information submitted by the applicant, as required in the application packet, Form 470-1461, the following factors will be considered in selecting service proposals:

(1) The demonstrated experience and expertise of the applicant.
(2) The demonstrated and justified need for services.
(3) The relationship of the project purpose, goal(s), and objectives with the identified need.
(4) The measurability of objectives.
(5) The adequacy of project design and methodology.
(6) The process and instruments for project evaluation.
(7) The efforts to secure future funding.
(8) The appropriateness of project budget in relation to the project methodology.

If additional review criteria are viewed as necessary, they will be specified in the application packet.

38.4(2) *Research project review and selection.*

a. All research proposals meeting the minimum criteria above shall be evaluated by the members of the council grants review committee, division staff, or other members of the council. The council may use advisory task forces, committees, and other persons with expertise, as deemed necessary by the grants review committee. The review criteria are contained in the application packet, Form 470-1461. The grants review committee shall make recommendations for project funding to the full council for consideration. The council recommendation shall be forwarded to the commissioner who will award the grants.

b. Based on the information submitted by the applicant, as required in the application packet, Form 470-1461, the following factors will be considered in selecting research proposals:

(1) The demonstrated experience and expertise of the applicant.

(2) The demonstrated knowledge of the problem or issue to be researched.

(3) The relationship of the project purpose, goal(s), and objectives with the identified problem.

(4) The measurability of the objectives.

(5) The adequacy of project design, methodology, including qualification of project staff.

(6) The process for project evaluation.

(7) The appropriateness of the project budget in relation to the project goals, objectives, and design.

If additional review criteria is viewed as necessary, it will be specified in the application packet.

441—38.5(225C,217) Notification. Notification of acceptance or denial of the proposal will be sent to each applicant.

441—38.6(225C,217) Request for reconsideration. Dissatisfied applicants may file a request for reconsideration of the denial of an award with the commissioner. The request for reconsideration must be submitted within ten (10) working days of the date of the notice of decision and must include a request for the commissioner to review the decision and the reasons for dissatisfaction. Within ten (10) working days of the receipt of the request the commissioner or designee will review the request and evidence provided and will issue a final decision.

No disbursements will be made to any applicant for a period of ten (10) working days after the date of the notice. If a request is received within the ten (10) working days, all disbursements will be held pending a final decision on the request. All applicants involved will be notified if a request is filed.

441—38.7(225C,217) Contracts. The funds for approved projects will be awarded through a contract entered into by the commissioner and the applicant. The work statement of the contract and the budget will be mutually negotiated between the commissioner or designee and the applicant. The contract may cover a period not to exceed twenty-four (24) months. The contract shall set forth the expectations and terms of compliance between the contractor and the commissioner.

441—38.8(225C,217) Records. Grantees shall keep statistical and financial records as required by the commissioner and specified in the contract.

441—38.9(225C,217) Reallocation of funds.

38.9(1) The commissioner shall require the grantee to report, in writing, any projected underexpenditures prior to the completion of the grant. When underexpenditures are reported, the commissioner may renegotiate the total contract budget to avoid underexpenditure.

38.9(2) The council will recommend use of any underexpended funds to the commissioner.

This rule is intended to implement Iowa Code sections 217.6 and 225C.3.

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[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]

CHAPTER 39
Reserved

TITLE IV
AID TO DEPENDENT CHILDREN

CHAPTER 40
APPLICATION FOR AID
[Prior to 7/1/83, Social Services(770), Ch 40]
[Prior to 2/11/87, Human Services(498)]

441—40.1(239) Definitions.

"Applicant" means a person for whom assistance is being requested, parent(s) living in the home with the child(ren), and the nonparental relative as defined in 41.2(3) who is requesting assistance for the child(ren).

"Assistance unit" includes any person whose income is considered when determining eligibility or the amount of assistance for aid to dependent children.

"Budgeting process" means the process by which income is computed to determine eligibility under the one hundred eighty-five percent (185%) eligibility test described in 441—41.7(239), initial eligibility, the initial aid-to-dependent children grant, ongoing eligibility, and the ongoing aid-to-dependent children grant.

1. For retrospective budgeting, the budget month is the second month preceding the payment month.
2. For prospective budgeting, the budget month and payment month are the same calendar month.

"Budget month" means the calendar month from which the local office uses income or circumstances of the eligible group to compute eligibility and the amount of assistance.

"Central office" shall mean the state administrative office of the department of human services.

"Change in income" means a permanent change in hours worked, rate of pay, or beginning or ending income.

"Change in work expenses" means a permanent change in the cost of dependent care or the beginning or ending of dependent care.

"Department" shall mean the Iowa department of human services.

"Income in kind" is any gain or benefit which is not in the form of money payable directly to the eligible group including nonmonetary or in kind benefits, such as meals, clothing, and vendor payments. Vendor payments are money payments which are paid to a third party and not to the eligible group.

"Initial two months" means the first two (2) consecutive months for which assistance is paid. This may include a month for which a partial payment is made.

"Local office" shall mean the local office of the department of human services.

Whenever *"medical institution"* is used in this title, it shall mean a facility which is organized to provide medical care, incuding nursing and convalescent care, in accordance with accepted standards as authorized by state law and as evidenced by the facility's license. A medical institution may be public or private. Medical institutions include the following:

1. Hospitals
2. Extended care facilities (skilled nursing)
3. Intermediate care facilities
4. Mental health institutions
5. Hospital schools

"Payment month" means the calendar month for which assistance is paid.

"Payment standard" means the total needs of a group as determined by adding need according to the schedule of basic needs, described in 41.8(2), to any allowable special needs, described in 41.8(3).

"Prospective budgeting" means the determination of eligibility and the amount of assistance for a calendar month based on the best estimate of income and circumstances which will exist in that calendar month.

"Recipient" means a person for whom assistance is paid, parent(s) living in the home with the eligible child(ren) and nonparental relative as defined in 41.2(3) who is receiving assistance for the child(ren). Unless otherwise specified, a person is not a recipient for any month in

which the assistance issued for that person is subject to recoupment because the person was ineligible.

"Report month" for retrospective budgeting means the calendar month following the budget month. "Report month" for prospective budgeting means the calendar month in which a change occurs.

"Retrospective budgeting" means the computation of the amount of assistance for a payment month based on actual income and circumstances which existed in the budget month.

"Standard of need" means the total needs of a group as determined by adding need according to the schedule of living costs, described in 41.8(2), to any allowable special needs, described in 41.8(3).

"Suspension" means a month in which an assistance payment is not made due to ineligibility for one month when eligibility is expected to exist the following month.

"Unborn child" shall include an unborn child during the entire term of the pregnancy.

"Work incentive program" means the work incentive demonstration (WIN/CMS) program as described in 441—chapter 90, except as specified in subrule 42.4(2)"a."

This rule is intended to implement Iowa Code sections 239.3, 239.5, and 239.6.

441—40.2(239) Application. The application for aid to dependent children shall be submitted on Public Assistance Application, Form PA-2207-0 or Form PA-2230-0 (Spanish). The application shall be signed by the applicant, the applicant's authorized representative, or, when the applicant is incompetent or incapacitated, someone acting responsibly on the applicant's behalf. When both parents, or a parent and stepparent, are in the home, both shall sign the application.

40.2(1) Each individual wishing to do so shall have the opportunity to apply for assistance without delay. When the parent is in the home with the child and is not prevented from acting as payee by reason of physical or mental impairment, this parent shall make the application.

40.2(2) An applicant may be assisted by other individuals in the application process; the client may be accompanied by such individuals in contact with the local office, and when so accompanied, may also be represented by them. When the applicant has a guardian, the guardian shall participate in the application process.

40.2(3) The applicant shall immediately be given an application form to complete. When the applicant requests that the forms be mailed, the local office shall send the necessary forms in the next outgoing mail.

40.2(4) A new application shall be made whenever a person is added to the eligible group or when a parent or a stepparent becomes a member of the household.

40.2(5) *Reinstatement.*

a. Assistance shall be reinstated without a new application when all necessary information is provided at least three (3) working days before the effective date of cancellation and eligibility can be re-established.

b. Assistance may be reinstated without a new application when all necessary information is provided after the third working day but before the effective date of cancellation and eligibility can be re-established before the effective date of cancellation.

c. When eligibility factors are met, assistance shall be reinstated when the completed Public Assistance Eligibility Report, Form PA-2140-0, is received by the local office within ten (10) days of the date a cancellation notice is sent to the recipient because the form was incomplete or not returned.

d. Rescinded, effective October 1, 1985.

This rule is intended to implement Iowa Code sections 239.3, 239.5 and 239.6.

441—40.3(239) Date of application. The date of application is the date an identifiable Public Assistance Application, Form PA-2207-0 or Form PA-2230-0 (Spanish), is received in the county. An identifiable application is an application containing a legible name and address, that has been signed.

This rule is intended to implement Iowa Code section 239.3.

441—40.4(239) Procedure with application.

40.4(1) The decision with respect to eligibility shall be based primarily on information furnished by the applicant. The applicant shall report no later than at the time of the face-to-face interview any change as defined in 40.7(4)*"e"* which occurs after the application was signed. Any change which occurs after the face-to-face interview shall be reported by the applicant within five (5) days from the date the change occurred. The local office shall notify the applicant in writing of additional information or verification that is required to establish eligibility for assistance. Failure of the applicant to supply the information or verification, or refusal by the applicant to authorize the local office to secure the information or verification from other sources, shall serve as a basis for denial of assistance. Five (5) working days shall be considered as a reasonable period for the applicant to supply the required information or verification. Any time taken beyond the five (5) days shall be considered a delay on the part of the applicant, unless the local office extends the deadline because the applicant is making every effort to secure the information or verification but is unable to do so.

a. In those instances where an application has been filed to add an individual to an existing eligible group, the five (5)-day requirement for reporting changes shall be waived. Such applicants and eligible groups shall be subject to the recipient's ten (10)-day-reporting requirement as defined in 40.7(4).

b. Reserved.

40.4(2) In processing an application, the local office shall conduct at least one face-to-face interview with the applicant prior to approval of the application for assistance. The local office shall assist the applicant, when requested, in providing information needed to determine eligibility and amount of assistance. The application process shall include a visit, or visits, to the home of the child and the person with whom the child will live during the time assistance is granted under the following circumstances:

a. When it is the judgment of the local office that a home visit is required to clarify or verify information pertaining to the eligibility requirements; or

b. When the applicant requests a home visit for the purpose of completing a pending application.

c. In those instances where an application has been filed to add an individual to an existing eligible group, the face-to-face interview requirement shall be waived.

40.4(3) The applicant who is subject to monthly review as described in 40.7(1) shall become responsible for completing Form PA-2140-0, Public Assistance Eligibility Report, after the time of the face-to-face interview. This form shall be issued and returned according to the requirements in 40.7(4)*"b."* The application process will continue as regards the initial two (2) months of eligibility, but eligibility and the amount of payment for the third month and those following is dependent on the proper return of these forms. The local office shall explain to the applicant at the time of the face-to-face interview the applicant's responsibility to complete and return this form.

40.4(4) The decision with respect to eligibility shall be based on the applicant's eligibility or ineligibility on the date the local office enters eligibility information on the Data Processing Turnaround Document, except as described in 40.4(3). The applicant shall become a recipient on the date the automated benefit calculation system determines the applicant is eligible for aid and sends a notice to this effect.

This rule is intended to implement Iowa Code sections 239.4, 239.5 and 239.6.

441—40.5(239) Time limit for decision. The applicant shall receive a notice approving assistance, or a written notice of denial as soon as possible, but not later than thirty (30) days from the date of application. This time standard shall apply except in unusual circumstances, such as when the local office and the applicant have made every reasonable effort to secure necessary information which has not been supplied by the date the time limit expired; or because of emergency situations, such as fire, flood or other conditions beyond the administrative control of the local office. When eligibility is dependent upon the birth of a child the time limit may be extended while awaiting the birth of the child. When it becomes evident that due to an

error on the part of the local office, eligibility will not be established within the thirty (30)-day limit, the application shall be approved pending a determination of eligibility.

This rule is intended to implement Iowa Code sections 239.4, 239.5 and 239.6.

441—40.6(239) Effective date of grant. New approvals shall be effective as of the date the applicant becomes eligible for assistance, but in no case shall the effective date be earlier than seven (7) days following the date of application. In those instances where an application has been filed to add an individual to an existing eligible group, approval for that individual shall be effective as of the date the applicant becomes eligible for assistance, but in no case shall the effective date be earlier than seven (7) days following the date of application.

This rule is intended to implement Iowa Code section 239.5.

441—40.7(239) Continuing eligibility.

40.7(1) Eligibility factors shall be reviewed at least every six (6) months for aid to dependent children using information contained in and verification supplied with Form PA-2140-0, Public Assistance Eligibility Report. A face-to-face interview shall be conducted at least annually at the time of a review.

a. Any assistance unit with one or more of the following characteristics shall be reviewed monthly:

(1) The assistance unit contains any member with earned income, including earnings in kind, unless the income is disregarded under 41.7(2)*"e."*

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

(3) The assistance unit contains any member receiving nonexempt unearned income, the source or amount of which is expected to change more often than once annually, unless the income is from job insurance benefits, interest or educational income as described in 41.7(1)*"d"*; or unless the assistance unit's adult members are sixty (60) years old or older, or are receiving disability or blindness payments under Titles I, II, X, XIV, or XVI of the Social Security Act; or unless all adults, who would otherwise be members of the assistance unit, are receiving supplemental security income including state supplementary assistance.

(4) The assistance unit contains any member whose eligibility is dependent upon unemployment of the principal wage earner.

(5) The assistance unit contains any member residing out of state on a temporary basis.

b. The assistance unit subject to monthly review shall complete a Public Assistance Eligibility Report, Form PA-2140-0, for each budget month.

40.7(2) A redetermination of specific eligibility factors shall be made when:

a. The recipient reports a change in circumstances, or

b. A change in the recipient's circumstances comes to the attention of a staff member, or

c. Requested as part of a special study review by Project Integrity.

40.7(3) Information for reviews shall be submitted on Form PA-2140-0, Public Assistance Eligibility Report. This form shall be signed by the payee, the payee's authorized representative, or, when the payee is incompetent or incapacitated, someone acting responsibly on the payee's behalf. When both parents, or a parent and stepparent, are in the home, both shall sign the Public Assistance Eligibility Report.

40.7(4) *Responsibilities of recipients (including individuals in suspension status).* For the purposes of this subrule, recipients shall include persons who received assistance subject to recoupment because the persons were ineligible.

a. The recipient shall cooperate by giving complete and accurate information needed to establish eligibility and the amount of the aid-to-dependent children grant.

b. The recipient shall complete Form PA-2140-0, Public Assistance Eligibility Report, when requested by the local office in accordance with these rules. The form will be supplied as needed to the recipient by the department. The department shall pay the cost of postage to

return the form. When the form is issued in the department's regular end-of-month mailing, the recipient shall return the completed form to the local office by the fifth calendar day of the report month. When the form is not issued in the department's regular end-of-month mailing, the recipient shall return the completed form to the local office by the seventh day after the date it is mailed by the department. The local office shall supply the recipient with a Form PA-2140-0, Public Assistance Eligibility Report, on request. Failure to return a completed form shall result in cancellation of assistance. A completed form is a form with all items answered, signed, dated no earlier than the last day of the budget month and accompanied by verification as required in 41.7(1) "i," and 41.7(2) "q."

c. The recipient shall supply, insofar as the recipient is able, additional information needed to establish eligibility and the amount of the aid-to-dependent-children grant within five (5) working days from the date a written request is mailed by the local office to the recipient's current mailing address or given to the recipient. The recipient shall give written permission for release of information when the recipient is unable to furnish information needed to establish eligibility and the amount of the aid-to-dependent-children grant. Failure to supply the information or refusal to authorize the local office to secure the information from other sources shall serve as a basis for cancellation of assistance.

d. The recipient shall cooperate with the department when the recipient's case is selected by quality control or Project Integrity for verification of eligibility. Failure to do so shall serve as a basis for cancellation of assistance.

e. The recipient, or an applicant applying to be added to an existing eligible group, shall timely report any change in the following circumstances:

(1) Income from all sources, including any change in the care expenses and any change in full-time or part-time employment status as defined in 41.7(2)*"b."*

(2) Resources.

(3) Members of the household.

(4) School attendance.

(5) Becoming incapacitated or recovery from incapacity.

(6) Change of mailing or living address.

(7) Payment of child support.

(8) The completion of a U.S. Individual Income Tax Return, Form 1040 or 1040A, requiring repayment of excess advance earned income credit payments.

(9) Receipt of a warrant that exceeds the amount on the most recent notice from the department by ten dollars ($10) or more or receipt of a duplicate warrant.

(10) Receipt of a social security number.

(11) Payment for child support, alimony, or dependents as defined in 41.7(8)*"b"* and 41.7(10).

f. A report shall be considered timely when made within ten (10) days from:

(1) The receipt of resources, income, or increased or decreased income.

(2) The date care expenses increase or decrease or the date full-time or part-time employment status, as defined in 41.7(2)*"b,"* changes.

(3) The date the address changes.

(4) The date the child is officially dropped from the school rolls.

(5) The date a person enters or leaves the household.

(6) The date medical or psychological evidence indicates a person becomes incapacitated or recovers from incapacity.

(7) The date the client increases or decreases child support payments.

(8) The date a U.S. Individual Income Tax Return, Form 1040 or 1040A, requiring repayment of excess advanced earned income credit payments is signed by the recipient.

(9) The date the recipient receives a warrant that exceeds the amount on the most recent notice from the department by ten dollars ($10) or more or a duplicate warrant.

(10) The receipt of a social security number.

(11) The date a person described in 41.7(8)*"b"* or *"c"* or a sponsor increases or decreases payments for child support, alimony or dependents.

g. When a change is not timely reported, any excess assistance paid shall be subject to recovery.

40.7(5) After assistance has been approved, eligibility for continuing assistance and the amount of the grant shall be effective as of the first of each month. Any change affecting eligibility reported during a month shall be effective the first day of the next calendar month and any change affecting the amount of assistance shall be effective for the corresponding payment month except:

a. When the recipient completes an application to add a new person to the eligible group, and that person meets eligibility requirements, a payment adjustment shall be made for the month of application, subject to the effective date of grant limitations prescribed in 441—40.6(239).

b. When income ended during one of the initial two (2) months of eligibility and a grant adjustment could not be made effective the first of the following month in accordance with 41.7(9)"*b*"(1), a payment adjustment shall be made.

c. When verification of an income deduction or diversions is provided before the end of the report month, but too late for a grant adjustment to be made effective the first of the following month, a payment adjustment shall be made.

d. When cancellation of assistance is later in those cases where issuance of a timely notice, as required by 441—7.6(217), requires that the action be delayed until the first day of the second calendar month. Any overpayment received in the first calendar month shall be recouped.

e. Any change not reported prospectively in the budget month and reported on the monthly report form shall be effective for the corresponding payment month. When the change creates ineligibility for more than one month, the payment made in the report month shall be recouped.

f. When the recipient timely reports, as defined in 40.4(1) or 40.7(4), a change in income or circumstances during the first initial month of eligibility, prospective eligibility and grant amount for the second initial month shall be determined based on the change. A payment adjustment shall be made when indicated. Recoupment shall be made for any overpayment regardless of when the change is reported.

g. When an individual included in the eligible group becomes ineligible, that individual's needs shall be removed prospectively effective the first of the next month. When the action must be delayed due to administrative requirements a payment adjustment or recoupment shall be made when appropriate.

h. When specifically indicated otherwise in these rules, such as in 41.5(5) and 41.7(9)"*c*"(2).

This rule is intended to implement Iowa Code sections 239.2, 239.3, 239.5, 239.6 and 239.18.

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CHAPTER 41
GRANTING ASSISTANCE

[Prior to 7/1/83, Social Services(770), Ch 41]
[Prior to 2/11/87, Human Services(498)]

441—41.1(239) Eligibility factors specific to child.

41.1(1) *Age.* Aid to dependent children shall be available to a needy child under the age of eighteen (18) years without regard to school attendance.

A child is eligible for the entire month in which the child's eighteenth birthday occurs, unless the birthday falls on the first day of the month. Aid to dependent children shall also be available to a needy child of eighteen (18) years who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, as defined in subrule 41.4(1)*"a,"* and who is reasonably expected to complete the program before reaching age nineteen (19).

41.1(2) *Citizenship and alienage.* An aid to dependent children assistance grant may include the needs of a child who is a resident of the United States only when the child is either a citizen or an alien lawfully admitted for permanent residence or otherwise legally permanently residing in the United States as evidenced by suitable documentary proof furnished by the immigration and naturalization service of the United States Department of Justice.

41.1(3) *Residing with relative.* The child shall be living in the home of one of the relatives specified in subrule 41.2(3). When an unwed mother intends to place her child for adoption shortly after birth, the child shall be considered as living with the mother until the time custody is actually relinquished.

a. Living with relatives implies primarily the existence of a relationship involving an accepted responsibility on the part of the relative for the child's welfare, including the sharing of a common household.

b. Home is the family setting maintained or in the process of being established as evidenced by the assumption and continuation of responsibility for the child by the relative.

41.1(4) Rescinded, effective July 1, 1980.

41.1(5) *Deprivation of parental care and support.*

a. A child shall be considered as deprived of parental support or care when the parent is out of the home in which the child lives under the following conditions. When these conditions exist, the parent may be absent for any reason, and may have left only recently or some time previously; except that a parent whose absence is occasioned solely by reason of the performance of active duty in the uniformed services of the United States is not considered absent from the home. "Uniformed service" means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanographic and Atmospheric Administration, or Public Health Service of the United States. A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.

(1) The nature of the absence is such as either to interrupt or to terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and

(2) The known or indefinite duration of the absence precludes relying on the parent to plan for the present support or care of the child.

b. Aid to dependent children is available to a child of unmarried parents the same as to a child of married parents when all eligibility factors are met.

c. A parent is considered incapacitated when a clearly identifiable physical or mental defect has a demonstrable effect upon earning capacity or the performance of the homemaking duties required to maintain a home for the child. The incapacity shall be expected to last for a period of at least thirty (30) days from the date of application.

(1) The determination of incapacity shall be supported by medical or psychological evidence. The evidence may be submitted either by letter from the physician or on Form PA-2126-5, Report on Incapacity.

(2) When an examination is required and other resources are not available to meet the expense of the examination, the physician shall be authorized to make the examination and submit the claim for payment on Form PA-5113-0, Authorization for Examination and Claim for Payment.

(3) A finding of eligibility for social security benefits or supplemental security income benefits based on disability or blindness is acceptable proof of incapacity for aid to dependent children purposes.

(4) Any recipient participating in a vocational rehabilitation program under the department of education, division of vocational rehabilitation services, shall be considered incapacitated and no other determination of disability shall be made.

(5) A parent who is considered incapacitated shall be referred to the department of education, division of vocational rehabilitation services, for evaluation and services. Acceptance of these services is optional.

d. When a child is deprived of support or care of a natural parent, the presence of an able-bodied stepparent in the home shall not disqualify a child for assistance, provided that other eligibility factors are met. A stepparent is a person who is the legal spouse of the child's natural or adoptive parent by ceremonial or common law marriage.

This rule is intended to implement Iowa Code sections 239.1, 239.2 and 239.5.

441—41.2(239) Eligibility factors specific to payee.

41.2(1) Reserved.

41.2(2) *Citizenship and alienage.* An aid to dependent children assistance grant may include the needs of an adult who is a resident of the United States only when the adult is either a citizen or an alien lawfully admitted for permanent residence or otherwise legally permanently residing in the United States as evidenced by suitable documentary proof furnished by the immigration and naturalization service of the United States Department of Justice.

41.2(3) *Specified relationship.*

a. A child may be considered as meeting the requirement of living with a specified relative if the child's home is with one of the following or with a spouse of the relative even though the marriage is terminated by death or divorce:

Father—adoptive father.

Mother—adoptive mother.

Grandfather—grandfather-in-law, meaning the subsequent husband of the child's natural grandmother, i.e., stepgrandfather—adoptive grandfather.

Grandmother—grandmother-in-law, meaning the subsequent wife of the child's natural grandfather, i.e., stepgrandmother—adoptive grandmother.

Great-grandfather—great-great-grandfather.

Great-grandmother—great-great-grandmother.

Stepfather, but not his parents.

Stepmother, but not her parents.

Brother—brother-of-half-blood—stepbrother—brother-in-law—adoptive brother.

Sister— sister-of-half-blood—stepsister—sister-in-law—adoptive sister.

Uncle—aunt, of whole or half blood.

Uncle-in-law—aunt-in-law.

Great uncle—great-great-uncle.

Great aunt—great-great-aunt.

First cousins—nephews—nieces.

b. A relative of the putative father can qualify as a specified relative if the putative father has acknowledged paternity by the type of written evidence on which a prudent person would rely.

41.2(4) *Liability of relatives.* All appropriate steps shall be taken to secure support from legally liable persons on behalf of all persons in the eligible group, including the establishment of paternity.

a. When necessary to establish eligibility, the local office shall make the initial contact with the absent parent at the time of application. Subsequent contacts shall be made by the child support recovery unit.

b. When contact with the aid to dependent children family or other sources of information indicates that relatives other than parents and spouses of the eligible children are contributing toward the support of members of the eligible group, have contributed in the past, or are of such financial standing they might reasonably be expected to contribute, the local office shall contact these persons to verify current contributions or arrange for contributions on a voluntary basis.

41.2(5) *Referral to child support recovery unit.* The local office shall provide prompt notice to the child support recovery unit whenever assistance is furnished with respect to a child whose eligibility is based on the continued absence of a parent from the home or when any member of the eligible group is entitled to support payments.

"Prompt notice" means within two (2) working days of the date assistance is approved.

41.2(6) *Cooperation in obtaining support.* Each applicant for or recipient of aid to dependent children shall cooperate with the department in establishing paternity and securing support for persons whose needs are included in the assistance grant, except when good cause as defined in 41.2(8) for refusal to cooperate is established.

a. The applicant or recipient shall cooperate in the following areas:

(1) Identifying and locating the parent of the child for whom aid is claimed.

(2) Establishing the paternity of a child born out of wedlock for whom aid is claimed.

(3) Obtaining support payments for the applicant or recipient and for a child for whom aid is claimed.

(4) Obtaining any other payments or property due the applicant, recipient, or child.

b. Cooperation is defined as including the following actions by the applicant or recipient:

(1) Appearing at the local office or the child support recovery unit to provide verbal or written information or documentary evidence known to, possessed by, or reasonably obtained by the applicant or recipient that is relevant to achieving the objectives of the child support recovery program. This includes completing and signing the Support Information, CS-1101-5, upon request of the local office.

(2) Appearing as a witness at judicial or other hearings or proceedings.

(3) Providing information, or attesting to the lack of information, under penalty of perjury.

(4) Paying to the department any nonexempt cash support payments received by a recipient after the date of decision as defined in 40.4(4).

c. The applicant or recipient shall cooperate with the local office in supplying information with respect to the absent parent, the receipt of support, and the establishment of paternity, to the extent necessary to establish eligibility for assistance and permit an appropriate referral to the child support recovery unit.

d. The applicant or recipient shall cooperate with the child support recovery unit to the extent of supplying all known information and documents pertaining to the location of the absent parent and taking action as may be necessary to secure support payments or establish paternity.

e. The income maintenance unit in the local office shall make the determination of whether or not the client has cooperated.

f. Failure to cooperate shall result in the individual's need being removed from the grant and a protective payee established.

41.2(7) *Assignment of support payments.* Each applicant for or recipient of assistance shall assign to the department any rights to support from any other person as the applicant or recipient may have. This shall include rights to support in the applicant or recipient's own behalf or in behalf of any other family member for whom the applicant or recipient is applying for or receiving assistance and which have accrued at the time the assignment is executed. An assignment is effective the same date the local office enters eligibility information on the Data Processing Turnaround Document and is effective for the entire period for which assistance is paid.

a. The support assignment shall remain in effect during the month of suspension. However, the monthly support entitlement or the support collected for a month of suspension, whichever is less, shall be refunded to the client by the child support recovery unit at the earliest possible date.

b. The first fifty dollars ($50) of assigned support collected periodically which represents monthly support payments made by a legally responsible individual shall be paid to the client without affecting either eligibility for assistance or the amount of the assistance grant during the month.

c. and *d.* Reserved.

e. When the assistance grant is canceled, the local office shall submit appropriate notice to the clerk of court to terminate the assignment.

41.2(8) *Good cause for refusal to cooperate.* Good cause shall exist when it is determined that cooperation in establishing paternity and securing support is against the best interests of the child.

a. The local office shall determine that cooperation is against the child's best interest when the applicant's or recipient's cooperation in establishing paternity or securing support is reasonably anticipated to result in:

(1) Physical harm to the child for whom support is to be sought; or

(2) Emotional harm to the child for whom support is to be sought; or

(3) Physical harm to the parent or caretaker relative with whom the child is living which reduces the person's capacity to care for the child adequately, or

(4) Emotional harm to the parent or caretaker relative with whom the child is living of a nature or degree that it reduces the person's capacity to care for the child adequately.

b. The local office shall determine that cooperation is against the child's best interest when at least one of the following circumstances exists, and the local office believes that because of the existence of that circumstance, in the particular case, proceeding to establish paternity or secure support would be detrimental to the child for whom support would be sought.

(1) The child for whom support is sought was conceived as a result of incest or forcible rape.

(2) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction.

(3) The applicant or recipient is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish the child for adoption, and the discussions have not gone on for more than three (3) months.

c. Physical harm and emotional harm shall be of a serious nature in order to justify a finding of good cause. A finding of good cause for emotional harm shall be based only upon a demonstration of an emotional impairment that substantially affects the individual's functioning.

d. When the good cause determination is based in whole or in part upon the anticipation of emotional harm to the child, the parent, or the caretaker relative, the following shall be considered:

(1) The present emotional state of the individual subject to emotional harm.

(2) The emotional health history of the individual subject to emotional harm.

(3) Intensity and probable duration of the emotional impairment.

(4) The degree of cooperation required.

(5) The extent of involvement of the child in the paternity establishment or support enforcement activity to be undertaken.

41.2(9) *Claiming good cause.* Each applicant for or recipient of aid to dependent children who is required to cooperate with the child support recovery unit shall have the opportunity to claim good cause for refusing to cooperate in establishing paternity or securing support payments.

a. Prior to requiring co-operation, the local office shall notify the applicant or recipient of the right to claim good cause as an exception to the co-operation requirement and of all the requirements applicable to a good cause determination. The notice shall be in writing. One copy shall be given to the applicant or recipient and one copy shall be signed by the applicant or recipient and the worker and filed in the case record.

b. The initial notice advising of the right to refuse to cooperate for good cause shall:

(1) Advise the applicant or recipient of the potential benefits the child may derive from the establishment of paternity and securing support.

(2) Advise the applicant or recipient that by law cooperation in establishing paternity and securing support is a condition of eligibility for aid to dependent children.

(3) Advise the applicant or recipient of the sanctions provided for refusal to cooperate without good cause.

(4) Advise the applicant or recipient that good cause for refusal to cooperate may be claimed; and that if the local office determines, in accordance with these rules, that there is good cause, the applicant or recipient will be excused from the cooperation requirement.

(5) Advise the applicant or recipient that upon request, or following a claim of good cause, the local office will provide further notice with additional details concerning good cause.

c. When the applicant or recipient makes a claim of good cause or requests additional information regarding the right to file a claim of good cause, the local office shall issue a second notice which:

(1) Indicates that the applicant or recipient must provide corroborative evidence of a good cause circumstance and must, when requested, furnish sufficient information to permit the local office to investigate the circumstances.

(2) Informs the applicant or recipient that, upon request, the local office will provide reasonable assistance in obtaining the corroborative evidence.

(3) Informs the applicant or recipient that on the basis of the corroborative evidence supplied and the agency's investigation when necessary, the local office will determine whether cooperation would be against the best interest of the child for whom support would be sought.

(4) Lists the circumstances under which cooperation may be determined to be against the best interests of the child.

(5) Informs the applicant or recipient that the child support recovery unit may review the local office's findings and basis for a good cause determination and may participate in any hearings concerning the issue of good cause.

(6) Informs the applicant or recipient that the child support recovery unit may attempt to establish paternity and collect support in those cases where the local office determines that this can be done without risk to the applicant or recipient if done without the applicant's or recipient's participation.

d. The applicant or recipient who refuses to cooperate and who claims to have good cause for refusing to cooperate has the burden of establishing the existence of a good cause circumstance. Failure to meet these requirements shall constitute a sufficient basis for the local office to determine that good cause does not exist. The applicant or recipient shall:

(1) Specify the circumstances that the applicant or recipient believes provide sufficient good cause for not cooperating.

(2) Corroborate the good cause circumstances.

(3) When requested, provide sufficient information to permit an investigation.

41.2(10) *Determination of good cause.* The local office shall determine whether good cause exists for each applicant for or recipient of aid to dependent children who claims to have good cause.

a. The applicant or recipient shall be notified by the local office of its determination that good cause does or does not exist. The determination shall:

(1) Be in writing.

(2) Contain the local office's findings and basis for determination.

(3) Be entered in the aid to dependent children case record.

b. The determination of whether or not good cause exists shall be made within forty-five (45) days from the day the good cause claim is made. The local office may exceed this time standard only when:

(1) The case record documents that the office needs additional time because the information required to verify the claim cannot be obtained within the time standard, or

(2) The case record documents that the claimant did not provide corroborative evidence within the time period set forth in 41.2(11).

c. When the local office determines that good cause does not exist:

(1) The applicant or recipient will be so notified and afforded an opportunity to cooperate, withdraw the application for assistance, or have the case closed; and

(2) Continued refusal to cooperate will result in the imposition of sanctions.

d. The local office shall make a good cause determination based on the corroborative evidence supplied by the applicant or recipient only after it has examined the evidence and found that it actually verifies the good cause claim.

e. Prior to making a final determination of good cause for refusing to cooperate, the local office shall:

(1) Afford the child support recovery unit the opportunity to review and comment on the findings and basis for the proposed determination, and

(2) Consider any recommendation from the child support recovery unit.

f. The child support recovery unit may participate in any appeal hearing that results from an applicant's or recipient's appeal of an agency action with respect to a decision on a claim of good cause.

g. Assistance shall not be denied, delayed, or discontinued pending a determination of good cause for refusal to cooperate when the applicant or recipient has specified the circumstances under which good cause can be claimed and provided the corroborative evidence and any additional information needed to establish good cause.

h. The local office shall:

(1) Periodically, but not less frequently than every six (6) months, review those cases in which the agency has determined that good cause exists based on a circumstance that is subject to change.

(2) When it determines that circumstances have changed so that good cause no longer exists, rescind its findings and proceed to enforce the requirements pertaining to cooperation in establishing paternity and securing support.

41.2(11) *Proof of good cause.* The applicant or recipient who claims good cause shall provide corroborative evidence within twenty (20) days from the day the claim was made. In exceptional cases where the local office determines the applicant or recipient requires additional time because of the difficulty in obtaining the corroborative evidence, the local office shall allow a reasonable additional period of time upon approval by the worker's immediate supervisor.

a. A good cause claim may be corroborated with the following types of evidence.

(1) Birth certificates or medical or law enforcement records which indicate that the child was conceived as the result of incest or forcible rape.

(2) Court documents or other records which indicate that legal proceedings for adoption are pending before a court of competent jurisdiction.

(3) Court, medical, criminal, child protective services, social services, psychological, or law enforcement records which indicate that the putative father or absent parent might inflict physical or emotional harm on the child or caretaker relative.

(4) Medical records which indicate emotional health history and present emotional health status of the caretaker relative or the child for whom support would be sought; or written statements from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the caretaker relative or the child for whom support would be sought.

(5) A written statement from a public or licensed private social agency that the applicant or recipient is being assisted by the agency to resolve the issue of whether to keep the child or relinquish the child for adoption.

(6) Sworn statements from individuals other than the applicant or recipient with knowledge of the circumstances which provide the basis for the good cause claim.

b. When, after examining the corroborative evidence submitted by the applicant or recipient, the local office wishes to request additional corroborative evidence which is needed to permit a good cause determination, the local office shall:

(1) Promptly notify the applicant or recipient that additional corroborative evidence is needed, and

(2) Specify the type of document which is needed.

c. When the applicant or recipient requests assistance in securing evidence, the local office shall:

(1) Advise the applicant or recipient how to obtain the necessary documents, and

(2) Make a reasonable effort to obtain any specific documents which the applicant or recipient is not reasonably able to obtain without assistance.

d. When a claim is based on the applicant's or recipient's anticipation of physical harm and corroborative evidence is not submitted in support of the claim:

(1) The local office will investigate the good cause claim when the office believes that the claim is credible without corroborative evidence and corroborative evidence is not available.

(2) Good cause will be found when the claimant's statement and investigation which is conducted satisfies the office that the applicant or recipient has good cause for refusing to cooperate.

(3) A determination that good cause exists will be reviewed and approved or disapproved by the worker's immediate supervisor and the findings will be recorded in the case record.

e. The local office may further verify the good cause claim when the applicant's or recipient's statement of the claim together with the corroborative evidence do not provide sufficient basis for making a determination. When the local office determines that it is necessary, it may conduct an investigation of good cause claims to determine that good cause does or does not exist.

f. When it conducts an investigation of a good cause claim, the local office will:

(1) Contact the absent parent or putative father from whom support would be sought when the contact is determined to be necessary to establish the good cause claim.

(2) Prior to making the necessary contact, notify the applicant or recipient so the applicant or recipient may present additional corroborative evidence or information so that contact with the parent or putative father becomes unnecessary, withdraw the application for assistance or have the case closed, or have the good cause claim denied.

41.2(12) *Enforcement without caretaker's cooperation.* When the local office makes a determination that good cause exists, it shall also make a determination of whether or not child support enforcement can proceed without risk of harm to the child or caretaker relative when the encorcement or collection activities do not involve their participation.

a. Prior to making the determination, the child support recovery unit shall have an opportunity to review and comment on the findings and basis for the proposed determination and the local office shall consider any recommendation from the unit.

b. The determination shall be in writing, contain the local office's findings and basis for determination, and be entered into the aid to dependent children case record.

c. When the local office excuses cooperation but determines that the child support recovery unit may proceed to establish paternity or enforce support, it will notify the applicant or recipient to enable the individual to withdraw the application for assistance or have the case closed.

41.2(13) *Furnishing of social security number.* As a condition of eligibility each applicant for or recipient of and all members of the eligible group must furnish a social security account number or proof of application for a number if it has not been issued or is not known and provide the number upon its receipt. The requirement shall not apply to a payee who is not a member of the eligible group.

a. Assistance shall not be denied, delayed, or discontinued pending the issuance or verification of the numbers when the applicant or recipient has complied with the requirements of 41.2(13).

b. When the mother of the newborn child is a current recipient, the mother shall have until the second month following the mother's discharge from the hospital to apply for a social security account number for the child.

This rule is intended to implement Iowa Code sections 239.1, 239.2, 239.3 and 239.5, and 1982 Iowa Acts, ch 1237.

441—41.3(239) Home and residence.

41.3(1) *Iowa residence.*

a. A resident of Iowa is one:

(1) Who is living in Iowa voluntarily with the intention of making that person's home there and not for a temporary purpose. A child is a resident of Iowa when living there on other than a temporary basis. Residence may not depend upon the reason for which the individual entered the state, except insofar as it may bear upon whether the individual is there voluntarily or for a temporary purpose; or

(2) Who, at the time of application, is living in Iowa, is not receiving assistance from another state, and entered Iowa with a job commitment or seeking employment in Iowa, whether or not currently employed. Under this definition the child is a resident of the state in which the caretaker is a resident.

b. Residence is retained until abandoned. Temporary absence from Iowa, with subsequent returns to Iowa, or intent to return when the purposes of the absence have been accomplished, does not interrupt continuity of residence.

41.3(2) *Suitability of home.* The home shall be deemed suitable until the court has ruled it unsuitable and, as a result of such action, the child has been removed from the home.

41.3(3) *Temporary absence from the home.* The needs of an individual who is temporarily out of the home are included in the assistance grant. A temporary absence exists in the following circumstances.

a. An individual is anticipated to be in the medical institution for less than a year, as verified by a physician's statement. Failure to return within one (1) year will result in the individual's needs being removed from the grant.

b. When an individual is out of the home to secure education or training, as defined for children in 41.4(1) *"a"* and for adults in 55.2(249C), as long as the caretaker relative retains supervision of the child.

c. An individual is out of the home for reasons other than reasons in paragraphs *"a"* and *"b"* and the payee intends that the individual will return to the home within three (3) months. Failure to return within three (3) months will result in the individual's needs being removed from the grant.

This rule is intended to implement Iowa Code section 239.2.

441—41.4(239) Work incentive program registration and referral. An application for assistance constitutes a registration for the work incentive program for all members of the aid-to-dependent-children case. All persons eligible for or receiving a grant under the aid-to-dependent-children program shall be referred unless the local office determines the person is exempt.

41.4(1) *Exemptions.* The following persons are exempt from referral.

a. A child who is under the age of sixteen (16) or between the ages of sixteen (16) and eighteen (18) and attending elementary, secondary, or vocational or technical school full-time; or a child eighteen (18) years of age who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and reasonably expected to complete the program before reaching age nineteen (19).

(1) A child shall be considered as attending school full-time when enrolled or accepted in a full-time (as certified by the school or institute attended) elementary, secondary, or the equivalent level of vocational or technical school or training leading to a certificate or diploma. Correspondence school is not an allowable program of study.

(2) The child shall also be considered in regular attendance in months when the child is not attending because of official school or training program, vacation, illness, convalescenced, or family emergency. A child meets the definition of regular school attendance until the child has been officially dropped from the school rolls.

(3) When the child's education is temporarily interrupted pending adjustment of the education or training program, assistance shall be continued for a reasonable period of time to complete the adjustment.

(4) Rescinded, effective August 1, 1986.

b. A person over the age of sixty-five (65) or who is prevented from engaging in employment or training because of a temporary or permanent medically determinable physical or mental impairment. Medical evidence may be obtained from either an independent physician or psychologist or the state rehabilitation agency in the same manner specified in subrule 41.1(5)*"c."*

c. A person who lives so far away from any work incentive program project that the person cannot effectively participate. The individual is exempt if more than a total of ten (10) hours would be required for a normal work or training day, including a round trip by reasonably available public transportation or automobile from home to the project. Persons in areas without a work incentive program project are considered exempt.

d. A person required in the household on a substantially continuous basis because of a medically determinable condition of another member of the household. The condition shall be established in the same manner as specified in subrule 41.1(5)*"c."*

e. A parent or other eligible caretaker relative of a child under the age of six (6) who personally provides care for the child with only very brief and infrequent absences from the child. "Brief and infrequent absence" means short term absences which do not reoccur on a regular basis. Any involvement by the parent in work of less than one hundred twenty-nine (129) hours per month or attendance in school of less than full time, as defined by the school, shall be considered brief and infrequent. Recreational activities and vacations by the parent or child which result in the parent being absent from the child shall be considered brief and infrequent.

f. A parent or other caretaker of a child, where another adult relative in the home is referred.

g. A person who is employed in nonsubsidized employment for one hundred twenty-nine (129) hours or more per month. For self-employed persons, hours shall be determined by dividing the average net monthly income from self-employment by the federal minimum wage. "Net monthly income" means income in a month remaining after deduction of allowable business expenses as described in subrule 41.7(2), paragraphs *"k," "l," "m," "n"* and *"o."*

h. A woman who has been medically verified to be in the sixth month or more of pregnancy. Verification of the pregnancy and estimated date of birth shall be obtained in the same manner as specified in subrule 41.1(5)*"c."*

41.4(2) *Changes in status.* Any exempt person shall report any change affecting the exempt status to the income maintenance worker within ten (10) days of the change.

41.4(3) *Volunteers.* Any person who is determined exempt may volunteer for referral.

41.4(4) Rescinded, effective August 1, 1986.

41.4(5) *Referral to vocational rehabilitation.* Any person determined exempt from referral because of a medically determinable physical or mental impairment shall be referred to the department of education, division of vocational rehabilitation services. Acceptance of vocational rehabilitation services is optional with the client.

41.4(6) *Refusal to cooperate during assessment.* The needs of a mandatory referral who refuses to cooperate during assessment shall be excluded from the assistance grant. The needs of the person can be included in the eligible group only after assessment has been completed.

41.4(7) *Refusal to participate after assessment.* When work incentive program staff determines that a mandatory referral refused to participate in training or accept a bona fide offer of employment without good cause, the needs of the person shall be excluded from the assistance grant.

a. Upon written notification from the work incentive program that the mandatory referral has refused to participate, the local office shall apply the following sanctions. For the first refusal to participate the person shall be sanctioned for three (3) calendar months. Subsequent refusals after a first refusal shall result in a six (6)-calendar month sanction for each refusal.

(1) When the person is a parent, the needs of the parent shall be removed from the aid to dependent children grant and a protective payee, other than the parent, shall be appointed.

(2) When the person is the only dependent child in the eligible group, the aid to dependent children grant shall be canceled.

(3) When the person is one of two (2) or more dependent children in the eligible group, the person's needs shall be removed from the aid to dependent children grant.

b. When a mandatory work incentive program referral who was sanctioned on the basis of failure to participate in the work incentive program without good cause reapplies for aid-to-dependent-children benefits the following criteria must be met before eligibility can be established:

(1) The person must give evidence to the work incentive program of willingness to participate.

(2) The sanction period specified under 41.4(7)*"a"* must have elapsed.

(3) When the first two (2) criteria are met, then aid-to-dependent-children benefits for the applicant or family shall begin the day the person meets the criteria.

41.4(8) *Refusal to cooperate or participate by a volunteer.* Volunteer referrals or participants who refuse to cooperate or participate as specified in these rules shall be removed from volunteer referral status. Volunteers are not subject to financial sanctions. However, reinstatement to volunteer referral status shall follow requirements and time frames specified for reinstatement of mandatory referrals. Volunteers whose referral status changes from volunteer to mandatory during a sanction period shall be rereferred and the volunteer sanction period dropped.

This rule is intended to implement Iowa Code sections 239.2, 239.5, 249C.6 and 249C.17.

441—41.5(239) Uncategorized factors of eligibility.

41.5(1) *Divesting of income.* Assistance shall not be approved when an investigation proves that income was divested and the action was deliberate and for the primary purpose of qualifying for assistance or increasing the amount of assistance paid.

41.5(2) *Duplication of assistance.* A recipient whose needs are included in an aid to dependent children grant shall not concurrently receive a grant under any other public assistance program administered by the department. Neither shall a recipient concurrently receive a grant from a public assistance program in another state. When a recipient leaves the home of a specified relative, no payment for a concurrent period shall be made for the same recipient in the home of another relative.

41.5(3) *Aid from other funds.* Supplemental aid from any other agency or organization shall be limited to aid for items of need not covered by the department's standards and to the amount of the percentage reduction used in determining the payment level. Any duplicated assistance shall be considered unearned income.

41.5(4) *Contracts for support.* A person entitled to total support under the terms of an enforceable contract is not eligible to receive aid to dependent children when the other party, obligated to provide the support, is able to fulfill that part of the contract.

41.5(5) *Participation in a strike.*

a. The family of any parent with whom the child(ren) is living shall be ineligible for aid-to-dependent-children for any month in which the parent is participating in a strike on the last day of the month.

b. Any individual shall be ineligible for aid to dependent children for any month in which the individual is participating in a strike on the last day of that month.

c. Definitions:

(1) A strike is a concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

(2) An individual is not participating in a strike at the individual's place of employment when the individual is not picketing and does not intend to picket during the course of the dispute, does not draw strike pay, and provides a signed statement that the individual is willing and ready to return to work but does not want to cross the picket line solely because of the risk of personal injury or death or trauma from harassment. The district administrator shall determine whether such a risk to the individual's physical or emotional well-being exists.

41.5(6) *Aliens sponsored by an agency or organization.*

a. An alien sponsored by a public or private agency or organization which executed an affidavit for support shall be ineligible for aid-to-dependent-children assistance for three (3) years following the alien's date of entry into the United States unless it is determined that the agency or organization no longer exists, that the agency or organization is no longer able to meet the alien's needs as specified in subrule 41.8(2), or that the alien entered the United States with a status identified in 41.7(10)*"b"*(1) through (5).

b. In order for an agency or organization to be considered unable to meet the alien's needs, the agency or organization must provide a signed and notarized statement that the agency or organization is unable to meet the alien's needs in whole or in part.

c. When the agency or organization is capable of meeting only a portion of the alien's needs, any income made available to the alien shall be treated as unearned income in accordance with subrule 41.7(1).

d. For a period of thirty-six (36) months following the date of entry into the United States, the sponsored alien shall provide the local office with the information and documentation required to determine the alien's eligibility. The alien is responsible for obtaining the cooperation of the sponsor. Aliens who do not obtain this cooperation or supply this information are not eligible for assistance. Date of entry is the date established by the Immigration and Naturalization Service as the date the alien was admitted for permanent residency.

This rule is intended to implement Iowa Code sections 239.2 and 239.5.

441—41.6(239) Resources.

41.6(1) *Limitation.* An applicant or recipient may have the following resources and be eligible for aid to dependent children. Any resource not specifically exempted shall be counted toward resource limitations.

a. A homestead without regard to its value. A mobile home or similar shelter shall be considered as a homestead when it is occupied by the recipient. Temporary absence from the homestead with a defined purpose for the absence and with intent to return when the purpose of the absence has been accomplished shall not be considered to have altered the exempt status of the homestead. The net market value of any other real property shall be considered with personal property.

b. Household goods and personal effects without regard to their value. Personal effects are personal or intimate tangible belongings of an individual, especially those that are worn or carried on the person, which are maintained in one's home, and include clothing, books, grooming aids, jewelry, hobby equipment, and similar items.

c. Life insurance which has no cash surrender value. The owner of the life insurance policy is the individual paying the premium on the policy with the right to change the policy as the individual sees fit.

d. An equity not to exceed a value of $1500 in one motor vehicle. When a person has more than one motor vehicle, the equity value of the additional motor vehicle(s) shall be counted toward the resource limitation in 41.6(1)*"e"*. When a motor vehicle(s) is modified with special equipment for the handicapped, the special equipment shall not increase the value of the motor vehicle(s).

e. A reserve of other property, real or personal, not to exceed $1000 for the eligible group. Resources of the eligible group shall be determined in accordance with subrule 41.6(2).

f. Money which is counted as income in a month, during that same month; and that part of lump sum income as defined in 41.7(9)"*c*"(2) reserved for the current or future month's income.

g. Payments which are exempted for consideration as income and resources under subrule 41.7(6).

h. An equity not to exceed $1,500 in one funeral contract or burial trust for each member of the eligible group. Any amount in excess of $1,500 shall be counted toward resource limitations unless it is established that the funeral contract or burial trust is irrevocable.

i. One burial plot for each member of the eligible group. A burial plot is defined as a conventional gravesite, crypt, mausoleum, urn, or other respository which is customarily and traditionally used for the remains of a deceased person.

j. Settlements for payment of medical expenses.

k. Life estates.

l. When the value of any resource is exempted in part, that portion of the value which exceeds the exemption shall be considered in computing whether the eligible group's property is within the reserve defined in paragraph "*e*".

41.6(2) *Persons considered.*

a. Resources of persons in the eligible group shall be considered in establishing property limitations.

b. Resources of the parent who is living in the home with the eligible child(ren) but whose needs are excluded from the eligible group shall be considered in the same manner as if the parent were included in the eligible group.

c. Resources of the stepparent living in the home with the eligible group shall be considered only when determining eligibility of the spouse, with one exception: The resources of a stepparent included in the eligible group shall be considered in the same manner as a parent. The resources of the parent who is ineligible because of the stepparent's resources shall be considered as if the parent were included in the eligible group.

d. The resources of supplemental security income recipients shall not be counted in establishing property limitations.

e. The resources of a nonparental relative who elects to be included in the eligible group shall be considered in the same manner as a parent.

f. When a sponsor is financially responsible for an alien according to subrule 41.7(10), the resources of the sponsor or sponsor's spouse receiving supplemental security income or aid to dependent children shall not be considered in determining an alien's resource limitation.

g. Resources applied to sponsored aliens shall not be considered in determining the needs of unsponsored members of the alien's family except to the extent the resources are actually available.

41.6(3) *Homestead defined.* The homestead consists of the house, used as a home, and may contain one or more contiguous lots or tracts of land, including buildings and appurtenances. When within a city plat, it shall not exceed one-half (½) acre in area. When outside a city plat it shall not contain, in the aggregate, more than forty (40) acres. When property used as a home exceeds these limitations, the equity value of the excess property shall be determined in accordance with subrule 41.6(5).

41.6(4) *Liquidation.* When proceeds from the sale of resources or conversion of a resource to cash, together with other nonexempted resources, exceed the property limitations, the recipient is ineligible to receive assistance until the amount in excess of the resource limitation has been expended unless immediately used to purchase a homestead, or reduce the mortgage on a homestead. Property settlements which are part of a legal action in a dissolution of marriage or palimony suit are considered as resources upon receipt.

a. The resource value of a negotiable mortgage or contract is the amount for which it can be sold or discounted.

b. When the mortgage or contract is a negotiable resource or is a discounted contract retained by the individual, only that portion of the payment received representing interest is considered unearned income. When the interest payment is used to purchase a homestead or

reduce a mortgage on a homestead, the monthly interest amount received which is in excess of the monthly payment shall be considered unearned income.

c. When the mortgage or contract is not negotiable, or has no discounted value, it is not considered a resource and the payments received, including principal and interest, shall be considered unearned income.

d. When property is sold on a nonnegotiable contract basis and the proceeds are used to purchase a homestead or reduce the mortgage on a homestead, the monthly payments received in excess of the payments made on the homestead mortgage or purchase shall be considered as income.

41.6(5) *Net market value defined.* Net market value is the gross price for which property or an item can currently be sold on the open market, less any legal debts, claims, or liens against the property or item.

41.6(6) *Availability.*

a. A resource must be available in order for it to be counted toward resource limitations. A resource is considered available under the following circumstances:

(1) The applicant/recipient owns the property in part or in full and has control over it; that is, it can be occupied, rented, leased, sold, or otherwise used or disposed of at the individual's discretion.

(2) The applicant/recipient has a legal interest in a liquidated sum and has the legal ability to make the sum available for support and maintenance.

b. An applicant/recipient shall take all appropriate action to gain title and control of any resource the value of which would affect eligibility.

c. When property is owned by more than one (1) person, unless otherwise established, it is assumed that all individuals hold equal shares in the property.

d. When the applicant or recipient cannot readily convert to cash an available resource of real property, the value of which would affect eligibility, the resource shall be considered exempt for the first nine (9) months of eligibility or the first nine (9) months the resource is an available resource to the applicant or recipient, as long as all of the following conditions exist:

(1) The resource has been publicly advertised for sale and remains for sale.

(2) The asking price for the resource is reasonable.

(3) The applicant or recipient has not refused a reasonable offer on the resource.

(4) The applicant or recipient agrees to repay the department at the time of disposal for aid-to-dependent-children assistance received during the period of exemption. The amount to be repaid shall be either the amount of cash assistance received or the net proceeds from the sale, whichever is less.

(5) The applicant or recipient signs Form PA-2248-O, "Real Property Exemption Agreement," attesting that the applicant or recipient is aware of and agrees to meet the conditions specified in this paragraph.

(6) If the applicant or recipient fails to repay the department from the net proceeds of the sale, aid-to-dependent-children assistance paid during the period of exemption shall be considered an overpayment subject to recovery. The amount of the overpayment shall be either the amount of cash assistance received or the net proceeds from the sale, whichever is less.

(7) If the property is not disposed of during the exemption period, or if eligibility no longer exists for some other reason, the entire amount of cash assistance received during the exemption period shall be considered an overpayment subject to recovery.

(8) If the property is not disposed of during the exemption period, assistance shall be terminated on the basis that available resources exceed the resource limitation.

41.6(7) *Damage judgments and insurance settlements.*

a. Payment resulting from damage to or destruction of an exempt resource shall be considered a resource to the applicant/recipient the month following the month the payment was received. When the applicant/recipient signs a legal binding commitment no later than the month after the month the payment was received, the funds shall be considered exempt for the duration of the commitment providing the terms of the commitment are met within eight (8) months from the date of commitment.

b. Payment resulting from damage to or destruction of a nonexempt resource shall be considered a resource in the month following the month in which payment was received.

41.6(8) *Trusts.* When assets from a trust or conservatorship, except one established solely for the payment of medical expenses, together with other resources exceed resource limitations, the department shall determine whether the assets are available by examining the language of the trust agreement or order establishing a conservatorship.

a. Funds clearly conserved and available for care, support, or maintenance shall be considered toward resource or income limitations.

b. When the local office questions whether the funds in a trust or conservatorship are available, the local office shall refer the trust or conservatorship to central office. When assets in the trust or conservatorship are not clearly available, central office staff may contact the trustee or conservator and request that the funds in the trust or conservatorship be made available for current support and maintenance. When the trustee or conservator chooses not to make the funds available, the department may petition the court to have the funds released either partially or in their entirety or as periodic income payments. Funds in a trust or conservatorship that are not clearly available shall be considered unavailable until the trustee, conservator or court actually makes the funds available. Payments received from the trust or conservatorship for basic or special needs are considered income.

41.6(9) *Aliens sponsored by individuals.* When a sponsor is financially responsible for an alien according to subrule 41.7(10), the resources of the sponsor and the sponsor's spouse in excess of $1,500 shall be applied to the alien's resource limitation.

a. When a person described in subrule 41.7(10) sponsors two (2) or more aliens who apply for assistance on or after November 1, 1981, the resources of the sponsor and the sponsor's spouse in excess of $1500 shall be divided equally among the aliens.

b. The resources of a sponsor or sponsor's spouse receiving supplemental security income or aid to dependent children shall be treated in accordance with subrule 41.6(2).

41.6(10) *Not considered a resource.* Inventories and supplies, exclusive of capital assets, that are required for self-employment shall not be considered a resource. Inventory is defined as all unsold items, whether raised or purchased, that are held for sale or use and shall include, but not be limited to, merchandise, grain held in storage and livestock raised for sale. Supplies are items necessary for the operation of the enterprise, such as lumber, paint and seed. Capital assets are those assets which, if sold at a later date, could be used to claim capital gains or losses for federal income tax purposes. When self-employment is temporarily interrupted due to circumstances beyond the control of the household, such as illness, and inventory or supplies retained by the household shall not be considered a resource.

This rule is intended to implement Iowa Code section 239.5.

441—41.7(239) Income. All unearned and earned income, unless specifically exempted, disregarded, deducted for work expenses, or diverted as defined in these rules, shall be considered in determining initial and continuing eligibility and the amount of the aid-to-dependent-children grant. The determination of initial eligibility is a three (3)-step process. Initial eligibility shall be granted only when (1) the countable gross nonexempt unearned and earned income, exclusive of the aid-to-dependent-children grant, received by the eligible group and available to meet the current month's needs is no more than one hundred eighty-five percent (185%) of the standard of need for the eligible group; (2) the countable net unearned and earned income is less than the standard of need for the eligible group; and (3) the countable net unearned and earned income, after applying allowable disregards, is less than the payment standard for the eligible group. The determination of continuing eligibility is a two (2)-step process. Continuing eligibility shall be granted only when (1) countable gross nonexempt income, as described for initial eligibility, does not exceed one hundred eighty-five percent (185%) of the standard of need for the eligible group; and (2) countable net unearned and earned income is less than the payment standard for the eligible group. The amount of the aid-to-dependent-

children grant shall be determined by subtracting countable net income from the payment standard for the eligible group. Child support assigned to the department in accordance with subrule 41.2(7) shall be considered unearned income for the purpose of determining continuing eligibility, except as specified in subrules 41.2(7)*"b"* and 41.7(7)*"q."* Expenses for care of children or disabled adults, deductions, and diversions shall be allowed when verification is provided. The local office shall return all verification to the applicant or recipient.

41.7(1) *Unearned income.* Unearned income is any income in cash that is not gained by labor or service. When taxes are withheld from unearned income, the amount considered will be the net income after the withholding of taxes (federal insurance contribution Act, state and federal income taxes). Net unearned income, from investment and nonrecurring lump sum payments, shall be determined by deducting reasonable income producing costs from the gross unearned income. Money left after this deduction shall be considered gross income available to meet the needs of the eligible group.

a. Social security income is the amount of the entitlement before withholding of a Medicare premium.

b. Rescinded, effective December 1, 1986.

c. Rescinded, effective September 1, 1980.

d. Financial assistance received for education or training.

(1) Any financial assistance received for the purpose of education or training shall be considered as first available for the educational expenses of tuition; books; transportation to and from school; child care necessary for school attendance; board and room when the student does not live at home; and any other direct verified educational expense. Money left after educational expenses, unless specifically exempt, shall be considered gross income available to meet the needs of the eligible group. When a student has a combination of exempt and nonexempt income for educational purposes, the exempt income shall be considered as first available for the expenses of education.

(2) Transportation shall be considered an educational or training expense only when it is to and from school, including transporting the individual's child or children to and from a child care facility or babysitter, and includes parking fees and bridge tolls. The expense is allowable based on the actual cost of bus transportation as charged in the community as reported; the actual cost of cab transportation as verified by the cab company when cab transportation is necessary due to late school hours, remoteness of the home, disability of the person, opening and closing hours of the child care center, or the impossibility of securing other means of transportation; the current mileage rate paid to state employees when a private motor vehicle is used for a reasonable estimate of miles as reported (reasonable shall mean the estimate is within three (3) miles round trip daily when the mileage is calculated from maps or verified by driving the usual route); payment to ride with another person as verified by receipt; parking meter fees as reported; parking lot fees as verified by receipt; and bridge tolls as reported.

(3) Any extended social security benefit received by a parent or nonparental relative, as defined in 41.2(3), conditional to school attendance shall be considered as first available for educational expenses and shall be treated in accordance with 41.7(1)*"d"*(1) and (2). Money left after educational expenses shall be considered gross income available to meet the needs of the eligible group.

e. When an individual receiving educational assistance from the veterans administration also receives an additional amount for an individual's dependents the amount for the individual's dependents who are in the eligible group shall be counted available as nonexempt income.

f. When the applicant or recipient sells property on contract, proceeds from the sale shall be considered according to subrule 41.6(4).

g. Every person in the eligible group shall apply for benefits for which that person may be qualified and accept those benefits, even though the benefit may be reduced because of the laws governing a particular benefit. The needs of any individual who refuses to cooperate in applying for or accepting benefits from other sources shall be removed from the eligible group. The individual is not eligible for the earned income disregard in subrule 41.7(2)*"c"* or medical benefits.

h. Support payments in cash shall be considered as unearned income in determining initial and continuing eligibility.

(1) Any nonexempt cash support payment, for a member of the eligible group, made while the application is pending shall be treated as unearned income and deducted from the initial assistance warrant(s). Any nonexempt cash support payment, for a member of the eligible group, received by the recipient after the date of decision as defined in 40.4(4), shall be refunded to the child support recovery unit.

(2) Support payments shall be considered as unearned income in the month in which the IV-A agency (income maintenance) is notified of the payment by the IV-D agency (child support recovery unit).

The amount of income to consider shall be the actual amount paid or the monthly entitlement, whichever is less.

(3) Support payments reported by child support recovery during the budget month shall be used to determine prospective and retrospective eligibility for the corresponding payment month.

(4) When the reported support payment, combined with other income, creates ineligibility the case shall be canceled. Eligibility may be re-established for any month in which the countable support payment combined with other income meets the eligibility tests.

i. The applicant or recipient shall cooperate in supplying verification of all unearned income. When the information is available, the local office shall verify job insurance benefits by using information supplied to the department by the department of employment services. When the local office uses this information as verification, job insurance benefits shall be considered received the second day after the date that the check was mailed by employment services. When the second day falls on a Sunday or federal legal holiday, the time shall be extended to the next mail delivery day. When the client notifies the local office that the amount of job insurance benefits used is incorrect, the client shall be allowed to verify the discrepancy. A payment adjustment shall be made when indicated. Recoupment shall be made for any overpayment. The client must report the discrepancy prior to the payment month or within ten (10) days of the date on the Notice of Decision, Form PA-3102-0, applicable to the payment month, whichever is later, in order to receive a payment adjustment.

j. Every person in the eligible group shall apply for and accept health or medical insurance offered by an employer when it is available and provided at no cost to the applicant or recipient. The needs of any individual who refuses to cooperate in applying for or accepting this insurance shall be removed from the eligible group. The individual is not eligible for the earned income disregard in subrule 41.7(2)"*c*" or medical benefits.

41.7(2) *Earned income.* Earned income is defined as income in the form of a salary, wages, tips, bonuses, commission earned as an employee, income from Job Corps or profit from self-employment. Earned income from commissions, wages, tips, bonuses, Job Corps, or salary means the total gross amount irrespective of expenses of employment. With respect to self-employment, earned income means the profit determined by comparing gross income with the allowable costs of producing the income. Income shall be considered earned income when it is produced as a result of the performance of services by an individual. Advance earned income credit payments shall be considered earned income when received.

a. Each applicant or recipient whose gross nonexempt earned income, earned as an employee or net profit from self-employment, is considered in determining eligibility and the amount of the assistance grant is entitled to one standard work expense deduction.

The first $75 of nonexempt earned income shall be deducted monthly.

b. Each applicant or recipient with nonexempt earned income is entitled to a deduction for care expenses subject to the following limitations.

(1) Child care or care for an incapacitated adult shall be considered a work expense in the amount paid for care of an individual in the eligible group, not to exceed $160 per month for a full-time employee and $159 for a part-time employee or the going rate in the community, whichever is less.

(2) Full-time employment shall be defined as employment of one hundred twenty-nine (129) or more hours per month. Part-time employment shall be defined as employment fewer than one hundred twenty-nine (129) hours per month. The determination as to whether self-employment income is full time or part time shall be made on the basis of whether the average net monthly income from self-employment is at least equal to the federal minimum wage multiplied by one hundred twenty-nine (129) hours a month. "Net monthly income" means income in a month remaining after deduction of allowable business expenses as described in subrule 41.7(2), paragraphs *"k," "l," "m," "n"* and *"o."*

(3) The deduction is allowable only when the care covers the actual hours of the individual's employment plus a reasonable period of time for commuting; or the period of time when the individual who would normally care for the child or incapacitated adult is employed at such hours that the individual is required to sleep during the waking hours of the child or incapacitated adult, excluding any hours a child is in school.

(4) Any special needs of a physically or mentally handicapped child or adult shall be taken into consideration in determining the deduction allowed.

(5) The expense shall be verified by receipt or a statement from the provider of care and shall be allowed when paid to any person except a parent of the child.

c. After deducting allowable work expenses as defined in 41.7(2)*"a"* and *"b,"* $30 plus one-third of the total of the remaining monthly nonexempt earned income, earned as an employee or the net profit from self-employment, of each individual whose needs are included in the assistance grant is disregarded in determining eligibility and the amount of the assistance grant.

(1) Initial eligibility is determined without application of this disregard. Exception: When for any one of the four (4) months immediately preceding the date of reapplication the needs of the individual having the income were met in whole or in part by an aid-to-dependent-children grant from any state, that individual is automatically eligible for the $30 plus one-third disregard of earned income, provided the individual did not receive the disregard for four (4) consecutive months while receiving assistance.

(2) The $30 plus one-third disregard shall be limited to four (4) consecutive months for each individual whose needs are included in the eligible group. Any individual whose needs are included in the eligible group and who received the disregard for four (4) consecutive months shall not receive the disregard again until the individual has not been a recipient of assistance for twelve (12) consecutive months. A month of suspension shall not be construed as an interruption of the four (4) consecutive months for receiving the disregard. However, the month of suspension shall not be counted as a month in which the disregard is received. A "recipient of assistance" includes an individual not receiving a payment due to the limitations on payment described in 441—45.6(239) and 441—45.7(239).

(3) Provided the individual remains a member of the eligible group after having received the $30 plus one-third disregard for four (4) consecutive months, the individual is entitled to receive the $30 disregard for the eight (8) consecutive months which follow the last month in which the $30 plus one-third disregard was received.

When an individual is terminated from assistance after having received the $30 plus one-third disregard for four (4) consecutive months, and then reapplies for assistance within the following eight (8) consecutive months, the applicant is automatically entitled to the $30 disregard of earned income for any months remaining in the applicant's eight (8) consecutive month period.

d. Ineligibility for expenses and disregards.

(1) An applicant or recipient is not eligible for the standard work expense, care expense, or the disregards of earned income described in subrule 41.7(2)*"c"* for one (1) month if within thirty (30) days preceding the month of application or the report month the individual terminated employment, reduced earned income, or refused to accept a bona fide offer of employment in which the individual was able to engage, without good cause as defined in 41.4(1). A "bona fide offer of employment" is an offer made through the work incentive program or an offer

made by an employer which the worker determines was a definite offer of employment at the federal minimum wage or more; there was no unreasonable risk to health or safety due to working conditions or there was worker's compensation protection; the individual was physically able to engage in the employment and the individual was able to get to and from the job by using public or private transportation, or by walking where feasible.

(2) An applicant or recipient is not eligible for the standard work expense, care expense, or the disregards described in subrule 41.7(2)"*c*" for any month in which the individual failed, without good cause, to timely report a change in earned income or to timely report earned income on the Public Assistance Eligibility Report. Good cause for not timely returning a Public Assistance Eligibility Report or timely reporting a change in earned income shall be limited to circumstances beyond the control of the individual, such as, but not limited to, a failure by the local office or department to provide needed assistance when requested, to give needed information, to follow procedure resulting in a delay in the return of the Public Assistance Eligibility Report, or when conditions require the form to be mailed other than with the regular end-of-the-month mailing. Good cause shall also include, but not be limited to, circumstances when the individual was prevented from reporting by a physical or mental disability, death or serious illness of an immediate family member; or other unanticipated emergencies; or mail was not delivered due to a disruption of regular mail delivery. The applicant or recipient who returns the Public Assistance Eligibility Report, listing earned income, by the sixteenth day of the report month shall be considered to have good cause for not timely returning the Public Assistance Eligibility Report.

(3) A recipient is not eligible for the standard work expense, care expense, or the $30 plus one-third disregard for any month in which the individual requested that assistance be canceled for the primary purpose of avoiding the receipt of the $30 plus one-third disregard for four (4) consecutive months.

(4) Any month in which an applicant or recipient does not receive the $30 plus one-third disregard due to the sanctions in subparagraphs (1), (2), and (3) shall be counted toward the four (4) consecutive months limitation of 41.7(2)"*c*"(2).

e. The earnings as defined in 41.7(2) of an eligible child are disregarded as income when the child is a full-time student as defined in 41.4(1)"*a*"(1) and (2) or a part-time student who is not a full-time employee, as defined in 41.7(2)"*b.*" A student is one who is attending a school, college or university, or a course of vocational or technical training designed to fit the person for gainful employment and includes a participant in the Job Corps program. Initial eligibility is determined without application of this disregard and the earned income of the eligible child shall be considered income in the one hundred eighty-five percent (185%) eligibility test prescribed in 41.7(239), unless the income is exempt under 41.7(7).

f. to i. Reserved.

j. A person is considered self-employed when the person:

(1) Is not required to report to the office regularly except for specific purposes such as sales training meetings, administrative meetings, or evaluation sessions.

(2) Establishes the person's own working hours, territory, and methods of work.

(3) Files quarterly reports of earnings, withholding payments, and FICA payments to the internal revenue service.

k. The net profit from self-employment income in a nonhome based operation shall be determined by deducting only the following expenses that are directly related to the production of the income:

(1) The cost of inventories and supplies purchased that are required for the business, such as items for sale or consumption and raw materials.

(2) Wages, commissions, and mandated costs relating to the wages for employees of the self-employed.

(3) The cost of shelter in the form of rent; the interest on mortgage or contract payments; taxes; and utilities.

(4) The cost of machinery and equipment in the form of rent or the interest on mortgage or contract payments.

(5) Insurance on the real or personal property involved.

(6) The cost of any repairs needed.

(7) The cost of any travel required.

(8) Any other expense directly related to the production of income, except the purchase of capital equipment and payment on the principal of loans for capital assets and durable goods or any cost of depreciation.

l. When the client is renting out apartments in the client's home, the following shall be deducted from the gross rentals received to determine the profit:

(1) Shelter expense in excess of that set forth on the chart for determining income in-kind in subrule 41.8(2) for the eligible group.

(2) That portion of expense for utilities furnished to tenants which exceeds the amount set forth on the chart for determining income in-kind in subrule 41.8(2).

(3) Ten percent (10%) of gross rentals to cover the cost of upkeep.

m. In determining profit from furnishing board, room, operating a family life home, or providing nursing care, the following amounts shall be deducted from the payments received:

(1) $41 plus an amount equivalent to the monthly thrifty food plan in the food stamp program for a one-member household for a boarder and roomer or an individual in the home to receive nursing care, or $41 for a roomer, or an amount equivalent to the monthly thrifty food plan in the food stamp program for a one-member household for a boarder.

(2) Ten percent (10%) of the total payment to cover the cost of upkeep for individuals receiving a room or nursing care.

n. Gross income from providing child care in the applicant's or recipient's own home shall include the total payment(s) received for the service and any payment received due to the Child Nutrition Amendments of 1978 for the cost of providing meals to children. In determining profit from providing child care services in the applicant's or recipient's own home, forty percent (40%) of the total gross income received shall be deducted to cover the costs of producing the income, unless the individual requests to have expenses in excess of the forty percent (40%) considered. When the applicant or recipient requests to have actual expenses considered, profit shall be determined in the same manner as specified in 41.7(2)"*o*".

o. In determining profit for a self-employed enterprise in the home other than providing room and board, renting apartments or providing child care services in the home, the following expenses shall be deducted from the income received:

(1) The cost of inventories and supplies purchased that are required for the business, such as items for sale or consumption and raw materials.

(2) Wages, commissions, and mandated costs relating to the wages for employees.

(3) The cost of machinery and equipment in the form of rent; or the interest on mortgage or contract payment; and any insurance on such machinery equipment.

(4) Ten percent (10%) of the total gross income to cover the costs of upkeep when the work is performed in the home.

(5) Any other direct cost involved in the production of the income, except the purchase of capital equipment and payment on the principal of loans for capital equipment and payment on the principal of loans for capital assets and durable goods or any cost of depreciation.

p. Income in-kind received in payment for work shall be given the same consideration as cash when the work is in a commercial arrangement and the payment for the work is regular and certain.

q. The applicant or recipient shall cooperate in supplying verification of all earned income. A self-employed individual shall keep any records necessary to establish eligibility.

41.7(3) *Shared living arrangements.* When an aid to dependent children parent shares living arrangements with another family or person, funds combined to meet mutual obligations for shelter and other basic needs are not income. Funds made available to the aid to dependent children eligible group, exclusively for their needs, are considered income.

41.7(4) *Diversion of income.*

a. Nonexempt earned and unearned income of the parent shall be diverted to meet the unmet needs, including special needs, of the dependent, but ineligible-child(ren) of the parent living in the family group. Income of the parent shall be diverted to meet the unmet needs of the ineligible child(ren) of the parent and a companion in the home only when the income and resources of the companion and the child(ren) are within aid-to-dependent-children standards. The maximum income that shall be diverted to meet the needs of the dependent, but ineligible child(ren) shall be the difference between the needs of the eligible group if the ineligible child(ren) were included and the needs of the eligible group with the child(ren) excluded, except as specified in 41.7(8)*"b."*

b. Nonexempt earned and unearned income of the parent shall be diverted to permit payment of court-ordered support to children not living with the parent when the payment is actually being made.

41.7(5) *Income of unmarried specified relatives under age nineteen.*

a. Income of an unmarried specified relative under age nineteen (19) when that specified relative lives with a parent who receives aid to dependent children or lives with a nonparental relative or in an independent living arrangement.

(1) The income of the unmarried, underage specified relative who is also an eligible child in the grant of the specified relative's parent shall be treated in the same manner as that of any other child. The income for the unmarried, underage specified relative who is not an eligible child in the grant of the specified relative's parent shall be treated in the same manner as though the specified relative had attained majority.

(2) The income of the unmarried, underage specified relative living with a nonparental relative or in an independent living arrangement shall be treated in the same manner as though the specified relative had attained majority.

b. Income of unmarried specified relative under the age of nineteen (19) who lives in the same home as a self-supporting parent(s) or legal guardian(s). The income of the unmarried specified relative under the age of nineteen (19) living in the same home as a self-supporting parent(s) or legal guardian(s) shall be treated in accordance with subparagraphs (1), (2), (3), and (4) below.

(1) When the unmarried specified relative is under the age of eighteen (18) and not a parent or legal guardian of the dependent child, the income of the specified relative shall be exempt.

(2) When the unmarried specified relative is under the age of eighteen (18) and a parent of the dependent child, the income of the specified relative shall be treated in the same manner as though the specified relative had attained majority. The income of the specified relative's self-supporting partent(s) or legal guardian(s) shall be treated in accordance with 41.7(8)*"c."*

(3) When the unmarried specified relative is under the age of eighteen (18) and a legal guardian of the dependent child, the income of the specified relative shall be exempt. The income of the specified relative's self-supporting parent(s) or legal guardian(s) shall be treated in accordance with 41.7(8)*"c."*

(4) When the unmarried specified relative is age eighteen (18), the income of the specified relative shall be treated in the same manner as though the specified relative had attained majority.

To be considered a legal guardian, the guardianship must have been established by court order.

41.7(6) *Exempt as income and resources.* The following shall be exempt as income and resources:

a. Food reserves from home-produced garden products, orchards, domestic animals, and the like, when utilized by the household for its own consumption.

b. The value of the coupon allotment in the food stamp program.

c. The value of the United States department of agriculture donated foods (surplus commodities).

d. The value of supplemental food assistance received under the Child Nutrition Act and the special food service program for children under the National School Lunch Act.

e. Any benefits received under Title III-C, Nutrition Program for the Elderly, of the Older Americans Act.

f. Benefits paid to eligible households under the Low Income Home Energy Assistance Act of 1981.

g. Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the Federal-Aid Highway Act of 1968.

h. Any judgment funds that have been or will be distributed per capita or held in trust for members of any Indian tribe. When the payment, in all or part, is converted to another type of resource, that resource is also exempt.

i. Payments to volunteers participating in the volunteers in service to America (VISTA) program, except that this exemption will not be applied when the director of ACTION determines that the value of all VISTA payments, adjusted to reflect the number of hours the volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938, or the minimum wage under the laws of the state where the volunteers are serving, whichever is greater.

j. Payments for supporting services or reimbursement of out-of-pocket expenses received by volunteers in any of the programs established under Titles II and III of the Domestic Volunteer Services Act.

k. Tax-exempt portions of payments made pursuant to the Alaskan Native Claims Settlement Act.

l. Experimental housing allowance program payments made under annual contribution contracts entered into prior to January 1, 1975, under section 23 of the U.S. Housing Act of 1936 as amended.

m. The income of a supplemental security income recipient.

n. Income of an ineligible child.

o. Unearned income-in-kind.

p. Rescinded, effective October 1, 1983.

q. Loans and grants obtained and used under conditions that preclude their use for current living costs.

r. Any loan or grant to any undergraduate student for educational purposes made or insured under any program administered by the United States Secretary of Education.

s. All earned income of the undergraduate student in a college work-study program administered by the United States Secretary of Education.

t. Any income restricted by law or regulation which is paid to a representative payee, other than a parent who is the applicant or recipient, unless the income is actually made available to the applicant or recipient by the representative payee.

u. The first $50 received by the eligible group which represents a current monthly support obligation or a voluntary support payment, paid by a legally responsible individual, but in no case shall the total amount exempted exceed $50 per month per eligible group.

41.7(7) *Exempt as income.* The following are exempt as income.

a. Reimbursements from a third party.

b. Reimbursement from the employer for job-related expenses.

c. The following nonrecurring lump sum payments:

(1) Income tax refund.

(2) Retroactive supplemental security income benefits.

(3) Settlements for the payment of medical expenses.

(4) Refunds of security deposits on rental property or utilities.

(5) That part of a lump sum received and expended for funeral and burial expenses.

(6) That part of a lump sum both received and expended for the repair or replacement of resources.

d. Payments received by the family providing foster care to a child or children when the family is operating a licensed foster home.

e. Any income which is restricted to the sole use of a child being removed from the eligible group to be placed in aid to dependent children-foster care.

f. Small monetary nonrecurring gifts, such as those for Christmas, birthdays and graduations, not to exceed $30 per person in any three (3)-month period.

g. Rescinded, effective July 1, 1986.

h. Supplementation from county funds providing:

(1) The assistance does not duplicate any of the basic needs as recognized by the aid to dependent children program, or

(2) The assistance, if a duplication of any of the basic needs, is made on an emergency basis, not as ongoing supplementation.

i. Any payment received as a result of an urban renewal or low-cost housing project from any governmental agency.

j. A retroactive corrective payment.

k. The training allowance issued by the rehabilitation education and services branch of the department of public instruction.

l. The following payments from the work incentive program:

(1) The daily participation allowance for individuals in job club, individual job search and work experience program.

(2) The payment for child care.

m. The payment for training related expenses to individuals in an individual education and training plan.

n. The training allowance issued by the commission for the blind.

o. Payment(s) from a passenger(s) in a car pool.

p. Support refunded by the child support recovery unit for the first month of termination of eligibility and the family does not receive aid to dependent children.

q. Support refunded by the child support recovery unit or otherwise paid to or for the recipient for a month of suspension. The maximum exempt payment shall be the amount of the monthly support entitlement. The payment shall never exceed the amount of support collected for the month of suspension.

r. Retrospective income received by an individual, whose needs are prospectively removed from the eligible group or who is no longer a member of the household, except nonrecurring lump sum income that causes a period of ineligibility and the income of a parent or stepparent who remains in the home.

s. Income of a nonparental relative as defined in 41.2(3) except when the relative is included in the eligible group.

t. The retrospective income of individuals who are prospectively added to an eligible group for the initial two (2) months of eligibility unless retrospective budgeting is required by 41.7(9)*"a"*(5). The benefit of this exemption shall also apply to the incomes of persons who made application for assistance for July or August 1983 provided the family is currently eligible for assistance.

u. Earnings of a child under Job Training Partnership Act of 1982 for six (6) calendar months in a calendar year.

v. Compensation in lieu of wages received by a child under the Job Training Partnership Act of 1982.

w. Any amount for training expenses included in a payment issued under the Job Training Partnership Act of 1982.

x. Rescinded, effective July 1, 1986.

y. Earnings of a child who is a full-time student as defined in 41.7(2)*"e"* for six calendar months in a calendar year. This exemption does not apply to earnings under Job Training Partnership Act of 1982.

z. Retrospective income attributed to an unmarried, underage parent or legal guardian in accordance with 41.7(8)*"c"* effective the first day of the month following the month in which the unmarried, underage parent or legal guardian turns age eighteen (18) or reaches majority through marriage. When the unmarried, underage parent or legal guardian turns age eighteen (18) on the first day of a month, the retrospective income of the self-supporting parent(s) or legal guardian(s) becomes exempt as of the first day of that month.

41.7(8) *Treatment of income in excluded parent cases, stepparent cases, and underage parent or guardian cases.*

a. Treatment of income in excluded parent cases. A parent who is living in the home with the eligible child(ren) but whose needs are excluded from the eligible group is not eligible for the $30 or the one-third earned income disregards, and shall be permitted to retain only that part of the parent's income to meet the parent's needs as determined by the difference between the needs of the eligible group with the parent included and the needs of the eligible group with the parent excluded. All remaining income of the parent shall be applied against the needs of the eligible group.

b. Treatment of income in stepparent cases. The income of a stepparent who is not included in the eligible group, but is living with the parent in the home of the eligible child(ren), shall be given the same consideration and treatment as that of a natural parent, subject to the limitations of subparagraphs (1), (2), (3), (4), (5), (6), and (7) below.

(1) The stepparent's monthly gross nonexempt earned income, earned as an employee or monthly net profit from self-employment, shall receive a standard work expense deduction as prescribed in 41.7(2)*"a."*

(2) Any amounts actually paid by the stepparent to individuals not living in the home, who are claimed or could be claimed by the stepparent as dependents for federal income tax purposes, shall be deducted from the total nonexempt monthly earned and unearned income of the stepparent.

(3) The stepparent shall also be allowed a deduction from nonexempt monthly earned and unearned income for alimony and child support payments made to individuals not living in the home with the stepparent.

(4) The nonexempt monthly earned and unearned income of the stepparent remaining after application of the deductions in 41.7(8)*"b"*(1), (2) and (3) above shall be used to meet the needs of the stepparent and the stepparent's dependents living in the home, when the dependents' needs are not included in the eligible group and the stepparent claims or could claim the dependents for federal income tax purposes. These needs shall be determined in accordance with the aid-to-dependent-children standard of need for a family group of the same composition. Any remaining income in excess of these needs shall be applied as unearned income to the needs of the eligible group.

(5) A nonexempt nonrecurring lump sum received by a stepparent shall be considered as income in the budget month, and counted in computing eligibility and the amount of the grant for the payment month. Any portion of the nonrecurring lump sum retained by the stepparent in the month following the month of receipt shall be considered a resource to the stepparent.

(6) When the income of the stepparent, not in the eligible group, is insufficient to meet the needs of the stepparent and the stepparent's dependent, but ineligible, child(ren) living in the home, the income of the parent may be diverted to meet the unmet needs of the child(ren) of the current marriage.

(7) When the needs of the stepparent, living in the home, are not included in the eligible group, the eligible group and any dependent but ineligible child(ren) of the parent shall be considered as one unit, and the stepparent and the stepparent's dependents, other than the spouse, shall be considered a separate unit.

c. Treatment of income in underage parent or guardian cases. In the case of a dependent child whose unmarried parent or legal guardian is under the age of eighteen (18) and living in the same home as the unmarried, underage parent's or legal guardian's own self-supporting parent(s) or legal guardian(s), the income of the self-supporting parent(s) or legal guardian(s) shall be considered available to the eligible group after appropriate deductions. The deductions to be applied are the same as are applied to the income of a stepparent pursuant to subrule 41.7(8)*"b"*(1) through (4). In applying the deductions, each employed parent or legal guardian shall receive the benefit of the work expense deduction in subrule 41.7(8)*"b"*(1). Nonrecurring lump sum income received by the self-supporting parent(s) or legal guardian(s) shall be treated in accordance with 41.7(8)*"b"*(5).

When the self-supporting spouse of a self-supporting parent or legal guardian is also living in the home, the income of that spouse shall be attributable to the self-supporting parent or legal guardian in the same manner as the income of a stepparent is determined pursuant to subrule 41.7(8)"*b*"(1) through (4). Nonrecurring lump sum income received by the spouse of the self-supporting parent or legal guardian shall be treated in accordance with 41.7(8)"*b*"(5). The self-supporting parent or legal guardian and any ineligible dependents of that person shall be considered as one unit; the self-supporting spouse and the spouse's ineligible dependents, other than the self-supporting parent or legal guardian, shall be considered a separate unit.

41.7(9) *Budgeting process.*

a. Initial eligibility.

(1) At time of application all earned and unearned income received and anticipated to be received by the eligible group during the month the decision is made shall be considered to determine eligibility for aid to dependent children, except income which is exempt. When income is prorated in accordance with 41.7(9)"*c*"(1), 41.7(9)"*g*" and 41.7(9)"*i*," the prorated amount is counted as income received in the month of decision. Allowable work expenses during the month of decision shall be deducted from earned income, except when determining eligibility under the one hundred eighty-five percent (185%) test defined in 41.7(239). The determination of eligibility in the month of decision is a three (3)-step process as described in 41.7(239).

(2) When countable gross nonexempt earned and unearned income in the month of decision, or in any month after assistance is approved, exceeds one hundred eighty-five percent (185%) of the standard of need for the eligible group, the application shall be rejected or the assistance grant canceled. Countable gross income means gross income, as defined in 41.7(239), without application of any disregards, deductions for work expenses, or diversions. When the countable gross nonexempt earned and unearned income in the month of decision equals or is less than one hundred eighty-five percent (185%) of the standard of need for the eligible group, initial eligibility shall then be determined. Initial eligibility is determined without application of the earned income disregards as specified in 41.7(2)"*c*" and "*e*." Appropriate deductions for work expenses and diversions are applied. When countable net earned and unearned income in the month of decision equals or exceeds the standard of need for the eligible group, the application shall be rejected.

(3) When the countable net income in the month of decision is less than the standard of need for the eligible group, the earned income disregards shall be applied when there is eligibility for these disregards. When countable net earned and unearned income in the month of decision, after application of the earned income disregards, work expenses and diversions, equals or exceeds the payment standard for the eligible group, the application shall be rejected.

When the countable net income in the month of decision is less than the payment standard for the eligible group, the application shall be approved. The amount of the aid-to-dependent-children grant shall be determined by subtracting countable net income in the month of decision from the payment standard for the eligible group, except as specified in 41.7(9)"*a*"(4).

(4) Eligibility for aid to dependent children for any month or partial month before the month of decision shall be determined only when there is eligibility in the month of decision. The family composition for any month or partial month before the month of decision shall be considered the same as on the date of decision. In determining eligibility and the amount of the assistance payment for any month or partial month preceding the month of decision, income and all circumstances except family composition in that month shall be considered in the same manner as in the month of decision. When the eligibility determination is delayed until the third initial month or later and payment is being made for the preceding months, the payment for the month following the initial two (2) months shall be based, retrospectively, on income and all circumstances except family composition in the corresponding budget month.

(5) The amount of the assistance grant for the initial two (2) months of eligibility shall be computed prospectively with two (2) exceptions. Income shall be considered retrospectively for the first two (2) payment months which follow a month of suspension, unless there has been a change in the family's circumstances. Also, income for the first and second months of eligibility shall be considered retrospectively when the applicant was a recipient for the two (2) immediately preceding payment months, including months for which payment was not received due to the restriction defined in 441—45.6(239) and 441—45.7(239).

(6) Income considered for prospective budgeting shall be the best estimate, based on knowledge of current and past circumstances and reasonable expectations of future circumstances.

(7) Work expense for care, as defined in 41.7(2)"*b*", shall be the allowable care expense expected to be billed or otherwise expected to become due during the budget month. The amount of standard work expense deduction for each wage earner as defined in 41.7(2)"*a*" shall be allowed.

b. Ongoing eligibility.

(1) After the initial two (2) payment months, the amount of each grant shall be based, retrospectively, on income and other circumstances in the budget month. However, when the income was considered prospectively in the initial application and is not expected to continue, it shall not be considered again. This includes an eligible group not receiving a payment due to the restriction defined in 441—45.6(239) and 441—45.7(239).

(2) When a change in eligibility factors occurs, the local office shall prospectively compute eligibility based on the change, effective no later than the month following the month the change occurred. If eligibility continues, no action is taken. If ineligibility exists, assistance shall be canceled or suspended. Continuing eligibility under the one hundred eighty-five percent (185%) eligibility test, defined in 41.7(239), shall be computed prospectively and retrospectively.

(3) Income considered for retrospective budgeting shall be the actual income received in the budget month, except for the income described in 41.7(9)"*c*"(1), 41.7(9)"*g*" and 41.7(9)"*i*". A payroll check will be considered received the date the employer distributes payroll checks to employees.

(4) Work expense for care, as defined in 41.7(2)"*b,*" shall be the actual allowable expense billed or which otherwise became due in the budget month. The amount of standard work expense deduction for each wage earner, as defined in 41.7(2)"*a,*" shall be allowed.

c. Lump sum income.

(1) Lump sum income other than nonrecurring. Recurring lump sum earned and unearned income, except for the income of the self-employed, shall be prorated over the number of months for which the income was received and applied to the grant for the same number of months. Income received by an individual employed under a contract shall be prorated over the period of the contract. Income received at periodic intervals or intermittently shall be prorated over the period covered by the income and applied to the grant for the same number of months, except periodic or intermittent income from self-employment shall be treated as described in 41.7(9)"*i*". When the lump sum income is earned income, appropriate disregards, deductions and diversions shall be applied to the monthly prorated income. Income is prorated when a lump sum is received before the month of decision and is anticipated to recur; or a lump sum is received during the month of decision or anytime during the receipt of assistance.

(2) Nonrecurring lump sum income. Moneys received as a nonrecurring lump sum, except as specified in 41.6(4), 41.6(7), 41.7(8)"*b,*" and 41.7(8)"*c,*" shall be treated in accordance with this rule. Nonrecurring lump sum income shall be considered as income in the budget month and counted in computing eligibility and the amount of the grant for the payment month, unless the income is exempt. Nonrecurring lump sum unearned income is defined as a payment in the nature of a windfall, for example, an inheritance, an insurance settlement for pain and suffering, an insurance death benefit, a gift, lottery winnings, or a retroactive payment of benefits, such as social security, job insurance or workers' compensation. A lump sum payment of earned income credit shall be treated as a nonrecurring lump sum payment of earned

income. When countable income, exclusive of the aid-to-dependent-children grant but including countable lump sum income, exceeds the needs of the eligible group, the case shall be canceled or the application rejected. In addition, unless the lump sum was from a loan, the eligible group shall be ineligible for the number of full months derived by dividing the income by the standard of need for the eligible group. Any income remaining after this calculation shall be applied as income to the first month following the period of ineligibility and disregarded as income thereafter.

The period of ineligibility shall be shortened when the schedule of living costs as defined in 41.8(2) increases.

The period of ineligibility shall be shortened by the amount which is no longer available to the eligible group due to a loss, a theft or because the person controlling the lump sum no longer resides with the eligible group and the lump sum is no longer available to the eligible group.

The period of ineligibility shall also be shortened when there is an expenditure of the lump sum made for the following circumstances unless there was insurance available to meet the expense: Payments made on medical services for the former eligible group or their dependents for services listed in 441—chapters 78, 81, 82 and 85 at the time the expense is reported to the department; the cost of necessary repairs to maintain habitability of the homestead requiring the spending of over twenty-five dollars ($25) per incident; cost of replacement of exempt resources as defined in subrule 41.6(1) due to fire, tornado, or other natural disaster; or funeral and burial expenses. The expenditure of these funds shall be verified. A dependent is an individual who is claimed or could be claimed by another individual as a dependent for federal income tax purposes.

When countable income, including the lump sum income, is less than the needs of the eligible group, the lump sum shall be counted as income for the budget month. For purposes of applying the lump sum provision, the eligible group is defined as all eligible persons and any other individual whose lump sum income is counted in determining the period of ineligibility. During the period of ineligibility, individuals not in the eligible group when the lump sum income was received may be eligible for aid to dependent children as a separate eligible group. Income of this eligible group plus income, excluding the lump sum income already considered, of the parent or other legally responsible person in the home shall be considered as available in determining eligibility and the amount of the grant.

d. The third digit to the right of the decimal point in any computation of income, hours of employment and work expenses for care, as defined in 41.7(2)*"b,"* shall be dropped.

e. In any month for which an individual is determined eligible to be added to a currently active aid-to-dependent-children case, the individual's needs shall be included subject to the effective date of grant limitations as prescribed in 441—40.6(239). When adding an individual to an existing eligible group, any income of that individual shall be considered prospectively for the initial two (2) months of that individual's eligibility and retrospectively for subsequent months. Any income considered in prospective budgeting shall be considered in retrospective budgeting only when the income is expected to continue. The needs of an individual determined to be ineligible to remain a member of the eligible group shall be removed prospectively effective the first of the following month.

f. Suspension. The local office shall suspend assistance retrospectively when income or circumstances in the budget month cause ineligibility and the local office has knowledge or reason to believe that ineligibility will exist for only one (1) month. During the month of suspension, individuals not in the eligible group prior to suspension may be eligible for aid to dependent children as a separate eligible group. Income of this eligible group plus income of the parent or other legally responsible person in the home shall be considered as available in determining eligibility and the amount of the grant. The income of an ineligible parent or other legally responsible person shall be considered prospectively in accordance with 41.7(4) and 41.7(8).

g. Lump sum nonexempt financial assistance for education or training shall be prorated over the period it is intended to cover after deducting allowable expenses of education or training. This is true when the income is received prior to the month of decision and covers a period of time extending beyond the month of decision, is expected to continue, and covers a period of time extending beyond the month of decision; or received in the month of decision; or received or is anticipated to be received after the approval of assistance.

h. Income from self-employment received on a regular weekly, biweekly, semimonthly or monthly basis shall be budgeted in the same manner as the earnings of an employee. The countable income shall be the net income.

i. Income from self-employment not received on a regular weekly, biweekly, semimonthly or monthly basis that represents an individual's annual income shall be averaged over a twelve (12)-month period of time, even if the income is received within a short period of time during that twelve (12)-month period. Any change in self-employment shall be handled in accordance with subparagraphs (3), (4), and (5) below.

(1) When a self-employment enterprise which does not produce a regular weekly, biweekly, semimonthly or monthly income has been in existence for less than a year, income shall be averaged over the period of time the enterprise has been in existence and the monthly amount projected for the same period of time. If the enterprise has been in existence for such a short time that there is very little income information, the worker shall establish, with the cooperation of the client, a reasonable estimate which shall be considered accurate and projected for three (3) months, after which the income shall be averaged and projected for the same period of time. Any changes in self-employment shall be considered in accordance with subparagraphs (3), (4) and (5) below.

(2) These policies apply when the self-employment income is received before the month of decision and the income is expected to continue, in the month of decision, and after assistance is approved.

(3) A change in the cost of producing self-employment income is defined as an established permanent ongoing change in the operating expenses of a self-employment enterprise. Change in self-employment income is defined as a change in the nature of business.

(4) When a change in operating expenses occurs, the local office shall recompute the expenses on the basis of the change.

(5) When a change occurs in the nature of the business, the income and expenses shall be computed on the basis of the change.

j. Payment for a special need as defined in 41.8(3) shall be made when documentation of the special need is received by the local office. When the special need continues, payment shall be included, prospectively, in each month's aid-to-dependent-children grant. When the special need ends, payment shall be removed prospectively. Any overpayment for a special need shall be recouped.

Any documentation of a special need received during a month of suspension shall be considered in determining eligibility and the amount of payment for the month following the month of suspension.

k. When a family's assistance for a month is subject to recoupment because the family was not eligible, individuals applying for assistance during the same month may be eligible for aid to dependent children as a separate eligible group. Income of this new eligible group plus income of the parent or other legally responsible person in the home shall be considered as available in determining eligibility and the amount of the grant. The income of an ineligible parent or other legally responsible person shall be considered prospectively in accordance with 41.7(4) and 41.7(8).

41.7(10) *Aliens sponsored by individuals.*

a. A sponsor is any person who signed an affidavit of support or similar agreement on behalf of an alien(s) as a condition of the alien's entry into the United States.

b. The income and resources of a sponsor and the sponsor's spouse shall not be deemed to an alien who is:

(1) Admitted to the United States as a result of the application, prior to April 1, 1980, of the provisions of section 203(a)(7) of the Immigration and Nationality Act;

(2) Admitted to the United States as a result of the application, after March 31, 1980, of the provisions of section 207(c) of the Immigration and Nationality Act;

(3) Paroled into the United States as a refugee under section 212(d)(5) of the Immigration and Nationality Act;

(4) Granted political asylum by the attorney general under section 208 of the Immigration and Nationality Act; or

(5) A cuban and Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980 (Public Law 96-422); or

(6) The dependent child of the sponsor or sponsor's spouse.

c. For a period of thirty-six (36) months following the date of entry into the United States, a sponsored alien shall provide the local office with the information and documentation required to determine the alien's eligibility. The alien is responsible for obtaining the cooperation of the sponsor. Aliens who do not obtain this cooperation or supply this information are not eligible for assistance. Date of entry is the date established by Immigration and Naturalization Service as the date the alien was admitted for permanent residence.

d. The income of the sponsor or sponsor's spouse receiving supplemental security income or aid to dependent children shall not be considered in determining an alien's eligibility for aid to dependent children or the amount of the grant.

e. The total gross income of the sponsor and the sponsor's spouse when living together, shall be considered available as the unearned income of the alien for three (3) years following the alien's entry into the United States, after the following deductions:

(1) Twenty percent (20%) or $175, whichever is less, of the total gross unearned and earned income or net income from self-employment shall be deducted.

(2) The needs of the sponsor and anyone else living in the same household who the sponsor claims or could claim as a dependent for federal tax purposes shall be deducted. Need shall be determined in accordance with the standard of need for a family of the same composition.

(3) Any amount actually paid by the sponsor to individuals not living in the home who are claimed or could be claimed as dependents for federal income tax purposes or to or for an ex-spouse or child not living in the home shall be deducted.

f. When a person sponsors two (2) or more aliens who apply for assistance on or after November 1, 1981, the countable income of the sponsor and the sponsor's spouse shall be divided equally among the aliens.

g. Income applied to sponsored aliens shall not be considered in determining the needs of unsponsored members of the alien's family except to the extent the income is actually available.

41.7(11) *Restriction on diversion of income.* No income may be diverted to meet the needs of a person living in the home who has been sanctioned under subrule 41.2(6), 41.4(7) or 59.2(2) or who is required to be included in the eligible group according to subrule 41.8(1)*"a"* and has failed to cooperate. This restriction applies to subrules 41.7(4)*"a"* and 41.7(8).

This rule is intended to implement Iowa Code sections 239.2, 239.5 and 239.6 and 1984 Iowa Acts, Chapter 1310, sections 3 and 10.

441—41.8(239) Need standards.

41.8(1) *Definition of the eligible group.* The eligible group consists of all eligible persons living together, except when one or more of these persons has elected to receive supplemental security income under Title XVI of the Social Security Act. There shall be at least one (1) child in the eligible group except when the only eligible child is receiving supplemental security income. The unborn child is not considered a member of the eligible group for purposes of establishing the number of persons in the eligible group.

a. The following persons shall be included (except as otherwise provided in these rules):

(1) The dependent child and any brother or sister of the child, of whole or half blood or adoptive, if the brother or sister meets the eligibility requirements of age and school attendance specified in subrule 41.1(1) and is deprived as specified in subrule 41.1(5), or rule 441—42.2(239) if the brother or sister is living in the same home as the dependent child.

(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.

b. The following persons may be included:

(1) The needy relative who assumes the role of parent.

(2) The needy relative who acts as payee when the parent is in the home, but is unable to act as payee.

(3) The incapacitated stepparent, upon request, when the stepparent is the legal spouse of the natual or adoptive parent by ceremonial or common law marriage and the incapacitated stepparent does not have a child in the eligible group.

(4) The stepparent who is not incapacitated when the stepparent is the legal spouse of the natural or adoptive parent by ceremonial or common law marriage and the stepparent is required in the home to care for the dependent children or the incapacitated parent. These services must be required to the extent that if the stepparent were not available, it would be necessary to pay for the care of the children or the incapacitated parent by inclusion of an allowance in the assistance grant.

41.8(2) *Schedule of needs.* The schedule of living costs represents one hundred percent (100%) of basic needs. The schedule of living costs is used to determine the needs of individuals when these needs must be determined in accordance with the standard of need defined in 40.1(16). The one hundred eighty-five percent (185%) schedule is included for the determination of eligibility in accordance with 441—41.7(239). The schedule of basic needs is used to determine the basic needs of those persons whose needs are included in and are eligible for an aid-to-dependent-children grant. The eligible group is considered a separate and distinct group without regard to the presence in the home of other persons, regardless of relationship to or whether they have a liability to support members of the eligible group. The schedule of basic needs is also used to determine the needs of persons not included in the assistance grant, when these needs must be determined in accordance with the payment standard defined in 40.1(17). The percentage of basic needs paid to one (1) or more persons as compared to the schedule of living costs is shown on the chart below.

SCHEDULE OF NEEDS

Number of Persons	1	2	3	4	5	6	7	8	9	10	Each Additional Person
185% of Living Costs	394.05	778.85	919.45	1069.30	1184	1317.20	1446.70	1578.05	1707.55	1866.65	186.85
Schedule of Living Costs	213	421	497	578	640	712	782	853	923	1009	101
Schedule of Basic Needs	163	322	381	443	490	545	599	653	707	773	77
Ratio of Basic Needs to Living Costs	76.6%	76.6%	76.6%	76.6%	76.6%	76.6%	76.6%	76.6%	76.6%	76.6%	76.6%

CHART FOR DETERMINING INCOME IN KIND
(all figures are on a per person basis)

Number of Persons	1	2	3	4	5	6	7	8	9	10 or More
Shelter	46.65	48.31	32.84	26.37	21.54	18.39	16.17	14.62	13.26	13.00
Utilities	25.30	24.02	15.62	12.06	9.67	8.08	7.53	6.66	6.03	5.90
Supp. & Repl.	10.68	8.20	5.33	4.13	3.53	2.99	2.57	2.29	2.04	2.00
Food	43.84	47.73	44.34	40.66	36.95	35.88	34.65	34.03	33.90	33.21
Clothing	12.64	14.07	13.46	13.47	13.33	13.20	13.02	12.73	12.72	12.46
Per. Care & Supp.	7.59	8.20	8.13	8.16	7.94	7.81	7.55	7.50	7.06	6.92
Med. Cab. Supp.	1.68	1.68	1.68	1.68	1.68	1.68	1.68	1.68	1.68	1.68
Communications	14.62	8.79	5.60	4.22	3.36	2.80	2.40	2.11	1.87	1.83

a. The definitions of the basic need components are as follows:

(1) Shelter: Rental, taxes, upkeep, insurance, amortization.

(2) Utilities: Fuel, water, lights, water heating, refrigeration, garbage.

(3) Household supplies and replacements: Essentials associated with housekeeping and meal preparation.

(4) Food: Including school lunches.

(5) Clothing: Including layette, laundry, dry cleaning.

(6) Personal care and supplies: Including regular school supplies.

(7) Medicine chest items.

(8) Communications: Bus fares, telephone, newspapers, magazines.

b. Special situations in determining eligible group:

(1) The needs of a child or children in a nonparental home shall be considered a separate eligible group when the relative is receiving aid-to-dependent-children assistance for the relative's own children.

(2) When the unmarried specified relative under age nineteen (19) is living in the same home with a parent or parents who receive aid to dependent children, the needs of the specified relative, when eligible, shall be included in the same eligible group with the parent(s). When the specified relative is a parent, the needs of the eligible children for whom the unmarried parent is caretaker shall be included in the same eligible group. When the specified relative is a nonparental relative, the needs of the eligible children for whom the specified relative is caretaker shall be considered a separate eligible group.

When the unmarried specified relative under the age of nineteen (19) is living in the same home as a parent(s) who receives aid to dependent children but the specified relative is not an eligible child, need of the specified relative shall be determined in the same manner as though the specified relative had attained majority.

When the unmarried specified relative under the age of nineteen (19) is living with a nonparental relative or in an independent living arrangement, need shall be determined in the same manner as though the specified relative had attained majority.

When the unmarried specified relative is under the age of eighteen (18) and living in the same home with a parent(s) or legal guardian(s) who does not receive aid to dependent children, the needs of the specified relative, when eligible, shall be included in the assistance grant with the children when the specified relative is a parent. When the specified relative is a nonparental relative as defined in 41.2(3), only the needs of the eligible children shall be included in

the assistance grant. When the unmarried specified relative is age eighteen (18), need shall be determined in the same manner as though the specified relative had attained majority.

(3) When a person who would ordinarily be in the eligible group has elected to receive supplemental security income benefits, the person, income and resources, shall not be considered in determining aid to dependent children benefits for the rest of the family.

(4) When two (2) individuals, married to each other, are living in a common household and the children of each of them are recipients of assistance, the assistance grant shall be computed on the basis of their comprising one (1) eligible group. This rule shall not be construed to require than an application for assistance be made for children who are not the natural or adoptive children of the applicant.

41.8(3) *Special needs.* On the basis of demonstrated need the following special needs shall be allowed, in addition to the basic needs.

a. School expenses. Any specific charge, excluding tuition, for a child's education made by the school, or in accordance with school requirements in connection with a course in the curriculum, shall be allowed provided the allowance shall not exceed the reasonable cost required to meet the specifications of the course, and the student is actually participating in the course at the time the expense is claimed. Payment will not be made for ordinary expenses for school supplies.

b. Guardian/conservator fee. An amount not to exceed ten dollars ($10) per case per month may be allowed for guardian's/conservator's fees when authorized by appropriate court order. No additional payment is permitted for court costs or attorney's fees.

c. Individual education and training. The expense of an individual education and training plan as defined in 441—chapter 55.

41.8(4) *Period of adjustment.* When a parent recovers from the condition which caused incapacity, or when the absent parent and parent establish or re-establish a home for the child, assistance shall continue for the existing eligible group, if there is need, for a period not to exceed the issuance of three (3) warrants.

This rule is intended to implement Iowa Code section 239.5, 1984 Iowa Acts, chapter 1310, sections 3 and 10 and 1985 Iowa Acts, chapter 259, section 3.

441—41.9(239) Composite ADC/SSI cases. When persons in the aid to dependent children household, who would ordinarily be in the eligible group, are receiving supplemental security income benefits. The following rules shall apply.

41.9(1) *Pending SSI approval.* When a person who would ordinarily be in the eligible group has applied for supplement security income benefits. The person's needs may be included in the aid to dependent children grant pending approval of supplemental security income.

41.9(2) *Ownership of property.* When property is owned by both the supplemental security income beneficiary and the aid to dependent children recipient, each shall be considered as having a half interest in order to determine the value of the resource, unless the terms of the deed or purchase contract clearly establish ownership on a different proportional basis.

This rule is intended to implement Iowa Code section 239.5

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CHAPTER 42
UNEMPLOYED PARENT

[Prior to 7/1/83, Social Services (770), Ch 42]
[Prior to 2/11/87, Human Services(498)]

441—42.1(239) Definitions.

"Approved training" means work incentive program, individual education and training plan program, and Job Training Partnership Act program, or participation in a vocational rehabilitation training plan.

"Bona fide offer" means an actual or genuine offer which includes a specific wage or a training opportunity at a specific place when used to determine whether the parent has refused an offer of training or employment.

"Calendar quarter" means a period of three (3) consecutive months ending March 31, June 30, September 30 or December 31.

"Parent" means the natural or adoptive parent.

"Principal earner" means the parent who earned the greater amount of income in the twenty-four (24) months immediately preceding the month in which the application is made for assistance.

"Qualifying parent" means the parent designated as principal earner.

"Unemployed" means:

Working less than one hundred (100) hours in a month, or

Working one hundred (100) hours or more in a month, but working less than one hundred (100) hours the two (2) previous months and expected to work less than one hundred (100) hours during the next month.

When self-employed, the hours of employment shall be established in accordance with either of the methods described in paragraphs 1 and 2 below, at the option of the applicant or recipient within the constraints described in paragraph 3 below.

1. The hours of employment may be determined on the basis of the actual hours worked in a month, when the actual hours can be verified by reliable written evidence from a disinterested third party, for example, the person(s) who contracted the labor of the applicant or recipient.

2. The hours of employment may be computed by dividing net monthly income from self-employment by the federal minimum wage. "Net monthly income" means income in a month remaining after deduction of allowable business expenses as described in subrule 41.7(2), paragraphs *"k," "l," "m," "n,"* and *"o."*

3. The applicant shall select one of the two (2) methods above for determining hours of employment prior to the determination of eligibility. The choice is effective until the family is no longer eligible for aid-to-dependent-children-unemployed-parent assistance with the following exception:

When the applicant chooses to have the hours of employment determined in accordance with paragraph 1 above, but later is unable to provide the required verification for a particular month, the determination of the hours of employment for that month and all subsequent months shall be computed in accordance with paragraph 2 above until the family is no longer eligible for aid-to-dependent-children-unemployment-parent assistance.

441—42.2(239) Deprivation. A child shall be eligible for assistance on the basis of being deprived of parental care or support by reason of the qualifying parent's unemployment.

42.2(1) *Priority of other deprivation factors.* When deprivation exists because of parental absence or incapacity, that deprivation factor supersedes and the case shall not be processed on the basis of a parent's unemployment.

42.2(2) Reserved.

441—42.3(239) Principal earner. The qualifying parent shall be the principal earner for the twenty-four (24)-month period preceding the month of application, regardless of when the parents' relationship to each other began. When there is a question as to which parent is the principal earner, the income maintenance worker shall make the determination using the best evidence available. The parent originally designated principal earner shall retain that designation until the family is no longer eligible for aid to dependent children.

441—42.4(239) Qualifying parent. The dependent child's parent who qualifies the child(ren) for assistance shall be the principal earner and meet the following requirements.

42.4(1) The parent shall be unemployed for thirty (30) days prior to receipt of assistance and anytime thereafter other than during the adjustment period. Assistance shall not be paid to cover any of the thirty (30)-day period.

a. The parent who is out of work due to refusal without good cause of a bona fide offer of employment or training for employment shall not be considered unemployed.

b. The parent who is out of work due to a labor dispute shall not be considered unemployed.

42.4(2) The qualifying parent shall have a recent connection with the labor force established by a work history which includes at least one of the following:

a. Six (6) or more quarters within a thirteen (13)-quarter period ending within one (1) year prior to the quarter of application in which earned income of at least fifty dollars ($50) per quarter was received or there was participation in a community work experience program under Title IV-A, Section 409 of the Social Security Act, as amended effective October 1, 1981, or there was participation in a work incentive or work incentive demonstration program training plan.

b. Receipt of job insurance benefits currently or within twelve (12) months prior to the date of application.

c. Eligibility for job insurance benefits within twelve (12) months prior to the date of application, except an application was not filed or some or all of the work performed was not in covered employment.

42.4(3) Employment services registration, work incentive program, job insurance benefits. The qualifying parent shall register for employment with the department of employment services or shall be referred to the work incentive program. The qualifying parent shall apply for and receive job insurance benefits when eligible. When a parent refuses to register for employment or apply for or draw unemployment benefits, there is no eligibility on the basis of unemployment.

42.4(4) Active search for employment or training. While the application is pending and after assistance has been approved, the qualifying parent shall comply with the following active search requirements:

a. The qualifying parent shall actively search for employment or training for employment with a minimum of eight (8) employment seeking face-to-face contacts per month. While the application is pending a minimum of two (2) contacts per week will suffice. After one written warning, any individual who fails to meet the minimum standard shall not be considered unemployed.

(1) The qualifying parent who is out of work due to failure to make an active and earnest search for work as described in IAC 345—4.22(1)*"c"* which results or would result in disqualification for job insurance benefits shall not be considered unemployed.

(2) The qualifying parent shall document the search for employment using Form PA-2142-5, Job Search, upon request. Failure to do so will result in cancellation.

(3) The qualifying parent who participates in an approved training program satisfies the search requirement during any period of active attendance.

(4) The qualifying parent must meet all of the conditions in this paragraph during any month in which an ADC case is suspended.

b. The parent shall not, without good cause: End, limit, or reduce hours of employment; refuse job search assistance or counseling when a counselor is assigned from employment services; refuse a bona fide offer of employment or training for employment. Failure to follow up on a referral which could result in a bona fide offer of employment or training shall be considered the same as a refusal.

42.4(5) Establishing good cause.

a. When a bona fide offer of employment or training is made independently of the work incentive program, the determination of whether or not there was good cause for refusal is an income maintenance responsibility.

b. Good cause for limiting or reducing hours, ending or refusing a bona fide offer of employment or training for employment exists when:

(1) A bona fide offer of employment is made at a wage below the minimum amount customary for such work in the community, or the offer of training is not for a specific program, or

(2) The parent cannot engage in the job or training for physical reasons, or

(3) The parent has no way to get to and from the job or training site, or

(4) The working conditions at the site would be a risk to the parent's health or safety, or

(5) There is no worker's compensation protection.

c. When an offer of employment or training is through the work incentive program, the determination as to whether the offer is bona fide, or whether there was good cause to refuse it, will be made by work incentive program staff. Any appeal from a mandatory referral shall be directed to the department.

d. When good cause is not established, the child(ren) shall not be considered deprived.

42.4(6) Relationship with work incentive program. In mandatory work incentive program counties, the qualifying parent may be referred to and required to cooperate with and participate in the work incentive program.

a. Failure of a nonexempt mandatory referral to cooperate or participate will result in ineligibility for unemployed parent assistance. In voluntary counties, the parent may volunteer for the work incentive program, but is not required to do so. The mandatory work incentive program referral who is exempt, shall be registered with regular employment services.

b. When the local office receives official written notice from work incentive program staff that the parent who is a mandatory referral has failed to participate or the parent has rendered referral meaningless by a refusal to cooperate with work incentive program staff, unemployed parent assistance shall be canceled for the applicable work incentive program sanction period.

441—42.5(239) Failure to cooperate. After assistance is approved, failure to cooperate with the work and training requirements of the unemployed parent program shall result in ineligibility for the entire family for a minimum of one (1) month.

441—42.6(239) Inclusion of the nonqualifying parent. The nonqualifying parent shall be included in the eligible group in accordance with subrule 41.8(1).

441—42.7(239) Income maintenance worker contact to ensure active search for employment or training. The income maintenance worker is responsible for a minimum of one (1) contact per month to determine whether the requirement of an active search for employment or training is being met by the qualifying parent. Exception: Contacts and documentation are not required for any month in which the qualifying parent received Iowa job insurance benefits.

441—42.8(239) Assistance continued. When the qualifying parent becomes employed, assistance shall continue if the family is otherwise eligible for a period not to exceed the issuance of three (3) warrants.

42.8(1) An adjustment period following the incapacitated parent's recovery or the absent parent's return home shall continue for only as long as is necessary to determine whether there is eligibility on the basis of parental unemployment. When deprivation on the basis of unemployment cannot be established, assistance shall be continued for a maximum of three (3) warrants.

42.8(2) Reserved.

These rules are intended to implement Iowa Code sections 239.2, 239.5 and 239.17.

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◊ Two or more ARC's.

CHAPTER 43
ALTERNATE PAYEES

[Prior to 7/1/83, Social Services(770), Ch 43]
[Prior to 2/11/87, Human Services(498)]

441—43.1(239) Conservatorship or guardianship.

43.1(1) When application is filed for aid to dependent children by a person under conservatorship or guardianship, a copy of the court order shall be secured by the local office. Assistance payments shall be made to the conservator or guardian to be allocated for the support and care of the dependent child.

43.1(2) The department may petition the probate court to appoint a conservator over any payee when the department has reason to believe any payments of aid to dependent children are not being used or may not be used in the best interests of the child. Assistance payments shall be made to the conservator to be allocated for the support and care of the dependent child(ren).

43.1(3) Rescinded, effective 7/1/81.

This rule is intended to implement Iowa Code section 239.5.

441—43.2(239) Protective payments.

43.2(1) Protective payments shall be made to a protective payee when a recipient has demonstrated severe difficulties in managing money, but has the capacity to learn, in a relatively short time, to manage funds in a reasonably adequate manner. Protective payments shall be utilized in the following instances:

a. When the aid to dependent children payee has clearly demonstrated such inability to manage funds that the needs of the children have not been reasonably served.

b. When the aid to dependent children payee, who has been deemed appropriate for employment or vocational training, without good cause refuses employment or training.

c. When a parent or other adult fails to cooperate in establishing paternity or securing support without good cause.

43.2(2) Consideration shall be given to the appointment of a protective payee when there is clear and specific evidence that the aid to dependent children payee persistently mismanages the assistance payments to the detriment of the children. This evidence includes, but is not limited to:

a. Continued refusal or inability to properly feed and clothe the dependent children.

b. Continued expenditures made for nonessentials or for other items so as to threaten the children's chances for healthy growth and development.

c. Continued, persistent, and deliberate failure to meet obligations for rent, food, school supplies, or other essentials.

d. Repeated evictions or incurrence of debts with attachments or levies made against current income.

e. Continued inability to plan and spread necessary expenditures over the usual period between assistance checks.

43.2(3) The local office has the responsibility for determining whether to recommend a protective payee, in selecting the payee, recommending termination of the arrangement, and providing casework services directed toward increasing money management skills of the recipient.

43.2(4) The selection and appointment of a protective payee shall be in accordance with the following standards.

a. Interest in and concern with the well-being of the recipient family. This interest may have been demonstrated by regular and frequent visits to the family or past efforts to help the family at time of crisis.

b. Interest, ability, and the time to help the family to make proper use of the assistance payment in connection with ordinary household budgeting. This ability may have been demonstrated by past experience in purchasing food and clothing and household supplies within a restricted income or other knowledge of effective household money management practices.

c. Geographical proximity or means of transportation to the family to be accessible for frequent consultation on household budgeting and other household money payment problems.

d. Ability to establish and maintain positive relationships with members of the family. The protective payee must assume a teaching role to facilitate the acquisition of new money management skills.

e. A responsible, dependable, and reliable individual with the capacity to handle highly confidential family information and to handle money which is vital and essential to another family's daily well-being.

f. Not an individual with a direct or indirect interest in the disposition of the assistance payment, such as the executive officer of the agency, landlord, grocer, or other vendor of goods and services dealing with the recipient.

g. Not an employee of the local office.

43.2(5) The protective payee shall manage or supervise and make basic decisions about the expenditure of the assistance payment. As the recipient demonstrates the ability to use the funds appropriately, the protective payee shall gradually increase self management until the recipient is able to manage the entire assistance payment. The protective payee shall make a quarterly report to the local office of general expenditures and progress being made by the recipient in money management within thirty (30) days following the end of each three (3)-month period.

43.2(6) A protective payment arrangement for persons specified in subrule 43.2(1)*"a"* shall be limited to twelve (12) months.

43.2(7) All protective payment arrangements shall be evaluated at least every three (3) months to determine whether the protective payee is carrying out the responsibilities in the best interests of the child or children. In addition, a decision shall be made for each protective payment arrangement for persons specified in subrule 43.2(1)*"a"* whether to:

a. Restore the recipient to regular money payment status,

b. Continue the recipient under protective payment status, or

c. Arrange for the appointment of a conservator when it appears that the recipient is unable to respond to the beneficial effects of the protective payment plan or progress is so slow as to require continuation of the plan beyond the time limitation on protective payments.

43.2(8) Protective payments for persons specified in subrule 43.2(1)*"a"* shall be limited to ten percent (10%) of the total aid to dependent children caseload.

This rule is intended to implement Iowa Code sections 239.3 and 239.5 and 1982 Iowa Acts, chapter 1237.

441—43.3(239) Vendor payments.

43.3(1) A vendor payment or payments may be made in an emergency situation when the recipient has become so involved financially that proper care for the family may be secured only with a guarantee of payment from the department. A vendor payment or payments may be made upon the request of the recipient or when the local office determines it is necessary to extricate the family from financial difficulties or to comply with the provisions of the work incentive program. Emergency situations include, but are not limited to:

a. Eviction and inability to find other shelter.

b. Termination of or refusal to provide utilities by the utility company.

c. The necessity to provide such essentials as food, clothing, and shelter for dependent children.

d. Continued inability on the part of the payee to manage funds for the benefit of the family, but time is needed to secure a protective payee or a conservator or guardian.

43.3(2) Vendor payments shall be authorized subject to the following limitations:

a. Vendor payments shall be authorized only by the local administrator.

b. Vendor payments shall be authorized only with the knowledge and consent of the recipient except in those instances where the vendor payment provision is utilized on an emergency basis to protect the family pending the completion of other arrangements.

c. Vendor payments shall be authorized only to meet emergent situations which limit the recipient's ability to furnish care for children.

d. Vendor payments shall be authorized monthly. When the payments are needed for a period in excess of two (2) months, approval shall be granted by the district income maintenance supervisor or designee.

e. Vendor payments shall be a part of the limitation specified in subrule 43.2(8).

43.3(3) The amount of vendor payment shall be established in the following manner:

a. A vendor payment or payments shall be for a specific item or items of need.

b. The recipient, worker, and vendor shall mutually agree upon the quantity, kinds, and quality of goods or services to be provided and the amount to be paid, except in those instances where the vendor payment is necessary as described in subrule 43.3(1) without the consent of the payee.

c. The entire item of need established in 43.3(3)*"a"* shall be covered by the vendor payment except in those instances where the aid to dependent children grant is less than the amount needed for the vendor payment. In these instances the amount of the vendor payment shall not exceed the amount of the assistance grant.

d. Before a vendor payment is established, consideration shall be given to the family's entire financial situation so that the vendor payment will not jeopardize the funds needed for the family's other expenses.

e. When a vendor payment is established because of a recipient's failure to participate in the work incentive program, such payment shall be fifty percent (50%) or more of the total assistance paid for the month.

f. The balance of the assistance payment not used for the vendor payment shall be paid to the recipient in the form of a regular assistance warrant.

43.3(4) The local office shall send the vendor two (2) copies of Form PA-3157-5, Authorization for Vendor Payment. The vendor shall complete and return one copy of the form to the local office along with a copy of the billing, invoice or statement.

441—43.4(239) Emergency payee. Payments may be made to persons acting for relatives who have been receiving assistance for a child in emergency situations that deprive the child of the relatives' care. These payments shall be made for a temporary period, not to exceed three (3) months, to allow time to make and implement plans for the child's continuing care and support.

This rule is intended to implement Iowa Code section 239.5.

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CHAPTER 44

Rescinded, effective 10/1/85

CHAPTER 45

[Ch 45, January 1974 IDR Supplement, renumbered as (770), Ch 42]

PAYMENT

[Prior to 7/1/83, Social Services(770), Ch 45]
[Prior to 2/11/87, Human Services(498)]

441—45.1(239) Address. Assistance warrants shall be mailed to the recipient's current address or, upon request, to a post office box, bank, or to any other address for which the recipient has good reason for the request. Assistance warrants shall be mailed to the protective payee, conservator, or guardian (if applicable) in cases involving said persons.

441—45.2(239) Return. Assistance warrants are not forwardable. When they cannot be delivered by the post office, they shall be returned to either the local office or to the central office.

441—45.3(239) Held warrants. A warrant may be held by the department only in the following instances:

45.3(1) The recipient's whereabouts is unknown.

45.3(2) The recipient is not in the home due to an emergency and it is not known who will be serving as emergency payee.

441—45.4(239) Underpayment. A corrective payment shall be made when the recipient receives a payment in an amount less than that for which the recipient was eligible due to an administrative error or the recipient reports the completion of the federal tax return requiring repayment to internal revenue service of excess advance earned income credit payments received in the prior calendar year.

45.4(1) An underpayment may be attributed to the local office as a result of one of the following circumstances:

a. Misfiling or loss of forms or documents.

b. Errors in typing or copying.

c. Computer input errors.

d. Mathematical errors.

e. Failure to certify assistance in the correct amount when all essential information was available to the local office.

f. Failure to make prompt revisions in grants following changes in policies requiring the changes as of a specific date.

45.4(2) Conditions under which a retroactive corrective payment may be made.

a. Retroactive corrective payments shall be made to currently eligible recipients or to those who would be currently eligible if an administrative error had not occurred.

b. Any retroactive corrective payment for which the recipient is eligible shall first be applied to any unpaid overpayment before the balance, if any, is paid to the recipient.

c. Retroactive corrective payments shall be made only for the twelve (12) months preceding the month in which the underpayment is discovered when the underpayment was discovered on or before January 31, 1985. Retroactive corrective payments shall be made for all months preceding the month in which the underpayment was discovered when the underpayment was discovered on or after February 1, 1985.

45.4(3) The amount of the corrective payment to the recipient for repayment to internal revenue service of excess advance earned income credit payments shall be computed on the basis of the earnings considered in determining the aid-to-dependent-children grant for the prior year.

45.4(4) A retroactive corrective payment is:

a. Exempt from consideration as income.

b. Exempt from consideration as a resource in the month received and the following month.

441—45.5(239) Deceased or canceled cases. A retroactive corrective payment or a special allowance shall be made for deceased or canceled cases only when the payment was approved by the local office prior to the recipient's death or cancellation.

441—45.6(239) Limitation on payment. A payment shall be made to an eligible recipient only when the amount of the assistance is ten dollars ($10) or more.

441—45.7(239) Rounding of need standard and payment amount. The need standard and monthly payment amount must be rounded down to the next whole dollar when the result of determining the standard of need or the payment amount is not a whole dollar.

These rules are intended to implement Iowa Code sections 239.2 and 239.5.

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CHAPTER 46
RECOUPMENT

[Prior to 7/1/83, Social Services(770), Ch 46]
[Prior to 2/11/87, Human Services(498)]

441—46.1(239) Definitions.

"Agency error" in overpayments means: (a) The same as circumstances described in 45.4(1) pertaining to underpayments, or (b) any error that is not a client or procedural error.

"Client" means a current or former applicant or recipient of aid to dependent children.

"Client error" means and may result from:

False or misleading statements, oral or written, regarding the client's income, resources, or other circumstances which may affect eligibility or the amount of assistance received;

Failure to timely report changes in income, resources, or other circumstances which may affect eligibility or the amount of assistance received;

Failure to timely report the receipt of and, if applicable, to refund assistance in excess of the amount shown on the most recent Notice of Decision, Form PA-3102-0, or the receipt of a duplicate warrant; or

Failure to refund to the child support recovery unit any payment from the absent parent received after the date the decision on eligibility was made.

False or misleading statements regarding the existence of a sponsor or the income or resources of the sponsor and the sponsor's spouse, when a sponsor is financially responsible for an alien according to 41.5(6) and 41.7(10).

"Good cause" for not reporting income or resources means the change results in a monthly error of less than ten dollars ($10).

"Overpayment" means any assistance payment received in an amount greater than the amount the eligible group is entitled to receive.

"Procedural error" means: A technical error which does not in and of itself result in an overpayment. Procedural errors include:

Failure to secure a properly signed application at the time of initial application or reapplication.

Failure to require an application when a new person is added to the eligible group or when a parent or a stepparent becomes a member of the household.

Failure of the local office to conduct the face-to-face interviews described in subrules 40.4(2) and 40.7(1).

Failure to request a Public Assistance Eligibility Report at the time of a monthly or six (6) month review.

Failure of local office staff to cancel aid to dependent children when the client submits a Public Assistance Eligibility Report which is not complete as defined in 40.7(4)*"b."* However overpayments of grants as defined above based on incomplete reports are subject to recoupment.

"Recoup" means reimburse, return, or repay an overpayment.

"Recoupment" means the repayment of an overpayment, either by a payment from the client or an amount withheld from the assistance warrant or both.

"Without fault" means an alien's sponsor is "without fault" when the department fails to determine that an alien has a sponsor, fails to determine that an alien sponsored by an agency or organization is ineligibile for assistance in accordance with 41.5(6), fails to count the sponsor's income in accordance with 41.7(10) and resources in accordance with 41.6(9) in determining the alien's eligibility or an overpayment results from an agency error.

441—46.2(239) Monetary standards.

46.2(1) *Amount subject to recoupment.* All aid-to-dependent-children overpayments shall be subject to recoupment.

46.2(2) *Warrant issued.* When recoupment is made by withholding from the aid-to-dependent-children grant, the warrant issued shall be for no less than ten dollars ($10).

441—46.3(239) Notification. All clients shall be promptly notified when it is determined that an overpayment exists. Notification shall include the dates of the overpayment, the amount of overpayment subject to recoupment, and the reason for the overpayment. The local office shall notify the client by means of the Notice of Overpayment, Form PA-3170-0, when an overpayment exists. The client shall simultaneously be sent a worksheet showing the computation of the overpayment.

441—46.4(239) Determination of overpayments. All overpayments due to agency or client error or due to assistance paid pending an appeal decision or due to assistance paid while real property is exempt as a resource in accordance with subrule 41.6(6)*"d"* shall be recouped. A procedural error alone does not result in an overpayment.

46.4(1) *Agency error.* When an overpayment is due to an agency error recoupment shall be made, including those instances when errors by the department prevent the requirements in subrules 41.2(6) or 41.2(7) from being met or when the client receives a duplicate warrant. An overpayment of any amount is subject to recoupment with one exception: When the client receives a warrant that exceeds the amount on the most recent notice from the department, recoupment shall be made only when the amount received exceeds the amount on the notice by ten dollars ($10) or more. The client is required to timely report receipt of excess assistance under 40.7(4). An overpayment due to agency error shall be computed as if the information had been acted upon timely.

46.4(2) *Assistance paid pending appeal decision.* Recoupment of overpayments resulting from assistance paid pending a decision on an appeal hearing shall begin no later than the month after the month in which the final decision is issued.

46.4(3) *Client error.*

a. An overpayment due to client error shall be computed as if the information had been reported and acted upon timely. Exception: When the client, without good cause, as defined in 41.7(2)*"d"*(2), fails to report income earned as specified in subrule 41.7(2)*"d"*(2), the deductions in subrule 41.7(2)*"a"*, *"b"* and *"c"* shall not be allowed.

b. Overpayments due to failure to refund payments received from the absent parent shall be the total support payment made for members of the eligible group at the time the support payment was received. In addition, assistance payments made to meet the needs of the recipient or eligible group may also be subject to recoupment under provisions in 41.2(6) and 41.7(8).

46.6(4) *Failure to cooperate.* Failure to cooperate in the investigation of alleged overpayments shall result in ineligibility for the months in question and the overpayment shall be the total amount of assistance received during those months.

46.4(5) *Overpayment in special alien cases.*

a. Overpayment in special alien cases when the sponsor is an individual. An overpayment due to client error regarding the income and resources of the alien's sponsor and the sponsor's spouse shall be recouped from the alien or from the resources of the sponsor and the sponsor's spouse which were available to the alien according to 41.6(9). Exception: When the sponsor is found to have "good cause" or to be "without fault" recoupment shall be from the alien.

b. Overpayment in special alien cases when the sponsor is an agency or organizaton. An overpayment due to the sponsor's failure to provide correct information shall be recouped from the alien or from the resources of the sponsor. An overpayment due to client error regarding the sponsor's ability to support the alien shall be recouped from the alien or resources of the sponsor. Exception: When the sponsor is found to have "good cause" or to be "without fault" the recoupment shall be from the alien.

46.4(6) *Real property exempted as a resource.* Excess assistance paid while real property is exempt as a resource in accordance with subrule 41.6(6)*"d"* shall be recouped. The amount of the overpayment shall be determined as follows:

a. If the applicant or recipient fails to reimburse the department from the net proceeds of the sale, aid-to-dependent-children assistance paid during the period of exemption shall be

considered an overpayment subject to recovery. The amount of the overpayment shall be either the amount of cash assistance received or the net proceeds from the sale, whichever is less.

b. If the property is not disposed of during the exemption period, or if eligibility no longer exists for some other reason, the entire amount of cash assistance received during the exemption period shall be considered an overpayment subject to recovery. Recoupment, however, shall not be initiated until the property is disposed of.

441—46.5(239) Source of recoupment. Recoupment shall be made from basic needs or in accordance with 46.4(5) above. The minimum recoupment amount shall be the amount prescribed in 46.5(3). Regardless of the source, the client may choose to make a lump sum payment, make periodic installment payments when an agreement to do this is made with the office of investigations, or have repayment withheld from the warrant. The client shall sign either Form PA-3164-0, Agreement to Repay Overpayment or Form PA-3167-0, Agreement to Repay Overpayment after Probation, when requested to do so by the office of investigations. When the client fails to make the agreed upon payment, the agency shall reduce the warrant. Recoupment, whether it be by a lump sum payment, periodic installment payments, or withholding from the warrant, can be made from one or both of the following sources:

46.5(1) and 46.5(2) Rescinded, effective February 8, 1984.

46.5(3) *Basic needs.*

a. Recoupment by withholding from basic needs for overpayments due to client error or a combination of client and agency errors shall be ten percent (10%) of the basic needs standard in accordance with the schedule in subrule 41.8(2), unless the client elects to have more withheld.

b. Recoupment by withholding from basic needs for overpayments due to the continuation of benefits pending a decision on an appeal as provided under rule 7.9(217) or a combination of continued benefits and agency or client errors shall be ten percent (10%) of the basic needs standard in accordance with the schedule in subrule 41.8(2), unless the client elects to have more withheld.

c. Recoupment by withholding from basic needs for overpayments due to agency error shall be one percent (1%) of the basic needs standard in accordance with the schedule in subrule 41.8(2), unless the client elects to have more withheld.

d. When the client fails to reimburse the department in accordance with subrule 41.6(6)*"d"* recoupment shall be made. The amount of the overpayment shall be determined in accordance with subrule 46.4(6). The amount of recoupment from basic needs shall be ten percent (10%) of the basic needs standard in accordance with the schedule in subrule 41.8(2) unless the client elects to have more withheld.

46.5(4) *Recoupment in special alien cases.*

a. Recoupment in special alien cases when the sponsor is an individual. Recoupment shall be made from the resources deemed to an alien according to 41.6(9) when

(1) The sponsor is financially responsible for the alien according to 41.7(10),

(2) The alien and sponsor failed to provide accurate information regarding the sponsor's income or resources, and

(3) An overpayment resulted.

When recoupment is to be made from the resources deemed to an alien, the case shall be referred to the office of investigations for investigation, recoupment, or referral for possible prosecution.

b. Recoupment in special alien cases when the sponsor is an agency or organization. Recoupment shall be made from the resources of the sponsor when

(1) The sponsor is financially responsible for the alien in accordance with 41.5(6).

(2) The alien or sponsor failed to provide accurate information regarding the sponsor's ability to support the alien, and

(3) An overpayment resulted.

When recoupment is to be made from the sponsor's resources, the case shall be referred to the department of inspections and appeals for investigation, recoupment, or referral for possible prosecution.

441—46.6(239) Rescinded, effective February 8, 1984.

441—46.7(239) Procedures for recoupment.

46.7(1) *Initiating recoupment.* When the local office starts recoupment proceedings, recoupment shall begin as soon as the amount of the overpayment has been established.

46.7(2) *Referral.* When the local office does not start recoupment proceedings, the case shall be referred to the department of inspections and appeals for investigation, recoupment, or referral for possible prosecution.

46.7(3) *Canceled cases.* Canceled cases with unpaid overpayment shall be referred to the department of inspections and appeals for investigation, recoupment, or referral for possible prosecution. When a canceled case with an unpaid overpayment is reopened, responsibility for recoupment may be transferred to the local office to begin or continue recoupment according to these rules.

46.7(4) *Change of circumstances.* When financial circumstances change, the recoupment plan is subject to revision.

46.7(5) *Collection.* Recoupment for overpayments shall be made from the parent or nonparental relative who was the caretaker relative, as defined in 41.2(3), at the time the overpayment occurred, except as provided in 46.4(5). When both parents were in the home at the time the overpayment occurred, both parents are equally responsible for repayment of the overpayment.

46.7(6) *Suspension and waiver.* Recoupment will be suspended on nonfraud overpayments when the case is canceled and the amount of the overpayment is less than thirty-five dollars ($35). If the case is reopened within three (3) years, recoupment is initiated again. Recoupment will be waived on overpayments which have been held in suspense for three (3) years.

441—46.8(239) Appeals. The client has the right to appeal the amount of the overpayment and the amount to be withheld from the warrant.

These rules are intended to implement Iowa Code sections 239.2, 239.5, 239.6, 239.14 and 239.17, 45 CFR 233.20(a)(12), and 1983 Iowa Acts, chapter 201, section 3.

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Chapters 47 to 49
Reserved.

TITLE V
STATE SUPPLEMENTARY ASSISTANCE

CHAPTER 50
APPLICATION FOR ASSISTANCE

[Prior to 7/1/83, Social Services(770), Ch 50]
[Prior to 2/11/87, Human Services(498)]

441—50.1(249) Definitions.

"Payment for residential care" shall mean payment to a recipient living in a residential care facility who is determined to be in need of care and payment is made on a per diem basis.

"Payment for a protective living arrangement" shall mean payment to a recipient living in a family life home. The payment shall be made in accordance with standards established by the department by rule in chapter 52.

"Payment for a dependent relative" shall mean payment to a recipient on behalf of a dependent relative as defined in Iowa Code section 249.3(3).

This rule is intended to implement Iowa Code section 249.3.

441—50.2(249) Application procedures.

50.2(1) In order to be eligible for state supplementary assistance, an aged, blind, or disabled person with need for a living arrangement as defined in Iowa Code section 249.3 shall be receiving supplemental security income benefits or shall meet all eligibility requirements for the benefits other than income, but have less income than the standards for the living arrangements as set forth in rules chapter 52 and chapter 177.

a. Payments for mandatory supplementation, blind allowance, dependent relative allowance, and the family life home program shall be federally administered. Income excluded in determining eligibility for or the amount of a supplemental security income benefit shall be excluded in determining eligibility for or the amount of the state payment.

b. Payments for in-home-health related care and residential care shall be state administered. Income excluded in determining eligibility for or the amount of a supplemental security income benefit, except the twenty dollar ($20) exclusion of any income, shall be excluded in determining eligibility for or the amount of the state payment.

50.2(2) Any person applying for payment for a protective living arrangement or payment for a dependent relative shall make application for supplemental security income at the social security administration district office. The local office of the department of human services shall certify to the social security administration as to the nature of the living arrangement or the status of the dependent.

50.2(3) Any person applying for payment for residential care or dependent person allowance shall make application at the local office of the department of human services. Any person applying for payment for a protective living arrangement or in-home-health related care, whose income exceeds supplemental security income payment standards, shall make application at the local office of the department of human services. The application shall be made on the Application for Medical Assistance or State Supplementary Assistance, PA-1107-0, provided by the department.

a. Each individual wishing to do so shall have the opportunity to apply for assistance without delay.

b. An applicant may be assisted by other individuals in the application process; the client may be accompanied by the individuals in contact with the local office, and when so accompanied, may also be represented by them. When the applicant has a guardian, the guardian shall participate in the application process.

c. The applicant shall immediately be given an application form to complete. When the applicant requests that the forms be mailed, the local office shall send the necessary forms in the next outgoing mail.

d. The decision with respect to eligibility shall be based primarily on information furnished by the applicant. The local office shall notify the applicant in writing of additional information or verification that is required to establish eligibility for assistance. Failure of the applicant to supply the information or refusal to authorize the local office to secure the information from other sources shall serve as a basis for denial of assistance.

This rule is intended to implement Iowa Code section 249.4.

441—50.3(249) Approval of application.

50.3(1) Payment for a protective living arrangement or payment for a dependent relative shall be effective as of the date of application or the date of eligibility, whichever is later.

50.3(2) Payment for residential care shall be effective as of the date of application or the date of eligibility, whichever is later.

50.3(3) The application for residential care shall be approved or denied within five (5) working days after the Social Security Administration approves supplemental security income benefits. When supplemental security income benefits will not be received, the application shall be approved or denied within five (5) working days from the date of establishment of all eligibility factors.

This rule is intended to implement Iowa Code section 249.4.

441—50.4(249) Reviews.

50.4(1) Any eligibility factor shall be reviewed whenever a change in circumstances occurs.

50.4(2) All eligibility factors shall be reviewed at least annually.

This rule is intended to implement Iowa Code section 249.4.

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CHAPTER 51
ELIGIBILITY

[Prior to 7/1/83, Social Services(770), Ch 51]
[Prior to 2/11/87, Human Services(498)]

441—51.1(249) Application for other benefits. An applicant or any other individual whose needs are included in determining the state supplementary assistance payment must have applied for or be receiving all other benefits for which the individual may be eligible.

441—51.2(249) Supplementation. Any supplemental payment made from any source shall be considered as income, and the payment shall be used to reduce the state supplementary assistance payment.

441—51.3(249) Eligibility for residential care.

51.3(1) *Licensed facility.* Payment for residential care shall be made only when the facility in which the applicant or recipient is residing is currently licensed by the department of inspections and appeals pursuant to laws governing health care facilities.

51.3(2) *Physician's statement.* Payment for residential care shall be made only when there is on file an order written by a physician certifying that the applicant or recipient being admitted requires residential care but does not require nursing services. The certification shall be updated whenever a change in the recipient's physical condition warrants reevaluation, but no less than every twelve (12) months.

51.3(3) *Spouse's income.* The income of a spouse, with whom the resident would be living if not in a residential care facility, shall be considered available on a monthly basis to the applicant or recipient after the following monthly deductions.

a. The amount of the basic supplemental security income standard for one (1) person.

b. The amount of disregard of income allowed under supplemental security income.

c. The amount of the supplemental security income standard for a dependent for each dependent living in the home with the spouse.

d. The amount of established medical needs for the applicant or recipient, spouse, and each dependent which are not otherwise met.

e. When income is earned, $65 plus one-half of any remaining earned income.

51.3(4) *Diversion of income.* When the spouse's income is less than the amounts deducted in 51.3(3), income of the recipient above the recipient's personal needs allowance shall be diverted to meet the unmet needs of the spouse and dependents as established by 51.3(3), paragraphs *"a"*, *"c"* and *"d"*.

51.3(5) *Resources.* When the applicant or recipient in a residential care facility has a spouse with whom the resident would be living if not in a residential care facility, the applicable resource limitation shall be that established under supplemental security income for a couple living together.

This rule is intended to implement Iowa Code section 249.3.

441—51.4(249) Dependent relatives.

51.4(1) *Income.* Income of a dependent relative shall be less than $170. When the dependent's income is from earnings, an exemption of $65 shall be allowed to cover work expense.

51.4(2) *Resources.* The resource limitation for a recipient and a dependent child or parent shall be $1,800. The resource limitation for a recipient and a dependent spouse shall be $2,700. The resource limitation for a recipient, spouse, and dependent child or parent shall be $2,700.

51.4(3) *Living in the home.* A dependent relative shall be eligible until out of the recipient's home for a full calendar month starting at 12:01 a.m. on the first day of the month until 12:00 midnight on the last day of the same month.

51.4(4) *Dependency.* A dependent relative may be the recipient's ineligible spouse, parent, child, or adult child who is financially dependent upon the recipient. A relative shall not be considered to be financially dependent upon the recipient when the relative is living with a spouse who is not the recipient.

This rule is intended to implement Iowa Code sections 249.3 and 249.4.

441—51.5(249) Residence. A recipient of state supplementary assistance shall be living in the state of Iowa.

This rule is intended to implement Iowa Code section 249.3.

441—51.6(249) Lump sum payment. A nonrecurring lump sum payment shall be treated as a resource.

This rule is intended to implement Iowa Code section 249.3.

441—51.7(249) Income from providing room and board. In determining profit from furnishing room and board or providing family life home care, $170 per month shall be deducted to cover the cost, and the remaining amount treated as earned income.

This rule is intended to implement Iowa Code sections 249.3 and 249.4.

441—51.8(249) Furnishing of social security number. As a condition of eligibility applicants or recipients of state supplementary assistance must furnish their social security account numbers or proof of application for the numbers if they have not been issued or are not known and provide their numbers upon receipt.

Assistance shall not be denied, delayed, or discontinued pending the issuance or verification of the numbers when the applicants or recipients are cooperating in providing information necessary for issuance of their social security numbers.

This rule is intended to implement Iowa Code sections 249.3 and 249.4.

441—51.9(249) Recovery.

51.9(1) *Definitions.*

"Administrative overpayment" means assistance incorrectly paid to or for the client because of continuing assistance during the appeal process.

"Agency error" means assistance incorrectly paid to or for the client because of action attributed to the department as the result of one or more of the following circumstances:

1. Misfiling or loss of forms or documents.
2. Errors in typing or copying.
3. Computer input errors.
4. Mathematical errors.
5. Failure to determine eligibility correctly or to certify assistance in the correct amount when all essential information was available to the local office.
6. Failure to make prompt revisions in payment following changes in policies requiring the changes as of a specific date.

"Client" means a current or former applicant or recipient of state supplementary assistance.

"Client error" means assistance incorrectly paid to or for the client because the client or client's representative failed to disclose information, or gave false or misleading statements, oral or written, regarding the client's income, resources, or other eligibility and benefit factors. It also means assistance incorrectly paid to or for the client because of failure by the client or client's representative to timely report as defined in rule 441—76.10(249A).

"Department" means the department of human services.

51.9(2) *Amount subject to recovery.* The department shall recover from a client all state supplementary assistance funds incorrectly expended to or on behalf of the client. The incorrect expenditures may result from client or agency error, or administrative overpayment.

51.9(3) *Notification.* All clients shall be promptly notified when it is determined that assistance was incorrectly expended. Notification shall include for whom assistance was paid, the time period during which assistance was incorrectly paid; the amount of assistance subject to recovery, when known; and the reason for the incorrect expenditure.

51.9(4) *Source of recovery.* Recovery shall be made from the client or from parents of children under age twenty-one (21) when the parents completed the application and had responsibility for reporting changes. Recovery may come from income, resources, the estate, income tax refunds, and lottery winnings of the client.

51.9(5) *Repayment.* The repayment of incorrectly expended state supplementary assistance funds shall be made to the department.

51.9(6) *Appeals.* The client shall have the right to appeal the amount of funds subject to recovery under the provisions of 441—chapter 7.

This rule is intended to implement Iowa Code sections 249.3 and 249.4.

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CHAPTER 52
PAYMENT

[Prior to 7/1/83, Social Services(770), Ch 52]
[Prior to 2/11/87, Human Services(498)]

441—52.1(249) Assistance standards. Assistance standards are the amounts of money allowed on a monthly basis to recipients of state supplementary assistance in determining financial need and the amount of assistance granted.

52.1(1) *Protective living arrangement.* The following assistance standards have been established for state supplementary assistance for individuals living in a protective living arrangement:

Family life home certified under rules in chapter 111.

$378.20	care allowance
44.00	personal allowance
$422.20	Total

52.1(2) *Dependent relative.* The following assistance standards have been established for state supplementary assistance for dependent relatives residing in a recipient's home.

a. Aged or disabled client and a dependent relative $510.00
b. Aged or disabled client, eligible spouse, and a dependent relative..... $680.00
c. Blind client and a dependent relative $532.00
d. Blind client, aged or disabled spouse and a dependent relative $702.00
e. Blind client, blind spouse and a dependent relative $724.00

52.1(3) *Residential care.* Payment to a recipient in a residential care facility shall be made on a flat per diem rate of $12.35 or on a cost-related reimbursement system with a maximum reimbursement per diem rate of $17.28. A cost-related per diem rate shall be established for each facility choosing this method of payment according to rule 54.3(249). After the rate is established as determined above, state supplementary assistance payments made to recipients shall be reduced by a factor of three and eighty-five hundredths percent (3.85%). The facility shall make no charge to the recipient to defray this reduction.

The facility shall accept the per diem rate established by the department for state supplementary assistance recipients and make no additional charges to the recipient.

a. All available income of a recipient after applicable disregards shall be applied to meet the cost of care before payment is made through the state supplementary assistance program.

(1) Residents in the following situations shall apply income toward the cost of care beginning with the month of approval in the following circumstances:

1. Persons eligible for state supplementary assistance transferring from an intermediate care facility to a residential care facility or from one residential care facility to another.
2. Residents changing from private payment status to state supplementary assistance status while residing in a residential care facility.
3. Residents moving from an independent living arrangement to a residential care facility may retain enough of the first month's income to meet the maintenance or living expenses connected with the previous living arrangement. In these cases the department shall determine how much of the resident's income is available for first-month client participation.

(2) The income of the resident shall have the following monthly disregards:

1. $44.00 allowance to meet personal expenses.
2. When income is earned, $65.00 plus one-half of any remaining earned income.
3. Established unmet medical needs, excluding private health insurance.
4. Funds to meet the basic needs of dependents living in the home of the recipient according to subrule 51.3(4).

b. Payment is made for only the days the recipient is a resident of the facility. Payment shall be made for the date of entry into the facility, but not the date of death or discharge.

c. Payment shall be made in the form of a grant to the recipient on a post payment basis.

d. Eligibility for payment is based on a thirty-one (31)-day month. When income is sufficient to pay the cost of care in a month with less than thirty-one (31) days, no state supplementary assistance payment shall be made, but the recipient shall remain eligible for all other benefits of the program.

e. Payment will be made for periods the resident is absent overnight for the purpose of visitation or vacation. The facility will be paid to hold the bed for a period not to exceed thirty (30) days during any calendar year, unless the department of human services caseworker has devised a service plan which justifies the allowance of additional leave. The number of days for which a recipient is eligible is based upon the date of entry into the program at the rate of two and one-half (2½) days per month for the remaining months in the current calendar year.

f. Payment will be made for a period not to exceed ten (10) days in any calendar month when the resident is absent due to hospitalization. Payment will not be authorized for over ten (10) days for any continuous hospital stay whether or not the stay extends into a succeeding month or months.

g. The per diem rate established for recipients of state supplementary assistance shall not exceed the average rate established by the facility for private pay residents.

(1) Residents placed in a facility by another governmental agency are not considered private paying individuals. Payments received by the facility from such an agency shall not be included in determining the average rate for private paying residents.

(2) To compute the facility-wide average rate for private paying residents, the facility shall accumulate total monthly charges for those individuals over a six (6)-month period and divide by the total patient days care provided to this group during the same period of time.

52.1(4) *Blind.* The standard for a blind recipient not receiving another type of state supplementary assistance is twenty-two dollars ($22) per month.

52.1(5) *In-home health related care.* Payment to a person receiving in-home health related care shall be made in accordance with rules in chapter 177.

52.1(6) *Minimum income level cases.* The income level of those persons receiving old age assistance, aid to the blind, and aid to the disabled in December 1973 shall be maintained at the December 1973 level as long as the recipient's circumstances remain unchanged and that income level is above current standards. In determining the continuing eligibility for the minimum income level, the income limits, resource limits, and exclusions which were in effect in October 1972 shall be utilized.

This rule is intended to implement Iowa Code sections 234.6, 234.38, 249.2, 249.3 and 249.4, 249A.4 and 1986 Iowa Acts, chapter 1246, sections 309 and 314.

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CHAPTER 53

[Ch 53, IDR 1973, renumbered as (770) Ch 7]

Reserved

CHAPTER 54
FACILITY PARTICIPATION

[Prior to 7/1/83, Social Services(770), Ch 54]
[Prior to 2/11/87, Human Services(498)]

441—54.1(249) Application and contract agreement. Each facility desiring to particpate in the state supplementary assistance program must enter into a contract with the department of human services and agree to the provisions as enumerated in Form PA-1108-6, Application and Contract Agreement for Residential Care Facilities. The effective date of the contract shall be the first of the month that the Application and Contract Agreement for Residential Care Facilities, signed by the administrator of the facility, is received by the department. No payment shall be made for care provided before the effective date of the contract. The contract shall be for a term of twelve (12) months, subject to renewal; or until the department ceases to participate in the program; or until either party gives sixty (60) days notice of termination in writing to the other party.

This rule is intended to implement Iowa Code section 249.12.

441—54.2(249) Maintenance of case records. A facility must maintain a case folder for each individual residing in the facility which contains the following:

1. Contract between the facility and the resident on Form PA-2365-6, Admission Agreement.
2. Physician's statement certifying that the resident does not require nursing services.
3. Proof of expenditures from resident's "personal needs" allowance.

This rule is intended to implement Iowa Code section 249.12.

441—54.3(249) Financial and statistical report. All facilities wishing to participate in the program shall submit a Financial and Statistical Report for Residential Care Facilities, Form AA-4038-0, to the department. The reports shall be based on the following rules.

54.3(1) *Failure to maintain records.* Failure to adequately maintain fiscal records, including census records, medical charts, ledgers, journals, tax returns, canceled checks source documents, invoices, and audit reports by or for a facility may result in the penalties specified in subrule 54.8(1).

54.3(2) *Accounting procedures.* Financial information shall be based on that appearing in the audited financial statement. Adjustments to convert to the accrual basis of accounting shall be made when the records are maintained on other accounting basis. Residential care facilities which are a part of a health facility providing nursing home services are not required to file Form AA-4038-0, Financial and Statistical Report for Residential Care Facilities. Combination facilities shall continue to file Form AA-4036-0, Financial and Statistical Report for Nursing Homes.

54.3(3) *Submission of reports.* The report shall be submitted to the department of human services no later than three (3) months after the close of each six (6)-month period of the facility's established fiscal year. Failure to submit the report within the three (3)-month period shall reduce payment to seventy-five percent (75%) of the current rate. The reduced rate shall be paid for no longer than three (3) months, after which time no further payments shall be made.

54.3(4) *Payment at new rate.* When a new rate is established, payment at the new rate shall be effective with services rendered as of the first day of the month in which the report was received by the department of human services. Adjustments shall be included in the payment the third month after the receipt of the report.

54.3(5) *Accrual basis.* Facilities not using the accrual basis of accounting shall adjust recorded amounts to the accrual basis. Records of cash receipts and disbursements shall be adjusted to reflect accruals of income and expense.

54.3(6) *Census of public assistance recipients.* Census figures of public assistance recipients shall be obtained on the last day of the month ending the reporting period.

54.3(7) *Patient days.* In determining in-patient days, a patient day is that period of service rendered a patient between the census taking hours on two (2) successive days, the day of discharge being counted only when the patient was admitted that same day.

54.3(8) *Opinion of accountant.* The department may require that an opinion of a certified public accountant or public accountant accompany the report when adjustments made to prior reports indicate disregard of the certification and reporting instructions.

54.3(9) *Calculating patient days.* When calculating patient days, facilities shall use an accumulation method.

a. Census information shall be based on a patient status at midnight each day. A patient whose status changes from one class to another shall be shown as discharged from the previous status and admitted to the new status on the same day.

b. When a recipient is on a reserved bed status and the department of human services is paying on a per diem basis for the holding of a bed, or any day a bed is reserved for a public assistance or nonpublic assistance resident and a per diem rate for the bed is charged to any party, reserved days shall be included in the total census figures for in-resident days.

54.3(10) *Revenues.* Revenues shall be reported as recorded in the general books and records. Expense recoveries credited to expense accounts shall not be reclassified in order to be reflected as revenues.

a. Routine daily services shall represent the established charge for daily care. Routine daily services are those services which include room, board, and such services as supervision, feeding, and similar services.

b. Revenue not related to resident care shall be applied in reduction of the related expense.

c. Investment income adjustment is necessary only when interest expense is incurred, and only to the extent of the interest expense.

d. Accounts receivable charged off or provision for uncollectible accounts shall be reported as a deduction from gross revenue.

54.3(11) *Limitation of expenses.* Certain expenses that are not normally incurred in providing resident care shall be eliminated or limited according to the following rules.

a. Federal and state income taxes are considered in computing the fee for services for proprietary institutions.

b. Fees paid directors and nonworking officer's salaries are not allowed as reimbursable costs.

c. Bad debts are not an allowable expense.

d. Charity allowances and courtesy allowances are not an allowable expense.

e. Personal travel and entertainment are not allowable as reimbursable costs. Certain expenses such as rental or depreciation of a vehicle and expenses of travel which include both business and personal costs shall be prorated. Amounts which appear to be excessive may be limited after consideration of the specific circumstances. Records shall be maintained to substantiate the indicated charges.

(1) Commuter travel by the owner(s), owner-administrator(s), administrator, nursing director or any other employee is not an allowable cost (from private residence to facility and return to residence).

(2) The expense of one car or one van or both designated for use in transporting patients shall be an allowable cost. All expenses shall be documented by a sales slip, invoice or other document setting forth the designated vehicle as well as the charges incurred for the expenses to be allowable.

(3) Each facility which supplies transportation services as defined in Iowa Code section 601J.1, subsection 1, shall provide current documentation of compliance with or exemption from public transit coordination requirements as found in Iowa Code chapter 601J and 820—[09, A] chapter 2 of the department of transportation rules at the time of annual contract renewal. Failure to cooperate in obtaining or in providing the required documentation of compliance or exemption after receipt from the Iowa department of transportation, public transit division shall result in disallowance of vehicle costs and other costs associated with transporting residents.

(4) Expenses related to association business meetings, limited to individual members of the association who are members of a national affiliate, and expenses associated with workshops, symposiums, and meetings which provide administrators or department heads with hourly credits required to comply with continuing education requirements for licensing, are allowable expenses.

(5) Travel of an emergency nature required for supplies, repairs of machinery or equipment, or building is an allowable expense.

(6) Travel for which a patient must pay is not an allowable expense.

(7) Allowable expenses in subparagraphs (2) to (5) above are limited to six percent (6%) of total administrative expense.

f. Entertainment provided by the facility for participation of all residents who are physically and mentally able to participate is an allowable expense except entertainment for which the patient is required to pay is not an allowable expense.

g. Loan acquisition fees and standby fees are not considered part of the current expense of patient care, but should be amortized over the life of the related loan.

h. A reasonable allowance of compensation for services of owners is an allowable cost, provided the services are actually performed in a necessary function. Adequate time records shall be maintained. Adjustments may be necessary to provide compensation as an expense for nonsalaried working proprietors and partners. Members of religious orders serving under an agreement with their administrative office are allowed salaries paid persons performing comparable services. When maintenance is provided these persons by the facility, consideration shall be given to the value of these benefits and this amount shall be deducted from the amount otherwise allowed for a person not receiving maintenance.

(1) Compensation means the total benefit received by the owner for the services rendered to the facility. It includes salary amounts paid for managerial, administrative, professional, and other services; amounts paid by the facility for the personal benefit of the proprietor; the cost of assets and services which the proprietor receives from the facility; and deferred compensation.

(2) Reasonableness requires that the compensation allowance be such an amount as would ordinarily be paid for comparable services by comparable facilities, and depends upon the facts and circumstances of each case.

(3) Necessary requires that the function be such that had the owner not rendered the services, the facility would have had to employ another person to perform the service, and be pertinent to the operation and sound conduct of the facility.

(4) The maximum allowed compensation for the administrator is $1,250 per month plus $13 per month per bed licensed capacity for each bed over sixty (60) not to exceed $1,775 per month.

i. Management fees shall be computed on the same basis as the administrator's salary but shall have the amount paid the resident administrator deducted. When the parent company can separately identify accounting costs, such costs are allowed.

j. Depreciation based upon tax cost using only the straight-line method of computation, recognizing the estimated normal life of the asset, may be included as a resident cost. When accelerated methods of computation have been elected for income tax purposes, an adjustment shall be made. For change of ownership, refer to 54.3(12)*"b"* and *"c"*.

k. Necessary and proper interest on both current and capital indebtedness is an allowable cost.

(1) Interest is the cost incurred for the use of borrowed funds. Interest on current indebtedness is the cost incurred for funds borrowed for a relatively short term. Interest on capital indebtedness is the cost incurred for funds borrowed for capital purposes.

(2) "Necessary" requires that the interest be incurred on a loan made to satisfy a financial need of the provider, be incurred on a loan made for a purpose reasonably related to resident care.

(3) "Proper" requires that interest be incurred at a rate not in excess of what a prudent borrower would have had to pay in the money market on the date the loan was made, and be paid to a lender not related through control or ownership to the borrowing organization.

(4) Interest on loans is allowable as cost at a rate not in excess of the amount an investor could receive on funds invested in the locality on the date the loan was made.

(5) Interest is an allowable cost when the general fund of a provider borrows from a donor-restricted fund, a funded depreciation account of the provider, or the provider's qualified pension fund, and pays interest to such fund, or when a provider operated by members of a religious order borrows from the order.

(6) When funded depreciation is used for purposes other than improvement, replacement or expansion of facilities or equipment related to resident care, allowable interest expense is reduced to adjust for offsets not made in prior years for earnings on funded depreciation. A similar treatment will be accorded deposits in the provider's qualified pension fund where the deposits are used for other than the purpose for which the fund was established.

l. Costs applicable to supplies furnished by a related party or organization are a reimbursable cost when included at the cost to the related party or organization. The cost shall not exceed the price of comparable supplies that could be purchased elsewhere.

(1) Related means that the facility, to a significant extent, is associated with or has control of or is controlled by the organization furnishing the services, facilities, or supplies.

(2) Common ownership exists when an individual or individuals possess significant ownership or equity in the facility and the institution or organization serving the provider.

(3) Control exists where an individual or an organization has power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution.

(4) When the facility demonstrates by convincing evidence that the supplying organization is a bona fide separate organization; that a substantial part of its business activity of the type carried on with the facility is transacted with others and there is an open competitive market for the type of services, facilities, or supplies furnished by the organization; that the services, facilities, or supplies are those which commonly are obtained by similar institutions from other organizations and are not a basic element of resident care ordinarily furnished directly to residents by such institutions; and that the charge to the facility is in line with the charge for these services, facilities, or supplies in the open market and no more than the charge made under comparable circumstances to others by the organization for these services, facilities, or supplies, the charges by the supplier shall be allowable costs.

m. When the operator of a participating facility rents from a nonrelated party, the amount of rent or lease expense allowable on the cost report shall be based on either of the following methods at the discretion of the operator:

(1) Actual rent expense or portion thereof so that total property cost does not exceed the median property cost of all participating facilities as adjusted annually based on cost reports on file with the department as of June 30 each year.

(2) The cost of the facility amortized over its expected useful life plus other owner's expenses and a reasonable rate of return, not to exceed actual rent payments.

When the operator of a participating facility rents or leases the building from a related party, the amount of rent or lease expense allowable on the cost report shall be no more than the amortized cost of the facility plus other owner's expenses.

Whenever owner's costs are used as the basis for allowable rental costs, the owner must be willing to provide documentation of these costs.

n. Depreciation, interest and other capital costs attributable to construction of new facilities, expanding existing facilities, or the purchase of an existing facility, are allowable expenses only if prior approval has been gained through the health planning process specified in rules of the public health department, 470—chapter 201.

54.3(12) *Termination or change of owner.*

a. A participating facility contemplating termination of participation or negotiating a change of ownership shall provide the department of human services with at least sixty (60) days prior notice. A transfer of ownership or operation terminates the participation agreement. A new owner or operator shall establish that the facility meets the conditions for participation and enter into a new agreement. The person responsible for transfer of ownership or for termination is responsible for submission of a final financial and statistical report through the date of the transfer. No payment to the new owner shall be made until formal notification is received. The following situations are defined as transfer of ownership:

(1) In the case of a partnership which is a party to an agreement to participate in the residential care program, the removal, addition, or substitution of an individual for a partner in the association, in the absence of an express statement to the contrary, dissolves the old partnership and creates a new partnership which is not a party to the previously executed agreement and a transfer of ownership has occurred.

(2) When a participating nursing home is a sole proprietorship, a transfer of title and property to another party constitutes a change of ownership.

(3) When the facility is a corporation, neither a transfer of corporate stock nor a merger of one or more corporations with the participating corporation surviving is a transfer of ownership. A consolidation of two (2) or more corporations resulting in the creation of a new corporate entity constitutes a change of ownership.

(4) When a participating facility is leased, in whole or in part, a transfer of ownership is considered to have taken place.

b. Upon change of ownership, the new owner or operator shall furnish the department with an appraisal made by a department-approved appraiser. The appraisal shall be based on market values.

c. The new owner or operator shall either continue the previous owner's depreciation schedule or set-up a new depreciation schedule using the amount obtained by deducting the depreciation expense incurred since July 1, 1980, from the value of depreciable real property. The value will be the sale price or appraisal value, whichever is less.

54.3(13) *Payment to new home.* A new home for which cost has not been established shall receive the prevailing maximum allowable cost ceiling. At the end of three (3) months' operation a financial and statistical report shall be submitted and the cost established subject to provisions set forth in 53.1(3)*"g"*. Subsequent reports shall be submitted from the beginning day of operation to the end of the fiscal year or six (6) months interim period, whichever comes first, and each six (6) months thereafter.

54.3(14) *Payment to the new owner.* An existing facility with a new owner shall continue with the previous owner's per diem rate until a new financial and statistical report has been submitted and a new rate established. The facility may submit a report for the period from beginning of actual operation to the end of the fiscal year or may submit two (2) cost reports within the fiscal year provided the second report covers a period of six (6) months ending on the last day of the fiscal year. The facility shall notify the department of human services of the date its fiscal year will end and of the reporting option selected.

54.3(15) *Basis for reimbursement and upper limits.* The cost-related per diem rate is calculated by computing the per diem allowable costs from the financial and statistical report, adding five percent (5%) to all costs except interest to adjust for inflation, and adding an incentive factor of fifty-two cents ($.52) for nonprofit facilities and seventy cents ($.70) for proprietary facilities.

After the rate is established as determined above, state supplementary assistance payments made to recipients shall be reduced by a factor of three and eighty-five hundredths percent (3.85%). The facility shall make no charge to the recipient to defray this reduction.

A facility's actual allowable costs when combined with the inflation and incentive factors must not exceed the upper limit established in subrule 52.1(3).

Beginning July 1, 1985, each facility electing cost-related reimbursement is limited to a per diem computed from actual allowable costs from the financial and statistical report which

do not exceed one hundred two percent (102%) of the per diem in effect for that facility on June 30, 1985. If a facility's actual allowable costs are below one hundred two percent (102%) of its June 30, 1985 per diem, the facility may receive inflation and incentive factors in addition to actual allowable costs. The combined payment for allowable costs, inflation, and incentive factors may not exceed either one hundred two percent (102%) of the June 30, 1985, facility per diem or the cap established in subrule 52.1(3).

This rule is intended to implement Iowa Code section 249.12 and 1986 Iowa Acts, House File 2484, section 309.

441—54.4(249) Goods and services provided. All facilities participating in the program shall provide residents those goods and services required by the terms of the license issued by the department of inspections and appeals in accordance with Iowa Code chapter 135C and rules promulgated thereto set forth in 470—chapter 57 and requirements of the department of human services set forth in these rules.

54.4(1) *Payment accepted.* The amount of client participation and the payment made through the state supplementary assistance program shall be accepted as payment in full for the required goods and services provided the resident. The facility may seek reimbursement from other sources for goods and services provided that are beyond the goods and services required to be provided by these rules.

54.4(2) *Care, maintenance, general supervision, and personal services.* Each facility as part of providing care, maintenance, general supervision, and personal services shall provide as necessary supervision or assistance with ambulation, grooming, hair washing, shaving, personal hygiene, bathing, getting in and out of bed, dressing, feeding, and with medication that can be self-administered.

54.4(3) *Laundry.* Each facility shall provide personal laundry service to the resident as part of the goods and services paid for through the program.

54.4(4) *Room furnishings.* The facility shall completely furnish the resident's room in accordance with department of inspections and appeals subrule 57.30(4) without additional charge to the resident or person acting on the resident's behalf. When the resident wishes to provide some item or items of room furnishing, the facility may grant the request.

This rule is intended to implement Iowa Code section 249.12.

441—54.5(249) Personal needs account. When a facility manages the personal needs funds of a resident, it shall establish and maintain a system of accounting for expenditures from the resident's personal needs funds. The personal needs funds shall be deposited in a single checking account, not commingled with trust funds from any other facility, nor commingled with facility operating funds except for facility funds, not to exceed $500, deposited to cover bank charges and have in the account name the terms "Resident Trust Funds". The funds shall be deposited in a bank or other institution within the state of Iowa insured by the federal government. Expense for bank service charges for this account is an allowable audit cost under rule 54.3(249) if the service cannot be obtained free of charge. The department shall charge back to the facility any maintenance item included in the computation of the audit cost that is charged to the resident's personal needs when such charge constitutes double payment. Unverifiable expenditures charged to personal needs accounts may be charged back to the facility. The accounting system is subject to audit by representatives of the Iowa department of human services, and shall meet the following criteria:

54.5(1) *Ledger.* Upon admittance, a ledger sheet shall be credited with the resident's total incidental money on hand. Thereafter, the ledger shall be kept current on a monthly basis. The facility may combine the accounting with the disbursement section showing the date, amount given the resident, and the resident's signature. A separate ledger shall be maintained for each resident.

54.5(2) *Expenditures.* When something is purchased for the resident and is not a direct cash disbursement, each such expenditure item in the ledger shall be supported by a signed, dated receipt. The receipt shall indicate the article furnished for the resident's benefit.

54.5(3) *Disbursement.* Personal funds shall be turned over only to the resident, the resident's guardian, or other persons selected by the resident. With the consent of the resident, when the resident is able and willing to give the consent the administrator may turn over personal funds to a close relative or friend of the resident to purchase a particular item. A signed, dated receipt shall be required to be deposited in the resident's files.

54.5(4) *Audit.* The ledger and receipts for each recipient shall be made available for periodic audits by an accredited department representative. Audit certification shall be made by the department's representative at the bottom of the ledger sheet. Supporting receipts may then be destroyed.

54.5(5) *Death.* Upon a recipient's death the funds remaining in the personal needs account shall be treated in the following manner:

a. The facility shall provide a written statement of the personal needs account to be filed in the case record.

b. When an estate is opened, the funds shall be submitted to the estate administrator.

c. When no estate is opened, the funds shall be released to the person assuming responsibility for the recipient's funeral expenses.

d. When no estate is opened and there are no living heirs, the funds shall be submitted to the department to escheat to the state.

This rule is intended to implement Iowa Code section 249.12.

441—54.6(249) Case activity report. A case Activity Report, Form AA-4166-0, shall be submitted to the department whenever a recipient enters the facility, changes level of care, is hospitalized, leaves for visitation, or is discharged from the facility.

This rule is intended to implement Iowa Code section 249.12.

441—54.7(249) Billing procedures. In order to determine the amount of payment to the recipient, the facility shall submit a billing form to be received by the department by the fifth working day following the last day of the month in which service was provided. Payment will be mailed to the recipient by the fifteenth working day of the month.

54.7(1) *Billing.* When payment is made, the facility will receive a copy of Form AA-4163-0, Residential Payment Register. The original shall be returned to the department as a claim for the next month.

54.7(2) *Changes.* When there has been a new admission, a discharge, or a claim for a reserved bed, the facility shall also submit Form AA-4164-0, Residential Care Change Notice, with the claim.

This rule is intended to implement Iowa Code section 249.12.

441—54.8(249) Audits.

54.8(1) *Audit of financial and statistical report.* Authorized representatives of the department of human services or the department of health and human services shall have the right, upon proper identification, to audit, using generally accepted auditing procedures, the general financial records of a facility to determine if expenses reported on the Financial and Statistical Report for Residential Care Facilities, Form AA-4038-0, are reasonable and proper according to the rules set forth in rule 54.3(249). The aforementioned audits may be done either on the basis of an on-site visit to the facility, their central accounting office, or office(s) of their agent(s).

a. When a proper per diem rate cannot be determined, through generally accepted and customary auditing procedures, the auditor shall examine and adjust the report to arrive at what appears to be an acceptable rate and shall recommend to the department of human services that the indicated per diem be reduced to seventy-five percent (75%) of the established payment rate for the ensuing six (6)-month period and if the situation is not remedied on the subsequent Financial and Statistical Report for Residential Care Facilities, Form AA-4038-0, the health facility shall be suspended and eventually canceled from the residential care facility program, or

b. When a facility continues to include as an item of cost an item or items which had in a prior audit been removed by an adjustment in the total audited costs, the auditor shall recommend to the department of human services that the per diem be reduced to seventy-five percent (75%) of the current payment rate for the ensuing six (6)-month period. The department may, after considering the seriousness of the exception, make the reduction.

54.8(2) *Audit of proper billing and handling of resident funds.*

a. Field auditors of the department of inspections and appeals, or representatives of health and human services, upon proper identification, shall have the right to audit billings to the department of human services and receipts of client participation, to ensure the facility is not receiving payment in excess of the contractual agreement and that all other aspects of the contractual agreement are being followed as deemed necessary.

b. Field auditors of the department of inspections and appeals or representatives of health and human services, upon proper identification, shall have the right to audit records of the facility to determine proper handling of resident funds in compliance with rule 54.5(249).

c. The auditor shall recommend and the department of inspections and appeals shall request repayment by the facility to either the department of human services or the resident(s) involved, sums inappropriately billed to the department or collected from the resident.

d. The facility shall have sixty (60) days to review the audit and repay the requested funds or present supporting documentation which would indicate that the requested refund amount, or part thereof, is not justified.

e. If the facility fails to comply with paragraph "*d*", the audit results may be referred to the attorney general's office for whatever action may be deemed appropriate.

f. When exceptions are taken during the scope of an audit which are similar in nature to the exceptions taken in a prior audit, the auditor shall recommend and the department may, after considering the seriousness of the exceptions, reduce payment to the facility to seventy-five percent (75%) of the current payment rate.

This rule is intended to implement Iowa Code section 249.12.

441—54.9(249A) Respite care for Title XIX waiver recipients. Residential care facilities may be used to provide respite care as defined in rule 441—83.1(249A) to eligible individuals in the Title XIX waiver program.

This rule is intended to implement Iowa Code chapter 249A and 1984 Iowa Acts, chapter 1310, section 3.

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TITLE VI
GENERAL PUBLIC ASSISTANCE PROVISIONS

CHAPTER 55
WORK AND TRAINING PROGRAMS

[Prior to 7/1/83, Social Services(770), Ch 55]
[Prior to 2/11/87, Human Services(495)]

441—55.1(249C) Persons eligible. Persons who are receiving public assistance and are eligible for work and training programs include:

55.1(1) The payee, payee's spouse, and dependent children who are in the eligible group.

55.1(2) Dependent children, sixteen (16) years of age and over, who are not in school or training and for whom there are no educational plans under consideration for implementation within the next three (3) months.

55.1(3) Caretaker relatives and other essential persons in the eligible group. Caretaker relatives who are providing the child with a family home, but are not legally responsible for the child's support, and are themselves not a needy person shall not be eligible for work and training programs.

This rule is intended to implement Iowa Code section 249C.1(5).

441—55.2(249C) Education and training plans. Education and training means any academic or vocational training program which prepares the individual for a specific professional or vocational area of employment. The plan shall include occupational evaluation and assessment. All individual education and training plans shall be approved by the district office of the department of human services prior to implementation.

55.2(1) In order to have a plan approved, clients have the following responsibilities:

a. Clients shall apply for individual education and training plan services at least three (3) weeks prior to the start of course work, failure to do so shall result in rejection of the application.

b. Prior to plan approval, and for each academic year of participation, clients shall apply for and accept all available educational financial awards for which they are eligible, including grants and scholarships. Clients shall also be required to apply for low interest student loans of up to a maximum of $800 per academic year unless they are participating in a plan jointly sponsored by the individual education and training plan program and the Job Training Partnership Act program and the Job Training Partnership Act program is paying all or part of educational costs including tuition, fees, books, and supplies. In instances when the financial contribution of the Job Training Partnership Act program in combination with other educational awards received by the client are insufficient to meet educational costs as specified above, individual education and training plan program funds may be used as a supplement, providing department expenditures do not exceed maximum payments specified in 55.2(3) of these rules. Department training allowances shall be authorized only when all educational awards received by the client, including low interest student loans when required by the department, have been used or allocated, on a month-by-month basis, for allowable training costs in the following payment order: Tuition, fees, books, supplies, child care and transportation.

Clients attending private training facilities where the tuition exceeds the amount the department can pay shall retain award moneys to pay the annual difference between actual tuition cost and the maximum tuition amount the department can pay.

Clients who elect to accept low interest student loan moneys in excess of amounts required by the department may use excess moneys at their discretion.

c. Clients shall maintain a minimum of fifteen (15) credit hours per quarter or semester unless the department has given prior approval to carry fewer hours.

d. Clients shall participate in training on a full-time basis unless training is available only on a part-time basis.

e. Clients who have not completed a high school education shall do so before other vocational training courses may be arranged. GED or high school courses and vocational training programs may run concurrently. Clients may be approved to return to regular high school only when they are within one year of their normal graduation date.

55.2(2) In order to have a plan approved, the plan must meet certain criteria.

a. Training plans shall include a specific vocational goal, completion of which shall not exceed thirty-six (36) months of participation, including a maximum of twelve (12) months of participation to complete high school, GED, adult basic education, or English as a second language classes. Months of participation is defined as a calendar month or part thereof starting with the month individual education and training plan (IETP) service begins as specified on the IETP plan and during which the client either receives IETP financial assistance or utilizes IETP required financial awards.

b. Approval may be given for the following courses or training:

(1) Previously completed courses or training only when intended as a brush up.

(2) Correspondence courses only when the courses are required but not offered by a training facility attended by the client.

(3) Out-of-state training only when similar training is not available in-state or when required relocation to attend an in-state facility would be unnecessary by attending an out-of-state facility.

(4) College programs which lead to an associate of arts. Bachelor of arts or bachelor of science degree programs only when the client has already earned all freshman credits and can enter the training facility as a sophomore.

(5) Continuing advanced training in the same vocational area, providing this training combined with previously completed training under this program does not exceed three (3) calendar years. Training in a different vocational area will be approved only when a minimum of one (1) year has elapsed since training was completed and employment cannot be found.

(6) Prerequisite courses when they are required for admission to a specific training program. Clients who fail to earn required grades for admission to the chosen program will not be approved to repeat these courses.

(7) Summer school only when it does not result in additional department expenditures over those of a normal academic year; required classes are only available during summer session; or participation reduces the total length of time required to complete the training.

c. No plan shall be approved for the following:

(1) Continuing education units.

(2) When the duration of the plan exceeds the known length of time during which the client will remain eligible for categorical assistance.

(3) Courses which are less than two (2) weeks in duration.

(4) When available manpower statistics for a local area indicate low employment potential. Exceptions may be made when the client is willing to relocate after training to an area where there is employment potential or when the client has a bona fide job offer prior to entering training.

(5) Jobs paying less than minimum wage.

(6) College course work for a client who possesses a baccalaureate degree.

(7) Plans containing requests for rings, pins, pictures, rental of graduation gowns, elective courses which require, in addition to books, expenditures for special equipment, for example photography or art supplies, or field trips, and other items that are not required to complete training for a vocational goal.

55.2(3) Training plan tuition allowances are limited as follows:

a. Training plan tuition allowances for bachelor of arts, bachelor of science or similar degree programs shall not exceed the maximum undergraduate Iowa resident rate charged by a state university in Iowa.

b. Tuition allowances for all other programs shall not exceed the rate charged by the state of Iowa area school located nearest to the training plan project.

This rule is intended to implement Iowa Code sections 249C.3 and 249C.5.

441—55.3(249C) Incentives and disregards. All income earned for work under an education or training program shall be applied to reduce the cost of public assistance paid to the person or the person's family except that income exemptions allowed in the public assistance programs shall be allowed for these earnings.

This rule is intended to implement Iowa Code sections 249C.10 and 249C.11.

441—55.4(249C) Training expenses.

55.4(1) An allowance shall be made for expenses of training. This shall include tuition, books, fees, including graduation, GED testing and certificate fees, and any other fees required for completion of the training, and required uniforms and tools.

a. A work and training allowance of sixty dollars ($60) per month shall be provided to a person participating in a full-time training plan. A full-time training plan consists of at least thirty (30) hours per week.

b. A person participating in a part-time training plan shall receive an allowance for transportation at the current rate paid to state employees to and from the training site with a maximum of fifty-four dollars ($54) per month.

c. No allowance shall be made for any item that is being paid for through earnings that are diverted for that purpose.

55.4(2) Individual education and training plan may pay child care assistance for an unmarried mother returning to high school, living in her parent's home and ineligible for aid to dependent children but has a child receiving aid to dependent children when there is no one in the home to provide care.

55.4(3) Individual education and training plan funds may not be used to purchase supplies to enable a client to begin a private business.

55.4(4) Individual education and training plan allowances are paid directly to the client. Clients shall submit the Estimate of Cost, Form PA-8121-5, to initiate allowances or change the amount of payment. Clients shall use the allowances to pay authorized educational expenses. Use of the allowances for any reason other than their intended purpose will result in immediate termination of the client's plan. Clients shall sign the Financial Agreement, Form PA-3163-5, which specifies client financial responsibilities.

a. Clients shall furnish receipts of expenditures, except for training related expense allowances, within ten (10) days of receipt of allowances. Failure to provide receipts will preclude authorization of additional payments.

b. Clients shall refund overpayment when the cost of actual purchases is less than the amount of the allowance provided. Failure to refund overpayments will result in termination of the plan.

c. Clients need not refund an overpayment from an allowance received when the overpayment is less than ten dollars ($10).

This rule is intended to implement Iowa Code section 249C.11.

441—55.5(249C) Supportive service. The county and area caseworkers shall provide supporting and follow-up services to participants in a work or training program, including family planning, budgeting, child care, medical services, employability planning, job placement and other services involved in completing the training plan or finding a job.

441—55.6(249C) Public or private training. On-the-job training shall be carried out in conjunction with the local employment service and its rules shall be followed.

55.6(1) If the training includes work experience, nonprofit organizations shall be used exclusively, and the length of this training shall be no longer than twenty-six (26) weeks. When a trainee is in training longer than ten (10) weeks there should be definite possibilities of a job.

55.6(2) Institutional training can be provided by both public and private agencies.

441—55.7(249C) Health and safety. The worker may require an individual to complete a physical examination prior to approval of a training plan when a client specific or exhibits any physical conditions which might jeopardize successful participation in the program.

55.7(1) The physician should indicate to the best of the physician's knowledge that the person is capable of completing the training or continuing with appropriate employment.

55.7(2) If physical or emotional disabilities are present, these shall be under control prior to enrollment in the training program.

55.7(3) If the work or training is so hazardous that safety glasses, hard hats and so forth are needed, these safety precautions shall be provided.

441—55.8(249C) Payment to client.

55.8(1) Payment of training related expenses shall commence for that month that the client begins training and shall be terminated when the client has completed training. When a client is already involved in training prior to requesting an individual education and training plan, payment of training related expenses shall start for that month that the plan is approved. The payment may continue for one (1) month after the client completes training if, during the month, the client is actively seeking employment.

55.8(2) The department's responsibility for individual education and training plan financial assistance begins for that month during which the plan is approved.

55.8(3) Retroactive payments shall not be allowed for expenses incurred prior to plan approval. There shall be no reimbursement for training purposes already paid for by the client or other source.

55.8(4) When a client receives training related expenses or incentive payments from other programs which equal or exceed those paid by this program, training related expenses will not be paid from this program. When the amount received from another program is less than that paid by this program, a supplemental payment may be made as long as the combined payment does not exceed that normally paid by this program.

441—55.9(249C) Completion or termination of a plan.

55.9(1) Clients who successfully complete their training plan may keep any books or supplies purchased at the expense of the individual education and training plan program while the client was in training.

55.9(2) Clients who do not complete their training program shall return all books and supplies purchased by the individual education and training program.

55.9(3) When a client enrolled in the individual education and training plan program drops out of training without just cause, the client may be denied additional individual education and training plan services for a minimum of one (1) year, from the time that the client dropped out. Just cause for dropping out of the individual education and training plan program include illness, death in the family, problems with an absent spouse, behavioral problems with the children, and similar circumstances.

55.9(4) A worker may deny or terminate an individual education and training plan for any of the following reasons:

a. The client fails to appear for two (2) consecutive scheduled appointments with the worker. The client shall have been notified by certified mail of the appointments.

b. The client fails to cooperate in providing information concerning grades, academic progress, financial resources, change of address, change of telephone number, or change of family composition.

c. The client is unable to maintain a normal full-time workload of at least fifteen (15) credits per quarter or semester. A full-time normal workload for training facilities which do not base progress on the credit hour systems shall be that norm established by the training facility as being normal and full-time.

d. The course or training is one which the client has previously completed.

e. It can be documented that the client's participation in the individual education and training plan program is detrimental to family functioning.

f. The client is unable to maintain a minimum cumulative C grade point from the time individual education and training plan services begin.

g. The client was unable to maintain a cumulative C grade point in the same training for which application is now being made.

h. The client withdraws from courses or from the program without prior departmental approval.

i. The client refuses or fails to apply for outside funding resources.

This rule is intended to implement Iowa Code section 249C.2.

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CHAPTER 56
BURIAL BENEFITS

[Prior to 7/1/83, Social Services(770), Ch 56]
[Prior to 2/11/87, Human Services(498)]

441—56.1(239,249) Application. An application for burial benefits shall be filed on the Application for Burial Benefits, Form PA-5301-0, provided by the department at the office of the county department of human services prior to the interment of the deceased, except in the case when the interment takes place on a day that the county department of human services is not open for business. In that instance an application for burial benefits shall be filed within three (3) working days of the date of interment. The decision to approve or deny the application shall be made and the funeral director notified of the decision by the county office within one (1) working day of the date the application was filed.

This rule is intended to implement Iowa Code sections 239.9 and 249.9.

441—56.2(249) Recipients of state supplementary assistance and former recipients of old-age assistance, aid to the blind, and aid to the disabled prior to Janaury, 1 1974.

56.2(1) When an application for burial benefits in made, the department's potential liability shall be established by deducting from $400 the sum of any resources specified in Iowa Code subsection 249.9(2). Any other resources shall be deducted first from the cost of burial. If the resulting balance is more than the department's established potential liability, the amount of the potential liability shall be paid as a burial benefit. If the resulting balance is less than the department's established potential liability, the amount of the balance shall be paid as a burial benefit.

56.2(2) and 56.2(3) Rescinded, effective July 1, 1984.

This rule is intended to implement Iowa Code sections 239.9 and 249.9.

441—56.3(239) Recipients of aid to dependent children.

56.3(1) *Eligibility.* The following children may be eligible for burial benefits:

a. A child receiving aid to dependent children during the month of death,

b. A child for whom an aid to dependent children assistance grant has been certified to the central office, but on whose behalf an assistance check has not yet been issued.

c. A newborn or stillborn child who would have otherwise been found eligible for an aid to dependent children grant except there has not been sufficient time to add such child to the eligible group of an active aid to dependent children case.

d. A child receiving care under the aid to dependent children—foster care program at the time of death.

e. A child born to an eligible child in an active aid to dependent children case who would have been eligible for aid to dependent children as the child of an underage payee, except there has not been sufficient time to approve such a case.

56.3(2) *Financial limitations on eligibility.* The following resources shall be considered as available to apply upon an eligible child's burial expenses, thereby reducing the department's liability of four hundred dollars ($400).

a. The estate of the child that is not consumed by claims with a higher priority.

b. Life insurance, the proceeds of a policy or contract with a burial benefit association or society, payable to the child's estate or to any person legally liable for his support, and any other benefits or payments resulting from the child's death.

c. Any prior funeral arrangements shall be considered in the same light as cash.

d. The resources of the child's parents or other payee only when voluntarily offered for application upon the burial expense.

56.3(3) and 56.3(4) Rescinded, effective July 1, 1984.

This rule is intended to implement Iowa Code sections 239.9 and 249.9.

441—56.4(239,249) Claim. The vendor's claim for burial services shall be filed within ninety (90) days of the date of interment at the office of the county department of human services on the Burial Claim, Form AA-4149-0, provided by the department. When more than one individual or firm has rendered service in caring for or burying the body of the deceased, the claim shall be submitted and signed by only one individual or firm, who shall be responsible for reimbursing the other parties involved.

This rule is intended to implement Iowa Code sections 239.9 and 249.9.

56.5 Rescinded, effective 7/1/83.

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CHAPTER 57
INTERIM ASSISTANCE REIMBURSEMENT

[Prior to 2/11/87, Human Services(498)]

441—57.1(249) Definitions.

"County agency" means a county relief or veterans affairs agency under the jurisdiction of the county board of supervisors which furnishes relief in the form of cash or vendor payments to or in behalf of needy individuals in accordance with established standards under the provisions of Iowa Code chapter 250 or 252.

"Interim assistance" means assistance in the form of cash or vendor payments for meeting basic needs furnished by the county agency during the interim period. "Basic needs" includes food, clothing, shelter, medical care and other essentials of daily living. It does not include the county payment of social services costs associated with services during the interim period.

"Interim period" is the time span beginning with the effective filing date of a supplemental security income (SSI) application through and including the month when SSI or federally administered state supplementation began. The interim period does not include any periods subsequent to the month in which the individual is determined to be eligible for SSI, e.g., it does not include any periods in which the SSI beneficiary is in nonpayment or suspended status nor does it include any periods during which the individual is underpaid by the Social Security Administration due to that agency's failure to make a timely modification of the individual's SSI benefit or for any other reason.

"Payments" means SSI payments and any federally administered state supplementary assistance payments that are determined by the Social Security Administration to be due the individual at the time the first SSI payment is made. An emergency advance payment or a payment based on presumptive blindness or disability made by the Social Security Adminstration is not considered to be the first SSI payment for interim assistance reimbursement purposes.

"SSI" means supplemental security income for the aged, blind, and disabled.

"Written authorization" means authorization on Form PA-6109, Interim Assistance Reimbursement Authorization which authorizes the Social Security Administration to make the initial retroactive SSI benefit payable to the county agency.

441—57.2(249) Requirements for reimbursement. The county agency must have a written agreement with the department of human services in order to receive reimbursement for interim assistance payments. The agreement must be on Form PA-6110, Interim Assistance Reimbursement Agreement. This agreement will provide that:

57.2(1) The county agency will secure written authorization from the individual to withhold SSI payments due the individual.

57.2(2) Interim assistance must be paid utilizing the same standards used for other recipients provided assistance by that county agency.

57.2(3) The county agency will pay to the individual within ten (10) days from the date it receives reimbursement any interim assistance reimbursement it received in excess of the interim assistance the county furnished to or on behalf of the individual.

57.2(4) The county agency will provide the individual with a written explanation of the apportionment on Form PA-6108, Interim Assistance Notice of Apportionment showing the amount of the payment received by the county agency from the Social Security Administration, the amount retained by the county agency for reimbursement and the excess amount, if any, due the individual and provide the individual with the right to a hearing before the county board of supervisors or the county commission of veteran affairs on disputes arising from the apportionment of the payment.

57.2(5) The county agency shall maintain a file for each individual who has received interim assistance and maintain adequate records of all transactions made relating to interim assistance and the apportionment of the individual's initial payment. The following records shall be maintained for each individual:

a. Identification. Name, social security number, address.

b. Assistance furnished. Date paid, amount of payment, to whom paid, needs covered by the payment.

c. Reimbursement check. Date received from the Social Security Administration, amount of the check, amount withheld as reimbursement, amount paid to the individual, date paid to the individual.

d. Disputes. Date received, issue, action taken, resolution.

e. Documentation. Original authorization form executed by the individual, apportionment document received by the Social Security Administration, all pertinent correspondence to and from the individual, copy of SSI award notice, a copy of correspondence related to vendor payments made.

Records shall be maintained for a period of five (5) years subsequent to the date of receipt by the county agency of interim assistance reimbursement and shall be available to the department of human services or the Social Security Administration on request.

57.2(6) The county agency must comply with the provisions of 45 CFR 205.50 relating to the safeguarding of information concerning individuals to whom payment of excess interim assistance reimbursement is made pursuant to subrules 57.2(2) and 57.2(3).

57.2(7) The county agency shall submit to the department of human services such reports as the department may need to comply with requirements of the Social Security Administration in the form and at times prescribed by the department.

57.2(8) The county agency or the department of human services may terminate the agreement at any time upon thirty (30) days' written notice to the other party. If the agreement is terminated by either party the department of human services and the county agency agree that all cases for which the county agency has obtained Form PA-6109, Interim Assistance Reimbursement Authorization, shall be processed by the county agency in accordance with the agreement.

57.2(9) The agreement shall begin on a date mutually satisfactory to the department of human services and the county agency. It will extend for a period of twelve (12) months from that date at which time it will be automatically renewed for successive periods of twelve (12) months thereafter unless the county agency or the department of human services gives written notice not to renew at least thirty (30) days before the end of the current period.

441—57.3(249) Audits by the department of human services. The department of human services will make periodic audits of the interim assistance records of county agencies in order to determine compliance on the part of the county agency with its agreement with the department, and compliance with the department's rules and regulations.

57.3(1) Such audits will include but will not necessarily be limited to an examination of the following:

a. That records are currently and adequately maintained in accordance with the provisions of subrule 57.2(4).

b. That interim assistance reimbursement payments made to the county agency by the Social Security Administration were correctly apportioned and that the county's records of interim assistance disbursements made to or on behalf of the individual support the apportionment made of the interim assistance reimbursement payment.

57.3(2) If an audit by the department or an examination by the Social Security Administration indicates corrective action by the county agency is necessary, the county agency will be so notified by the department and any corrective payment due the individual will be made within a period of ten (10) days from the receipt of such notification by the county agency.

441—57.4(249) Independent audits. If a reimbursement dispute arises between a county and the federal Social Security Administration, the county shall pay for an independent audit.

The audit shall be conducted by a certified public accountant appointed by the county. A copy of the findings of the audit shall be provided the department by the certified public accountant.

441—57.5(249) Withholding of funds. If the Social Security Administration establishes a claim against a county and withholds funds from the state or directs the department to pay the claim to a recipient of federal supplemental security income, the department shall withhold from other funds due the county from the department the amount of the claim.

441—57.6(249) Notice of interim assistance reimbursement eligibility and accountability. The Social Security Administration will forward to the county Form SSA-8125, SSI Notice of Interim Assistance Reimbursement Eligibility and Accountability Report, indicating the disposition of the individual's SSI claim (i.e., denial or allowance). This form also provides the county agency with a method of accounting on an individual case basis for the disposition of interim assistance reimbursement funds received from the Social Security Administration. The county agency will receive Form SSA-8125 on every case where the individual has signed an interim assistance authorization and the authorization is processed by the Social Security Administration prior to a final determination on SSI eligibility.

441—57.7(249A) Certification of authority. The county agency shall submit the name, title, and signature of each official of the county agency authorized to sign the Notice of Interim Assistance Eligibility, Form SSA-8125, on the Certificate of Authority, Form PA-6111, to the district office of the department. Form PA-6111 shall be submitted prior to the date the agency first participates in the program and subsequently when changes in authorized officials occur.

These rules are intended to implement 1984 Iowa Acts, chapter 1310, section 9.

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CHAPTER 58
Rescinded, effective 7/1/84

CHAPTER 59
UNEMPLOYED PARENT WORKFARE PROGRAM
[Prior to 7/1/83, Social Services(770), Ch 59]

441—59.1(70GA,ch201) Contracts. The department of human services (department) shall establish a community work experience program (CWEP) for ADC unemployed parents by contracting with counties (county) or local public or nonprofit organizations (hereto referred to as agency) designated by both the county board of supervisors and the department of human services to provide work sites and assign persons referred by the department to appropriate work sites. The Community Work Experience Contract, PA-6104-5, shall be used. Designation of Local Agency Agreement, PA-3166-5, shall also be used when a local agency is designated by the department and a county.

59.1(1) A contracting county or agency may obtain work sites for participants from other public and nonprofit organizations within the county. These organizations shall supervise participants and report immediately to the county or agency matters that the county or agency is required to report to the department. The county or agency shall have no further responsibility for participants assigned to these organizations other than provided in these rules.

59.1(2) Participants may be placed at work sites with religious institutions only when work performed is nonsectarian and not in support of sectarian activities. Participants may not be used to replace regular employees in the performance of nonsectarian work for the purpose of enabling regular employees to engage in sectarian activities.

59.1(3) The county or the agency may charge the entity responsible for a work site a reasonable fee to cover the cost of workers' compensation liability insurance provided by or through the county or agency, which is not reimbursed through federal participation, and the administrative cost in providing the insurance, to program participants employed at the work site. However, the fee shall be the actual cost of coverage and administration, not to exceed $.55 per hour per participant. The county or agency shall report the fees it has received from work sites for workers' compensation insurance at the time that it submits its quarterly billing to the department, as provided in 441—59.8(70GA,ch201).

441—59.2(70GA,ch201) Registration. In counties with an operating unemployed parent community work experience program, all principal wage earners in unemployed parent cases shall be required to register for and participate in the community work experience program (CWEP) as a condition of receiving aid to dependent children assistance unless they qualify for exemption. Refusal to register or participate shall make the entire family ineligible for assistance as follows:

59.2(1) Families of principal wage earners who refuse to register shall remain ineligible for assistance until registration occurs.

59.2(2) Families of principal wage earners who refuse to participate shall be ineligible for assistance for three (3) months from the first time refusal occurs. A subsequent refusal shall render the family ineligible for six (6) months for each refusal.

441—59.3(70GA,ch201) Exemptions. Unemployed parent recipients shall be exempt if:

59.3(1) A recipient is not the principal wage earner.

59.3(2) The principal wage earner is employed in nonsubsidized employment for eighty (80) or more hours per month. For a self-employed person, the hours of employment shall be determined by the same option chosen by that person to establish the hours of employment for aid-to-dependent-children-unemployed-parent assistance in accordance with subrule 42.1(1).

59.3(3) An unemployed parent family receives a zero grant because the family is eligible for less than ten dollars ($10) per month.

59.3(4) The principal wage earner is participating in a department approved training program as defined in subrule 42.1(8), excluding the work incentive program.

59.3(5) It has been medically determined that the primary wage earner is a woman who is in the sixth month or more of pregnancy.

441—59.4(70GA,ch201) Work incentive program projects. In work incentive program project areas, principal wage earners shall be exempt from CWEP participation if they are registered for and actively participating in WIN approved vocational classroom training programs or work experience assignments. All other principal wage earners shall be required to register for and participate in CWEP as well as accept work incentive program job search assignments. Reduced CWEP participation shall be allowed when work incentive program job search assignments require more than one (1) day of participation.

441—59.5(70GA,ch201) Department responsibilities.

59.5(1) Income maintenance staff of the department shall register principal wage earners for CWEP and shall refer registrants to the county or agency using CWEP Registration, PA-2374-5, which shall include the following information:

1. Identifying information consisting of participant name, address, telephone number and social security number.
2. The maximum weekly hours that a participant can be assigned to a work site.
3. A self-assessment including health, available transportation, criminal history, education, work history, and suitable types of work assignments as identified by the registrant.

59.5(2) At the time of registration, registrants shall be required to review and sign Your Rights and Responsibilities, PA-2237-5, to acknowledge that a complete explanation of the CWEP program has been provided. Registrants shall also be provided a copy of the rules governing the community work program.

59.5(3) The department shall determine weekly hours of participation by dividing the aid to dependent children grant received (excluding special need allowances) by the prevailing state or federal minimum wage (whichever is higher) and dividing the figure obtained by four and three-tenths (4.3) with the resulting number rounded down to the nearest whole number.

59.5(4) The department shall issue each participant an allowance of twenty-five dollars ($25) per month as compensation for transportation expenses incurred. In addition, each participant whose documented transportation expenses exceed twenty-five dollars ($25) shall receive a supplemental monthly transportation allowance based on the transportation expenses of (1) actual cost of public transportation by bus or eighteen cents ($0.18) per mile for miles the participant drives between home and the work site and (2) actual parking fees.

Clothing, shoes, gloves, and health and safety equipment necessary for the performance of work at a work site under the program, which the participant does not already possess, shall be provided to the participant by the entity responsible for the work site. The items shall remain the property of the entity responsible for the work site, unless the participant and the entity agree to a different arrangement. Under no circumstances shall participants be required to use their assistance or their income or resources to pay any portion of their participation costs.

59.5(5) Job search activities, which shall be separate from CWEP participation requirements, shall be prescribed and administered by the department as specified in 42.4(4). Participants shall be allowed time away from CWEP assignments to engage in scheduled job interviews. When possible, the participant shall notify the work-site supervisor at least twenty-four (24) hours in advance of the name and address of the employer and the time that the participant will be away from the work site participating in an interview. If twenty-four (24)-hour notice is not possible, notice must be given as soon as possible and prior to the interview. Time spent in scheduled job interviews which result in absence from the work site shall be counted as part of the required weekly hours of CWEP participation.

441—59.6(70GA,ch201) County or agency responsibilities.

59.6(1) The county or agency shall make a reasonable effort to establish a sufficient number of work sites to accommodate all registrants referred by the department. When a work site is established in another public or nonprofit organization, that organization shall adhere to these rules and be responsible for the direct supervision of any participant assigned to the organization. The county or agency shall secure a written assurance from the organization that it will adhere to these rules. All complaints of noncompliance other than health and safety or displacement issues will be investigated by the county or agency and the department of human services CWEP coordinator. Work sites shall meet the following criteria:

a. Work sites shall provide services which are of some benefit to the public.

b. Work sites shall be limited to public and nonprofit agencies.

c. Work sites established shall not result in displacement of current employees and shall not be used in place of hiring staff for established vacant positions.

d. Work sites shall not be related to political, electoral, or partisan activities.

e. Work sites shall not be developed in response to or in any way be associated with the existence of a strike, lockout, or other bona fide labor dispute.

f. Work sites shall not violate an existing labor agreement between employees and employer.

g. Work sites shall comply with all applicable federal and state health and safety standards.

h. A grievance procedure shall be provided for public complaints regarding the displacement of regular workers with participants. Upon the filing of the complaint, the county or agency shall establish a local impartial board consisting of representatives of the legal profession, organized labor, private industry, and the department to hear and resolve the complaints. All work sites shall post in a conspicuous location, a written statement describing the grievance procedure and the public's right to file complaints alleging the displacement of regular paid workers. The grievance board shall have access to all documents of the work site needed in their investigation.

59.6(2) The agency shall assign participants to work sites according to the following criteria:

a. The prior training, proficiency, experience and skills of a participant as indicated on CWEP Registration, PA-2374-5, shall be matched to the extent possible with job requirements of available work sites.

b. Participants shall be assigned to work the number of hours per week specified by the department if a work site is available. Maximum CWEP participation is limited to thirty-two (32) hours per week plus an additional eight (8) hours to engage in job search activities. The county or agency is authorized to reduce the number of CWEP hours when the hours required by a work site are fewer than those specified by the department unless the department notifies the county or the agency to the contrary.

c. A participant will not be assigned to a work site for more than eight (8) hours during any one (1) day unless the participant agrees. These hours need not be consecutive but this work period can be separated by only one (1) break period. A participant shall not be required to work more than four (4) days per week.

d. Work site assignments shall not be scheduled between the hours of 6 p.m. and 7 a.m. unless the participant voluntarily agrees to work between those hours. A participant shall be required to work only during those hours normally worked by regular employees at the work site.

e. A participant may be assigned to a work site any day of the week including Saturday and Sunday unless the participant has a bona fide objection to working on a particular day based on religious beliefs. A participant shall not be required to work on legal federal holidays or state public holidays unless agreed to by the participant.

f. Participants shall not be required to accept assignments where required travel from home to the work site exceeds one hour each way or exceeds 1,100 miles per month for miles the participant drives between home and the work site.

g. Work site assignments shall not exceed the recipient's physical, emotional or intellectual capabilities as indicated on the participant's CWEP Registration, PA-2374-5. If a participant's performance is unacceptable due to the participant's inability to perform required work, the county or agency shall find another placement within the participant's physical, emotional and intellectual capabilities.

h. Registrants shall be assigned to work sites according to when they registered. The county or agency shall maintain a chronological list of registrants according to date of registration. The names of persons registering on the same day shall be placed on the list in alphabetical order by last name. When an available work site is not suitable for the registrant at the top of the list, the county or agency shall review other registrants in listed order until an appropriate registrant is found.

i. The work schedule of a participating unemployed parent who is employed in or obtains unsubsidized employment shall be arranged so that the work schedule does not interfere with the participant's ability to retain the unsubsidized employment.

j. The department shall allow ten (10) working days beginning with the date of registration for the registrant to develop a community service work site. A work site must be a nonprofit organization which agrees to serve as a work site for the department and agrees to meet all program requirements as specified in IAC 441—chapter 59. The work site must agree to provide workers' compensation liability insurance for the participant.

(1) The department shall provide written information which will assist the registrant in identifying allowable work sites and will enable a registrant to inform a potential work site of program requirements.

(2) The registrant will be given a CWEP Work Site Agreement form, PA-6105-5, to be signed by the work site when the work site agrees to participate. The registrant will return the signed form to the department.

(3) Registrants who do not develop a work site and return a signed agreement form within ten (10) working days shall be referred to and be required to accept a placement by county or agency.

(4) Participants shall be allowed to transfer to self-developed work sites at any time, subject to the approval of the department.

(5) Participants must give current work sites and the CWEP agency and the department ten (10) working days' notice prior to transfer.

k. Participants shall have good cause for refusing a placement if any of the following factors exist:

(1) Risk to the health and safety or contrary to religious or ethical beliefs of the participant.

(2) The work assignment is beyond the physical or mental capability of the participant as documented by medical evidence or other reliable source.

(3) Unreasonable transportation requirement to attend the work site as specified in 59.6(2)*"f."*

(4) Placement would interfere with a participant's unsubsidized employment as provided in 59.6(2)*"i."*

(5) The work site violates any of the criteria for work sites as specified in 59.6(1).

59.6(3) The county or agency shall use its best efforts to place all registrants in work sites. However, the county or agency shall not be responsible for placing every registrant if a sufficient number of work sites does not exist.

59.6(4) The county or agency may require participants to obtain a physical examination. Any cost of the examination shall be paid by the medical assistance program.

59.6(5) The CWEP coordinator in the county or agency shall notify the department no later than one (1) working day after receipt of information that a participant begins or terminates a work site assignment or refuses to participate without good cause as defined in 59.6(2) and 59.6(6) using CWEP Participation Status Report, PA-4107-5. Refusal occurs when:

a. A participant refuses to appear for a scheduled appointment.

b. A participant refuses a work assignment.

c. A participant has more than one (1) unexcused absence.

d. A participant is more than fifteen (15) minutes late for work without being excused on three (3) occasions within a three (3)-month period.

e. A participant appears at the work site under the influence of alcohol or drugs.

f. A participant's performance continues to be unsatisfactory after being notified by the county or agency of unacceptable performance and what is necessary to make performance acceptable. This notification may be oral, but shall be documented to the participant in writing.

g. A participant physically threatens staff or coworkers. A physical threat is defined as:

(1) Having a dangerous weapon in one's possession and either threatening with or using the weapon.

(2) Committing assault.

h. A participant continues an offense after being notified that the participant's behavior is disruptive and in what manner it is disruptive.

i. A participant refuses to complete a physical examination.

59.6(6) The county, agency or organization shall allow absence, lateness, and missed appointments due to illness, family emergency including need for emergency child care, bad weather, lack of transportation, or job search activities of the participant or the participant's spouse. The department, county or agency may require written documentation signed by a health practitioner licensed in Iowa to verify when illness is habitual or a participant is ill more than three (3) consecutive days. The department, county or agency may require verification of family emergency, lack of transportation or job search activities. It is the responsibility of the participant to notify the work site supervisor as soon as possible that one of these events has occurred and the expected duration. If the duration is more than five (5) consecutive days, the county or agency shall notify the department.

59.6(7) When the county or agency believes that a participant is in violation of a community work experience requirement as specified in these rules, the county or agency shall notify the department in writing, with a copy to the participant. The notice shall include the name of the participant, the alleged violation, a summary of the facts including dates and times the violations occurred, and the name and address of the individual(s) with knowledge of the facts. After the county or agency has issued this report, it shall instruct the participant not to appear at the work site.

a. The participant and the participant's family may continue to receive benefits pending further action by the department according to 441—chapter 7. Final determination of whether a participant has refused to participate and determination of continued eligibility for aid to dependent children assistance rests with the department.

b. Participants shall have the right to file a written appeal at the local department office concerning any alleged violation of CWEP policy as set forth in these administrative rules which is imposed as a condition of participation. The responsible work site, county or agency shall provide the participant with written documentation which specifies the participation requirement in dispute. Hearings shall be conducted in a manner consistent with the provisions of 441—chapter 7.

c. Within three (3) working days of filing an appeal, the participant shall participate in a conference with the local department CWEP coordinator for a review of the dispute. Pending the hearing decision, the participant must cooperate by accepting the work assignment unless there is danger to health and safety.

d. All other disputes that are not conditions of participation shall be resolved locally.

59.6(8) The county, agency or organization shall participate, to the extent possible, in fair hearings which shall be conducted by the department when a participant files an appeal.

59.6(9) The county or agency shall: provide workers' compensation insurance through an insurance company licensed to do business in the state of Iowa that will provide and pay for the cost of defense (including attorney fees and suit costs) of claims filed or brought by the participants in the community work experience program for unemployed parents under Iowa Code chapters 85, 85A, 85B, and 86, or for employer's liability to an employee for bodily injury arising out of and in the course of the individual's participation at a designated work site and to pay any moneys due on behalf of or to any participant including settlements and awards plus any interest under these laws.

a. The policy (coverages A and B) will name the state of Iowa, the Iowa department of human services and any county, city, agency, nonprofit organization, and other entity participating in the community work experience program for unemployed parents as named insureds. The insurer shall endorse upon the policy that it will not pose as a defense to any workers' compensation claim brought by a program participant that the program participant is not an "employee" within the meaning of the policy or the Iowa workers' compensation laws.

b. The state of Iowa, Iowa department of human services and each county, agency and organization shall be responsible for any other legal liability imposed upon it by law or to insure itself, with its own funds, against such liability.

c. The department may, with the approval of the insurance commissioner, allow any county or agency to be self-insured if that county or agency will agree to appear, defend, and hold harmless the state of Iowa and the Iowa department of human services from any and all claims including costs and attorney's fees brought by program participants pursuant to the Iowa workers' compensation laws.

59.6(10) The county or agency shall safeguard client information in conformance with Iowa Code section 217.30.

59.6(11) The county or agency shall maintain all records related to CWEP for three (3) years.

59.6(12) The county or agency shall allow federal or state officials access to all CWEP records upon request.

59.6(13) Community action agencies under contract as CWEP sponsors shall include an annual compliance review of the CWEP under agencywide audit procedures conforming to Office of Management and Budget Circular A-102, Attachment P, Audit Requirements.

This rule is intended to implement Iowa Code chapter 249C.

441—59.7(70GA,ch201) Responsibilities of any organization with a CWEP work site other than the county or agency. Any organization other than the county or agency shall have the same responsibilities as those in 441—59.6(70GA,ch201) to the county or agency as the county or agency has to the department except for 59.6(9).

441—59.8(70GA,ch201) Reimbursement. The county or agency shall receive financial reimbursement at the prevailing federal match rate for CWEP. Reimbursement shall be limited to salaries and fringe benefits, travel, required administrative equipment and supplies, physical facilities, communications including phone service and postage, accounting and auditing services, advertising services and insurance coverage for Iowa workers' compensation. The county or agency shall submit quarterly billings for reimbursement to the department no later than thirty (30) days after the end of the quarter using Report of Local Administrative Expense, AA-4103-0. This billing shall be separate from other billings and include only CWEP related charges.

59.8(1) Reimbursement is not available for the following expenses:

a. Capital expenditures, depreciation, or use allowances in connection with CWEP.

b. The cost of making or acquiring materials or equipment in connection with participation in a CWEP project.

c. The cost of direct work site supervision of CWEP participation.

d. Costs associated with the use of any facilities of job service of Iowa used to find employment opportunities for participants.

e. Participant expenses.

59.8(2) Reserved.

441—59.9(70GA,ch201) CWEP relationship with job search requirements. While each program participant is actively and earnestly searching for work each week as directed by the department, the participant shall not be considered to be participating in CWEP and a county, agency, or organization shall bear no liability or responsibility to a program participant or for the participant's actions while engaged in the search for work.

These rules are intended to implement Iowa Code chapter 249C.

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CHAPTER 60
REFUGEE CASH ASSISTANCE

[Prior to 9/24/86 IAC Supp., see Refugee Service 715—chapters 1 to 8]
[Prior to 2/11/87, Human Services(498)]

PREAMBLE

These rules define and structure the department's refugee cash assistance program. Eligibility criteria, application procedures, reasons for adverse action, payment procedures, and recoupment procedures for overpayments are outlined.

441—60.1(217) Alienage requirements.

60.1(1) *Immigration status.* Refugees with the following immigration status meet the alienage requirement:

a. A person from any country who has a "parole" status as a "refugee" or "asylee" under Section 212(d)(5) of the Immigration and Nationality Act.

b. A person admitted from any country as a "conditional entrant" under Section 203(a)(7) of the Immigration and Nationality Act.

c. A person admitted from any country as a "refugee" under Section 207 of the Immigration and Nationality Act.

d. A person from any country who has been granted "asylum" under Section 208 of the Immigration and Nationality Act.

e. A person from any country who previously held one of the statuses in subrule 60.1(1), paragraphs "*a*" through "*d,*" whose status has subsequently been adjusted to that of "permanent resident alien."

60.1(2) *Nonrefugee child of refugee parents.* A nonrefugee child of refugee parents, when both parents in the home are refugees as defined in subrule 60.1(1), meets the alienage requirements. When only one parent is in the home and that parent is a refugee as defined in subrule 60.1(1), the child meets the alienage requirements.

60.1(3) *Immigration and Naturalization Service documents.* Each refugee shall provide Immigration and Naturalization Service documents in the form of either an I-94 card, an I-151 card, or an I-551 card to support the immigration status defined in subrule 60.1(1).

441—60.2(217) Application procedures. Application policies are defined in rules 441—40.3(239), 441—40.4(239), and 441—40.5(239).

441—60.3(217) Effective date of grant. The date of eligibility for a grant is defined in rule 441—40.6(239).

441—60.4(217) Accepting other assistance.

60.4(1) *Aid to dependent children.* A refugee applicant or recipient shall accept an aid to dependent children (ADC) grant or an ADC-unemployed parent grant if eligible under 441—chapters 40, 41, and 42.

60.4(2) *Supplemental security income (SSI).* Refugees who are sixty-five (65) or older, blind, or disabled shall apply for and, if eligible, accept supplemental security income.

441—60.5(217) Eligibility factors.

60.5(1) *Age.*

a. An unmarried refugee is considered an adult at age eighteen (18), except as defined in subrule 41.1(1), and is eligible to receive refugee cash assistance if otherwise eligible.

b. Married refugees with or without children, as defined in subrule 41.1(1), are eligible regardless of age if other eligibility factors are met.

60.5(2) *Residency.* Residency requirements are defined in subrule 41.3(1).

60.5(3) *Social security numbers.* Refugees are required to furnish a social security number as defined in subrule 41.2(13).

60.5(4) *Determination of need.* Need shall be determined as defined in rule 441—41.8(239) except as otherwise provided in this chapter.

60.5(5) *Income.* Income is defined in rules 441—40.1(239) and 441—41.7(239) except that applicants or recipients are not entitled to the thirty dollar ($30) or thirty dollar ($30) and one-third disregards defined in subrule 41.7(2), paragraph *"c."*

60.5(6) *Resources.* Resource requirements are defined in rule 441—41.6(239).

441—60.6(217) Students in institutions of higher education. A refugee who is a full-time student in an institution of higher education (other than a correspondence school) is ineligible for assistance with two (2) exceptions:

1. The refugee is in a program approved as part of a short-term employability plan as defined in subrule 60.9(3).
2. The refugee is in a program solely in English as a second language.

60.6(1) *Institution of higher education.* An institution of higher education is defined as an educational institution which provides an education program as specified below:

a. A public or private nonprofit institution of higher education is an educational institution which provides an educational program for which it awards an associate, baccalaureate, graduate, or professional degree; or at least a two (2)-year program which is acceptable for full credit toward a baccalaureate degree; or a least a one (1)-year training program which leads to a certificate or degree and prepares students for gainful employment in a recognized occupation.

b. A proprietary institution of higher education is an educational institution which provides as least a six (6)-month program of training to prepare students for gainful employment in a recognized occupation.

c. A postsecondary vocational institution is a public or private nonprofit educational institution which provides at least a six (6)-month program of training to prepare students for gainful employment in a recognized occupation.

60.6(2) *Full-time student.* A full-time student is a student who is carrying a full-time academic workload which equals or exceeds the following:

a. Twelve (12) semester or twelve (12) quarter hours per academic term in those institutions using standard semester, trimester, or quarter-hour systems.

b. Twenty-four (24) semester hours or thirty-six (36) quarter hours per academic year for institutions using credit hours to measure progress, but not using semester, trimester, or quarter systems, or the prorated equivalent for programs of less than one (1) academic year.

c. Twenty-four (24) clock hours per week for institutions using clock hours.

d. A series of courses or seminars which equals twelve (12) semester hours or twelve (12) quarter hours in a maximum of eighteen (18) weeks.

e. The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

441—60.7(217) Time limit for eligibility. A refugee may receive assistance, if eligible, during the first eighteen (18) months the refugee is in the United States, beginning the month the refugee enters the country. A nonrefugee child in the home with a refugee parent (or refugee parents, if both are in the home) is eligible for assistance until the parent(s) has been in the United States for eighteen (18) months, or until the child reaches eighteen (18) months of age, whichever occurs first.

60.7(1) *Resources.* The resources of refugees excluded because of the eighteen (18)-month limit shall be considered in the same manner as though these refugees were included in the eligible group.

60.7(2) *Income.*

a. When the eligible refugee group has income, the income shall be diverted to meet the needs of the refugees ineligible because of the time limit who would otherwise have been included in the refugee assistance group as defined in subrule 60.5(4).

b. The income of the refugees ineligible because of the time limit who would otherwise have been included in the assistance group as defined in subrule 60.5(4), shall be used first to meet the needs of the ineligible group and then applied to the eligible group's needs.

c. The amount of need for the ineligible group is the difference between the needs of the group including the ineligible refugees and the needs of the group excluding the ineligible refugees. Any excess income shall be applied to the needs of the eligible group.

441—60.8(217) Work registration. Each refugee applying for or receiving assistance shall register for employment or training unless the local office determines the refugee is exempt because of reasons listed in subrule 60.8(1).

60.8(1) *Exemptions.* The following refugees are exempt from registration:

a. A refugee who is under the age of sixteen (16); or who is age sixteen (16) but under age eighteen (18) and attending elementary, secondary, or vocational or technical school full time; or a refugee who is enrolled full time in training approved by the local office as part of an approved employability plan; or a refugee eighteen (18) years of age who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and reasonably expected to complete the program before reaching age nineteen (19).

(1) A refugee shall be considered as attending school full time when enrolled or accepted full time (as certified by the school or institute attended) in a school or training leading to a certificate or diploma. Correspondence school is not an allowable program of study.

(2) The refugee also shall be considered in regular attendance in months when the refugee is not attending because of an official school or training program, vacation, illness, convalescence, or family emergency. A refugee meets the definition of regular school attendance until the refugee has been officially dropped from the school rolls.

(3) When the refugee's education is temporarily interrupted pending adjustment of the education or training program, assistance shall be continued for a reasonable period of time to complete the adjustment.

b. A refugee age sixty-five (65) or older or who is prevented from engaging in employment or training because of a temporary or permanent medically determinable physical or mental impairment. Medical evidence may be obtained from an independent physician, psychologist, or the state rehabilitation agency as specified in subrule 41.1(5) *"c."*

c. A refugee required in the household on a substantially continuous basis because of a medically determinable condition of another member of the household. The condition shall be established as specified in subrule 41.1(5) *"c."*

d. A woman who has been medically verified to be in the sixth month or more of pregnancy. Verification of the pregnancy and estimated date of birth shall be obtained in the same manner as specified in subrule 41.1(5) *"a."*

e. A parent or other eligible caretaker of a child under the age of six (6) who personally provides care for the child with only very brief and infrequent absences from the child. "Brief and infrequent absence" means short-term absences which do not reoccur on a regular basis. Any involvement by the parent employed less than one hundred twenty-nine (129) hours per month or attending school less than full time, as defined by the school, shall be considered brief and infrequent. Recreational activities and vacations by the parent or child which result in the parent being absent from the child shall be considered brief and infrequent.

f. A parent or other eligible caretaker of a child, when the nonexempt parent or other nonexempt adult relative in the home is registered and has not refused to accept employment without good cause.

60.8(2) *Registration.* A refugee not exempt under subrule 60.8(1) shall be considered an employable refugee. An employable refugee shall register with the department of employment services and with the bureau of refugee programs.

60.8(3) *Refusal to register.*

a. An employable applicant refugee who refuses or fails to cooperate in accepting a referral to the department of employment services or the bureau of refugee programs, refuses or fails to appear at the department of employment services office for registration, or refuses or fails

to mail or deliver the registration form to the bureau of refugee programs, shall be denied assistance.

b. Assistance for an employable recipient refugee shall be terminated when the refugee refuses or fails to register with the department of employment services or the bureau of refugee programs.

441—60.9(217) Work and training requirements.

60.9(1) *Standards applicable to both work and training assignments.* The following standards must be met before an employable refugee can be required to accept a work or training assignment.

a. The job or training referral must be related to the physical and mental capability of the person to perform the task on a regular basis. Any claim of adverse effect on physical or mental health shall be based on adequate medical testimony from a physician or licensed or certified psychologist indicating that participation would impair the person's physical or mental health.

b. The total daily commuting time to and from home to the work or training site to which the person is referred shall not normally exceed two (2) hours, not including the transporting of a child to and from a child care facility, unless a longer commuting distance and time is generally accepted in the community, in which case the round trip commuting time shall not exceed the generally accepted community standards.

c. The work or training site to which the person is referred must not be in violation of applicable federal, state, and local health and safety standards.

d. Referrals shall not be made which are discriminatory in term of age, sex, race, creed, color, or national origin.

60.9(2) *Appropriate work requirements.* The local office, in making a determination of appropriate work, shall utilize the following criteria:

a. Appropriate work may be temporary, permanent, full time, part time, or seasonal work if it meets the other work standards defined in subrule 60.9(1).

b. The wage shall meet or exceed the federal or state minimum wage law, whichever is applicable, or if these laws are not applicable, the wage shall not be less favorable than the wage normally paid for similar work in that labor market but in no event shall it be less than three-fourths of the minimum wage rate.

c. The daily hours of work and the weekly hours of work shall not exceed those customary to the occupation.

d. No person shall be required to accept employment if:

(1) The position offered is vacant due to a strike, lockout, or other bona fide labor dispute.

(2) The person would be required to work for an employer contrary to the conditions of the person's existing membership in the union governing that occupation. However, employment not governed by the rules of a union in which the person has membership may be deemed appropriate.

60.9(3) *Short-term employability plan.* A short-term employability plan is an employability plan of less than one (1) year approved by the local office after consulting with the individual education and training plan unit and the bureau of refugee programs.

One (1) year means the twelve (12)-month period beginning with the date that the applicant's or recipient's employability or training plan is established by the local office. In the case of applicants, this shall occur shortly after the date of application. In recipient cases, it shall occur within thirty (30) days after the recipient's eighteenth (18) birthday.

60.9(4) *Training requirements for employed refugees.* An employable refugee recipient, employed less than one hundred (100) hours per month, shall be required to participate in part-time training when it is available and appropriate as determined by the local office after consulting the individual education and training plan unit and the bureau of refugee programs.

60.9(5) *Refusal to apply for, accept or continue employment or training.*

a. An employable refugee applicant who during the thirty (30) consecutive calendar days immediately prior to the receipt of assistance refuses to apply for or accept an offer of employment meeting the standards above, or who voluntarily quits employment meeting the standards above for the purpose of receiving assistance, shall be denied assistance.

b. Assistance for an employable refugee recipient shall be terminated if the refugee refuses to apply for, accept, or continue employment or employment-related training as defined above. For the first refusal the refugee shall be sanctioned for three (3) payment months. Subsequent refusals shall result in a six (6)-payment month sanction for each refusal. If the assistance grant includes other persons and the sanctioned refugee is a caretaker relative, assistance provided to the other persons shall be made in the form of protective payments as defined in rule 441—43.2(239).

441—60.10(217) Uncategorized factors of eligibility.

60.10(1) *Duplication of assistance.* A refugee whose needs are included in a refugee cash assistance grant shall not concurrently receive a grant under any other public assistance program administered by the department. Neither shall a recipient concurrently receive a grant from a public assistance program in another state.

60.10(2) *Contracts for support.* A person entitled to total support under the terms of an enforceable contract is not eligible to receive refugee cash assistance when the other party, obligated to provide the support, is able to fulfill that part of the contract.

60.10(3) *Participation in a strike.*

a. The spouse and children shall be ineligible for assistance for any month in which the other spouse or parent is participating in a strike on the last day of the month.

b. Any person shall be ineligible for assistance for any month in which the person is participating in a strike on the last day of that month.

c. Definitions of a strike and participating in a strike are defined in subrule 41.5(5), paragraph *"c."*

441—60.11(217) Temporary absence from home. Temporary absence from home is defined in subrule 41.3(3).

441—60.12(217) Application. The application shall be processed as defined in 441—40.2(239).

441—60.13(217) Continuing eligibility. Continuing eligibility shall be determined as defined in rule 441—40.7(239) except that refugee cash assistance shall be substituted for aid to dependent children whenever it appears.

441—60.14(217) Alternate payees. Alternate payees are defined in 441—chapter 43 except that refugee cash assistance shall be substituted for aid to dependent children whenever it appears.

Exception: Subrule 43.2(1) paragraph *"c"* shall not apply to refugee cash assistance applicants or recipients.

441—60.15(217) Payment. Payment shall be issued as defined in 441—chapter 45 except that refugee cash assistance shall be substituted for aid to dependent children whenever it appears.

441—60.16(217) Recoupment. Recoupment shall be determined as defined in 441—chapter 46 except that refugee cash assistance shall be substituted for aid to dependent children whenever it appears.

These rules are intended to implement Iowa Code section 217.6.

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CHAPTER 61
REFUGEE SERVICES PROGRAM

[Prior to 9/24/86 IAC Supp., see Refugee Service Center 715—chapters 1 to 8]
[Prior to 2/11/87, Human Services(498)]

PREAMBLE

The department of human services manages and coordinates refugee program activities in the state of Iowa. In this capacity, the department develops, implements, and oversees refugee activities which reflect policy priorities of the United States Department of State and the United States Department of Health and Human Services and which address sound practices on behalf of the state of Iowa as outlined in the Iowa State refugee program plan. Serving in the role of Iowa state refugee program coordinator, the commissioner coordinates with resettlement agency administrators active in the resettlement of refugees within the state of Iowa. Although the department manages many activities and programs in the administration of the state of Iowa's refugee program, the central focus is to promote as expeditiously as possible economic self-sufficiency and social self-reliance for refugees.

These rules define and structure the department's refugee services program. Eligibility criteria, application procedures, reasons for adverse actions, and appeal procedures for clients and sponsors are outlined.

441—61.1(217) Definitions.

"Bureau" means the bureau of refugee programs within the department.

"Client" means refugees or others determined eligible for services funded under the refugee program.

"Commissioner" means the commissioner of the department of human services or a designee.

"Department" means the Iowa department of human services.

"Employability plan" means the plan and goals developed at the time a client applies for employment services.

"Iowa state refugee program coordinator" means the commissioner, serving as the refugee program administrator, as appointed by the governor to administer programs funded and required by the Office of Refugee Resettlement within the United States Department of Health and Human Services.

"Iowa state refugee program plan" means the report that describes the state of Iowa's refugee program plan to meet the standards, goals, and priorities required under the Refugee Act of 1980 and developed by the director of the office of refugee resettlement for the successful resettlement of refugees.

"Refugee," as stated in the Refugee Act of 1980 (PL 96-212), means "a. Any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or b. In such special circumstances as the President after appropriate consultation (as defined in section 207(e) of the Refugee Act of 1980) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion," and designated as such by the U.S. Immigration and Naturalization Service. "The term 'refugee' does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of a particular social group, or political opinion."

"Refugee unit" means either an individual refugee or two (2) or more refugees representing an identifiable group, as determined by the bureau of refugee programs.

"Resettlement agency" means any business, organization or group of related persons hav-

ing a current contract with the U.S. Department of State's Bureau for Refugee Programs for the resettlement of refugees within the United States of America.

"Unaccompanied refugee minor" means any person under the age of eighteen (18) who has been designated by the U.S. Immigration and Naturalization Service to be a "refugee" and recognized by the U.S. Department of State as having no family members to care for the child's well-being.

441—61.2(217) Authority. The department has been given authority to administer the refugee program by Executive Order Number Twenty-One, signed by the governor December 24, 1985. U.S. Department of State and U.S. Department of Health and Human Services rules govern various program operations.

441—61.3(217) Location. The refugee program staff is primarily located at 1200 University Avenue, Des Moines, Iowa 50314. The office hours are 7:00 a.m. to 5:00 p.m., Monday through Friday. The Iowa toll-free number is 1-800-362-2780 and the general number is 515-281-4334. Bureau staff are also stationed in selected cities outside of Des Moines and can be contacted through these same telephone numbers.

441—61.4(217) Other resettlement agencies. The commissioner and chief administrators from the other resettlement agencies in Iowa meet regularly to plan joint projects, share program concerns and report on resettlement plans. Each resettlement agency in Iowa is required to report to the bureau on Form 402-0135, VOLAG Resettlement Plan, four (4) times each year regarding the agency's future refugee resettlement plans and significant refugee program activities.

441—61.5(217) Services of the department available for refugees. The department's direct services include, but are not limited to, the areas of:

61.5(1) *Job development.* These services involve working with employers in job development, placement, training, retention, and upgrading.

61.5(2) *Social adjustment.* These services provide assistance with housing, legal involvements, education, English training, school enrollment, and family counseling.

61.5(3) *Health programs coordination.* These services provide information on refugees and assistance in treating refugees to Iowa health providers.

61.5(4) *Resettlement services.* These services involve securing and training refugee sponsors, arranging for the refugees to come to Iowa and providing case management, job development, and social adjustment services.

As required under the resettlement contract with the U.S. Department of State, the department provides case management, job development, and social adjustment services to the refugees it resettles during their first ninety (90) days in Iowa. For refugees resettled by the department who have been in Iowa longer than ninety (90) days and for those refugees who were resettled by other resettlement agencies, the bureau makes available job development and social adjustment services using funds from the U.S. Department of Health and Human Services.

61.5(5) *Volunteer services.* These services include coordinating a volunteer English language tutoring program for refugees, scheduling volunteer activities, and linking with educational institutions that serve refugees through volunteers.

61.5(6) *Information and publication.* These services provide information to Iowans about Iowa's refugee program, the refugees in Iowa, and their cultures.

61.5(7) *Bilingual publication.* These services provide refugees with publications in English as well as their native languages which assist in their successful resettlement.

61.5(8) *Translation and interpretation services.* These services provide interpreter service from English into the refugee languages or vice versa and assistance in translating written materials.

61.5(9) *Immigration services.* These services provide assistance in U.S. residency status and travel.

61.5(10) *Adjustment of status.* These services provide guidance in obtaining permanent alien status and citizenship.

441—61.6(217) Eligibility for services. All persons who meet the definition of refugee as outlined in rule 441—61.1(217) and who are legally admitted into the United States are eligible for services. The department shall determine what services are appropriate. The department may provide services to nonrefugees who are legally residing in Iowa who are involved in or affected by Iowa's refugee program.

441—61.7(217) Application for services. Persons wanting refugee services from the department should contact the bureau in Des Moines either by telephone or in writing, or contact any of the bureau staff members. Refugees wanting job development services must provide the department with a complete employment application on Form 395-0133, Individualized Employability Worksheet.

441—61.8(217) Adverse service actions.

61.8(1) *Denial.* Services shall be denied when it is determined by the department that any of the following reasons apply:

a. The client is not in need of the service.

b. The client is not legally eligible.

c. The service is not covered in the state refugee program plan.

d. There is another community resource available to provide the services or a similar service free of charge to the client that will meet the client's needs.

e. The service for which the client is eligible is currently not available. A list of these services will be posted in the bureau's offices.

f. Funding is not available to provide the service. A list of services not available due to lack of funding shall be posted in the bureau offices.

g. The client refuses to allow documentation of eligibility.

h. The services requested are those for which other resettlement agencies are contractually responsible.

61.8(2) *Termination.* A particular service may be terminated when the department determines that any of the following reasons apply:

a. The need to attain the goals to which the service was directed has been achieved.

b. After repeated assessment, it is evident that the family or individual is unable to achieve or maintain goals set forth in the individual employability plan.

c. After repeated efforts, it is evident that the client is unwilling to accept further service.

d. The service is no longer available in the Iowa state refugee program plan.

e. There is another community resource available to provide the services or a similar service free of charge to the client that will meet the client's needs.

f. Funding is not available to provide the service. A list of services not available due to lack of funding shall be posted in the bureau's offices.

61.8(3) *Reduction.* A particular service may be reduced when the department determines that any of the following reasons apply:

a. Continued provision of service at its current level is not necessary. The department shall determine the level to which the service may be reduced without jeopardizing the client's continued progress toward achieving or maintaining the goal.

b. Another community resource is available to provide the same or similar service to the client, at no financial cost to the client, that will meet the client's need.

c. Funding is not available to continue the service at the current level. The client shall be reassessed to determine the level of service to be provided.

441—61.9(217) Client appeals. Decisions made by the department or its designee adversely affecting its clients may be appealed according to 441—chapter 7.

441—61.10(217) Refugee sponsors. The department is required under its resettlement contract with the U.S. Department of State to secure a sponsor for each refugee unit it resettles. Applications for sponsorship through the department are open, but not limited to, Iowans representing: Individuals; individuals representing a group, club, organization, or business; and churches or other religious organizations. Refugee sponsors must comply with a formal application process with the department and complete Form 402-0043, Sponsorship Application. The refugee sponsor must be able to provide certain types of nonfinancial assistance to the refugee unit as outlined by the department. The deputy chief of the bureau accepts or rejects each refugee sponsor application.

441—61.11(217) Adverse actions regarding sponsor applications. Applications shall be denied when it is determined by the department that any of the paragraphs or subparagraphs below apply:

61.11(1) The potential sponsor:

a. Seeks to benefit financially by sponsoring a refugee family.

b. Refuses to fill out and sign the Sponsorship Application.

c. Is not economically self-sufficient.

d. Seeks to engage a refugee family in political, economic, religious, or social activities which are intended to restrict the refugees' freedom of choice after they have arrived in Iowa. This includes but is not limited to instances where a potential sponsor seeks to impose the sponsor's beliefs, lifestyle, or efforts for economic gain on the refugee.

e. Refuses to take part in the department's orientation programs for sponsors.

f. Lacks the commitment of time and resources necessary to fulfill the responsibilities of sponsorship as defined in the Sponsorship Application.

61.11(2) The placement of a refugee family with a specific sponsor would cause undue physical or psychological hardship on the newly arrived refugee due to geographic isolation from support services or activities.

441—61.12(217) Administrative review of denial of services. Sponsors may request an administrative review when their applications are denied. The request shall be in writing and must be received by the department no later than thirty (30) days after the date of the notification of denial.

61.12(1) When a sponsor wishes a review of a denial, it will be referred to the chief of the bureau. The bureau chief will affirm or reverse the denial within twenty (20) days of the request.

61.12(2) When the bureau chief affirms the denial, the sponsor may request further review by sending a letter requesting review and the bureau chief's denial to the director of the division of community services within ten (10) days of the date of the bureau chief's denial. When more information is needed, the director shall request the information within five (5) days.

The director shall review the denial and issue a decision within ten (10) days of the request for the review or the receipt of additional information, whichever is later.

441—61.13(217) Refugee resettlement moneys. The department receives a certain amount of money from the U.S. Department of State for each refugee it resettles. A portion of that money is made available to the refugee sponsor for financial assistance in resettling the refugee unit. All of the moneys must be spent in accordance with financial requirements and approved expenditures of the department, U.S. Department of State, and the state of Iowa comptroller and must go toward the benefit of the refugee unit. The sponsor must sign Form 402-0025, Receipt Letter, to document the receipt of all refugee resettlement funds. The refugee sponsor must not financially benefit in any way from the refugee resettlement moneys.

441—61.14(217) Unaccompanied refugee minors program. The department administers the unaccompanied refugee minors program under rules covered in 441—chapters 156, 202, 112, 113, 114, 115, and 116 and by federal guidelines provided by the U.S. Department of Health and Human Services. In consultation with other resettlement agencies, the commissioner determines the number of unaccompanied minors to be resettled in Iowa. Resettlement agencies may not bring unaccompanied minors into Iowa without the authorization of the commissioner.

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CHAPTERS 62 and 63
Reserved

CHAPTER 64
RELIEF FOR NEEDY INDIANS
[Prior to 7/1/83, Social Services(770), Ch 64]
[Prior to 2/11/87, Human Services(498)]

441—64.1(252) Relief for Indians. The program of relief for needy Indians provides for the state department of human services, upon authorization of the tribal council of the settlement in Tama county, to order Department of Management to write warrants, in favor of an Indian residing on the settlement for those items designated by the department of human services. Warrants may also be issued to meet special needs when recommended by the tribal council and approved, on an individual basis, by the state department of human services.

This rule is intended to implement Iowa Code section 252.43.

441—64.2(252) Eligibility requirements.

64.2(1) *Determining amount of assistance.* The standards used in the aid to dependent children program shall be used for those items for which provision is made through the program of relief for needy Indians.

64.2(2) *Need.* Need exists when an applicant lacks sufficient income and resources to meet established requirements.

64.2(3) *Age.* There are no age limitations.

64.2(4) *Resources and income.* See subrule 41.1(1) and rule 41.2(239) (aid to dependent children).

64.2(5) *Support from relatives.* Responsible relatives shall be interviewed at the time of application and review. Any contribution made by the relative shall be taken into consideration in determining the amount of the grant.

64.2(6) *Applications.* See rules contained in chapter 40 (aid to dependent children).

64.2(7) *Investigations.* See rules contained in chapter 40 (aid to dependent children).

64.2(8) *Payment.* Payment shall be made directly to the vendor by the state department of human services for goods or services provided.

64.2(9) *Limitations on expenditures.* The state department shall notify the tribal council, each month, of funds available for that month. The tribal council may not issue orders in excess of such amount.

64.2(10) *Review.* A review of cases receiving assistance on a regular basis shall be made as frequently as the circumstances require but in no instance shall the period of time between reviews be in excess of six (6) months. In cases where temporary assistance is granted in emergencies the situation should be evaluated at any time additional assistance is requested.

This rule is intended to implement Iowa Code section 252.43.

441—64.3(252) Reporting requirements. The tribal council shall make monthly and annual reports to the department of human services stating amounts expended by type of assistance. Form 470-2196, Report of Indian Relief Activity, shall be used for this purpose.

The monthly reports shall be submitted to the department by the fifteenth of the following month and the annual report shall be submitted no later than September 30.

This rule is intended to implement Iowa Code section 252.43.

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TITLE VII
FOOD STAMP PROGRAM
CHAPTER 65
ADMINISTRATION
[Prior to 7/1/83, Social Services (770), Ch 65]
[Prior to 2/11/87, Human Services(498)]

441—65.1(234) Definitions.

"Constant unearned income" means nonexempt unearned income which is expected to be received regularly and is not expected to change, in source or amount, more often than annually. Time limited benefits, such as job insurance benefits, are not considered to be constant unearned income.

"Intentional failure to comply" in the aid to dependent children program and in accordance with administrative requirements at rule 65.3(234) is defined as fraud as established by a court.

"Notice of expiration" means either a message printed on an application for continued program participation, PAER Form PA-2141-0, which is automatically issued to the household, or Form FP-2310-0.

"Parent" means natural, legal, or step mother or father.

"Project area" means the state of Iowa as a whole is the administrative unit for food stamp program operations.

"Recent work history" means that the person received income from employment during either one of the two (2) calendar months immediately preceding the budget month, except the exempt earnings of a child shall not be considered.

"Report month" for retrospective budgeting means the calendar month following the budget month.

"Sibling" means biological, legal, step, half or adoptive brother or sister.

"Suspension" means a month in which a benefit issuance is not made due to retrospective net income which exceeds program limits, when eligibility for benefit issuance is expected to exist for the following month.

441—65.2(234) Application. Persons in need of food stamps may apply at the local office of human services by completing Form FP-2101-0 or FP-2101-1, food stamp application, when the application is for an initial month or the application is for a household whose previous participation was in another county, except when any person in the household is applying for aid through the aid to dependent children program or related medical programs, the refugee resettlement assistance programs, or the child medical assistance program. These persons shall complete Form PA-2207-0, Public Assistance Application. Households receiving food stamps without a change of county may apply for continued participation by submitting Form PA-2140-0, Public Assistance Eligibility Report.

441—65.3(234) *Administration of program. The food stamp program shall be administered in accordance with the Food Stamp Act of 1977 and in accordance with federal regulation, Title 7, Parts 270 through 282 as amended to December 31, 1986.

A copy of the federal law and regulations may be obtained at no more than the actual cost of reproduction by contacting the Bureau of Economic Assistance, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, 515/281-3133.

This rule is intended to implement Iowa Code section 234.12.

441—65.4(234) Issuance. All food stamp coupons are issued by direct mail except for expedited service, exchange for improperly manufactured or mutilated coupons, and exchange of old series coupons for new series coupons. These coupons are issued over-the-counter by local offices. Food coupons for on-going certifications will be mailed on a staggered basis during the first fifteen (15) days of each month.

*Federal regulations as amended to November 28, 1986, were emergency adopted February 1, 1987; see ARC 7352, IAB 2/11/87.

65.4(1) When a household's coupons have been replaced as the result of mail losses for one (1) month, the coupons shall be mailed to the local office for six (6) months.

65.4(2) When a household reports a shortage in its mail issuance, the household shall present the coupon books received to the local office for examination.

65.4(3) When a household presents $200 or more of old series coupons to be exchanged for new series coupons, the household shall sign a statement that the coupons were validly purchased by the household, telling the approximate dates of purchase, and giving the reasons for the accumulation and the delay in presenting them for exchange.

65.4(4) When a household meets the residency requirements of the food stamp program within the state of Iowa and is eligible for direct mailing, the household may have the coupon allotment sent to any mailing address within the state or to a community or mailing address which does not exceed ten (10) miles beyond the legal boundaries of the state.

441—65.5(234) Hotline. Persons having complaints or questions about program requirements and procedures may call the toll free number 1-800/532-1215.

441—65.6(234) Delays in certification.

65.6(1) When by the thirtieth day after the date of application the local office cannot take any further action on the application due to the fault of the household, the local office shall give the household an additional thirty (30) days to take the required action. The local office shall send the household a notice of pending status on the thirtieth day.

65.6(2) When there is a delay beyond sixty (60) days from the date of application and the local office is at fault and the application is complete enough to determine eligibility, the application shall be processed. For subsequent months of certification, the local office may require a new application form to be completed when household circumstance indicates changes have occurred or will occur.

65.6(3) When there is a delay beyond sixty (60) days from the date of application and the local office is at fault and the application is not complete enough to determine eligibility, the application shall be denied. The household shall be notified to file a new application and that it may be entitled to retroactive benefits.

441—65.7(234) Expedited service. When a household has been certified under expedited service provisions and verification of eligiblity factors has been postponed, the household shall be certified only for the month of application.

441—65.8(234) Utility allowance.

65.8(1) *Standard allowance.* The standard allowance is a single standard utility of $151.00.

65.8(2) *Heating expense.* Heating expense is the cost of fuel for the primary heating service normally used by the household.

65.8(3) *Telephone standard.* When a household is receiving telephone service for which it is required to pay and the household is not entitled to the single standard allowance, a standard allowance of $16.00 shall be allowed.

65.8(4) *Energy assistance payments.* For purposes of prorating the low income energy assistance payments to determine if households have incurred out-of-pocket expenses for utilities, the heating period shall consist of the months from October through March.

This rule is intended to implement Iowa Code section 234.12.

441—65.9(234) Treatment centers. Alcoholic or drug treatment or rehabilitation centers shall provide the local office with a certified list of residents currently participating in the food stamp program on a monthly basis.

441—65.10(234) Reporting changes. Households may report changes on the Change Report Form, FP-2232-0. Households are supplied with this form at the time of initial certification,

at the time of recertification whenever the household needs a new form, whenever a form is returned by the household, and upon request by the household.

Households who are exempt from filing a monthly report because of earnings of seventy-five dollars ($75.00) or less per month are required to report to the local office whenever their earnings exceed seventy-five dollars ($75.00) per month. This report is to be made no later than ten (10) days after the last day of the month in which the earned income increased to more than seventy-five dollars ($75.00).

441—65.11(234) Discrimination complaint. Individuals who feel that they have been subject to discrimination may file a written complaint with the Affirmative Action Office, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319.

441—65.12(234) Appeals. Fair hearings and appeals are provided according to the department's rules, chapter 7.

441—65.13(234) Joint processing.

65.13(1) *SSI/food stamps.* The department will handle joint processing of supplemental security income and food stamp applications by having the social security administration complete and forward food stamp applications.

65.13(2) *Public assistance/food stamps.* In joint processing of public assistance and food stamps, the certification periods for public assistance households will be assigned to expire at the end of the month in which the public assistance redetermination is due to be processed.

441—65.14(234) Rescinded, effective 10/1/83.

441—65.15(234) Proration of benefits. Benefits shall be prorated using a thirty (30)-day month.

This rule is intended to implement Iowa Code section 234.12.

441—65.16(234) Complaint system. Clients wishing to file a formal written complaint concerning the food stamp program may submit Form FP-2238-0, or FP-2238-1, Food Stamp Complaint, to the division of field operations. Department staff shall encourage clients to use the form.

441—65.17(234) Involvement in a strike. An individual is not involved in a strike at the individual's place of employment when the individual is not picketing and does not intend to picket during the course of the dispute, does not draw strike pay, and provides a signed statement that the individual is willing and ready to return to work but does not want to cross the picket line solely because of the risk of personal injury or death or trauma from harassment. The district administrator shall determine whether such a risk to the individual's physical or emotional well-being exists.

441—65.18(234) Rescinded, effective 8/1/86.

441—65.19(234) Monthly reporting/retrospective budgeting.

65.19(1) *Budgeting cycle.* Retrospective budgeting will base benefit calculation on the budget month which is the second calendar month preceding the issuance month.

65.19(2) *Reporting responsibilities of monthly reporting households.*

a. The Public Assistance Eligibility Report, Form PA-2140-0 will be supplied to the recipient, by the department, as needed or requested. The department shall provide a postage-paid envelope for return to the local office of Form PA-2140-0, the Public Assistance Eligibility Report.

b. The household shall return the completed form to the local office by the fifth calendar day of the month which precedes the issuance month, when the form was issued in the department's regular end-of-month mailing. The household shall return the completed form to the local

office by the seventh day after the date of the issuance of the form when the form was not issued in the department's regular end-of-month mailing.

c. Failure to return a completed form shall result in cancellation of assistance. A completed form is a form with all items answered, accompanied by verification as required in 65.19(14) and 65.19(15), and signed and dated by a responsible household member on or after the last day of the budget month. When the PA-2140-0 is used as a food stamp monthly report and a person in the household is also required to report monthly for another public assistance program, the form shall also be signed by all individuals required to sign for that program to be considered complete.

65.19(3) *Determination of eligibility.* Eligibility will be determined on the basis of the household's prospective income and circumstances.

65.19(4) *Public assistance income.* The aid to dependent children and refugee cash assistance grant(s) authorized for the issuance month will be considered in determination of the household's eligibility and benefit level. Adjustive or corrective public assistance payments shall be counted retrospectively.

65.19(5) *Suspension.* Suspension is not limited to households whose recurring income has a periodic increase. Suspension may not occur for two (2) consecutive months.

65.19(6) *Households required to submit monthly reports.* The following are subject to monthly reporting:

a. Households who are required to submit aid to dependent children monthly reports.

b. Households with one or more members who have a recent work history except when:

(1) The recent work history earnings of each person were seventy-five dollars ($75) or less per month or

(2) The adult members are all sixty (60) years old or older, or are receiving disability or blindness payments under Titles I, II, X, XIV, or XVI of the Social Security Act.

c. Households with one or more members receiving countable unearned income which is not constant except when one or more of the following apply:

(1) The adult members are all sixty (60) years old or older, or are receiving disability or blindness payments under Titles I, II, X, XIV, or XVI of the Social Security Act.

(2) The income is from job insurance benefits.

(3) The income is from educational income such as grants, scholarships, educational loans, fellowships or veterans educational benefits.

(4) The income is from interest.

d. Households with one or more members receiving countable earned income except when one or more of the following apply:

(1) The earned income of each person is seventy-five dollars ($75.00) or less per month.

(2) The earned income is annualized self-employment income.

(3) The earned income is that of persons in a group living arrangement whose only source of earned income is from a sheltered workshop program.

(4) The earned income is that received by migrant farm worker households.

65.19(7) *Entering or leaving monthly reporting or retrospective budgeting due to a change in status.* A monthly report will be required for the budget month in which exempt status is lost. Retrospective budgeting will begin for the issuance month which corresponds to the budget month in which exempt status is lost.

The household will not be required to submit a monthly report for the budget month following the budget month in which exempt status is attained. The exempt status which is related to recent work history will be attained in the third month of recent work history. Retrospective budgeting will end for the issuance month which corresponds to the budget month in which exempt status is attained.

65.19(8) *Prospective beginning months.* All eligible households will have benefits calculated prospectively for the two (2) beginning months. When a household has applied for assistance from the aid to dependent children program or related medical programs, the child medical assistance program or the refugee resettlement-cash assistance program, and for food stamp benefits using a Form PA-2207-0, Public Assistance Application, a third food stamps'

beginning month will be allowed when the public assistance program's first "initial month" is the same calendar month as the second food stamp's beginning month, and the third beginning month permits a simultaneous transition to retrospective budgeting.

65.19(9) *Disregarded income for the first months of retrospective budgeting.* Income considered prospectively for new household members or in the beginning months and not expected to continue shall not be considered again.

65.19(10) *Action on reported changes.* The local office will act on all reported changes for households required to submit monthly reports.

65.19(11) *Actual income.* Calculation of benefits will consider the actual income received or anticipated to be received in the budget month, without conversion to regular monthly amounts, unless income is required to be annualized or prorated.

65.19(12) *Mailing of notices.* All individual household notices of benefit amounts will be mailed separately from food stamps.

65.19(13) *Reinstatement.* Reinstatement of the household canceled for failure to submit a complete monthly report will occur only when the otherwise eligible household submits a complete report by the end of the report month or by the extended filing date, whichever is later.

65.19(14) *Verification of income.* A monthly report will be considered incomplete when it is not accompanied by verification of gross nonexempt unearned income or prorated income or annualized income when this income starts, stops, or changes in amount. Verification of interest income, with a monthly report, is not required.

65.19(15) *Return of verification.* The local office will return all items of verification, submitted in the monthly reporting process, to the household.

65.19(16) *Notice regarding reinstatement.* The household which has received a Notice of Cancellation, Form 4107-0, shall be notified in writing of its status every time the department receives a monthly report form prior to the end of the "report month," or the extended filing period, whichever is later.

65.19(17) *Additional information and verification.* The household which has submitted a complete monthly report shall submit, or cooperate in obtaining, additional information and verification needed to determine eligibility or benefits within five (5) working days of the local office's written request.

65.19(18) *Household membership.* Except for applications received during a period of time when the household was not certified to receive food stamps, household membership shall be determined as it was or is anticipated to be on the first day of the issuance month. Changes in household membership occurring on or after the first day of the month which are reported during the month in which the change occurs, will not be considered until the following month. Except for qualified residents of a shelter for battered women and children, individuals shall not be added to the household prior to their being removed from another household where they were receiving food stamps.

65.19(19) *Certification periods.* Households in which all members are receiving aid to dependent children (ADC) cash assistance or ADC-related medical assistance programs will be assigned certification periods of six (6) to twelve (12) months. However, a certification period of less than six (6) months may be assigned to match the food stamp recertification date and the public assistance review date.

Households in which one or more members are not receiving ADC cash assistance or ADC-related medical assistance and which are not required to file a monthly report will be assigned certification periods of one to six months based on the predictability of the household's circumstances except when the adult members are all sixty (60) years of age or older with very stable income such as social security, supplemental security income, pensions or disability payments. These households shall be certified for up to twelve (12) months.

65.19(20) *Households subject to retrospective budgeting.* All households are subject to retrospective budgeting unless exempted by rule or regulation. Exempt households are:

a. Migrant farm households while they are in the job stream.

b. Households whose adult members are all elderly or disabled with no earned income.

c. Households in beginning months as outlined in subrule 65.19(8).

441—65.20(234) Notice of expiration issuance.

65.20(1) Issuance of the Automated Notice of Expiration will occur with the monthly mailing of Public Assistance Eligibility Reports, Form PA-2140-0, from Des Moines.

65.20(2) Issuance of the Notice of Expiration, Form FP-2310-0, will occur from the local office at the time of certification if the household is certified for one (1) month, or for two (2) months, and will not receive the Automated Notice of Expiration.

441—65.21(234) Claims.

65.21(1) *Time period.* Claims shall be calculated back to the month the error originally occurred to a maximum of three (3) years prior to month of discovery of the overissuance.

65.21(2) *Suspension status.* Claims suspended under rules effective prior to June 1, 1983, that do not meet the criteria for suspension under rules effective June 1, 1983, shall be transferred to an active status.

65.21(3) *Application of restoration of lost benefits.* If the household is entitled to any benefits which it did not receive due to delay or error by the department, these benefits shall first be applied to any claims (including a suspended claim) with any remaining benefits being issued to the household.

441—65.22(234) Verification.

65.22(1) *Income.* Households shall be required to verify income at time of application, recertification and when income is reported or when income changes with the following exceptions:

a. Households are not required to verify the public assistance grant.

b. Households are not required to verify job insurance benefits when the information is available to the department from the department of employment services.

c. Households are only required to verify interest income at the time of application and recertification.

65.22(2) *Dependent care costs.* Households shall be required to verify dependent care costs at time of certification, when reported in the monthly reporting system, and when a change is reported (when a household is not in the monthly reporting system).

65.22(3) *Medical expenses.* Households shall be required to verify medical expenses at recertification and when reported.

65.22(4) *Shelter costs.* Households shall be required to verify shelter costs (other than utility expenses) at application and when the household reports moving or a change in its shelter costs.

65.22(5) *Utilities.* Actual utilities (for households required or choosing to use actual utility expenses) shall be verified at time of certification and when reported.

441—65.23(234) Weekly or biweekly income and prospective budgeting. Households receiving benefits determined by prospective budgeting shall have the actual amount of income that is received on a weekly or biweekly basis considered for that benefit month.

441—65.24(234) Failure to verify. When the household does not verify an expense as required, no deduction for that expense will be allowed.

441—65.25(234) Effective date of change. A food stamp change caused by, or related to, a public assistance grant change, will have the same effective date as the public assistance change.

441—65.26(234) Child support rebate (pass-through) from the department.

65.26(1) The child support rebate (pass-through) is an additional assistance payment and shall be counted retrospectively.

65.26(2) Receipt of the child support rebate (pass-through) shall not affect monthly reporting status.

65.26(3) Receipt of the child support rebate (pass-through) is not required to be reported or verified by the household.

441—65.27(234) Voluntary quit. Participating households subject to sanction because the head of household voluntarily quit employment shall be subject to a disqualification period of three (3) calendar months beginning with the month following the adverse notice period.

If the head of household who caused the disqualification leaves the household, it will be necessary for the household to reapply to reestablish eligibility.

441—65.28(234) Work requirements.

65.28(1) *Persons required to register.* Each household member who is not exempt by subrule 65.28(2) shall be registered for employment at the time of application, and once every twelve (12) months after initial registration, as a condition of eligibility. Registration is accomplished when the applicant signs a food stamp application form that contains a statement that all members in the household who are required to register for work are willing to register for work. This signature registers all members of that food stamp household that are required to register.

65.28(2) *Exemptions from work registration.* The following persons are exempt from the work registration requirement:

a. A person younger than sixteen (16) years of age or a person sixty (60) years of age or older. A person age sixteen (16) or seventeen (17) who is not a head of a household or who is attending school, or is enrolled in an employment training program on at least a half-time basis is exempt.

b. A person physically or mentally unfit for employment.

c. A household member subject to and complying with any work requirement under Title IV of the Social Security Act including mandatory work incentive demonstration program (WIN) referral.

d. A parent or other household member who is responsible for the care of a dependent child under age six (6) or an incapacitated person.

e. A person receiving unemployment compensation.

f. A regular participant in a drug addiction or alcohol treatment and rehabilitation program which is certified by the Iowa department of public health, division of substance abuse.

g. A person who is employed or self-employed and working a minimum of thirty (30) hours weekly or receiving weekly earnings at least equal to the federal minimum wage multiplied by thirty (30) hours.

h. A student enrolled at least half-time in any recognized school, recognized training program, or an institution of higher education (provided that students have met the requirements of federal regulation, Title 7, Part 273.5, as amended to December 31, 1986).

65.28(3) *Losing exempt status.* Persons not required to monthly report who lose exempt status because of any changes in circumstances (i.e, as loss of employment that also results in a loss of income of more than $25 a month, or departure from the household of the sole dependent child for whom an otherwise nonexempt household member was caring) shall register for employment when the change is reported. Persons required to monthly report who lose exempt status due to a change in circumstances shall register for employment at the household's next recertification.

65.28(4) *Registration process.* Upon reaching a determination that an applicant or a member of the applicant's household is required to register, the pertinent work requirements, the rights and responsibilities of work-registered household members, and the consequences of failure to comply shall be explained to the applicant. A written statement of the above shall be provided to each registrant in the household. The written statement shall also be provided at recertification and when a previously exempt member or a new household member becomes subject to work registration.

Registration for all nonexempt household members required to work register is accomplished when the applicant or recipient signs an application, recertification, or reporting form containing an affirmative response to the question, "Do all members who are required to work register and participate in job search agree to do so?" or similarly worded statement.

65.28(5) *Deregistration.* Work registrants who obtain employment or otherwise become exempt from the work requirement subsequent to registration or who are no longer certified for participation are no longer considered registered.

65.28(6) *Work registrant requirements.* Work registrants shall:

a. Participate in an assigned employment and training program.

b. Respond to a request from the department or the department of employment services for supplemental information regarding employment status or availability for work.

c. Report to an employer to whom referred by the department of employment services if the potential employment meets the suitability requirements described in subrule 65.28(15).

d. Accept a bona fide offer of suitable employment at a wage not less than the federal minimum wage.

65.28(7) *Employment and training programs.* Persons required to register for work and not exempted by subrule 65.28(9) from placement in a job component shall be subject to employment and training requirements. If not all nonexempt mandatory registrants can be served because of insufficient funds, registrants will be randomly selected for referral up to the limit the funding can accommodate. Requirements may vary among participants.

65.28(8) *Employment and training components.* The department of employment services shall serve as the provider of employment and training services for nonexempt food stamp registrants.

All registrants who are referred to employment services shall be required to first participate in the Job Search I component. If sufficient funds are available, participants who do not secure employment during Job Search I shall be required to participate in the Job Search II component. Each component shall have a duration of four (4) weeks.

Employment services is authorized to require clients to engage in vocational testing activities when deemed necessary by employment services which include the General Aptitude Test Battery and Validity Generalization.

Participants shall report for all scheduled employment interviews and accept bona fide offers of suitable employment as defined in subrule 65.28(15).

a. Job Search I. Registrants who do not have an Application Card, ES-511, currently on file with employment services will be required to complete one.

(1) Orientation. Participants in Job Search I shall receive an orientation to the program. At a minimum, the orientation shall include an explanation of services provided in each component, an explanation of participation requirements, an explanation of what services participants can expect to receive, and an explanation of each participant's rights and responsibilities. At the conclusion of the presentation, each participant shall be required to read and sign Your Rights and Responsibilities, Form 62-2053, acknowledging that a complete explanation of the program and what constitutes noncompliance and the sanctions for noncompliance have been provided.

(2) Job Search. At the conclusion of orientation, each participant shall be given a job search assignment. The participant shall be required to contact up to twenty-four (24) employers, face-to-face, while assigned to Job Search I for the purpose of submitting employment applications and arranging for employment interviews. Each participant shall be required to submit written documentation, using Work Search Requirements, Form IESC-1744, of employer contacts made. This documentation shall be provided in person to employment services staff at a scheduled meeting which shall occur at the conclusion of the Job Search I four (4)-week participation period. Each participant shall be given written notice of the time, date, and location of this meeting, at the conclusion of the Job Search I orientation period.

b. Job Search II. Participants who remain unemployed at the end of the Job Search I participation period shall be referred for participation in the Job Search II component.

(1) Job skills training. Participants in this component shall be provided a complete explanation of the program, what constitutes noncompliance and the sanction for noncompliance. Participants shall receive four (4) days (up to four (4) hours each of these days) of job-seeking skills training which shall be provided in a classroom setting. Participants who, for any reason, are absent any day during the four (4)-day job-seeking skills training period shall be required to repeat the entire four (4)-day period of training. Employment services staff may substitute other similar instructional activities in place of the four (4)-day classroom period when other activities are deemed more appropriate based on individual participant need and availability of agency resources.

(2) Job Search. At the conclusion of the instructional period, each participant shall be required to engage in job search activities. Participants shall be required to contact a maximum of sixteen (16) employers while assigned to Job Search II. Contacts shall be face-to-face for the purpose of submitting employment applications and arranging for job interviews. Participants shall be required to document, in writing, job search activities using Work Search Requirements, Form IESC-1744. This documentation shall be provided in person to employment services staff at a scheduled meeting which shall occur at the conclusion of the Job Search II four (4)-week participation period. Each participant shall be given written notice of the time, date, and location of this meeting at the conclusion of the Job Search II job-seeking skills training period.

65.28(9) *Exemptions from employment and training programs.* The department may exempt certain individuals and categories of individuals from employment and training participation. Exempt status of individuals shall be reviewed at recertification to determine if the exemption is still valid. Exempt classifications include:

a. Persons who reside in counties where:

(1) Job placements services are not available through the department of employment services and

(2) Either less than fifteen percent (15%) of the county's residents are employed outside of the county or the unemployment rate for the county is ten percent (10%) or higher.

b. Pregnant women in the sixth month or more of pregnancy. Department staff are authorized to require medical documentation.

c. Strikers and persons who are unemployed because of lockout.

d. Persons who are assigned to a job or training component, do not commence the component and are determined to have good cause as defined in subrule 65.28(17) may be considered exempted if the reason for good cause will last for sixty (60) days or longer. When the reason for the exemption is no longer applicable, the person may be placed in a component.

65.28(10) *Time spent in an employment and training program.* A participant may be placed in two (2) different components from October 1 through September 30.

The total hours of participation for any household member individually in any month together with any hours worked for compensation (in cash or in kind) shall not exceed one hundred twenty (120).

65.28(11) *Participation allowance.* Participants in employment and training programs shall be provided an allowance for costs of tranportation or other costs reasonably necessary and directly related to participation in the programs of $25 for each four (4)-week component in which the participant is placed. The allowance shall be authorized on the first day of each component in which the person participates. The allowance shall be authorized only once per component in each federal fiscal year.

65.28(12) *Failure to comply.* When an individual other than the head of the household has refused or failed without good cause to comply with the work registration or employment and training requirements in this section, that individual shall be ineligible to participate in the food stamp program for two (2) months and is treated as an excluded household member. If the head of household fails to comply, the entire household is ineligible to participate for two (2) months.

a. Ineligibility shall continue either (1) until the member who caused the violation complies with the requirement as specified in subrule 65.28(14), leaves the household, or becomes exempt from work registration as provided in subrule 65.28(2) exclusive of paragraphs "*c*" and "*e,*" or (2) for two (2) months, whichever occurs earlier.

b. If any household member who failed to comply joins another household as the head of the household, that entire new household is ineligible for the remainder of the disqualification period. If the member who failed to comply joins another household where the member is not the head of the household, the person shall be considered an excluded household member.

c. The disqualification period shall begin with the first month following the expiration of the adverse notice period, unless a fair hearing is requested.

d. Participants who are on probation in accordance with rules of this chapter and who incur any subsequent offense shall be sanctioned. Participants shall be notified of probation status in writing. Probation shall last for the duration of the component.

In addition to other work requirements in this chapter, sanctionable issues specific to employment and training components are as follows:

(1) Participants who are more than fifteen (15) minutes late for scheduled appointments with employment services without good cause shall be placed on probation; a subsequent lateness (without good cause) shall be considered refusal.

(2) Participants who are absent without good cause for orientation (Job Search I) or the first day of job-seeking skills instruction (Job Search II) shall be placed on probation. A second absence without good cause shall result in sanction.

(3) Participants who are absent without good cause on the second, third or fourth day of job-seeking skills instruction (Job Search II) shall be sanctioned.

(4) Participants who are absent without good cause at the time they are scheduled to present their job search documentation shall be sanctioned.

(5) Participants who fail to make the required number of employer contacts shall be sanctioned.

(6) Participants who exhibit disruptive behavior shall be placed on probation; a second offense shall result in sanction. Disruptive behavior means the participant hinders the performance of other participants or staff, refuses to follow instructions, or uses abusive language.

(7) Participants will be allowed an additional two (2) weeks to make up employer contacts which have been disallowed by employment services. Failure to make up employer contacts will result in sanction. Employment services will disallow employer contacts when it has been determined that the participant failed to make a face-to-face contact or the requirements of the job applied for far exceed the applicant's level of experience, education, or abilities.

(8) Participants who make physical threats to other participants or staff shall be sanctioned.

65.28(13) *Noncompliance with comparable requirements.* When the household contains a member who was exempt from work registration because the member was a mandatory work incentive demonstration project (WIN) participant or registered for work for job insurance benefits (JIB or UIB) and the member fails to comply with a WIN or JIB requirement comparable to a food stamp work registration or employment and training requirement, the household shall be treated as though the member failed to comply with the corresponding food stamp requirements. Disqualification procedures in subrule 65.28(12) shall be followed.

65.28(14) *Ending disqualification.* Following the end of the two (2)-month disqualification period for noncompliance with the work registration or employment and training requirements, participation may resume if a disqualified individual or household applies again and is determined eligible. Eligibility may be reestablished during a disqualification period and the household shall (if otherwise eligible) be permitted to resume participation if the member who caused the disqualification becomes exempt from the work requirement as provided in subrule 65.28(2) exclusive of paragraphs "*c*" and "*e*," is no longer a member of the household, or the member complies as follows:

a. If the member refused to register for work with the department, the member complies by registering.

b. If the member refused to respond to a request from the department or the department of employment services requiring supplemental information regarding employment status or availability for work, the member must comply with the request.

c. If the member refused to report to an employer to whom referred, the member must report to that employer if work is still available or report to another employer to whom referred.

d. If the member refused to accept a bona fide offer of suitable employment to which referred, the member must accept the employment if still available to the participant, or secure other employment which yields earnings per week equivalent to the refused job, or secure any other employment of at least thirty (30) hours per week or secure employment of less than thirty (30) hours per week but with weekly earnings equal to the federal minimum wage multiplied by thirty (30) hours.

65.28(15) *Suitable employment.* Employment shall be considered unsuitable if:

a. The wage offered is less than the highest either of the applicable federal minimum wage or eighty percent (80%) of the federal minimum wage if the federal minimum wage is not applicable.

b. The employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably be expected to earn is less than the applicable hourly wages specified in paragraph *"a"* above.

c. The household member, as a condition of employment or continuing employment, is required to join, resign from, or refrain from joining a legitimate labor organization.

d. The work offered is at a site subject to a strike or lockout at the time of the offer unless the strike has been enjoined under section 208 of the Labor-Management Relations Act (29 U.S.C. 78A) (commonly known as the Taft-Hartley Act), or unless an injunction has been issued under section 10 of the Railway Labor Act (45 U.S.C. 160).

e. The household member involved can demonstrate or the department otherwise becomes aware that:

(1) The degree of risk to health and safety is unreasonable.

(2) The member is physically or mentally unfit to perform the employment, as documented by medical evidence or by reliable information from other sources.

(3) The employment offered within the first thirty (30) days of registration is not in the member's major field of experience.

(4) The distance from the member's home to the place of employment is unreasonable considering the expected wage and the time and cost of commuting. Employment shall not be considered suitable if daily commuting time exceeds two (2) hours per day, not including the transporting of a child to and from a child care facility. Employment shall also not be considered suitable if the distance to the place of employment prohibits walking and neither public nor private transportation is available to transport the member to the job site.

(5) The working hours or nature of the employment interferes with the member's religious observances, convictions, or beliefs.

65.28(16) *Applicants for supplemental security income (SSI) and food stamps.* Household members who are jointly applying for SSI and for food stamps shall have the requirements for work registration waived until:

a. They are determined eligible for SSI and thereby become exempt from work registration, or

b. They are determined ineligible for SSI whereupon a determination of work registration status will be made.

65.28(17) *Determining good cause.* The department or its designee shall determine whether good cause exists for failure to comply with the work registration, employment and training, and voluntary quit requirements in 441—chapter 65. In determining whether good cause exists, the facts and circumstances shall be considered, including information submitted by the household member involved and the employer.

Good cause shall include circumstances beyond the member's control, such as, but not limited to, illness of the registrant or of another household member requiring the presence of the registrant, a household emergency, the unavailability of transportation, or the lack of adequate child care for children who have reached age six (6) but are under age twelve (12).

441—65.29(234) Income.

65.29(1) *Uneven proration of self-employment income.* Once a household with self-employment income is determined eligible based on its monthly net self-employment income, the household has the following options for computation of the benefit level:

a. Using the same net monthly self-employment income which was used to determine eligibility, or

b. Unevenly prorating the household's annual self-employment income over the period for which the household's self-employment income was averaged to more closely approximate the time when the income is actually received. If this option is chosen, the self-employment income assigned in any month together with other income and deductions at the time of certification

cannot result in the household's exceeding the maximum monthly net income eligibility standards for the household's size.

65.29(2) *Job insurance benefits.* When the local office of the department of human services uses information provided by the department of employment services to verify job insurance benefits, the benefits shall be considered received the second day after the date that the check was mailed by job service. When the second day falls on a Sunday or federal legal holiday, the time shall be extended to the next mail delivery day. When the client notifies the local office that the amount of job insurance benefits used is incorrect, the client shall be allowed to verify the discrepancy. A benefit adjustment shall be made when indicated. The client must report the discrepancy prior to the benefit month or within ten (10) days of the date on the Notice of Decision, PA-3102-0, applicable to the benefit month, whichever is later, in order to receive corrected benefits.

65.29(3) No portion of any student financial assistance received by a person from any program funded in whole or part by Title IV of the Higher Education Act of 1986 which is used by that person for costs, described in paragraphs *"a"* and *"b"* below, shall be considered as income or resources in determining eligibility or benefits for the food stamp program.

The specific costs which shall be excluded from any student financial assistance received under Title IV are as follows:

a. Tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study.

b. An allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution.

These rules are intended to implement Iowa Code sections 217.6 and 234.12.

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CHAPTERS 66 to 70
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CHAPTER 71
EMERGENCY FOOD DISTRIBUTION PROGRAM
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CHAPTER 72
EMERGENCY FOOD AND SHELTER PROGRAM
Rescinded, effective 11/1/86

◊Two ARCs

CHAPTER 73
FEDERAL SURPLUS FOOD PROGRAM

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[Prior to 2/11/87, Human Services(498)]

441—73.1(234) Program purpose and definitions.

73.1(1) *General purpose and scope.* The department of human services having been designated by the governor as the agency responsible for administration of the federal surplus food program entered an agreement with the United States Department of Agriculture (USDA) for distribution of excess commodities acquired by the commodity credit corporation and made available to Iowa. Pursuant to the agreement, the department of human services administers and coordinates the distribution of federal surplus foods to needy Iowans through local emergency feeding organizations.

Inquiries about the program may be made by contacting the department's Bureau of Operations Analysis, Hoover State Office Building, Des Moines, Iowa 50319-0114 (phone: (515) 281-4687).

73.1(2) *Definitions.*

"Charitable institution" means a facility that is:

a. Public or private, nonprofit, and tax-exempt under the Internal Revenue Code as documented by a letter of exemption; and

b. Organized for charitable or public welfare purposes, and has provided and will continue to provide services at the same address without marked change; and

c. A provider of regular meal services at least once a week on a regular basis. An institution must serve meals rather than redistribute foods in the form donated, or allow clients to prepare their meals individually.

"District coordinator" means the person designated by the district administrator to coordinate the federal surplus food program in the district.

"Emergency feeding organization" means an agency which provides nutrition assistance to relieve situations of emergency and distress through the provision of food to needy persons including low-income and unemployed persons under an agreement with the department. This definition can include local distribution agencies, cooperative emergency feeding organizations, soup kitchens, temporary shelters, hunger centers for indigent persons and food banks.

"Federal surplus food" means surplus food commodities acquired through price support operations of the Federal Commodity Credit Corporation and made available to Iowa by the USDA for distribution to needy persons. Federal surplus food shall include commodities made available to Iowa under Title II of the "Temporary Emergency Food Assistance Act of 1983."

"Household" means a single individual or group of related or nonrelated individuals, exclusive of boarders, who are not residents of an institution, who prepare food for home consumption.

"Local distribution agency" means local agencies and organizations operating or serving facilities distributing federal surplus food to needy persons for consumption in the home to an agreement with the department of human services. Field offices of the department of human services shall also be defined as local distribution agencies.

"Potentially hazardous food" means any food of the type or in a condition that it may spoil and which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, or other ingredients, capable of supporting rapid and progressive growth of infectious or toxicogenic microorganisms.

"Storage and distribution costs" means expenses incurred by the department of human services, local distribution agencies and emergency feeding organizations for intrastate storage and transportation of federal surplus foods. Costs include those to rent, lease, operate and maintain storage facilities and transportation equipment, and to load, unload, distribute, and otherwise handle, account for and manage the distribution of federal surplus foods.

Department of human services, local distribution organization and emergency feeding organization salary and support expenses of employees and operations engaged in the manage-

ment, coordination and accomplishment of federal surplus foods distribution shall be defined as storage and transportation costs to the extent that expenses are directly attributed to the storage and distribution of federal surplus foods.

441—73.2(234) Priority of distribution. When federal surplus food is available, it shall first be provided to local distribution agencies for distribution to eligible needy households residing in the state, and then to emergency feeding organizations. Any excess food available after distribution to households and emergency feeding organizations shall be offered to adult corrections facilities without rehabilitation programs and to other charitable institutions.

441—73.3(234) Agreements. In accord with the current agreement between the state of Iowa and the United States Department of Agriculture, Food and Nutrition Service, federal surplus food shall be provided to local distribution agencies and emergency feeding organizations upon entering a distribution agreement with the department of human services.

73.3(1) Local distribution agencies distributing surplus commodities to households must complete Form FP-1104, Local Distribution Agency Agreement, authorizing distribution within specific areas to eligible households.

73.3(2) Emergency feeding organizations must complete Form FP-1109, Emergency Feeding Organization Agreement, to be eligible to receive and distribute surplus foods remaining locally available after each distribution to households.

73.3(3) Charitable institutions, adult corrections, and juvenile detention facilities must complete Form FP-1108, Federal Surplus Food Institution Application, to be eligible to receive surplus foods remaining locally following distribution to households.

441—73.4(234) Household eligibility. Household eligibility is determined by household size, income, and residence.

73.4(1) *Residence.* Household members shall be residing in the state of Iowa.

73.4(2) *Household size.* Household size is determined by the number of people living in a dwelling, excluding boarders.

73.4(3) *Income eligibility.* All earned and unearned income of the household shall be counted in determining eligibility.

a. Income defined. Income means all income received by an individual from sources identified by the U.S. Census Bureau in computing median income and includes money wages or salary, net income from nonfarm self-employment, net income from farm self-employment, dividends, interest, income from estates or trusts, net rental income and royalties, public assistance or welfare payments, pensions and annuities, workers' compensation, alimony, child support, veterans' pensions, social security; railroad retirement, supplemental security income, state or federal assistance, veterans' benefits, black lung benefits, all disability pensions, state supplementary assistance, unemployment compensation benefits, and income from minors under sixteen years of age.

b. Determination of income. Earned or unearned income shall be the gross annual, monthly, or weekly income. Biweekly income is to be multiplied by 2.15 to determine monthly income. Adjusted gross self-employment income is to be averaged over a twelve (12)-month period. Income received from interest and dividends shall be averaged over a twelve (12)-month period. The amount of income which stops or starts during the month shall be estimated on the basis of the best information available.

c. Income exclusions. Income from the following programs shall not be counted when figuring total household income for this program:

(1) Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646, Section 216).

(2) Domestic Volunteers Services Act of 1973 (Public Law 93-113) as amended.

(3) Vista, University Year for Action.

(4) Payments derived from certain submarginal land of the United States which is held in trust for certain Indian Tribes (Public Law 94-114, Section 6).
(5) Payments from Crisis Intervention Program.
(6) CETA Youth Programs (Public Law 95-524) which include:
Youth Incentive Entitlement Pilot Project.
Youth Community Conservation and Improvement Project.
Youth Employment and Training Program.
(7) Indian Claims Commission Payments (Public Law 95-433).
(8) Job Training Partnership Act (Public Law 97-300) including salaries paid by employers to JTPA participants in an on-the-job training component.
(9) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Public Law 94-540).
(10) Alaska Native Claims Settlement Act (Public Law 92-203).
(11) Low Income Home Energy Assistance Program.
d. Income guidelines. Persons are financially eligible for this program when they are in one of the following categories:
(1) *Income maintenance status.* All members of the household are recipients of aid to dependent children, recipients of supplemental security income, or recipients of the food stamp program.
(2) *Income eligible status.* The gross income according to family size is no more than the following amounts:

Household Size	Yearly Income	Monthly Income	Weekly Income
1	$ 9,916	$ 827	$191
2	13,394	1,117	258
3	16,872	1,406	325
4	20,350	1,696	392
5	23,828	1,986	459
6	27,306	2,276	526
7	30,784	2,566	592
8	34,262	2,856	659
For each additional household member add:	$ 3,478	$ 290	$ 67

441—73.5(234) Notification of available food. The public shall be informed of the availability of food, the type of food available and the location and times of distribution by announcements through local media.

441—73.6(234) Household certification procedure. A responsible member of the household or designated proxy shall complete and sign a Declaratory Statement of Eligibility, FP-1102-0, prior to receiving food. The Declaratory Statement of Eligibility declares household residency, size, and income; that the household is not receiving food under this program as part of another household or at another distribution site; acknowledges an understanding of possible prosecution, under current law, for accepting food for which the household may not be eligible; agrees to cooperate with a quality control review; and indicates an understanding that the food received through this program is not to be sold or exchanged. The household member or proxy may be asked to show some official identification before receiving the food.
73.6(1) *Proxy designation.* When a member of the household cannot be present to complete the Declaratory Statement of Eligibility due to disability, employment, or lack of transportation, the member may authorize a proxy to act on behalf of the household by sending a signed note of authorization with the person acting as a proxy.
73.6(2) Reserved.

441—73.7(234) Distribution to households. The amount and type of federal surplus food distributed to each needy household shall be based upon the amount and type of food timely available and the individual household size. The schedule of distribution shall also be based upon the amount and type of food timely available and upon the availability of distribution and storage resources. A household may request less than the amount of food it is entitled to receive.

441—73.8(234) Emergency feeding operations, charitable institutions and corrections facilities eligibility. Eligibility to receive federal surplus foods remaining available after distribution to needy households shall be determined as follows:

73.8(1) Emergency feeding organizations are eligible upon entering an agreement pursuant to 73.3(234).

73.8(2) Charitable institutions are eligible when they meet the eligibility requirements of CFR Title 7, Part 250 "Donation of Food for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction", except that adult or juvenile correctional or detention facilities otherwise eligible do not need to have a rehabilitation program.

441—73.9(234) Distribution requirements. Federal surplus foods shall be distributed in communities through local distribution agencies which are adequately equipped to handle, store, transport and distribute the type and quantity of food available. Reasonable safeguards shall be provided by the local distribution agency against theft, spoilage and other loss.

441—73.10(234) Quality control and recoupment. A sample of households receiving food shall be pulled on regular basis for verification of residency, household size, income, and actual receipt of the surplus food. The department may seek restitution in cash or in kind or may deny future eligibility for up to six (6) months from date of denial when a household that receives surplus food is ineligible, has a duplicate issuance, or otherwise improperly receives food, or refuses to cooperate in the verification process.

441—73.11(234) Administrative review of denial of eligibility. A household may request an administrative review when its claim for surplus food was denied based on income, residency, receipt of a duplicate issuance, refusal to cooperate in the quality control verification process or other improper receipt of federal surplus food. Nonavailability of food is not subject to administrative review.

73.11(1) When a household wishes review of a denial, it will be referred to the site manager. The site manager will affirm or reverse the denial.

73.11(2) When the site manager affirms the denial, the household may request further review by sending a letter requesting review and the site manager's denial to the district administrator within five (5) days of the denial. When more information is needed, the district administrator shall request the information within five (5) days. The district administrator shall review the denial and issue a decision within ten (10) days of the request for the review or the receipt of additional information, whichever is later. When the denial is reversed, the household may take the decision to the distribution site on the next distribution date and receive the food to which it was entitled.

441—73.12(234) Payment of storage and distribution costs. Federal funds allocated to Iowa and state funds appropriated for payment of program costs shall be obligated in accord with the following provisions:

73.12(1) Statewide intrastate costs of storage and distribution prior to receipt of food by agencies and organizations under agreement with the department shall be paid from federal and state program funds only when incurred by the department of human services.

73.12(2) Local costs shall be paid by the department of human services to local distribution agencies and emergency feeding organizations as reimbursement for their salary and support expenses attributable to the program to the extent funds are available for payment.

Distributing agencies must complete Form FP-1205, Federal Surplus Food Distribution Report/ Reimbursement Request, in order to file for reimbursement. The department of human services shall pay purchased local transportation and storage costs directly to vendors provided prior authorization to purchase is obtained from the department of human services.

73.12(3) Payments from federal program funds administered by the department are subject to the provisions of CFR Title 7, part 251 published April 26, 1983.

441—73.13(234) Food losses. All food losses regardless of the dollar amount shall be reported to the bureau of operations analysis by the entity (subdistribution agency, warehouse, or food processor) responsible for the food. The bureau of operations analysis shall log in each loss by entity. Losses shall accumulate by entity from October 1 to September 30 of each year.

73.13(1) *Definition of lost foods.* Lost foods means those foods which, for any reason, cannot be demonstrated by appropriate records or other satisfactory evidence to have been delivered to, or to be available in good condition for delivery to, eligible recipient agencies or eligible recipients for whom they were intended. Commodities may be lost through one (1) or more of the following means:

a. Theft, damage, spoilage, or infestation in transit or in storage.

b. Improper distribution to institutions, families or individuals or distributing above authorized rates.

c. Sale or exchange of commodities or diversion to an improper use.

d. Failure to deliver end products according to contracted yields under a processing agreement.

e. Other similar causes.

73.13(2) *Determination of fault.* The bureau of operations analysis shall investigate the food loss and determine who is at fault.

73.13(3) *Claim action.* If the entity is at fault a claim action shall be initiated if the value of the accumulated food loss exceeds one hundred dollars ($100) unless there is evidence of violation of a federal or state statute. A claim action must be initiated regardless of the value of the food losses if the food losses occur when in transit for delivery.

73.13(4) *Processing of claims.*

a. Up to three (3) demand letters will be sent to the entity determined responsible for the loss.

b. Interest (late charge) shall be assessed against an entity beginning on the thirty-first day following the date of the first demand letter at the rate determined by the U.S. Treasury Department at the beginning of each fiscal quarter.

c. Failure to make restitution when requested is cause for cancellation of the agreement.

d. When an entity accumulates losses totaling $2,500 in a federal fiscal year the bureau of operations analysis shall refer the loss to the USDA Food and Nutrition Service regional office.

73.13(5) *Claim payment.* The claim shall be paid to the bureau of operations analysis.

73.13(6) *Administrative review of claim.* An entity may request an administrative review of its claim in writing within twenty (20) days of receipt of its first demand letter.

a. The request for review will be referred to the chief of the bureau of operations analysis. The bureau chief will affirm or reverse the claim within ten (10) days.

b. When the bureau chief affirms the claim, the entity may request further review by sending a letter requesting review and the bureau chief's denial to the director of the division of management and budget within five (5) days of the denial. When more information is needed the director shall request the information within five (5) days. The director shall review the denial and issue a decision within ten (10) days of the request for the review or the receipt of additional information, whichever is later.

73.13(7) *Penalties.* Suspected case instances of embezzlement, misapplication, theft or fraud of any funds or commodities from the program shall be referred to federal authorities.

441—73.14(234) State monitoring system. The department of human services shall annually review fifty (50) distribution sites and all emergency feeding organizations under contract agreement with the department to distribute commodities in accordance with Temporary Emergency Food Assistance Program (TEFAP) guidelines.

73.14(1) The department shall include a description of the monitoring system in its annual distribution plan.

73.14(2) Reviews of emergency feeding organizations and distribution sites shall include a review of eligibility determination, food ordering procedures, storage and warehousing practices, inventory control, approval of distribution sites, reporting and recordkeeping compliance.

73.14(3) Reviews of the distribution sites shall be conducted simultaneously with actual food distribution or eligibility determination. The first twenty-five (25) sites reviewed will be selected based on which sites have the highest number of households participating. The remaining twenty-five (25) households will be selected at the department's discretion.

73.14(4) The department shall submit a review of finding to each emergency feeding organization which shall include:

a. A description of each deficiency found and contributing factors.

b. Any requirements for corrective action.

c. A timetable for completion of corrective action.

73.14(5) The department shall monitor each emergency feeding organization's corrective action requirements identified.

441—73.15(234) Commodity distribution for political interest. The distribution of commodities shall not be used as a means for furthering the political interest of any individual or party.

These rules are intended to implement Iowa Code sections 234.6 and 234.12.

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CHAPTER 74
INSTITUTIONAL FOOD PROGRAM
[Prior to 2/11/87, Human Services(498)]

441—74.1(234) Definitions.

"Adult correctional institution" means a public, tax supported, residential entity for the confinement and rehabilitation of adult offenders or a public or private, nonprofit residential halfway house or prerelease center which provides rehabilitative services to adult offenders or exoffenders.

"Charitable institution" means a public or private nonprofit, tax exempt entity organized for charitable or public welfare purposes. It includes schools, service institutions and nonresidential child care institutions which meet the criteria of 441—74.5(234) and includes adult correctional institutions meeting the criteria of 441—74.6(234). It does not include schools which participate in the national school lunch program or receive commodities or cash refunds.

"Commodities" means food donated, or available for donation, by USDA through 7 CFR Part 250, revised as of January 1, 1983.

"Educational institution" means an entity which is recognized as a school by the department of education or which issues academic credits or equivalency certificates.

"Needy person" is a person served by a charitable institution, who, because of economic status, is in need of food assistance as defined in 74.7(1).

"Private institution" means an entity which is nonprofit and exempt from income tax under the Internal Revenue Code, as amended.

"Public institution" means an entity which is supported by a governmental agency at the state, county, or local level.

"Rehabilitative program" means any continuing activity conducted or approved by authorities of correctional institutions for the purposes of restoring inmates usefully to society through education, vocational training, employment, counseling services, and health therapy.

"Sentenced inmates" means persons who have been committed by a court to an adult correctional institution as the result of conviction in formal criminal proceedings.

"Storage, distribution and administrative cost" means the expense incurred for storage, handling, delivery and administration of the USDA donated foods.

"USDA" means the United States Department of Agriculture.

441—74.2(234) Administration. Administration of the program shall be the responsibility of the division of management and budget, bureau of operations analysis, commodity distribution unit. Any interested parties shall be referred directly to the commodity distribution unit.

441—74.3(234) Purpose. The purpose of the program is to provide food assistance to improve nutrition for needy persons in or served by eligible institutions or organizations.

441—74.4(234) Cost of the program. All charges for storage, handling, delivery and administrative cost shall be billed to recipient institutions. Billings will be made to the institutions by the department of human services. Failure by the institution to make payment within sixty (60) days following the date of the billing statement shall result in immediate suspension from the program until full payment is made.

441—74.5(234) General eligibility requirements. To be eligible, each charitable institution must meet all of the following criteria:

74.5(1) It must be public or, if private, nonprofit, and tax exempt.

74.5(2) An adult correctional institution must meet the criteria outlined in 441—74.6(234).

74.5(3) Its primary purpose must be noneducational. A charitable institution shall be considered "noneducational" even though educational courses are given, where the courses are incidental to the primary purpose of the charitable institution.

74.5(4) It must be an established entity organized for charitable or public welfare services and must provide continuing or ongoing services.

74.5(5) It must provide regular meal service. Sporadic or infrequent service shall not be considered regular. The institution must serve meals. It may not redistribute foods in the forms donated or allow residents to prepare their meals individually.

74.5(6) It must provide service either at no charge or at less than the actual cost of providing the service.

74.5(7) It must not participate in any other government commodity program.

441—74.6(234) Eligibility requirements for adult correctional institutions. Adult correctional institutions are eligible to receive donated foods as charitable institutions, to the extent of needy persons served, if they conduct rehabilitation programs meeting the standards of the American Correctional Association which are available to a majority of the total inmate population for a minimum of ten (10) hours per week per inmate.

441—74.7(234) Extent of eligibility. The extent of an institution's eligibility shall be based on the number of needy persons served.

74.7(1) In charitable institutions, persons may be considered needy if they do not participate in any USDA child nutrition program conducted within the institution and meet one of the following criteria:

a. They are eligible to receive a grant under aid to dependent children, food stamps, Medicaid, state supplementary assistance, or county general relief.

b. They would be eligible to receive such a grant or would be eligible to participate in either USDA food assistance program for needy households (food stamps or food distribution programs) if they were not a resident of the institution.

c. They are otherwise in need of food assistance because of inability to pay for the actual cost of services received.

74.7(2) In adult correctional institutions, inmates may be considered to be in need of food assistance.

74.7(3) The receipt of food stamps by an individual does not exempt the individual from being defined as a needy person eligible to receive donated foods as a resident of a charitable institution.

74.7(4) The number of needy persons for which a charitable institution is eligible to receive donated foods shall be determined on the basis of the criteria set forth in paragraphs "a" or "b":

a. In institutions where services are provided to each person either at no charge or at a charge which is less than the actual cost of providing the services, it may be assumed that all persons served have already been determined to be needy by the institution's admission policies. The extent of eligibility in these institutions shall be based on the average daily number of persons served during a period of not less than six (6) months.

b. In institutions where persons who are financially able are required to pay the full amount of charges which equal or exceed the cost of the service provided, the extent of eligibility shall be based on the actual number of persons served during a period of six (6) months or more who have been determined unable by institutional authorities to pay the full amount of charges or who have been determined to be economically needy by a state or local public or private welfare agency which makes payments on their behalf; or the extent of eligibility shall be based on the number of persons computed by multiplying the average number of persons served over a period of six (6) months or more by the percentage of the institution's operating funds which were derived during that period from public tax, private welfare sources, or tax-exempt contributions. Medicare payments, food stamps received by the institution in payment for meals, and reimbursement for meals or other financial assistance provided under the National School Act or Child Nutrition Act of 1966 shall not be considered to be derived from such sources.

74.7(5) For institutions serving three (3) meals daily to each person, allocations will be made to the extent of the number of eligible persons served. For institutions serving less than three (3) meals daily per person, the number of eligible persons will be computed by dividing the total number of meals served to eligible persons by ninety (90). Hospitals shall use the

number of free patient days multipled by three (3) to determine the number of meals served and dividing the number of meals by ninety (90) to determine the number of eligibles.

441—74.8(234) Distribution.

74.8(1) Distribution shall be on a quarterly basis. Institutions shall use the Order Form, Form FP-1106-0, to request donated foods at three (3)-month intervals.

74.8(2) The amount and type of donated foods shall depend on the availability of foods from USDA.

74.8(3) Donated foods shall be allocated only in amounts that can be used without waste in providing meals for the number of needy persons served.

74.8(4) Delivery shall be to a point within a twenty-five (25) mile radius from each institution.

441—74.9(234) Administrative reviews. Recipient institutions shall receive an on-site review, training session, and inspection upon approval of application and every three (3) years thereafter, and whenever there is a change in administrators, or a possibility of noncompliance with USDA guidelines. Where there is a substantial fluctuation of the needy population, an on-site review may be done every six (6) months.

441—74.10(234) Responsibilities of recipient institutions.

74.10(1) Each institution shall complete the Application and Review Report, Form FP-1101-0, annually and the Institution Food Distribution Agreement, Form FP-1105-0, at time of application, whenever there is a change in administration and every three (3) years thereafter. Either the department or recipient institution may cancel the agreement with a thirty (30) day written notice.

74.10(2) Each institution shall meet civil rights requirements as evidenced by completion of the Civil Rights Compliance Review, Form FP-1206-0.

74.10(3) Each institution shall permit authorized federal and state personnel to inspect donated foods in storage and all records and reports and shall permit the personnel to review or audit all procedures and methods used in distributing the donated foods at any reasonable time.

74.10(4) Each institution shall assume liability for all losses resulting from either of the following reasons:

a. Inadequate storage procedures resulting in spoilage or theft.

b. Improper use of any donated foods.

74.10(5) Each institution shall ensure that donated foods are not used in cooking for employees if separate preparation or dining areas are used. If common preparation, serving, or dining areas are shared, donated foods may be used.

441—74.11(234) Variations in food distribution. The commodity distribution unit may withhold or reduce the delivery of food items ordered by institutions under the following circumstances:

74.11(1) When food is not available or has not been transported to the state in time for delivery.

74.11(2) When the food inventory is not sufficient to meet all requests.

74.11(3) When the institution orders food in excess of the amount which could be used without waste in providing meals for the number of needy persons served.

74.11(4) When the state's supply is depleted or the department or USDA has issued orders restricting distribution of certain food items.

441—74.12(234) Food service companies. A charitable institution may employ a food service management company in the preparation of meals containing donated foods if the institution complies with the following criteria:

74.12(1) A contract must be completed between the institution and the food service company and a copy of the contract must be on file at the institution.

74.12(2) The contract must be approved by the commodity distribution unit to ensure the contract provides that:

a. Any commodities made available to the food service company by the institution shall only be used for the institution.

b. The books and records of the food service management company pertaining to the feeding operation of the charitable institution shall be available for a period of three (3) years from the close of the federal fiscal year to which they pertain for inspection and audit by state and federal representatives at any reasonable time and place.

441—74.13(234) Notice of decision. The commodity distribution unit shall give written notice to an institution as follows:

74.13(1) Approval or rejection of an application within sixty (60) days from the date of application.

74.13(2) Continued participation within ten (10) days from the date of an administrative review.

74.13(3) Probationary status to allow the institution to take corrective action to remove deficiencies noted on the corrective action form within ten (10) days from the date of an administrative review.

74.13(4) Cancellation of eligibility immediately after the expiration of the corrective action time frames when it is learned the institution failed to take the necessary corrective action.

74.13(5) Cancellation of eligibility immediately when a threat to health or safety is found.

441—74.14(234) Administrative review of denial of eligibility. An institution may request an administrative review when its claim for USDA commodities was denied based on eligibility requirements, extent of eligibility, noncompliance with institutional responsibilities, improper use of a food service company, failure to take necessary corrective action, or a health or safety threat. Nonavailability of food is not subject to administrative review.

74.14(1) When an institution wishes a review of a denial, it will be referred to the chief of the bureau of operations analysis. The bureau chief will affirm or reverse the denial.

74.14(2) When the bureau chief affirms the denial, the institution may request further review by sending a letter requesting review and the bureau chief's denial to the director of the division of management and budget within five (5) days of the denial. When more information is needed, the director shall request the information within five (5) days. The director shall review the denial and issue a decision within ten (10) days of the request for the review or the receipt of additional information, whichever is later. When the denial is reversed, the institution will be reestablished in the program.

441—74.15(234) Refusal of commodities upon delivery. The recipient institution may refuse any part of the order at time of delivery if the item(s) is not usable. The recipient institution shall check the order for shortage or damage at the time of delivery. The delivering warehouse and the department shall not be responsible for loss or damage after delivery has been made if receipt for the food delivered is signed.

441—74.16(234) Storage of commodities.

74.16(1) Commodities must be stored at the institution unless the institution has a contract for storage with a local storage facility. Commodities shall not be stored in private homes.

74.16(2) Proper space for storage or warehousing of commodities shall be maintained to prevent losses from spoilage, rodent or insect infestation, water damage and theft.

74.16(3) Spoilage or out-of-condition food must be reported to the bureau of operations analysis within one working day after discovery.

441—74.17(234) Records and reports.

74.17(1) All records shall be retained for a period of three (3) years from the close of the federal fiscal year (October 1 through September 30) to which they pertain.

74.17(2) Each institution shall maintain a perpetual inventory. A monthly physical inventory shall be completed and reconciled with the perpetual inventory.

74.17(3) Each institution shall maintain accurate and complete records of the data method used to determine the number of needy persons and the number of meals served.

74.17(4) Reports and inventories shall be submitted to the commodity distribution unit upon request.

74.17(5) A copy of any contract the institution has entered into with a food service management company shall be maintained on file at the institution and a copy shall be submitted to the commodity distribution unit.

441—74.18(234) Containers. When containers in which donated foods are received are disposed of by sale, the proceeds of the sale shall be forwarded to the Bureau of Operations Analysis, Commodity Distribution Unit, Hoover State Office Building, Des Moines, Iowa 50319-0114.

The recipient institution may use the containers, if so desired, unless otherwise instructed by the bureau of operations analysis.

441—74.19(234) Improper use of USDA donated food.

74.19(1) USDA donated food may not be transferred from one institution to another without prior approval from the department.

74.19(2) Suspected case instances of embezzlement, misappropriation, theft or fraud of any funds or commodities from the program shall be referred to federal authorities.

441—74.20(234) Food demonstrations and training programs. USDA donated food for the institution program is available to bona fide experimental or testing agencies, or for use in workshops for demonstrations or tests relating to the utilization of these foods. The food may also be used in food education and information programs for needy persons.

441—74.21(234) Disaster feeding. Any donated food received in the institution food distribution program may be used for group disaster feeding purposes with approval from the commodity distribution unit.

441—74.22(234) Food losses. All food losses regardless of the dollar amount shall be reported to the bureau of operations analysis by the entity (recipient institution, warehouse, or food processor) responsible for the food. The bureau of operations analysis shall log in each loss by entity. Losses shall accumulate by entity from October 1 to September 30 of each year.

74.22(1) *Definition of lost foods.* Lost foods means those foods which, for any reason, cannot be demonstrated by appropriate records or other satisfactory evidence to have been delivered to, or to be available in good condition for delivery to eligible recipient agencies or eligible recipients for whom they were intended. Commodities may be lost through one or more of the following means:

a. Theft, damage, spoilage, or infestation in transit or in storage.

b. Improper distribution to institutions, families or individuals, distributing above authorized rates, and in the case of charitable institutions, on the basis of a greater population than the number of needy persons served.

c. Sale or exchange of commodities or diversion to an improper use.

d. Failure to deliver end products according to contracted yields under a processing agreement.

e. Other similar causes.

74.22(2) *Determination of fault.* The bureau of operations analysis shall investigate the food loss and determine who is at fault.

74.22(3) *Claim action.* If the entity is at fault a claim action shall be initiated if the value of the accumulated food loss exceeds one hundred dollars ($100) unless there is evidence of violation of a federal or state statute. A claim action must be initiated regardless of the value of the food losses if the food losses occur when in transit for delivery.

74.22(4) *Processing of claims.*

a. Up to three (3) demand letters will be sent to the entity determined responsible for the loss.

b. Interest (late charge) shall be assessed against an entity beginning on the thirty-first day following the date of the first demand letter at the rate determined by the U.S. Treasury Department at the beginning of each fiscal quarter.

c. Failure to make restitution when requested is cause for cancellation of the agreement.

d. When an entity accumulates losses totaling two thousand five hundred dollars ($2,500) in a federal fiscal year the bureau of operations analysis shall refer the loss to the USDA Food and Nutrition Service regional office.

74.22(5) *Claim payment.*

a. The claim shall be paid to the bureau of operations analysis.

b. Replacement-in-kind with generically like items in lieu of cash payment may be used for losses with the approval of the bureau of operations analysis if the replacement-in-kind would not result in further losses and the inventory is not already in excess.

c. If replacement-in-kind is not practicable, similar replacement may be used in lieu of cash payment with the approval of the bureau of operations analysis and the Food and Nutrition Service regional office. Similar replacement means replacement of lost foods with a like quantity of similar domestically produced foods from the same food group.

d. The loss of bonus items may not be paid with replacement-in-kind or similar replacement items. Bonus items are those so designated by USDA and offered by USDA to the states as a one-time offer.

74.22(6) *Administrative review of claim.* An entity may request an administrative review of its claim in writing within twenty (20) days of receipt of its first demand letter. The procedures outlined in rule 441—74.14(234) shall be used.

These rules are intended to implement Iowa Code section 234.12.

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TITLE VIII
MEDICAL ASSISTANCE

CHAPTER 75
CONDITIONS OF ELIGIBILITY

[Ch 75, 1973 IDR, renumbered as Ch 90]
[Prior to 7/1/83, Social Services(770), Ch 75]
[Prior to 2/11/87, Human Services(498)]

441—75.1(249A) Persons covered.

75.1(1) *Persons receiving aid to dependent children or refugee cash assistance.* Medical assistance shall be available to all recipients of aid to dependent children or refugee cash assistance. Recipient means a person for whom an aid to dependent children (ADC) or refugee cash assistance (RCA) payment is received and includes persons deemed to be receiving ADC or RCA. Persons deemed to be receiving ADC or RCA are:

a. Persons denied ADC or RCA because the amount of payment would be less than ten dollars ($10).

b. Persons suspended from ADC or RCA because of recovery of an overpayment such as five (5) weekly checks received in the budget month instead of the usual four (4).

75.1(2) *Persons who are ineligible for aid to dependent children (ADC) because of requirements that do not apply under Title XIX of the Social Security Act.* Medical assistance shall be available to persons who would be eligible for ADC except for an eligibility requirement used in that program which is specifically prohibited under Title XIX.

75.1(3) Rescinded, effective April 1, 1985.

75.1(4) *Beneficiaries of Title XVI of the Social Security Act (Supplemental security income for the aged, blind and disabled) and mandatory state supplementation.* Medical assistance will be available to all beneficiaries of the Title XVI program and those receiving mandatory state supplementation.

75.1(5) *Persons receiving care in a medical institution who were eligible for medical assistance as of December 31, 1973.* Medical assistance will be available to all persons receiving care in a hospital, skilled nursing facility or intermediate care facility who were recipients of medical assistance as of December 31, 1973. Eligibility of these persons will continue as long as they continue to meet the eligibility requirements for the applicable assistance programs (old-age assistance, aid to the blind or aid to the disabled) in effect on December 31, 1973.

75.1(6) *Persons who would be eligible for cash assistance except for their institutional status.* Medical assistance shall be available to individuals receiving care in a hospital, skilled nursing facility, intermediate care facility, or intermediate care facility for the mentally retarded who would be eligible for aid to dependent children, supplemental security income, or state supplementary assistance if they were not institutionalized.

75.1(7) *Persons receiving care in a medical institution who would be ineligible for supplemental security income because of excess income if they were not institutionalized.* Medical assistance shall be available to persons receiving care in a hospital, skilled nursing facility, intermediate care facility or intermediate care facility for the mentally retarded who meet all eligibility requirements for supplemental security income except for income and whose income does not exceed three hundred percent (300%) of the maximum monthly payment for one person under the federal supplemental security income program.

a. Eligibility for persons in this group shall not exist until the person has been institutionalized for a period of thirty (30) consecutive days and shall be effective no earlier than the first day of the month in which the thirty (30)-day period begins. A "period of thirty (30) days" is defined as being from 12 a.m. of the day of admission to the medical institution, and ending no earlier than 12 midnight of the thirtieth day following the beginning of the period.

b. A person who enters a medical institution and who dies prior to completion of the thirty (30)-day period shall be considered to meet the thirty (30)-day period provision.

c. Only one thirty (30)-day period is required to establish eligibility during a continuous stay in a medical institution. Discharge during a subsequent month, creating a partial month of care, does not affect eligibility for that partial month regardless of whether the eligibility determination was completed prior to discharge.

d. A temporary absence of not more than fourteen (14) full consecutive days during which the person remains under the jurisdiction of the institution does not interrupt the thirty (30)-day period. In order to remain "under the jurisdiction of the institution" a person must first have been physically admitted to the institution.

75.1(8) *Certain persons essential to the welfare of Title XVI beneficiaries.* Medical assistance will be available to the person living with and essential to the welfare of a Title XIX beneficiary provided the essential person was eligible for medical assistance as of December 31, 1973. The person will continue to be eligible for medical assistance as long as the person continues to meet the definition of "essential person" in effect in the public assistance program on December 31, 1973.

75.1(9) *Individuals receiving state supplemental assistance.* Medical assistance shall be available to all recipients of state supplemental assistance as authorized by Iowa Code chapter 249. Medical assistance shall also be available to the individual's dependent relative as defined in subrule 51.4(4).

75.1(10) *Individuals under age twenty-one (21) living in a licensed foster care facility or in a private home pursuant to a subsidized adoption arrangement for whom the department has financial responsibility in whole or in part.* Medical assistance will be available to all these individuals provided they are not otherwise eligible under a category for which federal financial participation is available.

75.1(11) *Families terminated from aid to dependent children because of increased earnings or hours of employment.* Medical assistance shall be available for a period of up to four (4) months to individuals who are canceled from aid to dependent children program solely because a member of the eligible group receives increased income from employment. Income from employment includes:

a. Increase in rate of pay.

b. Increased hours of employment.

c. Receipt of income from Earned Income Tax Credit (EITC).

These recipients must have received aid to dependent children benefits during at least three (3) of the six (6) months immediately preceding the month in which ineligibility occurred and at least one (1) member of the eligible group, although not necessarily the same member, must continue to be employed during the period of extended medical coverage. The four (4) months medical coverage begins the day following termination of aid to dependent children benefits. When ineligibility is determined to occur retroactively, the extended medical coverage begins with the first month in which aid to dependent children assistance was erroneously paid.

75.1(12) *Persons ineligible due to October 1, 1972 social security increase.* Medical assistance will be available to individuals and families whose assistance grants were canceled as a result of the increase in social security benefits October 1, 1972, as long as these individuals and families would be eligible for an assistance grant if the increase were not considered.

75.1(13) *Persons who would be eligible for supplemental security income or state supplementary assistance but for social security cost-of-living increases received.* Medical assistance shall be available to all current social security recipients who meet the following conditions:

a. They were entitled to and received concurrently in any month after April 1977 supplemental security income and social security or state supplementary assistance and social security, and

b. They subsequently lost eligibility for supplemental security income or state supplementary assistance, and

c. They would be eligible for supplemental security income or state supplementary assistance if all of the social security cost-of-living increases which they and their financially responsible spouses, parents, and dependent children received since they were last eligible for and received social security and supplemental security income (or state supplementary assistance) concurrently

were deducted from their income. Spouses, parents, and dependent children are considered financially responsible if their income would be considered in determining the applicant's eligibility.

75.1(14) *Aid to dependent children—pregnant women.* Medical assistance shall be available to pregnant women who would be eligible for aid to dependent children if the child were born.

The pregnancy shall be verified in writing by a licensed physician. The verification shall attest to the fact of pregnancy and establish the probable date of conception. When an examination is required and other medical resources are not available to meet the expense of the examination, the physician shall be authorized to make the examination and submit the claim for payment.

a. Eligibility for medical assistance under this rule shall begin no earlier than the first of the month in which conception occurred, and in accordance with 441—76.5(249A).

b. Financial eligibility shall be established using the income and resource standards in effect in the aid to dependent children program.

c. An individual shall not be ineligible for medical assistance under this rule for failure to cooperate in establishing paternity or obtaining support, or for failure to register for the work incentive program.

d. Eligibility for medical assistance under this rule shall end when the pregnancy terminates.

75.1(15) *Child medical assistance program.* Medical assistance shall be available to persons under age twenty-one (21), including unborn children, if the following criteria are met:

a. Financial eligibility shall be determined for the family size of which the child is a member using the income and resource standards in effect for the aid to dependent children program. All of the resource standards of the aid to dependent children program shall be utilized in determining eligibility for this coverage group except the exclusion of nonhomestead real property from consideration while efforts are being made to sell the property. For purposes of determining eligibility for this coverage group, all nonhomestead real property shall be considered a resource. Family size shall be determined as follows:

(1) An unborn child is not considered a member of the family for purposes of establishing the number of persons in the family.

(2) A "man-in-the-house" who is not married to the mother of the unborn child is not considered a member of the unborn child's family for the purpose of establishing the number of persons in the family. His income and resources are not automatically considered, regardless of whether or not he is the legal or natural father of the unborn child. However, income and resources made available to the mother of the unborn child by the "man-in-house" shall be considered in determining eligibility for the unborn child.

(3) When a person is living with a parent(s), the family size shall consist of all family members as defined by the aid to dependent children program in subrule 41.7(8), paragraph *"c,"* and subrule 41.8(1) except as provided in 75.1(15)*"a"*(6).

Application for medical assistance shall be made by the parent(s) when the person is residing with them. A person shall be considered to be living with the parent(s) when the person is temporarily absent from the parent's(s') home as defined in subrule 41.3(3).

(4) When a person is living with a spouse the family size shall consist of that person, the spouse and any of their children.

(5) A person who is not living with a parent(s) or spouse shall be considered a family of one unless the person is living with a sibling as defined in subrule 41.2(3), in which case the family size shall consist of the person and all siblings under the age of twenty-one (21).

(6) When a person is residing in a household in which some members are receiving aid to dependent children and when the person is not included in the assistance eligible group, the family size shall consist of the person and all other family members as defined by the aid to dependent children program except those in the assistance eligible group.

b. In cases involving an unborn child the pregnancy shall be verified in writing by a licensed physician. The verification shall also establish the probable date of conception. When an

examination to establish pregnancy is required and no other resources are available to meet the expense of the examination, the physician shall be authorized to make the examination and submit a claim for the cost of the examination. Payment shall be made in accordance with existing regulations regarding physicians' fees.

Eligibility may be established no earlier than the first day of the month in which conception occurred and shall be in accordance with rule 441—76.5(249A).

c. A review of all eligibility factors shall be made no less frequently than every six (6) months.

d. A person is eligible for the entire month in which the person's twenty-first birthday occurs unless the birthday falls on the first day of the month.

75.1(16) *Payee.* For the purposes of this chapter, payee refers to a SSI payee defined in Iowa Code sections 633.3(7) and 633.3(20) and an ADC payee defined in 441—chapter 43.

75.1(17) *Persons who would be eligible for but are not receiving cash assistance.* Medical assistance shall be available to persons who would be eligible for aid to dependent children, supplemental security income, state supplementary assistance, or refugee cash assistance, but who choose not to receive payments.

75.1(18) *Individuals eligible for Title XIX waiver services.* Medical assistance shall be available to recipients of Title XIX waiver services as defined in 441—chapter 83.

75.1(19) *Individuals and families ineligible for aid to dependent children due to discontinuance of the $30 or the $30 and one-third earned income disregards.* Medical assistance shall continue to be available for nine (9) months to individuals and families who are canceled from aid to dependent children solely due to loss of the $30 or the $30 and one-third earned income disregards.

75.1(20) *Newborn children of Title XIX eligible mothers.* Medical assistance shall be available without an application to newborn children of the Title XIX eligible mothers beginning the month of the birth through the month of the first birthday as long as the child lives with the mother and the mother remains eligible for Title XIX.

75.1(21) *Individuals and families ineligible for aid to dependent children in whole or in part due to child or spousal support.* Medical assistance shall be available for four (4) months to individuals and families who become ineligible for aid to dependent children due to income from child support, alimony or contributions from a spouse if the individual or family member received aid to dependent children in at least three (3) of the six (6) months immediately preceding the month of cancellation.

75.1(22) *Refugee spend-down participants.* Medical assistance shall be available to persons who are eligible in every respect for refugee cash assistance except for excess income and resources and who meet one of the following criteria:

a. Their income and resources are within the guidelines for the medically needy program as set forth in 441—chapter 86.

b. Their resources are within the guidelines for the medically needy program and their income is above the current guidelines for the medically needy program but medical expenses have accrued which, when deducted from the income amount, have reduced the difference to the current medically needy income limit.

75.1(23) *Persons who would be eligible for supplemental security income or state supplementary assistance but for increases in social security benefits because of elimination of the actuarial reduction formula and cost-of-living increases received.* Medical assistance shall be available to all current social security recipients who meet the following conditions. They:

a. Were eligible for a social security benefit in December of 1983.

b. Were eligible for and received a widow's or widower's disability benefit and supplemental security income or state supplementary assistance for January of 1984.

c. Became ineligible for supplemental security income or state supplementary assistance because of an increase in their widow's or widower's benefit which resulted from the elimination of the reduction factor in the first month in which the increase was paid and in which a retroactive payment of that increase for prior months was not made.

d. Have been continuously eligible for a widow's or widower's benefit from the first month the increase was received.

e. Would be eligible for supplemental security income or state supplementary assistance benefits if the amount of the increase from elimination of the reduction factor and any subsequent cost-of-living adjustments were disregarded.

f. Submit an application prior to July 1, 1987, on Form PA-1107, Application for Medical Assistance or State Supplementary Assistance.

75.1(24) *Postpartum eligibility for pregnant women.* Medical assistance shall continue to be available, without an application, for sixty (60) days beginning with the last day of pregnancy to a woman who was eligible for and received medical assistance on the last day of pregnancy.

a. Postpartum medical assistance shall only be available to a woman who would not be determined categorically eligible for another coverage group after the pregnancy ended.

b. The woman must continue to be eligible, in all respects, as though she were pregnant, for the previous coverage group.

c. When the sixtieth day is not on the last day of the month the woman shall be eligible for medical assistance for the entire month.

This rule is intended to implement Iowa Code sections 249A.3, 249A.4 and 249A.6, 1983 Iowa Acts, chapter 4, sections 2 and 3 and chapter 201, section 3, and 1984 Iowa Acts, Senate File 2351, section 3.

441—75.2(249A) Medical resources. Medical resources include health and accident insurance, eligibility for care through Veterans Administration, specialized child health services, Title XVIII of the Social Security Act (Medicare) and other resources for meeting the cost of medical care which may be available to the recipient. These resources must be used when reasonably available.

When a medical resource may be obtained by filing a claim or an application, and cooperating in the processing of that claim or application, that resource shall be considered to be reasonably available, unless good cause for failure to obtain that resource is determined to exist.

Payment will be approved only for those services or that part of the cost of a given service for which no medical resources exist. Persons who have been approved by the Social Security Administration for supplemental security income shall complete form MA-2124-0, Supplementary Application—Retroactive Medical Assistance Eligibility, and return it to the local office of the department of human services. Persons eligible for Part B of the Medicare program shall make assignment to the department on form MA-2124-0, Supplementary Application—Retroactive Medical Assistance Eligibility.

75.2(1) The recipient, or one acting on the recipient's behalf, shall file a claim, or submit an application, for any reasonably available medical resource, and shall also cooperate in the processing of the claim or application. Failure to do so, without good cause, shall result in the termination of medical assistance benefits. The medical assistance benefits of a minor or a legally incompetent adult recipient shall not be terminated for failure to cooperate in reporting medical resources.

75.2(2) When a parent or payee, acting on behalf of a minor, or of a legally incompetent adult recipient, fails to file a claim or application for reasonably available medical resources, or fails to cooperate in the processing of a claim or application, without good cause, the medical assistance benefits of the parent or payee shall be terminated.

75.2(3) Good cause for failure to cooperate in the filing or processing of a claim or application, shall be considered to exist when the recipient, or one acting on behalf of a minor, or of a legally incompetent adult recipient, is physically or mentally incapable of cooperation. Good cause shall be considered to exist, when cooperation is reasonably anticipated to result in:

a. Physical or emotional harm to the recipient for whom medical resources are being sought.

b. Physical or emotional harm to the parent or payee, acting on the behalf of a minor, or of a legally incompetent adult recipient, for whom medical resources are being sought.

75.2(4) The determination of good cause shall be made by the Utilization Review Section of the Bureau of Medical Services. This determination shall be based on information and evidence provided by the recipient, or by one acting on the recipient's behalf.

This rule is intended to implement Iowa Code sections 249A.4, 249A.5, 249A.6, and 1983 Iowa Acts, chapter 153.

441—75.3(249A) Acceptance of other financial benefits. An applicant or recipient shall take all steps necessary to apply for and, if entitled, accept any income or resources for which the applicant or recipient may qualify, unless the applicant or recipient can show an incapacity to do so. Sources of benefits may be, but are not limited to, contributions, annuities, pensions, retirement or disability benefits, veteran's compensation and pensions, old-age, survivors, and disability insurance, railroad retirement benefits, black lung benefits, or unemployment compensation.

This rule is intended to implement Iowa Code sections 249A.3 and 249A.4.

441—75.4(249A) Right of subrogation.

75.4(1) The agency within the department of human services responsible for administration of the department's right of subrogation is the bureau of medical services. All notifications to the department required by law shall be directed to the bureau of medical services. Notification shall be considered made as of the time the notification is deposited so addressed, postage prepaid in the United States postal service system. The act of notification shall not in any way be considered to give the agreement of the commissioner or designee to any compromise under which the department would receive less than full reimbursement of the amounts it expended.

75.4(2) The department may pursue its rights to recover either directly from any third party or from any recovery obtained by or on behalf of any medical assistance recipient. If a recipient of the medical assistance program incurs the obligation to pay attorney fees and court costs for the purpose of enforcing a monetary claim to which the department is subrogated, the court costs and reasonable attorney fees shall first be deducted from the judgment or settlement. One-third of the remaining balance shall then be deducted and paid to the recipient. From the remaining balance, the claim of the department shall be paid. Any amount remaining shall be paid to the recipient. The department will provide computer generated documents or claim forms describing the services for which it has paid upon request of any affected recipient or the recipient's attorney. The documents may also be provided to a third party where necessary to establish the extent of the department's claim.

75.4(3) In those cases where appropriate notification is not given to the department or where the department's recovery rights are otherwise adversely affected by an action of the recipient or one acting on the recipient's behalf, medical assistance benefits shall be terminated. The medical assistance benefits of a minor child or a legally incompetent adult recipient shall not be terminated. Subsequent eligibility for medical assistance benefits shall be denied until an amount equal to the unrecovered claim has been reimbursed to the department or the individual produces documentation of incurred medical expense equal to the amount of the unrecovered claim. The incurred medical expense shall not be paid by the medical assistance program.

a. The applicant, or recipient, or one acting on the applicant or recipient's behalf, shall provide information and verification as required to establish the availability of medical or third party resources.

b. At time of application, the applicant or one acting on the applicant's behalf, shall report the existence of any potential medical resource. The applicant, or one acting on the applicant's behalf, shall promptly report any changes in medical resources that occur during the application process.

c. The recipient, or one acting on the recipient's behalf, shall timely report to the department, both the existence of any potential medical resources, or any changes in existing medical resources.

A report shall be considered timely when made within ten (10) days from:

(1) The date that health insurance begins, changes, or ends.

(2) The date that eligibility begins for care through Veterans Administration, specialized child health services, Title XVIII of the Social Security Act (Medicare) and other resources.

(3) The date the recipient, or one acting on the recipient's behalf, files an insurance claim against an insured third party, for the payment of medical expenses that otherwise would be paid by medical assistance.

(4) The date the recipient, or one acting on the recipient's behalf, retains an attorney with the expectation of seeking restitution for injuries from a possibly liable third party, and the medical expenses resulting from those injuries would otherwise be paid by medical assistance.

(5) The date that the recipient, or one acting on the recipient's behalf, receives a partial or total settlement for the payment of medical expenses that would otherwise be paid by medical assistance.

The recipient may report the change in person, by telephone, by mail or by using the Ten Day Report of Change, Form PA-4106-0, which is mailed with the Aid to Dependent Children Assistance warrants.

d. The recipient, or one acting on the recipient's behalf, shall complete the Recipient Inquiry, Form MA-4047-0, when the department has reason to believe that the recipient has received an accident related injury. Failure to cooperate in completing and returning this form, or in giving complete and accurate information, shall result in the termination of medical assistance benefits.

e. In those instances where the recovery rights of the department are adversely affected by the actions of a parent or payee, acting on the behalf of a minor, or legally incompetent adult recipient, the medical assistance benefits of the parent or payee shall be terminated. In those instances where a parent or payee fails to cooperate in completing or returning the Recipient Inquiry, Form MA-4047-0, or fails to give complete and accurate information concerning the accident related injuries of a minor or legally incompetent adult recipient, the medical assistance benefits of the parent or payee shall be terminated.

f. The recipient, or one acting on the recipient's behalf, shall refund to the department any settlement or payment received, that is intended to cover any medical expenses that would otherwise be paid by medical assistance. Failure of the recipient to do so, shall result in the termination of medical assistance benefits. In those instances where a parent or payee, acting on the behalf of a minor, or of a legally incompetent adult recipient, fails to refund a settlement overpayment to the department, the medical assistance benefits of the parent or payee shall be terminated.

75.4(4) Third party and provider responsibilities.

a. The health care services provider shall inform the department by appropriate notation on the Inpatient Hospital Claim, Form XIX HOSP-1, the Outpatient Hospital Claim, Form XIX HOSP-2, or on the Health Insurance Claim, Form HCFA 1500, that other coverage exists but did not cover the service being billed or that payment was denied.

b. The health care services provider shall notify the department in writing by mailing copies of any billing information sent to a recipient, an attorney, an insurer or other third party after a claim has been submitted to or paid by the department.

c. An attorney representing an applicant for or a past or present recipient of medical assistance on a claim to which the department is subrogated under this rule shall notify the department of the claim of which the attorney has actual knowledge, prior to filing a claim, commencing an action or negotiating a settlement offer. The mailing and deposit in a United States post office or public mailing box of the notice, addressed to the department at its state or district office location, is adequate legal notice of the claim.

75.4(5) Subrogation rights of the department.

a. The subrogation rights of the department are valid and binding on an attorney, insurer, or other third party only upon notice by the department or unless the attorney, insurer or other third party has actual notice that the recipient is receiving medical assistance from the department and only to the extent that the attorney, insurer or third party has not made payment to the recipient or an assignee of the recipient prior to the notice.

Any information released to an attorney, insurer or other third party, by the health care services provider, that indicates that reimbursement from the state was contemplated or received, shall be construed as giving the attorney, insurer or other third party actual knowledge of the department's involvement. For example, information supplied by a health care services provider which indicates medical assistance involvement shall be construed as showing involve-

ment by the department under Iowa Code section 249A.6. Payment of benefits by an insurer or third party pursuant to the subrogation rights of this rule discharges the attorney, insurer or other third party from liability to the recipient or the recipient's assignee to the extent of the payment to the department.

b. When the department has reason to believe that an attorney is representing an applicant for or recipient of medical assistance on a claim to which the department is subrogated under this rule, the department shall issue notice to that attorney of the department's subrogation rights by mailing the Attorney Letter, Form MA-4050-0, to the attorney.

c. When the department has reason to believe that an insurer is liable for the costs of a recipient's medical expenses, the department shall issue notice to the insurer of the department's subrogation rights by mailing the Notice of Subrogation, Form MA-4053-0, to the insurer.

d. The mailing and deposit in a United States post office or public mailing box of the notice, addressed to the attorney or insurer is adequate legal notice of the department's subrogation rights.

75.4(6) For purposes of this rule the term "third party" includes an attorney, individual, institution, corporation, or public or private agency which is or may be liable to pay part or all of the medical costs incurred as a result of injury, disease or disability by or on behalf of an applicant for or a past or present recipient of assistance under the medical assistance program.

This rule is intended to implement Iowa Code sections 249A.4, 249A.5, and 249.A.6.

441—75.5(249A) Computation of accountable income and resources for persons in a medical institution.

75.5(1) *Individual with no spouse.* All income and resources available to an applicant or recipient in a medical institution shall be considered in determining eligibility and financial participation by the resident.

75.5(2) *Member of couple whose noninstitutionalized spouse is eligible for medical assistance as aged, blind or disabled.*

a. The resources of the couple shall be considered as available to each other for the first six (6) months after the month they cease to live together and evaluated against the resource limitation for a couple. After this six (6)-month period, each member of the couple shall be treated as an individual with respect to resources.

b. The income of each spouse shall be used to determine eligibility for medical assistance for that spouse effective the month following the month the couple ceases to live together. No diversion of the institutionalized spouse's income shall be made for the maintenance needs of the noninstitutionalized spouse in determining the financial participation by the institutionalized spouse.

75.5(3) *Member of a couple whose noninstitutionalized spouse is ineligible for medical assistance as aged, blind, or disabled.* The institutionalized individual shall be treated as an individual with regard to income and resources after the month in which the couple ceases to live together, except that if the institutionalized spouse is determined to be eligible for medical assistance, a diversion from the institutionalized spouse's income shall be made for the maintenance needs of the noninstitutionalized spouse or the noninstitutionalized spouse and dependent children of the institutionalized spouse, not to exceed the following amounts:

a. For the maintenance needs of a noninstitutionalized spouse only, an amount which, when combined with the noninstitutionalized spouse's own income, equals the supplemental security income federal benefit rate for an individual in the individual's own home.

b. For the maintenance needs of a noninstitutionalized spouse and dependent children, an amount which, when combined with the income of the noninstitutionalized spouse and dependent children, equals the payment level for a family of the same size in the aid to dependent children program.

75.5(4) *Members of a couple who are both institutionalized.*

a. Members of a couple who are residing in the same room in a medical institution shall be treated as a couple until the first of the seventh calendar month they reside together. They

shall be subject to the resource limitation for a couple and the combined income of the couple shall not exceed twice the amount of the income limit established in subrule 75.1(7) to establish financial eligibility for medical assistance. Financial participation in the cost of care for each member of the couple shall be based on one-half of the couple's combined income.

They shall be treated as individuals effective the first of the seventh calendar month. The income level for each spouse shall not exceed the amount of the income limit established in subrule 75.1(7). The resource limit for each spouse is the limit for a single person. Financial participation in the cost of care shall be determined individually from each person's income.

b. Members of a couple who are both institutionalized, although not residing in the same room of the institution, shall be treated as individuals effective the month after the month the members of the couple cease living together.

This rule is intended to implement Iowa Code section 249A.3(2)*"a"* and 249A.4.

441—75.6(249A) Disposal of resources for less than fair market value.

75.6(1) In determining eligibility for medical assistance of individuals described in 75.1(4), 75.1(6), 75.1(7), 75.1(9) and 75.1(13), resources which were not exempt at the time of transfer which the individual gave away or sold at less than fair market value for the purpose of establishing eligibility for medical assistance shall be counted as resources still available to the individual for the following period of time:

a. For uncompensated value of $12,000 or less: twenty-four (24) months from the date of transfer.

b. For uncompensated value between $12,001 and $24,000: thirty-six (36) months from the date of transfer.

c. For uncompensated value between $24,001 and $36,000: forty-eight (48) months from the date of transfer.

d. For uncompensated value between $36,001 and $50,000: sixty (60) months from the date of transfer.

e. For uncompensated value over $50,000: seventy-two (72) months from the date of transfer.

75.6(2) Transfers of resources as described in 75.6(1) shall be presumed to be for the purpose of establishing eligibility for medical assistance unless the individual furnishes convincing evidence to establish that the transaction was exclusively for some other purpose. In addition to giving away or selling for less than fair market value, examples of transferring resources include but are not limited to establishing a trust, contributing to a charity or other organization, removing a name from a joint bank account, or decreasing the extent of ownership interest in a resource or any other transfer as defined in the supplemental security income program.

a. Convincing evidence to establish that the transaction was exclusively for a purpose other than establishing eligibility may include documents, letters, and contemporaneous writings, as well as other circumstantial evidence.

b. In rebutting the presumption that the resource was transferred to establish eligibility, the burden of proof is on the individual to establish:

(1) The fair market value of the compensation and

(2) That the compensation was provided pursuant to an agreement, contract, or expectation in exchange for the resource and

(3) That the agreement, contract, or expectation was established at the time of transfer.

75.6(3) Uncompensated value is defined as the fair market value of the resource minus the amount of compensation received by the individual in exchange for the resource. In no case will the amount of uncompensated value exceed the amount which would have been counted toward the resource limit (as of the date of transfer) if the resource had been retained.

a. Fair market value is defined as the price that the item can reasonably be expected to sell for on the open market in the particular geographic area involved and may be established by independent appraisal.

b. Compensation is defined as all money, real or personal property, food, shelter or services received by the individual in exchange for the resource if such money, property, food, shelter or services are provided in reliance on an agreement made at the time of transfer.

This rule is intended to implement Iowa Code section 249A.3.

441—75.7(249A) Furnishing of social security number. As a condition of eligibility applicants or recipients of Medicaid must furnish their social security account numbers or proof of application for the numbers if they have not been issued or are not known and provide their numbers upon receipt.

75.7(1) Assistance shall not be denied, delayed, or discontinued pending the issuance or verification of the numbers when the applicants or recipients are cooperating in providing information necessary for issuance of their social security numbers.

75.7(2) The mother of a newborn child shall have until the second month following the mother's discharge from the hospital to apply for a social security account number for the child.

This rule is intended to implement Iowa Code section 249A.3.

441—75.8 Reserved.

441—75.9(249A) Treatment of Medicaid qualifying trusts.

75.9(1) A Medicaid qualifying trust is a trust or similar legal device established other than by will by a person or that person's spouse under which the person may be the beneficiary of payments from the trust and the distribution of these payments is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the person. Trusts or initial trust decrees established prior to April 7, 1986, solely for the benefit of a mentally retarded person who resides in an intermediate care facility for the mentally retarded, are exempt.

75.9(2) The amount of income and principal from a Medicaid qualifying trust that shall be considered available shall be the maximum amount that may be permitted under the terms of the trust assuming the full exercise of discretion by the trustee or trustees for the distribution of the funds.

a. Trust income considered available shall be counted as income.

b. Trust principal (including accumulated income) considered available shall be counted as a resource, except where the trust explicitly limits the amount of principal that can be made available on an annual or less frequent basis. Where the trust limits the amount, the principal considered available over any particular period of time shall be counted as income for that period of time.

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

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CHAPTER 76
APPLICATION AND INVESTIGATION

[Ch 76, 1973 IDR, renumbered as Ch 91]
[Prior to 7/1/83, Social Services(770), Ch 76]
[Prior to 2/11/87, Human Services(498)]

441—76.1(249A) Place of filing. Application should be filed in the county department of human services in the county where the applicant resides. However, if medical care is required by the applicant while visiting in another county, application may be made in that county. The latter county will complete the forms used in the application process and forward them to the county of residence which will complete the determination of eligibility. Those persons eligible for supplemental security income and those who would be eligible when living outside a medical institution shall make application at the social security district office.

441—76.2(249A) Method of filing. Application may be made by the person, or by someone acting responsibly in the person's behalf. A person filing an application in behalf of the applicant should be a relative, friend or other person interested in the applicant's welfare and familiar with the applicant's affairs.

441—76.3(249A) Investigation. Applications will be investigated by the county department of human services and a decision rendered regarding eligibility within thirty (30) days of the date of application unless one (1) or more of the following conditions exist:

76.3(1) The application is being processed for eligibility as defined in rule 441—86.4(249A).

76.3(2) A companion application on the client's behalf for supplemental security income benefits is pending.

76.3(3) The application is pending due to completion of the requirement in subrule 75.1(7).

76.3(4) The application is pending due to nonreceipt of information which is beyond the control of the client or department.

76.3(5) The application is pending due to the disability determination process performed through the department.

441—76.4(249A) Notification of decision. The applicant will be notified in writing of the decision of the county department of human services regarding the applicant's eligibility for medical assistance. If the applicant has been determined to be ineligible an explanation of the reason will be provided.

441—76.5(249A) Effective date.

76.5(1) *Three (3)-month retroactive eligibility.*

a. The effective date of approval of medical assistance benefits shall be no later than the third month before the month of application when the individual:

(1) Received any covered medical service during the retroactive three (3) month period which is still not paid for, and

(2) Would have been eligible for medical assistance benefits in the month services were received, regardless of whether the individual was alive when the application for medical assistance was made.

b. The applicant need not be eligible in the month of application to be eligible in any of the three (3) months prior to the month of application.

c. Persons receiving only supplemental security income benefits who wish to make application for medical assistance benefits for the three (3) months preceding the month of application shall complete Form MA-2124-0, Supplementary Application — Retroactive Medical Assistance Eligibility.

76.5(2) *First day of month.*

a. For persons approved for aid to dependent children or programs related to aid to dependent children, medical assistance benefits shall be effective on the first day of a month when eligibility was established any time during the month.

b. For persons approved for supplemental security income, programs related to supplemental security income, or state supplementary assistance, medical assistance benefits shall be effective on the first day of a month when the individual was eligible as of the first moment of the first day of the month.

76.5(3) *Care prior to approval.* No payment shall be made for medical care received prior to the effective date of approval.

441—76.6(249A) Certification for services. The state department of human services shall issue an appropriate medical assistance identification card to an individual determined eligible for the benefits provided under the medical assistance program.

441—76.7(249A) Reinvestigation. Reinvestigation will be made as often as circumstances indicate but in no instance shall the period of time between reinvestigations exceed twelve (12) months.

441—76.8(249A) Investigation by quality control or Project Integrity. The recipient shall cooperate with the department when the recipient's case is selected by quality control or Project Integrity for verification of eligibility. Failure to do so shall serve as a basis for cancellation of assistance.

441—76.9(249A) Recipient lock-in. In order to promote high quality health care and to prevent harmful practices such as duplication of medical services, drug abuse or overuse, and possible drug interactions, recipients that utilize medical assistance services or items at a frequency or in an amount which is considered to be overuse of services as defined in subrule 76.9(7) may be restricted (locked-in) to receive services from a designated provider(s).

76.9(1) A lock-in or restriction shall be imposed for a minimum of six (6) months with longer restrictions determined on an individual basis.

76.9(2) The recipient may select the provider(s) from which services will be received. The selection shall be made by using Form MA-4068, Designation of Primary Providers. Other providers of the restricted service will be reimbursed only under circumstances specified in 76.9(3).

76.9(3) Payment will be made to provider(s) other than the designated (lock-in) provider(s) in the following instances:

a. Emergency care is required and the designated provider is not available. Emergency care is defined as care necessary to sustain life or prevent a condition which could cause physical disability.

b. The designated provider requires consultation with another provider.

c. The designated provider refers the recipient to another provider.

76.9(4) When the recipient fails to choose a provider(s) within thirty (30) days of the request, the local income maintenance worker will select the provider(s) based on previously utilized provider(s) and reasonable access for the recipient.

76.9(5) Recipients may change designated provider(s) when a change is warranted, such as when the recipient has moved, the provider no longer participates, or the provider refuses to see the patient. The worker for the recipient shall make the determination when the recipient has demonstrated that a change is warranted.

76.9(6) When lock-in is imposed on a recipient, timely and adequate notice shall be sent and an opportunity for a hearing given in accordance with 441—chapter 7.

76.9(7) Overuse of services is defined as receipt of treatments, drugs, medical supplies or other Medicaid benefits from one or multiple providers of service in an amount, duration, or scope in excess of that which would reasonably be expected to result in a medical or health benefit to the patient.

76.9(8) Determination of overuse of service shall be based on utilization data generated by the Surveillance and Utilization Review Subsystem of the Medicaid Management Information System. The system employs an exception reporting technique to identify recipients most likely to be program overutilizers by reporting cases in which the utilization exceeds the statistical

average. An investigation process determines if actual overutilization exists by verifying that the information reported by the computer system is valid and that the statistically higher than average situation is also unusual based on professional medical judgment. Medical judgments shall be made by physicians, pharmacists, nurses and other health professionals either employed by, under contract to, or consultants for the department. These medical judgments shall be made by the health professionals on the basis of the body of knowledge each has acquired which meets the standards necessary for licensure or certification under the Iowa licensing statutes for the particular health discipline.

441—76.10(249A) Applicant and recipient responsibilities.

76.10(1) An applicant or recipient eligible for medical assistance because of income and resource policies related to the supplemental security income program, except for actual recipients of supplemental security income, shall timely report any changes in the following circumstances to the department of human services:

a. Income from all sources.

b. Resources.

c. Membership of the household.

d. Recovery from disability.

e. Mailing or living address.

f. Health insurance premiums or coverage.

g. Medicare premium reimbursement.

h. Receipt of social security number

i. Gross income of the noninstitutionalized spouse or family when a diversion is made to the noninstitutionalized spouse or family.

j. Income and resources of parents and spouses when income and resources are used in determining Title XIX eligibility, client participation or spenddown.

k. Residence in a medical institution for other than respite care for more than fifteen (15) days for home and community-based recipients.

76.10(2) An applicant or recipient eligible for medical assistance because of aid to dependent children income and resource policies shall be expected to report changes in accordance with aid to dependent children policy found in subrule 40.4(1) and subrule 40.7(4), paragraphs *"e"* and *"f,"* respectively.

76.10(3) A report shall be considered timely when received in the local office within ten (10) days from the date the change is known to the recipient or authorized representative and within five (5) days from the date the change is known to the applicant or authorized representative.

76.10(4) When a change is not timely reported, any incorrect program expenditures shall be subject to recovery from the recipient.

441—76.11(249A) Automatic redetermination. Whenever a Medicaid recipient no longer meets the eligibility requirements of the current coverage group, an automatic redetermination of eligibility for other Medicaid coverage groups shall be made. Medical assistance shall continue pending the outcome of the redetermination. When the redetermination is completed, the person shall be notified of the decision in writing.

441—76.12(249A) Recovery.

76.12(1) *Definitions.*

"Administrative overpayment" means medical assistance incorrectly paid to or for the client because of continuing assistance during the appeal process or allowing a deduction for the Medicare part B premium in determining client participation while the department arranges to pay the Medicare premium directly.

"Agency error" means medical assistance incorrectly paid to or for the client because of action attributed to the department as the result of one or more of the following circumstances:

1. Misfiling or loss of forms or documents.
2. Errors in typing or copying.

3. Computer input errors.
4. Mathematical errors.
5. Failure to determine eligibility correctly or to certify assistance in the correct amount when all essential information was available to the local office.
6. Failure to make prompt revisions in medical payment following changes in policies requiring the changes as of a specific date.

"Client" means a current or former applicant or recipient of Medicaid.

"Client error" means medical assistance incorrectly paid to or for the client because the client or client's representative failed to disclose information, or gave false or misleading statements, oral or written, regarding the client's income, resources, or other eligibility and benefit factors. It also means assistance incorrectly paid to or for the client because of failure by the client or client's representative to timely report as defined in rule 441—76.10(249A).

"Department" means the department of human services.

76.12(2) *Amount subject to recovery.* The department shall recover from a client all Medicaid funds incorrectly expended to or on behalf of the client. The incorrect expenditures may result from client or agency error, or administrative overpayment.

76.12(3) *Notification.* All clients shall be promptly notified when it is determined that assistance was incorrectly expended. Notification shall include for whom assistance was paid; the time period during which assistance was incorrectly paid; the amount of assistance subject to recovery, when known; and the reason for the incorrect expenditure.

76.12(4) *Source of recovery.* Recovery shall be made from the client or from parents of children under age twenty-one (21) when the parents completed the application and had responsibility for reporting changes. Recovery may come from income, resources, the estate, income tax refunds, and lottery winnings of the client.

76.12(5) *Repayment.* The repayment of incorrectly expended Medicaid funds shall be made to the department.

However, repayment of funds incorrectly paid to a skilled nursing facility, intermediate care facility, or mental health institute may be made by the client to the facility. The department shall then recover the funds from the facility through a vendor adjustment.

76.12(6) *Appeals.* The client shall have the right to appeal the amount of funds subject to recovery under the provisions of 441—chapter 7.

These rules are intended to implement Iowa Code sections 249.3, 249.4 and 249A.4.

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CHAPTER 77
CONDITIONS OF PARTICIPATION FOR PROVIDERS OF MEDICAL AND REMEDIAL CARE

[Prior to 7/1/83, Social Services(770), Ch 77]
[Prior to 2/11/87, Human Services(498)]

441—77.1(249A) Physicians. All physicians (doctors of medicine and osteopathy) licensed to practice in the state of Iowa are eligible to participate in the program. Physicians in other states are also eligible if duly licensed to practice in that state.

441—77.2(249A) Retail pharmacies. Pharmacies are eligible to participate providing they are licensed in the state of Iowa or duly licensed in other states.

441—77.3(249A) Hospitals. All hospitals licensed in the state of Iowa and certified as eligible to participate in Part A of the Medicare program (Title XVIII of the Social Security Act) are eligible to participate in the medical assistance program. Hospitals in other states are also eligible if duly licensed and certified for Medicare participation in that state.

441—77.4(249A) Dentists. All dentists licensed to practice in the state of Iowa are eligible to participate in the program. Dentists in other states are also eligible if duly licensed to practice in that state.

NOTE: DENTAL LABORATORIES—Payment will not be made to a dental laboratory.

441—77.5(249A) Podiatrists. All podiatrists licensed to practice in the state of Iowa are eligible to participate in the program. Podiatrists in other states are also eligible if duly licensed to practice in that state.

441—77.6(249A) Optometrists. All optometrists licensed to practice in the state of Iowa are eligible to participate in the program. Optometrists in other states are also eligible if duly licensed to practice in that state.

441—77.7(249A) Opticians. All opticians in the state of Iowa are eligible to participate in the program. Opticians in other states are also eligible to participate.

NOTE: Opticians in states having licensing requirements for this professional group must be duly licensed in that state.

441—77.8(249A) Chiropracters. All chiropracters licensed to practice in the state of Iowa are eligible to participate providing they have been determined eligible to participate in Title XVIII of the Social Security Act (Medicare) by the social security administration. Chiropractors in other states are also eligible if duly licensed to practice in that state and determined eligible to participate in Title XVIII of the Social Security Act.

441—77.9(249A) Home health agencies. Home health agencies are eligible to participate providing they are certified to participate in the Medicare program (Title XVIII of the Social Security Act).

441—77.10(249A) Medical equipment and appliances, prosthetic devices and sickroom supplies. All dealers in medical equipment and appliances, prosthetic devices and sickroom supplies in Iowa or in other states are eligible to participate in the program.

441—77.11(249A) Ambulance service. Providers of ambulance service are eligible to participate providing they meet the eligibility requirements for participation in the Medicare program (Title XVIII of the Social Security Act).

441—77.12(249A) Skilled nursing homes. Nursing homes and hospitals or distinct parts thereof currently licensed as such by the Iowa state department of public health are eligible to participate in the program providing these facilities meet all of the conditions for participation as extended care facilities in the Medicare program (Title XVIII of the Social Security Act). In addition to these requirements the facilities also meet the requirements of the 1967 Life Safety Code of the National Fire Protection Association.

441—77.13(249A) Hearing aid dealers. Hearing aid dealers are eligible to participate if they are duly licensed by the state of Iowa. Hearing aid dealers in other states will be eligible to participate if they are duly licensed in that state.

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

441—77.14(249A) Audiologists. Audiologists are eligible to participate in the program when they are duly licensed by the state of Iowa. Audiologists in other states will be eligible to participate when they are duly licensed in that state. In states having no licensure requirement for audiologists, an audiologist shall obtain a license from the state of Iowa.

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

441—77.15(249A) Community mental health centers. Community mental health centers are eligible to participate in the medical assistance program when they comply with the standards for mental health centers in the state of Iowa established by the Iowa mental health authority.

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

441—77.16(249A) Screening centers. Public or private health agencies are eligible to participate as screening centers when they have staff and facilities providing capability to perform all of the elements of screening specified in rule 78.18(249A). Applications to participate shall be directed to the Bureau of Medical Services, Hoover State Office Building, Des Moines, Iowa 50319-0114.

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

441—77.17(249A) Physical therapists. Physical therapists are eligible to participate when they are licensed, in independent practice; and are eligible to participate in the Medicare program.

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

441—77.18(249A) Orthopedic shoe dealers and repair shops. Establishments eligible to participate in the medical assistance program are retail dealers in orthopedic shoes prescribed by physicians or podiatrists and shoe repair shops specializing in orthopedic work as prescribed by physicians or podiatrists.

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

441—77.19(249A) Rehabilitation agencies. Rehabilitation agencies are eligible to participate providing they are certified to participate in the Medicare program (Title XVIII of the Social Security Act).

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

441—77.20(249A) Independent laboratories. Independent laboratories are eligible to participate providing they are certified to participate in the Medicare program (Title XVIII of the Social Security Act).

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

441—77.21(249A) Rural health clinics. Rural health clinics are eligible to participate providing they are certified to participate in the Medicare program (Title XVIII of the Social Security Act).

441—77.22(249A) Psychologists. All psychologists licensed to practice in the state of Iowa and meeting the standards of the National Register of Health Service Providers in Psychology, 1981 edition, published by the council for the national register of health service providers in psychology, are eligible to participate in the medical assistance program. Psychologists in other states are eligible to participate when they are duly licensed to practice in that state and meet the standards of the National Register of Health Service Providers in Psychology.

This rule is intended to implement Iowa Code sections 249A.4 and 249A.15.

441—77.23(249A) Maternal health centers. A maternal health center is eligible to participate when it is a local nonprofit agency receiving supervision, approval and financial support from the Iowa state department of public health. The maternal health centers are approved by the Iowa state department of public health when the adopted standards of 1974 ambulatory care standards for obstetrics are met.

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

441—77.24(249A) Ambulatory surgical centers. Ambulatory surgical centers which are not part of hospitals are eligible to participate in the medical assistance program if they are certified to participate in the Medicare program (Title XVIII of the Social Security Act).

441—77.25(249A) Genetic consultation clinics. A genetic counseling clinic is eligible to participate in the Medicaid program if the clinic provides a team of professionals to render the genetic medical and counseling services. The team must have at least a physician geneticist certified or eligible for certification by the American Board of Medical Geneticists (ABMG) and at least one of the following professionals as defined by AMBG: a nurse, a genetic associate, a social worker, or a genetic counselor.

These services may be provided by employees or under contract arrangement with the clinic. The team will provide services under the clinical supervision of the physician and the physician shall be on the clinic premises when services are provided.

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

441—77.26(249A) Nurse-midwives. Nurse-midwives are eligible to participate in the Medicaid program if they have a current active license as a registered nurse and if they possess evidence of certification by the American College of Nurse-Midwives. Nurse-midwives must meet any additional standards imposed by their state for nurse-midwifery practice.

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

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CHAPTER 78
AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL SERVICES

[Prior to 7/1/83, Social Services(770), Ch 78]
[Prior to 2/11/87, Human Services(498)]

441—78.1(249A) Physicians' services. Payment will be approved for all medically necessary services and supplies provided by the physician including services rendered in the physician's office or clinic, the home, in a hospital, nursing home or elsewhere.

Payment shall be made for all services rendered by a doctor of medicine or osteopathy within the scope of this practice and the limitations of state law subject to the following limitations and exclusions:

78.1(1) Payment will not be made for:

a. Drugs dispensed by the physician unless it is established that there is no licensed retail pharmacy in the community in which the physician's office is maintained. Payment will not be made for biological supplies and drugs provided free of charge to practitioners by the state department of public health. Rate of payment shall be established as in subrule 78.2(2), but no professional fee shall be paid.

b. Routine physical examinations. A routine physical examination is an examination performed without relationship to treatment or diagnosis for a specific illness, symptom, complaint, or injury. No payment will be made for these examinations unless:

(1) The examination is required as a condition of employment or training and is approved by the department.

(2) The examination is required for an initial certification or period of recertification of the need for nursing care.

(3) The examination is in connection with early and periodic screening, diagnosis, and treatment or persons under age twenty-one (21) in aid to dependent children cases, as specified in rule 78.18(249A).

(4) The examination is required of a child for attendance at school or camp.

(5) The examination is in connection with the prescription of birth control medications and devices.

(6) The examination is for a pap smear which is allowed as preventative medicine services.

(7) The examination is for well baby care or a routine physical examination for a child under six (6) years of age.

(8) The examination is an annual routine physical examination for a child in foster care for whom the department assumes financial responsibility.

c. Treatment of certain foot conditions as specified in 78.5(2)"*a*", "*b*", and "*c*".

d. Acupuncture treatments.

e. Rescinded 9/6/78.

f. Unproven or experimental medical and surgical procedures. The criteria in effect in the Medicare program shall be utilized in determining when a given procedure is unproven or experimental in nature.

g. Charges for surgical procedures on the "Outpatient/Same Day Surgery List" produced by the Iowa foundation for medical care or associated inpatient care charges when the procedure is performed in a hospital on an inpatient basis unless the physician has secured approval from the hospital's utilization review department prior to the patient's admittance to the hospital. Approval shall be granted only when inpatient care is deemed to be medically necessary based on the condition of the patient or when the surgical procedure is not performed as a routine, primary, independent procedure. The "Outpatient/Same Day Surgery List" shall be published by the department in the provider manuals for hospitals and physicians. The "Outpatient/Same Day Surgery List" shall be developed by the Iowa foundation for medical care, and shall include procedures which can safely and effectively be performed in a doctor's office or on an outpatient basis in a hospital. The Iowa foundation for medical care may add, delete, or modify entries on the "Outpatient/Same Day Surgery List".

78.1(2) Payment will be approved for the following drugs and supplies when prescribed by a physician.

a. Legend drugs and devices requiring a prescription by law.

(1) Payment will be approved for insulin on the written prescription of a physician.

(2) Payment will be approved for certain drugs when prior approval is obtained from the fiscal agent and when prescribed for treatment of specified conditions as follows:

Payment for amphetamines and combinations of amphetamines with other therapeutic agents and amphetamine-like sympathomimetic compounds used for obesity control, including any combination of these compounds with other therapeutic agents, will be provided when there is a diagnosis of narcolepsy, hyperkinesis in children, or senile depression but not for obesity control. (Cross-reference 78.28(1)*"a"*)

Payment for multiple vitamins, tonic preparations and combinations thereof with minerals, hormones, stimulants, or other compounds which are available as separate entities for treatment of specific conditions will be approved when there is a specifically diagnosed vitamin deficiency disease. (Prior approval is not required for products principally marketed as prenatal vitamin-mineral supplements.) (Cross-reference 78.28(1)*"b"*)

(3) Payment will not be made for drugs determined to be ineffective or less than effective by the Secretary of Health and Human Services.

Unless the Secretary has determined there is a compelling justification for medical need, payment will not be made for those drugs and any other drug which is identical, related, or similar and placed under notice by the Secretary pursuant to section 505(e) of the Federal Food, Drug and Cosmetic Act.

(4) Payment will not be approved for prescription only products containing hexachlorophene.

(5) Payment will not be approved for prescription laxative drugs.

b. Medical and sickroom supplies when ordered by the physician for a specific rather than incidental use. No payment will be approved for medical and sickroom supplies for a recipient receiving care in a skilled nursing home. When a recipient is receiving care in an intermediate care facility or custodial home not certified as a skilled nursing home, payment will be approved only for the following supplies when prescribed by a physician:

(1) Colostomy and ileostomy appliances.

(2) Colostomy and ileostomy care dressings, liquid adhesive and adhesive tape.

(3) Disposable irrigation trays or sets.

(4) Disposable catheterization trays or sets.

(5) Indwelling Foley catheter.

(6) Disposable saline enemas.

(7) Diabetic supplies including disposable or reusable needles and syringes, testape, clinitest tablets, and clinistix.

c. Prescription records are required for all drugs as specified in Iowa Code sections 155.33, 155.34 and 204.308. For the purposes of the medical assistance program, prescriptions for medical supplies are required and shall be subject to the same provisions.

d. When it is not therapeutically contraindicated, the physician shall prescribe a quantity of medication sufficient for a thirty (30) day supply. Maintenance drugs in the following therapeutic classifications for use in prolonged therapy may be prescribed in ninety (90) day quantities:

(1) Oral contraceptives

(2) Cardiac drugs

(3) Hypotensive agents

(4) Vasodilating agents

(5) Anticonvulsants

(6) Diuretics

(7) Anticoagulants

(8) Thyroid and anti-thyroid agents

(9) Anti-diabetic agents

e. Prior approval is required for nutritional supplements. Prescription or nonprescription nutritional supplements shall be approved for payment for a recipient who needs the supplement due to a specifically diagnosed disease or condition which results in a metabolic or digestive disorder which prevents the person from obtaining the necessary nutritional value from usual foods and which cannot be managed by avoidance of certain food products. The nutritional supplements must be prescribed by a physician (MD/DO). (Cross-reference 78.28(1)*"d"*)

f. Nonprescription drugs as follows:

Aspirin Tablets 325 mg., 650 mg.
Aspirin Tablets, Enteric Coated 325 mg., 650 mg.
Aspirin Tablets, Buffered 325 mg.
Acetaminophen Tablets 325 mg., 500 mg.
Acetaminophen Elixir 120 mg./5 ml.
Acetaminophen Elixir 160 mg./5 ml.
Acetaminophen Solution 100 mg./ml.
Ferrous Sulfate Tablets 300 mg., 325 mg.
Ferrous Sulfate Elixir 220 mg./5 ml.
Ferrous Sulfate Drops 75 mg./0.6 ml.
Ferrous Gluconate Tablets 300 mg., 325 mg.
Ferrous Gluconate Elixir 300 mg./5 ml.
Ferrous Fumarate Tablets 300 mg., 325 mg.

Nonprescription multiple vitamin and mineral products specifically formulated and recommended for use as a dietary supplement during pregnancy and lactation.

With prior authorization, nonprescription multiple vitamins and minerals under the conditions specified in subrule 78.1(2)*"a"*(2).

Oral solid forms of the above covered items shall be prescribed and dispensed in a minimum quantity of one hundred (100) units per prescription except when dispensed via a unit dose system. When used for maintenance therapy, all of the above listed items may be prescribed and dispensed in ninety (90)-day quantities.

78.1(3) Payment will be approved for injections provided they are reasonable, necessary, and related to the diagnosis and treatment of an illness or injury or are for purposes of immunization. When billing for an injection, the physician must specify the brand name of the drug and the manufacturer, the strength of the drug, the amount administered, and the charge for each injection. When the strength and dosage is not included, payment will be made based on the customary dosage. The following exclusions are applicable.

a. Payment will not be approved for injections when they are considered by standards of medical practice not to be specific or effective treatment for the particular condition for which they are administered.

b. Payment will not be approved for an injection when administered for a reason other than the treatment of a particular condition, illness, or injury. When injecting an amphetamine or legend vitamin, prior approval must be obtained as specified in 78.1(2)*"a"*(2).

c. Payment will not be approved when injection is not an indicated method of administration according to accepted standards of medical practice.

d. Allergenic extract materials provided the patient for self administration shall not exceed a ninety (90)-day supply.

e. Payment will not be approved when an injection is determined to fall outside of what is medically reasonable or necessary based on basic standards of medical practice for the required level of care for a particular condition.

78.1(4) For the purposes of this program, cosmetic, reconstructive, or plastic surgery is surgery which can be expected primarily to improve physical appearance or which is performed primarily for psychological purposes or which restores form but which does not correct or materially improve the bodily functions. When a surgical procedure primarily restores function, whether or not there is also a concomitant improvement in physical appearance, the surgical procedure does not fall within the provisions set forth in this subrule.

a. Coverage under the program is generally not available for cosmetic, reconstructive, or plastic surgery. However, under certain limited circumstances payment for otherwise covered services and supplies may be provided in connection with cosmetic, reconstructive, or plastic surgery as follows:

(1) Correction of a congenital anomaly; or

(2) Restoration of body form following an accidental injury; or

(3) Revision of disfiguring and extensive scars resulting from neoplastic surgery.

(4) Generally, coverage is limited to those cosmetic, reconstructive, or plastic surgery procedures performed no later than twelve (12) months subsequent to the related accidental injury or surgical trauma. However, special consideration for exception will be given to cases involving children who may require a growth period.

b. Cosmetic, reconstructive, or plastic surgery performed in connection with certain conditions is specifically excluded. These conditions are:

(1) Dental congenital anomalies, such as absent tooth buds, malocclusion, and similar conditions.

(2) Procedures related to transsexualism or hermaphroditism, except as specifically provided for in this subrule.

(3) Cosmetic, reconstructive, or plastic surgery procedures performed primarily for psychological reasons or as a result of the aging process.

(4) Breast augmentation mammoplasty, surgical insertion of prosthetic testicles, and penile implant procedures, whether or not they would otherwise qualify for coverage under this subrule.

c. When it is determined that a cosmetic, reconstructive, or plastic surgery procedure does not qualify for coverage under the program, all related services and supplies, including any institutional costs, are also excluded.

d. Following is a partial list of cosmetic, reconstructive, or plastic surgery procedures which are not covered under the program. This list is for example purposes only and is not considered all inclusive.

(1) Any procedure performed for personal reasons, to improve the appearance of an obvious feature or part of the body which would be considered by an average observer to be normal and acceptable for the patient's age or ethnic or racial background.

(2) Cosmetic, reconstructive, or plastic surgical procedures which are justified primarily on the basis of a psychological or psychiatric need.

(3) Augmentation mammoplasties.

(4) Face lifts and other procedures related to the aging process.

(5) Reduction mammoplasties, unless there is medical documentation of intractable pain not amenable to other forms of treatment as the result of increasingly large pendulous breasts.

(6) Panniculectomy and body sculpture procedures.

(7) Repair of sagging eyelids, unless there is demonstrated and medically documented significant impairment of vision.

(8) Rhinoplasties, unless there is evidence of accidental injury occurring within the past six months which resulted in significant obstruction of breathing.

(9) Chemical peeling for facial wrinkles.

(10) Dermabrasion of the face.

(11) Revision of scars resulting from surgery or a disease process, except disfiguring and extensive scars resulting from neoplastic surgery.

(12) Removal of tattoos.

(13) Hair transplants.

(14) Electrolysis.

(15) Rescinded, effective 7/1/81.

(16) Penile implant procedures.

(17) Insertion of prosthetic testicles.

e. Coverage is available for otherwise covered services and supplies required in the treatment of complications resulting from a noncovered incident or treatment, but only when the subsequent complications represent a separate medical condition such as systemic infection, cardiac arrest, acute drug reaction, or similar conditions. Coverage shall not be extended for any subsequent care or procedure related to the complication that is essentially similar to the initial noncovered care. An example of a complication similar to the initial period of care would be repair of facial scarring resulting from dermabrasion for acne.

78.1(5) The physician's prescription for medical equipment, appliances, or prosthetic devices shall include the patient's diagnosis and prognosis, the reason the item is required, and an estimate in months of the duration of the need. Payment will be made in accordance with rule 78.10(249A).

78.1(6) Payment will be approved for the examination to establish the need for orthopedic shoes in accordance with rule 78.15(249A).

78.1(7) No payment shall be made for the services of a private duty nurse.

78.1(8) Payment for mileage shall be the same as that in effect in part B of Medicare.

78.1(9) Payment will be approved for visits to patients in skilled nursing homes or intermediate care facilities subject to the following conditions:

a. Payment will be approved for only one visit to the same patient in a calendar month. Payment for further visits will be made only when the need for the visits is adequately documented by the physician.

b. When only one patient is seen in a single visit the allowance shall be based on a follow-up home visit. When more than one patient is seen in a single visit, payment shall be based on a follow-up office visit. In the absence of information on the claim, the carrier will assume that more than one patient was seen, and payment approved on that basis.

c. Payment will be approved for mileage in connection with nursing home visits when:

(1) It is necessary for the physician to travel outside the home community, and

(2) There are not physicians in the community in which the nursing home is located.

78.1(10) Payment will be approved in independent laboratory when it has been certified as eligible to participate in Medicare.

78.1(11) Payment will be made for gastrointestinal surgery for the treatment of obesity when prior approval is obtained from the fiscal agent.

a. The following medical information shall be submitted for review prior to approval. The information for review may be documents attached to the request form rather than incorporated into a specific document.

(1) A complete history and physical examination of the patient preoperatively including weight and height.

(2) A medical evaluation of endocrine and emotional status of the patient preoperatively. When there has been a history of psychiatric illness, a psychiatric evaluation will be required.

(3) Preoperatively routine laboratory analysis of the patient such as CBC and urinalysis; liver function studies; SMA-12; triglycerides; thyroid function tests, where indicated; arterio-blood gas studies; pulmonary function studies, where indicated; electrolytes; and EKG.

(4) Reports of specialists when needed because of exception request.

b. The request will be approved based on the following criteria:

(1) The patient shall be at least one hundred seventy five percent (175%) of the ideal weight according to the mean weight (medium frame) on the Metropolitan Life Insurance Company weight scale.

(2) The patient shall be between the ages of twenty (20) and fifty-five (55).

(3) There shall be proven refractoriness to medical therapy for three (3) years.

(4) If an alcoholic, the patient shall not have consumed alcoholic beverages for at least three (3) years preceding the operation.

(5) There shall be no nonreversible sequela of systemic disease, for example, a stroke.

Exceptions to the above criteria shall be considered when there is a severe complication of obesity including, but not limited to a skeletal problem, severe heart condition or diabetes and an appropriate specialist has submitted information which outlines the severity of the condition and the need for the obesity surgery. (Cross-reference 78.28(1)"*c*")

78.1(12) Payment will be made on the same basis as in Medicare for services associated with treatment of chronic renal disease including physician's services, hospital care, renal transplantation, and hemodialysis, whether performed on an inpatient or outpatient basis. Payment will be made for deductibles and coinsurance for those persons eligible for Medicare.

78.1(13) Payment will be made to the physician for services rendered by auxiliary personnel employed by the physician and working under the direct personal supervision of the physician, when such services are performed incident to the physician's professional service.

a. Auxiliary personnel are nurses, physician's assistants, psychologists, social workers, audiologists, occupational therapists and physical therapists.

b. An auxiliary person is considered to be an employee of the physician if the physician:

(1) Is able to control the manner in which the work is performed, i.e., is able to control when, where and how the work is done. This control need not be actually exercised by the physician.

(2) Sets work standards.

(3) Establishes job description.

(4) Withholds taxes from the wages of the auxiliary personnel.

c. Direct personal supervision in the office setting means the physician must be present in the same office suite, not necessarily the same room, and be available to provide immediate assistance and direction.

Direct personal supervision outside the office setting, such as the recipient's home, hospital, emergency room, or nursing facility, means the physician must be present in the same room as the auxiliary person.

A nurse-midwife certified under 590—chapter 7 is exempt from the direct personal supervision requirement.

A physician's assistant certified under 470—chapter 136 is exempt from the direct personal supervision requirement if practicing in a community located in a rural medically underserved area as designated by the Department of Health and Human Services for purposes of establishing rural health clinics.

d. Services incident to the professional services of the physician means the service provided by the auxiliary person must be related to the physician's professional service to the recipient. If the physician has not or will not perform a personal professional service to the recipient the clinical records must document that the physician assigned treatment of the recipient to the auxiliary person.

78.1(14) The physicians certification for admission to an intermediate care facility shall be made on Form MA-2130-0, Recommendations for Nursing Home Care—Physicians Report.

78.1(15) The certification of inpatient hospital care shall be the same as that in effect in part A of Medicare. The hospital admittance record is sufficient for the original certification.

78.1(16) No payment will be made for sterilization of an individual under age twenty-one (21) or who is mentally incompetent or institutionalized. Payment will be made for sterilization performed on an individual who is age twenty-one (21) or older at the time the informed consent is obtained and who is mentally competent and not institutionalized when all the conditions in this subrule are met.

a. The following definitions are pertinent to this subrule:

(1) Sterilization means any medical procedure, treatment, or operation performed for the purpose of rendering an individual permanently incapable of reproducing and which is not a necessary part of the treatment of an existing illness or medically indicated as an accompaniment of an operation on the genital urinary tract. Mental illness or retardation is not considered an illness or injury.

(2) Hysterectomy means a medical procedure or operation to remove the uterus.

(3) Mentally incompetent individual means a person who has been declared mentally incompetent by a federal, state or local court of jurisdiction for any purpose, unless the individual has been declared competent for purposes which include the ability to consent to sterilization.

(4) Institutionalized individual means an individual who is involuntarily confined or detained, under a civil or criminal statute, in a correctional or rehabilitative facility, including a mental hospital or other facility for the care and treatment of mental illness, or an individual who is confined under a voluntary commitment in a mental hospital or other facility for the care and treatment of mental illness.

b. The sterilization shall be performed as the result of a voluntary request for the services made by the person on whom the sterilization is performed.

c. The person shall be advised prior to the receipt of consent that no benefits provided under the medical assistance program or other programs administered by the department may be withdrawn or withheld by reason of a decision not to be sterilized.

d. The person shall be informed that the consent can be withheld or withdrawn any time prior to the sterilization without prejudicing future care and without loss of other project or program benefits.

e. The person shall be given a complete explanation of the sterilization. The explanation shall include:

(1) A description of available alternative methods and the effect and impact of the proposed sterilization including the fact that it must be considered to be an irreversible procedure.

(2) A thorough description of the specific sterilization procedure to be performed and benefits expected.

(3) A description of the attendant discomforts and risks including the type and possible effects of any anesthetic to be used.

(4) An offer to answer any inquiries the person to be sterilized may have concerning the procedure to be performed. The individual shall be provided a copy of the informed consent form in addition to the oral presentation.

f. At least thirty (30) days and not more than one hundred eighty (180) days shall have elapsed following the signing of the informed consent except in the case of premature delivery or emergency abdominal surgery which occurs not less than seventy-two (72) hours after the informed consent was signed. The informed consent shall have been signed at least thirty (30) days prior to the expected delivery date for premature deliveries. Consent shall be obtained on Form XIX (PHY-3), Consent Form, and shall be attached to the claim for payment.

g. The information in paragraphs "*b*" through "*f*" shall be effectively presented to a blind, deaf, or otherwise handicapped individual and an interpreter shall be provided when the individual to be sterilized does not understand the language used on the consent form or used by the person obtaining consent. The individual to be sterilized may have a witness of the individual's choice present when consent is obtained.

h. Form XIX (PHY-3), Consent Form, shall be signed by the individual to be sterilized, the interpreter, when one was necessary, the physician, and the person who provided the required information.

i. Informed consent shall not be obtained while the individual to be sterilized is:

(1) In labor or childbirth, or

(2) Seeking to obtain or obtaining an abortion, or

(3) Under the influence of alcohol or other substance that affects the individual's state of awareness.

j. Payment will be made for a medically necessary hysterectomy only when it is performed for a purpose other than sterilization and only when one or more of the following conditions is met:

(1) The individual or representative has signed an acknowledgment that she has been informed orally and in writing from the person authorized to perform the hysterectomy that the hysterectomy will make the individual permanently incapable of reproducing, or

(2) The individual was already sterile before the hysterectomy, the physician has certified in writing that the individual was already sterile at the time of the hysterectomy and has stated the cause of the sterility, or

(3) The hysterectomy was performed as a result of a life-threatening emergency situation in which the physician determined that prior acknowledgment was not possible and the physician includes a description of the nature of the emergency.

78.1(17) Abortions. Payment for an abortion or related service is made when Form XIX (PHY-4) is completed for the applicable circumstances and is attached to each claim for services. Payment for an abortion is made under one of the following circumstances:

a. The physician certifies that the pregnant woman's life would be endangered if the fetus were carried to term.

b. The physician certifies that the fetus is physically deformed, mentally deficient or afflicted with a congenital illness and the physician states the medical indication for determining the fetal condition.

c. The pregnancy was the result of rape reported to a law enforcement agency or public or private health agency which may include a family physician within forty-five (45) days of the date of occurrence of the incident. The report shall include the name, address, and signature of the person making the report. Form XIX (PHY-4) shall be signed by the person receiving the report of the rape.

d. The pregnancy was the result of incest reported to a law enforcement agency or public or private health agency including a family physician no later than one hundred and fifty days after the date of occurrence. The report shall include the name, address, and signature of the person making the report. Form XIX (PHY-4) shall be signed by the person receiving the report of incest.

78.1(18) Payment and procedure for obtaining eyeglasses, contact lenses, and visual aids, shall be the same as described in 441—78.6(249A). (Cross-reference 78.28(3)

78.1(19) Preprocedure review by the Iowa Foundation for Medical Care (IFMC) will be required if payment under Medicaid is to be made for certain frequently performed surgical procedures which have a wide variation in the relative frequency the procedures are performed. Preprocedure surgical review applies to surgeries performed in hospitals (outpatient and inpatient) and ambulatory surgical centers. Approval by the IFMC will be granted only if the procedures are determined to be necessary based on the condition of the patient and the published criteria established by the IFMC and the department. If not so approved by the IFMC, payment will not be made under the program to the physician or to the facility in which the surgery is performed. The criteria are available from IFMC, 3737 Woodland Avenue, Suite 500, West Des Moines, Iowa 50265, or in local hospital utilization review offices.

The "Preprocedure Surgical Review List" shall be published by the department in the provider manuals for physicians, hospitals, and ambulatory surgical centers. The "Preprocedure Surgical Review List" shall be developed by the department with advice and consultation from the IFMC and appropriate professional organizations and will list the procedures for which prior review is required and the steps that must be followed in requesting such review. The department shall update the "Preprocedure Surgical Review List" annually. (Cross-reference 78.28(1)*"e"*)

This rule is intended to implement Iowa Code section 249A.4 and 1985 Iowa Acts, chapter 259, section 3.

441—78.2(249A) Retail pharmacies.

78.2(1) Payment will be approved for the following when ordered by a legally qualified practitioner (physician, dentist, or podiatrist):

a. Legend drugs and devices requiring a prescription by law subject to the same conditions as specified in subrule 78.1(2)*"a"*.

b. Medical and sickroom supplies when ordered by the physician for a specific rather than incidental use subject to the same conditions as specified in subrule 78.1(2)*"b"*.

c. Rental or purchase of medical equipment and appliances subject to the same conditions as specified in rule 78.10(249A).

d. Nonprescription drugs as specified in subrule 78.1(2)*"f."* The basis of payment shall be the same as specified in subrule 78.2(2)*"a"* except that a maximum allowable reimbursable cost for these drugs shall be established by the department at the median of the average wholesale prices less ten and fifty-nine hundredths percent (10.59%) of the chemically equivalent products available. No exceptions for reimbursement for higher cost products will be approved.

78.2(2) The amount of payment shall be based on several factors.

a. In accordance with 42 CFR 447.331-333, as amended October 1, 1985, the basis of payment for legend drugs shall be the pharmacist's usual, customary, and reasonable charge, but shall not exceed the average wholesale price of the drug less ten and fifty-nine hundredths percent (10.59%) plus the professional fee which represents the seventy-fifth percentile of fees charged to the private paying public by Iowa pharmacies, not to exceed $5.01 less six and thirty-five hundredths percent (6.35%). The maximum allowable reimbursable cost for drug products for which there is available a lower cost alternative equivalent product shall be established at the average wholesale price of the lower cost equivalent product dispensed less ten and fifty-nine hundredths percent (10.59%). If a physician certifies in the physician's handwriting that, in the physician's medical judgment, a specific brand is medically necessary for a particular recipient, the maximum allowable reimbursement does not apply and the department will pay the average wholesale price of the brand name product less ten and fifty-nine hundredths percent (10.59%). If a physician does not certify in the physician's handwriting that, in the physician's judgment a specific brand is medically necessary, and if a lower cost equivalent product is not substituted by the pharmacy, the department will pay for the product an amount equal to the upper level of the range of average wholesale prices of equivalent products less ten and fifty-nine hundreds percent (10.59%).

Equivalent products shall be defined as those products which meet therapeutic equivalence standards as published in the Federal Food and Drug Administration document "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations" and which are normally available from drug wholesalers servicing pharmacies in this state as determined by surveys of these wholesalers.

b. The determination of the unit cost component of the drug shall be based on the package size of drugs most frequently purchased by providers or the maximum allowable cost of each multiple source drug designated by the pharmaceutical reimbursement board of the department of health and human services, and published in the Federal Register.

c. Payment for sickroom supplies and medical equipment shall not exceed the manufacturer's suggested minimum retail price or the usual community price for such items, whichever is lower.

d. No payment shall be made for sales tax.

e. A professional dispensing fee of fifty cents ($.50) per prescription, in addition to the ordinary dispensing fee, shall be approved for selection of equivalent products which are less expensive than the following:

(1) Those products at the maximum reimbursement level established pursuant to 78.2(2)*"a,"* and

(2) Any brand name product not included pursuant to 78.2(2)*"a,"* if such selection results in a cost savings to the medical assistance program of at least one dollar and fifty cents ($1.50) per prescription.

78.2(3) The pharmacist shall dispense the lowest cost item in stock which meets the requirements of the practitioner as shown on the prescription.

78.2(4) Prescription records are required for all drugs as specified in Iowa Code sections 155.33, 155.34, and 204.308. For the purposes of the medical assistance program, prescriptions for medical supplies are required and shall be subject to the same provisions. All prescriptions shall be available for audit by the department of human services.

78.2(5) Payment will be approved for the following when ordered by a therapeutically certified optometrist:

a. Topical antimicrobial agents.

b. Topical and oral antihistamines.

c. Topical anti-inflammatory agents.

This rule is intended to implement Iowa Code section 249A.4 and 1986 Iowa Acts, chapter 1246, sections 309 to 314.

441—78.3(249A) Hospitals. Payment for inpatient hospital admission is approved when it meets the criteria for inpatient hospital care as determined by the Iowa Foundation for Medical Care (IFMC) or the delegated hospital. All cases are subject to review prior to admission; however, in most instances the preadmission review will focus on problem areas identified by the department and IFMC or its delegated hospitals. Obstetric cases admitted for delivery may have the review performed following admission. Medicaid payment for inpatient hospital admissions is approved when it is determined to meet the critera for inpatient hospital care. (Cross-reference 78.28(5) Continuing hospitalization shall be approved if the patient's condition meets the severity of illness and intensity of services criteria established by the IFMC and the department. The criteria are available from IFMC, 3737 Woodland Avenue, Suite 500, West Des Moines, Iowa 50265, or in local hospital utilization review offices. No payment will be made for waiver days.

There are no limitations on the amount of outpatient care for which payment will be made so long as the care is necessary.

If the recipient is eligible for inpatient or outpatient hospital care through the Medicare program, payment will be made for deductibles and coinsurance applicable in that program.

Unless the recipient's physician determines that the patient must be isolated for medical reasons and that a private room is required, payment will be approved only for multiple-bed accommodations.

78.3(1) Payment will be approved for the day of admission but not the day of discharge or death.

78.3(2) No payment will be approved for private duty nursing.

78.3(3) Certification of inpatient hospital care shall be the same as that in effect in part A of Medicare. The hospital admittance records are sufficient for the original certification.

78.3(4) Services provided for intestinal or gastric bypass surgery for treatment of obesity requires prior approval, which must be obtained by the attending physician before surgery is performed.

78.3(5) Payment will be approved for drugs provided inpatients subject to the same provisions specified in 78.1(2)"*a*"(2) and (3). Payment will be approved for drugs and supplies provided outpatients subject to the same provisions specified in 78.1(2). The basis of payment for drugs provided outpatients shall be the same as specified in 78.2(2).

78.3(6) Payment for nursing care provided by a hospital shall be made to those hospitals which have been certified by the state department of health as meeting the standards for a skilled nursing facility or an intermediate care facility. Payment as a skilled nursing facility shall be the same as specified in 78.12(249A). Payment as an intermediate care facility shall be the same as specified in 81.4(249A).

78.3(7) Payment for inpatient hospital tests for purposes of diagnosis and treatment shall be made only when the tests are specifically ordered for the diagnosis and treatment of a particular patient's condition by the attending physician or other licensed practitioner acting within the scope of practice as defined by law, who is responsible for that patient's diagnosis or treatment.

78.3(8) Payment will not be made for services rendered by a hospital for tuberculosis or mental diseases when the hospital is an institution established and maintained primarily for care and treatment of persons with tuberculosis or mental diseases.

78.3(9) Payment will be made for sterilizations in accordance with 78.1(16).

78.3(10) Payment will be approved for a kidney transplant, but not for any services connected with any other organ transplant.

78.3(11) Payment will be approved for inpatient hospital care rendered a patient in connection with dental treatment only when the mental, physical, or emotional condition of the patient prevents the dentist from providing this necessary care in the office.

78.3(12) Payment will be approved for a fee for use of an emergency room providing at least one of the following conditions is met:

a. The patient is evaluated or treated for a medical emergency, accident, or injury. Medical emergency is defined as a sudden or unforeseen occurrence or combination of circumstances presenting a substantial risk to an individual's health unless immediate medical treatment is given.

b. The patient's evaluation or treatment results in a utilization review committee approved inpatient hospital admission.

c. The patient is referred by a physician.

d. The patient is suffering from an acute allergic reaction.

e. The patient is experiencing acute, severe respiratory distress.

78.3(13) Payment for patients determined by utilization review to require the skilled nursing care level of care shall be made at the median rate of those facilities participating in the skilled nursing facilities program with the rate being adjusted as of January 1 each year. This rate is effective as of the date of notice by utilization review that the lower level of care is required. Those facilities participating in the skilled nursing facility program or swing bed program will be reimbursed at their established skilled nursing facility rate or swing bed rate.

78.3(14) Payment for patients determined by utilization review to require intermediate care facility level of care shall be made at the statewide average medical assistance intermediate care facility rate. This rate is effective as of the date of notice by utilization review that the lower level of care is required. Those facilities participating in the intermediate care facility program will be paid at their established intermediate care facility rate.

78.3(15) Payment for inpatient hospital charges associated with surgical procedures on the "Outpatient/Same Day Surgery List" produced by the Iowa foundation for medical care shall be made only when attending physician has secured appoval from the hospital's utilization review department prior to admittance to the hospital. Approval shall be granted when inpatient care is deemed to be medically necessary based on the condition of the patient or when the surgical procedure is not performed as a routine, primary, independent procedure. The "Outpatient/Same Day Surgery List" shall be published by the department in the provider manuals for hospitals and physicians. The "Outpatient/Same Day Surgery List" shall be developed by the Iowa foundation for medical care, and shall include procedures which can safely and effectively be performed in a doctor's office or on an outpatient basis in a hospital. The Iowa foundation for medical care may add, delete or modify entries on the "Outpatient/Same Day Surgery List".

78.3(16) Payment will be made for medically necessary skilled nursing care when provided by a hospital participating in the swing bed program certified by the department of inspections and appeals and approved by the U.S. Department of Health and Human Services. Payment shall be at the average rate per patient day paid during the previous calendar year for routine skilled nursing services furnished by Iowa skilled nursing facilities participating in the Medicaid program.

78.3(17) Respite care for Title XIX waiver recipients. Hospitals may be used to provide respite care as defined in rule 441—83.1(249A) to eligible individuals in the Title XIX waiver program.

78.3(18) Preprocedure review by the IFMC is required if hospitals are to be reimbursed for certain frequently performed surgical procedures as set forth under subrule 78.1(19). Criteria are available from IFMC, 3737 Woodland Avenue, Suite 500, West Des Moines, Iowa 50265, or in local hospital utilization review offices. (Cross-reference 78.28(5)

This rule is intended to implement Iowa Code sections 249A.4 and 249A.16 and 1985 Iowa Acts, chapter 259, section 3.

441—78.4(249A) Dentists.

78.4(1) This subrule delineates dental services for which payment will be made when rendered an eligible Title XIX recipient by an eligible provider. To ensure payment, services noted as requiring prior authorization shall be approved by the fiscal agent's dentist consultant prior to the provision of the services. In addition, some services not listed herein may be approved for payment on an exception basis after the provider has obtained authorization from the department's dentist consultant. Payment will be made for the following dental procedures:

a. Emergency services.

(1) Emergency services are those services required for alleviation of severe pain or immediate diagnosis and treatment of unforeseen dental conditions which if not immediately diagnosed and treated would lead to serious consequences of illness, disability or death. Such services are exempt from prior authorization; however, any service subject to prior authorization under normal conditions shall be supported by a dentist or physician statement describing the emergency and why emergency services were necessary.

(2) Emergency oral examination with treatment.

(3) Recement inlays, crowns or bridges.

(4) Fillings (sedative).

(5) House or nursing home visits. Only one visit fee shall be allowed when more than one patient is provided services at the same house or nursing home on the same day.

(6) Hospital calls up to a maximum of one visit per day.

(7) Therapeutic drug injection, by report, that is, the claim should include a brief narrative of history, findings, and treatment.

(8) Application of desensitizing medicaments, by report.

(9) Treatment of post surgery complications, by report.

b. Diagnostic services.

(1) An initial oral examination is payable once per patient per doctor.

(2) Periodic oral examination is payable once in a six (6)-month period.

(3) A complete mouth radiograph survey consisting of a minimum of fourteen (14) periapical films and bitewing films is a payable service once in a three (3)-year period. A panographic-type radiography with bitewings is considered the same as a complete mouth radiograph survey. Children under fourteen (14) years of age may receive the minimum number of X-rays sufficient to detect anomalies, diseases, and to evaluate development.

(4) Supplemental bitewing films are payable only once in a twelve (12)-month period.

(5) Single periapical films are payable when necessary.

(6) Intraoral radiograph, occlusal.

(7) Extraoral radiograph.

(8) Posteroanterior and lateral skull and facial bone radiograph, survey film.

(9) Temporomandibular joint radiograph.

(10) Cephalometric film.

(11) Special consultation fee when necessary to consult another dentist or physician.

(12) Oral prophylaxis, including necessary scaling and polishing, is payable once in a six (6)-month period, except for persons who because of physical or mental disability cannot maintain adequate oral hygiene at home and prophylaxis is necessary more frequently. These cases require prior authorization. Topical application of flouride is payable once in a six (6)-month period. (This does not include the use of flouride prophylaxis paste as flouride treatment.) (Cross-reference 78.28(2)*"a"*)

Reimbursements shall be made for pit and fissure sealants on first and second permanent molars only. All deciduous teeth are excluded. Reimbursements for sealants are restricted to work performed on children ages five (5) through eight (8) or first permanent molars and to work performed on children ages eleven (11) through fifteen (15) or second permanent molars. Payment will be approved for only one application per tooth in a child's lifetime.

(13) Diagnostic casts are a limited benefit and are payable only for orthodontic cases or when requested by the dentist-consultant.

c. Oral surgery.

(1) Payable surgical procedures (including local anesthesia and routine postoperative care) are:

Extractions, both surgical and nonsurgical.

Impaction (soft tissue impaction, upper or lower) that requires an incision of overlying soft tissue and the removal of the tooth.

Impaction (partial bony impaction, upper or lower) that requires incision of overlying soft tissue, elevation of a flap, removal of bone and removal of the tooth.

Impaction (complete bony impaction, upper or lower) that requires incision of overlying soft tissue, elevation of a flap, removal of bone and section of the tooth for removal.

Root recovery (surgical removal of residual root).

Oral antral fistula closure (or antral root recovery).

Surgical exposure of impacted or unerupted tooth for orthodontic reasons, including ligation when indicated.

Surgical exposure of impacted or unerupted tooth to aid eruption.

Biopsy of oral tissue, hard or soft.

Alveoplasty (surgical preparation of ridge for dentures).

Excision of reactive inflammatory lesions (scar tissue or localized congenital lesions), including excision pericoronal gingiva.

Excision of tumors.

Removal of cysts or tumors.

Destruction of lesions by physical methods: electrosurgery, chemotherapy, cryotherapy.

Removal of exostosis, maxilla or mandible, which are symptomatic.

Partial osteotomy (guttering or saucerization), pathological.

Radical resection of mandible with bone graft pathological.

Incision and drainage.

Removal of foreign body, skin or subcutaneous areolar tissue.

Removal of reaction-producing foreign bodies, musculoskeletal system.

Sequestrectomy of osteomyelitis.

Maxillary sinusotomy for removal of tooth fragments or foreign body.

Treatment of fractures, simple or compound, by open or closed reduction.

Open and closed reduction of dislocation.

Repair of traumatic wounds.

Suture of recent small wounds, reconstruction requiring delicate handling of tissues, wide undermining for meticulous closure.

Skin grafts, necessary because of pathology or trauma.

Injection of trigeminal nerve branches for destruction.

Avulsion of trigeminal nerve branches.

Frenulectomy.

Sialolithotomy.

Excision of salivary gland.

Sialodochoplasty.

Closure of salivary fistula.

Emergency tracheotomy.

(2) Surgical procedures requiring prior approval include the following:

Apicoectomy, performed as separate surgical procedure.

Apicoectomy, performed in conjunction with endodontic procedure.

Apical curettage.

Root resection.

Excision of hyperplastic tissue.

Payment will be approved for surgical endodontic treatment when nonsurgical treatment has been attempted and a reasonable time has elapsed after which failure has been demonstrated. (Cross-reference 78.28(2)*"b"*)

(3) General anesthesia is a payable service when the severity of the disease indicates the need for the treatment, or when there is a concomitant disease or impairment which warrants its use.

d. Periodontics.

(1) Periodontics include those procedures necessary for the treatment of the tissues supporting the teeth. Periodontic services require prior approval and identification of case type. A recipient exhibiting type I may have gingivitis, shallow pockets, with no bone loss. Type II, early periodontitis, includes moderate pockets, minor to moderate bone loss, satisfactory topography. Type III, moderate periodontitis, includes moderate to deep pockets, moderate to severe bone loss, unsatisfactory topography. Type IV services, i.e., advanced periodontitis in which there are deep pockets, severe bone loss and advance mobility patterns (usually cases involving missing teeth and reconstruction), are not payable by the program. (Cross-reference 78.28(2)*"c"*)

(2) Subgingival curettage is a payable benefit when provided in periodontal case type I, II or III and only when interproximal and subgingival calculus is evident in the radiographs, or when justified and documented that curettage, scaling or root planning is required in addition to routine prophylaxis. (Cross-reference 78.28(2)*"c"*(1)

(3) Surgical procedures are a payable benefit when approved treatment for periodontal case type II or III, only after a reasonable period of time following conservative treatment, and only when the patient has demonstrated reasonable oral hygiene unless the person is unable to do so because of a physical or mental disability, or in cases which demonstrate gingival hyperplasia resulting from drug therapy. (Cross-reference 78.28(2)*"c"*(2)

(4) Dental disease prevention services are limited benefits, payable only as part of treatment for approved periodontal case types I, II and III. The fee for this service is included as a component of the unit fee and is not payable as a separate billing.

e. Endodontics.

(1) Prior approval is required for these services except for emergency root canal therapy. Emergency root canal treatment may be done without prior approval when any of the following conditions exist: Failure of palliative treatment to relieve the acute distress of the patient; a tooth which has been accidentally avulsed; and a fracture of the crown of a tooth. (Cross-reference 78.28(2)*"d"*)

(2) Root canal therapy may be payable for permanent teeth when extensive post-treatment restorative procedures are not necessary and when missing teeth do not jeopardize the integrity or function of the dental arches.

(3) Normal post-treatment radiographs shall be submitted with the attending dentist's statements for root canal treatment, the fee for which is included in the charge for endodontic treatment.

(4) Vital pulpotomies are clinical findings and do not require prior authorization. Cement bases, pulp capping and insulating liners are part of the restoration and may not be billed separately.

f. Restorative.

(1) Treatment of dental caries is payable in those areas which require immediate attention. Restoration of incipient or nonactive carious lesions are not payable. Carious activity may be considered incipient when there is no penetration of the dento-enamel junction as demonstrated in diagnostic radiographs.

(2) Amalgam alloy, silicate, acrylic or composite resin-type filling materials are payable benefits of the program.

(3) Composite resin or plastic type fillings on posterior teeth are payable benefits only as Class V restorations, i.e., facial (buccal) surfaces and, as Class I restorations, i.e., occlusal surfaces. Class I restorations are reimbursable only once in a two (2)-year period.

(4) All cast restorations require prior approval. (Cross-reference 78.28(2)*"e"*)

(5) Stainless steel crowns may be payable when a more conservative procedure would not be serviceable.

(6) All crowns, except stainless crowns on primary teeth or temporary stainless steel crowns on permanent teeth, must be prior approved. Acrylic, porcelain or porcelain to metal type crowns for adults are payable for anterior teeth. Cast metal crowns are payable for clasp teeth for an existing or allowable partial denture when coronal involvement is beyond treatment with amalgam alloy. (Cross-reference 78.28(2)*"f"*)

(7) Cast post and core, steel post and composite or amalgam in addition to a crown require prior approval. (Cross-reference 78.28(2)*"g"*)

(8) Amalgam or acrylic build-ups are considered part of the preparation for the completed restoration except in special circumstances.

(9) Payment may be made for a surface only once in each episode of treatment, unless required for conservation of a tooth surface.

(10) Tooth preparation, temporary restorations, cement bases, pulp capping, impressions and local anesthesia are included in the restorative fee and may not be billed separately.

(11) When utilized as a final restoration with amalgam or composite resin, pin retention may be payable as a separate item.

(12) Proximal restorations in anterior teeth are considered single surface restorations.

(13) More than four (4) surfaces on an amalgam restoration will be reimbursed as a "four (4)-surface" amalgam.

(14) Topical application of flouride is payable only when preceded by an oral prophylaxis.

(15) Routine postoperative care is considered part of the fee for surgical procedures and may not be billed separately.

g. Prosthetics. (Cross-reference 78.28(2)*"h"*)

(1) Fixed and removable prostheses are payable only once in a five (5)-year period and only with prior authorization, except when necessary to prevent a significant disability. Payable removable prostheses are:

Complete dentures, including six (6) months' post delivery care. Partial dentures replacing anterior teeth, including six (6) months' post delivery care. Partial dentures replacing posterior teeth shall be approved only when the patient has less than four (4) posterior teeth in occlusion; or the patient has a full denture in one arch, and a partial denture replacing posterior teeth is required in the opposing arch in order to balance occlusion; or a partial denture replacing anterior teeth is being approved, and posterior teeth can be replaced with little additional cost.

Complete or partial temporary dentures, including six (6)-months' post delivery care.

Obturator for surgically excised palatal tissue or deficient velopharyngeal function of cleft palate patients.

(2) Fixed bridgework for missing anterior teeth shall be utilized on a limited basis with prior approval by the fiscal agent's dental consultant. Acid etch anterior bridgework requires prior approval. Fixed prosthetics for missing posterior teeth are not a covered benefit.

(3) Relining upper or lower complete or partial dentures, in the laboratory or office, is a payable service once in a twelve (12)-month period.

(4) Tissue conditioning is a payable service twice per appliance in a twelve (12)-month period.

(5) Two (2) repairs per appliance in a twelve (12)-month period are covered by the program. More than two (2) repairs in twelve (12) months require justification and documentation.

h. Orthodontics.

(1) Orthodontic procedures require prior approval. A request to perform an orthodontic procedure must be accompanied by an interpreted cephalometric radiograph and study models trimmed so that the models simulate centric occlusion of the patient. A written plan of treatment must accompany the diagnostic aids. Posttreatment records must be furnished upon request of the fiscal agent. Payment shall be approved for the most handicapping malocclusions determined in a manner consistent with Handicapping Malocclusion Assessment to Establish Treatment Priority by J.A. Salzmann, D.D.S., American Journal of Orthodontics, October 1968. (Cross-reference 78.28(2)*"i"*)

(2) Space management may be a payable benefit.

(3) Tooth guidance for a limited number of teeth or interceptive orthodontics is a payable service when the total cost of treatment does not exceed seventy-five dollars ($75). Pretreatment records are not required.

i. Office visits. Payment may be made for postoperative care where need is shown to be beyond normal follow-up care or for postoperative care where the original service was performed by another dentist.

78.4(2) If a request for prior approval is denied by the fiscal agent's dentist-consultant, the request may be resubmitted for reconsideration with additional information justifying the request. If the request is, again, denied, the dentist may submit a request for reconsideration to the department's medical services section. In the event medical services section denies the request, a dentist may file an appeal in accordance with 441—chapter 7.

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

441—78.5(249A) Podiatrists. Payment will be approved only for certain podiatric services.

78.5(1) Payment will be approved for the following orthotic appliances and treatment of nail pathologies:

a. Durable plantar foot orthotic.

b. Plaster impressions for foot orthotic.

c. Molded digital orthotic.

d. Shoe padding when appliances are not practical.

e. Custom molded space shoes for rheumatoid arthritis, congenital defects and deformities, neurotropic, diabetic and ischemic intractable ulcerations and deformities due to injuries.

f. Rams horn (hypertrophic) nails.

g. Onychomycosis (mycotic) nails.

78.5(2) Payment will be made for the same scope of podiatric services available through part B of title XVIII (Medicare) except as listed below:

a. Treatment of flatfoot. The term *"flatfoot"* is defined as a condition in which one or more arches have flattened out.

b. Treatment of subluxations of the foot are defined as partial dislocations or displacements of joint surfaces, tendons, ligaments, or muscles of the foot. Surgical or nonsurgical treatments undertaken for the sole purpose of correcting a subluxated structure in the foot as an isolated entity are not covered.

Reasonable and necessary diagnosis of symptomatic conditions that result from or are associated with partial displacement of foot structures is a covered service. Surgical correction in the subluxated foot structure that is an integral part of the treatment of a foot injury or is undertaken to improve the function of the foot or to alleviate an induced or associated symptomatic condition is a covered service.

c. Routine foot care. Routine foot care includes the cutting or removal of corns or callouses, the trimming of nails and other hygienic and preventive maintenance care in the realm of self-care such as cleaning and soaking the feet, the use of skin creams to maintain skin tone of both ambulatory and bedfast patients and any services performed in the absence of localized illness, injury, or symptoms involving the foot.

d. Orthopedic shoes. Payment will not be made for orthopedic shoes or for any device to be worn in or attached to orthopedic shoes or other types of shoes when provided by the podiatrist. Payment will be made to the podiatrist for the examination including tests to establish the need for orthopedic shoes.

78.5(3) Prescriptions are required for drugs and supplies as specified in rule 78.1(2)*"c"*.

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

441—78.6(249A) Optometrists. Payment will be approved only for certain optometric services and supplies.

78.6(1) Payable services include:

a. Visual analysis which shall include the following enumerated professional and technical optometric services:

(1) Complete case history.

(2) Visual acuity.

(3) Examination of the eye for ocular disease.

(4) Analytical tests where indicated. Tests that may be included are corneal measurements, retinoscopy, subjective refraction, habitual phorias, induced lateral and vertical phorias, duction through controls, cross-cylinder and resultant phorias, amplitude of accommodation, and plus and minus blur-out.

(5) Basic skills as required.

(6) Determination of near vision or working distance, acuity and range of near vision.

(7) Diagnosis from foregoing tests.

b. Prescription, analysis, advice and consultation which shall include the following professional services:

(1) Analysis of the patient's previous prescription when applicable.

(2) Analysis of present visual needs.

(3) Determination of required treatment.

(4) Programming and presentation of treatment.

(5) Writing of the prescription.

c. Lens service, verification and subsequent service. When lenses are necessary, the following enumerated professional and technical optometric services are to be provided:

(1) Ordering of corrective lenses.

(2) Verification of lenses after fabrication.

(3) Adjustment and alignment of completed lens order.

(4) Subsequent adjustment and servicing of lenses.

d. Multifocal lens service.

e. Fitting of contact lenses when required following cataract surgery or documented keratoconus. Payment for contact lenses shall be the actual laboratory cost as evidenced by an attached invoice.

f. Frame service. When a new frame is necessary, the following enumerated professional and technical optometric services are to be provided:

(1) Selection and styling.

(2) Sizing and measurements.

(3) Fitting and adjustment.

(4) Readjustment and servicing.

g. Frame service when only lenses are provided.

h. Tonometry. For persons aged thirty-five and over.

i. Repairs. Service fee shall not exceed the dispensing fee.

j. Ophthalmic materials which are provided in connection with any of the foregoing professional optometric services shall provide adequate vision as determined by the optometrist and meet the following standards:

(1) Corrected curve lenses, unless clinically contraindicated, manufactured by reputable American manufacturers.

(2) Standard plastic, plastic metal combination, or metal frames manufactured by reputable American manufacturers.

(3) Prescription standards according to the American optometric association standards and tolerance.

k. Payment for single vision lenses shall be $13.50 per pair, bifocal vision lenses shall be $23.50 per pair, trifocal vision lenses shall be $29.50 per pair, and aphakia lenses shall be $47 per pair. Payment for lenses with a correction of plus or minus six (6) diopters or more shall be an additional $8 per pair. One lens shall be one-half the per pair price. All fees shall be reviewed annually by the department.

l. Payment for a total frame shall be at cost not to exceed $12 and payment for replacement parts for frames shall be at cost not to exceed $8.

m. Case for glasses not to exceed ninety-five cents ($.95).

n. Schroeder shield.

o. Ptosis crutch.

p. Protective lenses for an individual with only one eye even if corrective lens is not required.

78.6(2) The following services require prior approval before payment will be made for:

a. Tonometry when patient is under age thirty-five (35). Approval shall be given when the recipient exhibits signs or symptoms of glaucoma, the retina has an abnormal appearance, or there is a family history of glaucoma.

b. Visual fields. Approval shall be given under the same circumstances as in 78.6(2)*"a"* or if there is a high tonometry reading.

c. Subnormal visual aids including hand magnifiers, loupes, telescopic spectacles, or reverse Galilean telescope systems. Approval shall be given when conventional glasses will not give adequate acuity based on the needs of the recipient and the visual aid will provide the acuity. Payment shall be actual laboratory cost as evidenced by an attached invoice.

d. A second lens correction within a twenty-four (24)-month period. Approval shall be given when the recipient's vision has at least a five-tenths (.5) diopter of change in sphere or cylinder or ten (10) degree change in axis. (Cross-reference 78.28(3)

78.6(3) Noncovered services include, but are not limited to, the following services:

a. Glasses with cosmetic gradient tint lenses or other eyewear for cosmetic purposes.

b. Glasses for protective purposes including glasses for eye safety, sunglasses, or glasses with photogray lenses.

c. Visual therapy.

d. Any service related to a noncovered service.

78.6(4) Therapeutically certified optometrists may remove superficial foreign bodies from the human eye and adnexa and may employ the following pharmaceuticals:

a. Topical antimicrobial agents.

b. Topical and oral antihistamines.

c. Topical anti-inflammatory agents.

A therapeutically certified optometrist is an optometrist who is licensed to practice optometry in this state and who is certified by the board of optometry examiners to use the agents and procedures listed above.

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

441—78.7(249A) Opticians. Payment will be approved only for certain services and supplies provided by opticians.

78.7(1) Payment will be made for the following services when prescribed by a physician (MD or DO) or an optometrist (OD):

a. A dispensing fee only when the recipient is provided with a new pair of glasses.

b. Preparation and fitting of contact lenses when required following cataract surgery or documented keratoconus. Payment for contact lenses shall be the actual laboratory cost as evidenced by an attached invoice.

c. Preparation and fitting of artificial eye.

d. Ophthalmic materials which are provided according to the prescription provided by a professional physician or optometrist shall meet the following standards:

(1) Corrected curve lenses, unless clinically contraindicated, manufactured by reputable American manufacturers.

(2) Standard plastic, plastic metal combination, or metal frames manufactured by reputable American manufacturers.

(3) Prescription standards according to the American optometric association standards and tolerances.

e. Payment for single vision lenses shall be $13.50 per pair, bifocal vision lenses shall be $23.50 per pair, trifocal vision lenses shall be $29.50 per pair, and aphakia lenses shall be $47

per pair. Payment for lenses with a correction of plus or minus six (6) diopters or more shall be an additional $8 per pair. One lens shall be one-half the per pair price. All fees shall be reviewed annually.

f. Payment for a total frame shall be at cost not to exceed $12 and payment for replacement parts for frames shall be at cost not to exceed $8.

g. Repairs or replacement of frames, lenses or component parts. Payment will be approved for service in addition to materials. Payment will be approved for replacement of glasses when the original glasses have been lost or damaged beyond repair. When the glasses no longer adequately correct the recipient's vision, payment will be approved for lenses only. Lens fee shall be the same as 78.7(1)*"e."* Service fees shall not exceed the dispensing fee.

h. Schroeder shield.

i. Ptosis crutch.

j. Case for glasses not to exceed ninety-five cents ($.95).

78.7(2) When prior approval is obtained by the physician or optometrist, payment for the following services shall be made:

a. Subnormal visual aids including hand magnifiers, loupes, telescopic spectacles or reverse Galilean telescope system. Approval shall be given when conventional glasses will not give adequate acuity and the visual aid will provide the acuity. Payment shall be the actual laboratory cost as evidenced by an attached invoice.

b. A second lens correction within a twenty-four (24)-month period. Approval shall be given when the recipient's vision has at least a five-tenths (.5) diopter of change in sphere or cylinder or ten (10) degree change in axis.

78.7(3) Noncovered services include but are not limited to the following services:

a. Glasses with cosmetic gradient tint lenses or other eyewear for cosmetic purposes.

b. Glasses for protective purposes including glasses for eye safety, sunglasses, or glasses with photogray lenses.

c. Any service related to a noncovered service.

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

441—78.8(249A) Chiropractors. Payment will be made for the same chiropractic procedures payable under Title XVIII of the Social Security Act (Medicare). Each chiropractor participating in the program is furnished a list of these chiropractic services for which payment will be approved. The chiropractor shall have on file in the office an X-ray documenting the existence of a subluxation of the spine for which treatment is being given and a charge made to the program in all cases except for pregnant women and children under age five (5). The documenting X-ray shall be no more than one year old at the time service is provided.

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

441—78.9(249A) Home health agencies. Payment will be approved for all medically necessary services and supplies as prescribed by a physician in a plan of home health care provided by a certified home health agency.

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

441—78.10(249A) Medical equipment and appliances, prosthetic devices and sickroom supply dealers. Payment will be made for all medical equipment and appliances, prosthetic devices and sickroom supplies required by the recipient because of the recipient's condition. The written prescription of the physician is necessary in all cases. If the item required by the recipient costs more than $250 and will be needed only a brief period consideration shall be given to loan or rental rather than purchase of the item. Providers shall dispense used equipment, if such equipment is available and appropriate for the recipient's condition. Payment for used equipment shall be made at up to eighty percent (80%) of the same item if new.

78.10(1) Payment will be approved for durable medical equipment, when the equipment can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of an illness or injury, and is appropriate for use in the home. The equipment must also be necessary and reasonable for the treatment of an illness or injury or to improve the functioning of a malformed body member.

78.10(2) Payment will be approved for prosthetic devices which replace all or part of an internal body organ or replace all or part of the function of a permanently inoperative or malfunctioning internal body organ. Leg, arm, back and neck braces, and artificial legs, arms and eyes are also covered.

78.10(3) Payment will be approved for sickroom supplies when prescribed by the physician for a specific rather than incidental use.

78.10(4) Payment will be approved for repairs to equipment or prosthetic devices which a recipient is purchasing or already owns.

78.10(5) Payment will be approved for replacement of equipment which the recipient owns or is purchasing in cases of loss or irreparable damage or wear and when required because of a change in the recipient's condition.

78.10(6) Payment will be approved for oxygen subject to the same conditions as in the Medicare program.

78.10(7) When an item is rented, at the point one-half of the total rent paid equals the purchase price, the recipient will be considered to own the item and no further rental payments shall be made. This policy is also applicable to the payment of coinsurance for Medicare beneficiaries.

78.10(8) Payment will not be made for equipment required by recipients receiving care in skilled nursing facilities or in intermediate care facilities.

78.10(9) The following durable medical equipment and appliances can be paid for through the medical assistance program.

Alternating pressure pads and mattresses when carrier's physician determines patient has, or is highly susceptible to, decubitus ulcers, and the patient's physician has prescribed the equipment for treatment and has specified in the prescription that the physician will supervise its use in connection with the course of treatment.

Aquamatic k-pad when the same conditions as specified for heating pads are met. Payment is limited to the amount which would be payable for an ordinary heating pad.

Artificial kidney for chronic renal failure.

Bedpans, autoclavable hospital type, when patient is bed confined.

Bed side rails when patient is bed confined and disoriented.

Bennett IPPB machine when patient's ability to breathe is severely impaired.

Bird respirator when patient's ability to breathe is severely impaired.

Cane when patient's condition impairs ambulation.

Commode when patient is confined to bed or room.

Crutches when patient's condition impairs ambulation.

Den-mat under same conditions as a mattress. Payment shall be based on the amount payable for an ordinary hospital bed mattress.

DePuy flote bed under same conditions as alternating pressure pads and mattresses.

DePuy flotation mattress under the same conditions as alternating pressure pads and mattresses.

Dialysis equipment under same conditions as artificial kidney.

Disposable sheaths and bags payable as medical or prosthetic supplies.

Elastic stockings payable as medical or prosthetic supplies.

Electric hospital beds under same conditions as hospital beds.

Oxygen face masks.

Flowmeter under same conditions as medical oxygen regulators.

Fluidic breathing assistor when there is need for IPPB device but oxygen is not required.

Franklin electric hospital bed under the same conditions as hospital beds.

Gel flotation pads and mattress under the same conditions as alternating pressure pads and mattresses.

Hand e-vent under the same conditions as IPPB machines.

Heating pads when the carrier's medical staff determines the patient's medical condition is one for which the application of heat in the form of a heating pad is therapeutically effective.

Health lamps when the carrier's medical staff determines the patient's medical condition is one for which the application of heat in the form of a heat lamp is therapeutically effective.

Hemodialysis equipment under the same conditions as an artificial kidney.

Hospital beds. This charge may include a variable-height feature only when the carrier determines that the hospital bed required by the patient is not available in the locality without this feature.

a. General hospital beds when the patient is bed confined and the carrier's medical staff determines the patient's condition necessitates positioning the body in a way which would not be feasible in an ordinary bed or attachments are required which could not be used on an ordinary bed.

b. Electrically elevates and lowers head and foot when the carrier's physician determines the patient's condition is such that frequent changes in body position are necessary or there may be an immediate need for a change in position and the patient can effect these adjustments.

c. Franklin electric hospital beds, but payment shall be based on whichever hospital bed satisfies the patient's medical needs.

Hoyer lift under same conditions as patient lifts.

Hydraulic lifts under same conditions as patient lifts.

Incontinent pads payable as medical or prosthetic supplies.

Infusion pumps when carrier's medical staff verifies the appropriateness of the therapy and of the prescribed pump for home use. The physician's prescription must specify that the physician will be supervising its use in connection with a course of treatment.

Inhalators when patient's ability to breathe is severely impaired.

IPPB machines when patient's ability to breathe is severely impaired.

Iron lungs when patient has respiratory paralysis.

Irrigating kit payable as medical or prosthetic supplies.

Jobst pressure gradient fabric supports payable as medical or prosthetic supplies.

Jobst stockings and support hose payable as medical or prosthetic supplies.

Jobst pneumatic appliances when the pneumatic appliance has been prescribed for use with a medically necessary jobst pneumatic compressor.

Jobst pneumatic compressor under same conditions as nonsegmental therapy type lymphedema pumps.

Lambs wool pads payable as medical or prosthetic supplies.

Leotards payable as medical or prosthetic supplies.

Linde oxygen walker system when patient's ability to breathe is severely impaired, but patient is ambulatory.

Nonsegmental therapy-type lymphedema pumps when patient has intractable edema of the extremities.

Magic-daily bedpan when hospital-type bedpan is required. Payment is limited to the amount which would be payable for an ordinary hospital-type bedpan.

Oxygen masks.

Mattress when hospital bed is medically necessary. A separate charge for replacement will not be allowed when hospital bed with mattress is rented.

Maxi-myst when patient's ability to breathe is severely impaired.

Medic-ease mattress under same conditions as alternating pressure pad or mattress. Payment shall be based on the least expensive item that satisfies the patient's needs.

Medical oxygen regulators when patient's ability to breathe is severely impaired.

Nebulizers when patient's ability to breathe is severely impaired.

Osci-lite under same conditions as heat lamps. Payment is limited to the amount payable for an ordinary heat lamp.

Oxygen when prescribed for use in connection with medically necessary durable medical equipment.

Oxygen humidifiers when a medical humidifier has been prescribed for use in connection with medically necessary durable medical equipment for purposes of moisturizing oxygen.

Oxygen tents when patient's ability to breath is severely impaired.

Patient lifts when carrier's physician determines patient's condition is such that periodic movement is necessary to effect improvement or to arrest or retard deterioration in the condition.

Postual drainage boards when patient has a chronic pulmonary condition.

Posturpedic mattress under same condition as mattresses.

Pressure-eze-pad under same conditions as alternating pressure pads and mattresses.

Pressure leotards payable as medical or prosthetic supplies.

Quad-canes under same conditions as walkers.

Renal dialysis equipment under same conditions as artificial kidney.

Respirators when the carrier's medical staff determines that the apparatus specified in the claim is medically required and appropriate for home use without technical or professional supervision.

Sigmamotor mobile infusion pump under same conditions as infusion pumps.

Sitz bath when carrier's medical staff determines patient has an infection or injury of the perineal area and the item has been prescribed by the physician as a part of a planned regimen of treatment in the patient's home.

S.O.S. emergency oxygen inhalator as a stationary unit when it is a more economical alternative to the purchase of oxygen in large size high pressure tanks.

Stryker flotation pads and mattresses under same conditions as alternating pressure pads and mattresses.

Suction machine when the carrier's medical staff determines that the machine specified in the claim is medically required and appropriate for home use without technical or professional supervision.

Surgical leggings payable as medical or prosthetic supplies.

Thermophore fomentation device under same conditions as heating pads. Payment is limited to the amount which would be payable for an ordinary heating pad.

Traction equipment when patient has orthopedic impairment requiring traction equipment which prevents ambulation during the period of use.

Trapeze bars when patient is bed confined and there is need to sit up because of a respiratory condition or a need to change body position for other medical reasons.

Ultraviolet cabinet for selected patients with generalized intractable psoriasis. The carrier shall determine that medical and other factors justify treatment at home rather than at alternative sites.

Autoclavable hospital-type urinals when patient is bed confined.

Vaporizers when patient has a respiratory illness.

Walkers when patient's condition impairs ambulation.

Water and pressure pads and mattresses under same conditions as alternating pressure pads and mattresses.

Watkins chronofusor under same conditions as infusion pumps.

Wheelchairs when patient's condition is such that the alternative would be chair or bed confinement.

Power operated wheelchairs and wheelchairs with other special features when patient's condition is such that a wheelchair is medically necessary and the patient is unable to operate the wheelchair manually.

Standard whirlpool bath equipment when patient is homebound and has a condition for which the whirlpool bath can be expected to provide substantial therapeutic benefit justifying its cost. When a patient is not homebound but has such a condition, payment is restricted to the cost of providing the services elsewhere when that alternative is less costly.

This rule is intended to implement Iowa Code sections 249A.3, 249A.4 and 249A.12.

441—78.11(249A) Ambulance service. Payment will be approved for ambulance service if it is required by the recipient's condition and the recipient is transported to the nearest hospital with appropriate facilities or to one in the same locality, from one hospital to another, to the patient's home or to a skilled nursing home. Payment for ambulance service to the nearest hospital for outpatient service will be approved only for emergency treatment. Ambulance service must be medically necessary and not merely for the convenience of the patient.

78.11(1) Partial payment may be made when an individual is transported beyond the destinations specified, and is limited to the amount that would have been paid had the individual been transported to the nearest institution with appropriate facilities. When transportation is to the patient's home, partial payment is limited to the amount that would have been paid from the nearest institution with appropriate facilities. When a recipient who is a resident of a nursing care facility is hospitalized and later discharged from the hospital, payment will be made for the trip to the nursing care facility where the recipient resides even though it may not in fact be the nearest nursing care facility.

78.11(2) The carrier shall determine that the ambulance transportation was medically necessary and that the condition of the patient precluded any other method of transportation. Payment can be made without the physician's confirmation when:

a. The individual is admitted as a hospital inpatient or in an emergency situation.

b. Previous information on file relating to the patient's condition clearly indicates ambulance service was necessary.

78.11(3) When a patient is transferred from one nursing home to another because of the closing of a facility or from a nursing home to a custodial home because the recipient no longer requires nursing care, the conditions of medical necessity and the distance requirements shall not be applicable. Approval for transfer shall be made by the local office of the department of human services prior to the transfer. When such a transfer is made, the following rate schedule shall apply:

One patient - normal allowance
Two patients - 3/4 normal allowance per patient
Three patients - 2/3 normal allowance per patient
Four patients - 5/8 normal allowance per patient

441—78.12(249A) Skilled nursing homes. Payment will be approved for care in skilled nursing homes providing skilled nursing care is medically necessitated by the recipient's condition. There are no limitations on the amount of care for which payment will be approved so long as skilled nursing care is medically necessary. Payment will be approved for multiple bed or ward accommodations. No payment will be approved for a private room.

78.12(1) Nursing homes that wish to participate in the medical assistance program, but not as an extended care facility in the Medicare program shall contact the state department of public health, which will provide the facility with an application form. After review, the state department of health will notify the facility and the department of human services whether certification is approved or denied.

a. Initial certifications are for a period of one year. The state department of public health may visit or resurvey facilities when necessary to ascertain continued compliance or to accommodate to periodic or cyclical survey plans. The facility will be notified by the state depart-

ment of public health of the decision following resurvey. A finding and certification that a facility is no longer in compliance shall terminate eligibility for participation in the medical assistance program.

b. When a facility decides to decertify a part or all of the facility for purposes of part A of Medicare participation, it will be assumed that the facility also wishes to decertify the same part for purposes of participation as a skilled nursing home in the medical assistance program effective on the same date unless the facility directs a letter to the bureau of medical services, department of social services, indicating that the decertification is not to be applicable to participation in the medical assistance program.

c. Each skilled nursing home shall enter into a written agreement with the department of human services wherein the facility agrees to comply with the rules and regulations of the program, maintain clinical and fiscal records sufficient to fully disclose the services provided recipients, and to furnish the department or the carrier with whatever information it may from time to time require concerning payments made to skilled nursing homes for providing services under the medical assistance program. The agreement shall not exceed a period of one year and will normally be timed to expire during the month in which the next resurvey of the facility is scheduled. When a facility is determined to be in substantial compliance with correctible deficiencies, the agreement shall not exceed a period of six (6) months. No more than two (2) successive agreements for six (6) months shall be executed with any skilled nursing home, and no second agreement shall be executed when any of the deficiencies existing are the same as those which were determined to exist at the time of the prior six (6) month agreement unless the department determines on the basis of documented evidence derived from the survey that the facility has made substantial effort and progress in correcting such deficiencies.

78.12(2) The Iowa foundation for medical care shall be responsible for reviews of the need for continued stay in skilled nursing homes.

78.12(3) The medical necessity for skilled nursing care shall be determined by the Iowa foundation for medical care.

78.12(4) Payment shall be approved for the day of admission, but not the day of discharge or death.

78.12(5) No payment will be made for periods during which the recipient is absent from the facility, regardless of whether the facility holds a bed for the recipient.

78.12(6) When only a distinct part of the total facility has been certified as a skilled nursing home, payment shall be approved only for recipients who occupy a bed in the certified part of the facility.

78.12(7) When a recipient of medical assistance, who is also eligible for part A of Medicare, receives care in an extended care facility, the carrier shall make payment for the deductible which is applicable from the twenty-first to the one hundredth day of care.

78.12(8) Payment will be approved for legend drugs requiring a prescription by law and for insulin. Payment will be made only to a licensed retail pharmacy of the recipient's choice, and not to the skilled nursing home. When the skilled nursing home is hospital-connected or has a retail pharmacy license, payment will be approved for drugs provided and billed for by the facility. Pharmaceutical records for recipients of medical assistance shall be maintained in accordance with regulations for pharmaceutical services in the Medicare program.

78.12(9) The cost of nonlegend drugs and medical and sickroom supplies shall be included in the charges billed to the carrier by the skilled nursing home.

78.12(10) Payment will be approved for physical therapy, speech therapy, or occupational therapy for outpatients provided by a therapist on the staff of the facility or under arrangements with the facility. Payment will be approved only when a physician has certified that:

a. Services are or were required because the individual needed therapy services on an outpatient basis.

b. A plan for furnishing such service has been established and is periodically reviewed by the physician. The plan of treatment shall prescribe the type, amount, and duration of the therapy services to be furnished the individual.

c. Services are or were furnished while the individual is or was under the care of a physician.

78.12(11) Skilled nursing facility reimbursement shall be prospective based on a per diem rate calculated for each facility by establishing a base year per diem to which an annual index is applied.

a. The base year per diem rate shall be the medical assistance cost per diem as determined using the facility's 1984 fiscal year-end cost report. The base per diem rate for facilities enrolled since 1984 will be determined using the facility's first finalized cost report. Determination of allowable costs for the base year will be made using Medicare methods in place on December 31, 1984.

b. The Skilled Nursing Facility Market Basket Index will be applied annually to reflect health care costs of skilled nursing facilities. In addition, all rates in effect June 30, 1986, shall be inflated by four and three-tenths percent (4.3%).

c. Skilled nursing facilities shall be classified as either hospital-based or free-standing (non-hospital based). A hospital-based facility is a skilled nursing facility under the management and administration of a hospital regardless of where the skilled beds are physically located.

d. Effective July 1, 1986, a ceiling of allowable cost shall be established at the sixtieth percentile for each classification based on facility rates in effect on June 30, 1986, inflated by four and three-tenths percent (4.3%). The allowable cost shall be weighted by medical assistance patient days.

e. A skilled nursing facility serving a disproportionate share of medical assistance recipients shall be exempt from the payment ceiling. For skilled nursing facilities, a disproportionate share of medical assistance recipients shall exist when the total cost of services rendered to medical assistance recipients in any one provider fiscal year is greater than or equal to fifty-one percent (51%) of the total facility's total allowable cost for the same fiscal year. The department will determine which providers qualify for this exemption.

f. The current method for submitting billings and cost reports shall be maintained. All cost reports will be subject to desk review audit and if necessary a field audit.

78.12(12) Payment will not be approved for rental or purchase of medical equipment and appliances for recipients receiving care in a skilled nursing home or extended care facility.

78.12(13) Medical assistance payment shall be approved to out-of-state skilled nursing facilities at the rate established by the state in which the facility is located under the following conditions:

a. The facility has agreed to participate in the Iowa Medicaid program.

b. The facility has been certified for Medicaid participation by the state in which the facility is located.

c. The attending physician recommends placement for one or more of the following reasons:

(1) A medical emergency or when a recipient's health would be endangered if required to travel to Iowa.

(2) The recipient lives near an Iowa border and needed services are traditionally or more appropriately available from a facility in a bordering state.

(3) Needed services are not otherwise readily available within the state of Iowa.

d. Prior approval has been given by the department.

78.12(14) When a recipient enters a skilled nursing home, the local office of the department of human services shall determine by contact with the attending physician the expected duration of care.

a. When the expected length of stay is thirty (30) days or less, no special treatment of income is necessary.

b. When the expected length of stay is in excess of thirty (30) days, all monthly income in excess of an amount exempted for personal care shall be applied on the cost of care in the facility.

78.12(15) A facility may appeal a decertification action according to the department's subrule 81.13(28).

78.12(16) Payment for residents determined by utilization review to require the intermediate care facility level of care shall be made at the statewide average medical assistance intermediate care facility rate. The average rate shall be calculated from the two (2) compilations of reported ICF costs completed during the previous calendar year. This rate is effective as of the date of final notice by utilization review that the lower level of care is required.

78.12(17) Respite care for Title XIX waiver recipients. Skilled nursing facilities may be used to provide respite care as defined in rule 441—83.1(249A) to eligible individuals in the Title XIX waiver program.

78.12(18) A Case Activity Report, Form AA-4166-0, shall be submitted to the department whenever a Medicaid applicant or recipient enters the facility, changes level of care, or is discharged from the facility.

This rule is intended to implement Iowa Code sections 249A.2(6), 249A.3(2)*"a,"* 249A.4, 249A.12, 249A.16, and 1984 Iowa Acts, chapter 1310, section 3.

441—78.13(249A) Transportation to receive medical care. Payment will be approved for transportation to receive services covered under the program only to the nearest institution or practitioner having appropriate facilities for care of the recipient when the following conditions are met.

78.13(1)* The source of the care is located outside the city limits of the community in which the recipient resides; or

78.13(2) The recipient resides in a rural area and must travel to a city to receive necessary care; and

78.13(3) The type of care is not available in the community in which the recipient resides, or the recipient has been referred by the attending physician to a specialist in another community: and

78.13(4) There is no resource available to the recipient through which necessary transportation might be secured free of charge.

78.13(5) Transportation may be of any type and may be provided from any source. When transportation is by car, the maximum payment which may be made will be the actual charge made by the provider for transportation to and from the source of medical care, but not in excess of the rate per mile payable to state employees for official travel. When public transportation is utilized, the basis of payment will be the actual charge made by the provider of transportation, not to exceed the charge that would be made by the most economical available source of public transportation. In all cases where public transportation is reasonably available to or from the source of care and the recipient's condition does not preclude its use, it must be utilized. When the recipient's condition precludes the use of public transportation, a statement to the effect shall be included in the case record.

78.13(6) In the case of a child too young to travel alone, or an adult or child who because of physical or mental incapacity is unable to travel alone, payment subject to the above conditions shall be made for the transportation costs of an escort. The worker is responsible for making a decision concerning the necessity of an escort and recording the basis for the decision in the case record.

78.13(7) When meals and lodging or other travel expenses are required in connection with transportation, payment will be subject to the same conditions as for a state employee and the maximum amount payable shall not exceed the maximum payable to a state employee for the same expenses in connection with official travel within the state of Iowa.

78.13(8) When the services of an escort are required subject to the conditions outlined above, payment may be made for meals and lodging, when required, on the same basis as for the recipient.

78.13(9) Payment will not be made in advance to a recipient or a provider of medical transportation.

*Objection, see [Social Services 770] IAC Supp. 12/15/75, 3/8/76.

78.13(10) Payment for transportation to receive medical care is made to the recipient.

Exception: Payment may be made to the agency which provided transportation if the agency is certified by the department of transportation, has a purchase of service contract for transportation services with the department of human services, and requests direct payment by submitting Form 075-0297, Claim Order/Claim Voucher, within ninety (90) days after the trip.

78.13(11) Medical Transportation Claim, MA-3022-1, shall be completed by the recipient and the medical provider and submitted to the local office for each trip for which payment is requested. All trips to the same provider in a calendar month may, at the client's option, be submitted on the same form.

78.13(12) No claim shall be paid if presented after the lapse of three (3) months from its accrual unless it is to correct payment on a claim originally submitted within the required time period.

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

441—78.14(249A) Hearing aids. Payment shall be approved for a hearing aid and examinations subject to the following conditions:

78.14(1) *Physician examination.* The recipient shall have an examination by a physician to determine that the recipient has no condition which would contraindicate the use of a hearing aid. This report shall be made on Form MA-2113-0, part 1, Report of Examination for a Hearing Aid.

78.14(2) *Audiological testings.* Specified audiological testing shall be performed by a physician or an audiologist as a part of making a determination that a recipient could benefit from the use of a hearing aid. The audiological testing shall be reported on Form MA-2113-0, part 2.

78.14(3) *Hearing aid evaluation.* A hearing aid evaluation establishing that a recipient could benefit from a hearing aid shall be made by a physician or audiologist. The hearing aid evaluation shall be reported on Form XIX-Audio-2, Hearing Aid Selection Report. When a hearing aid is recommended for a recipient the physician or audiologist recommending the hearing aid shall see the recipient at least one time within thirty (30) days subsequent to purchase of the hearing aid to determine that the aid is adequate.

78.14(4) *Hearing aid selection.* A physician or audiologist may recommend a specific brand or model appropriate to the recipient's condition. When a general hearing aid recommendation is made by the physician or audiologist, a hearing aid dealer may perform the tests to determine the specific brand or model appropriate to the recipient's condition. The hearing aid selection shall be reported on Form XIX-Audio-2, Hearing Aid Selection Report.

78.14(5) *Travel.* When a recipient is unable to travel to the physician or audiologist because of health reasons, payment shall be made for travel to the recipient's place of residence or other suitable location. Payment to physicians shall be made as specified in 78.1(8) and payment to audiologists shall be made at the same rate at which state employees are reimbursed for travel.

78.14(6) *Purchase of hearing aid.* Payment shall be made for the type of hearing aid recommended when purchased from an eligible licensed hearing aid dealer pursuant to rule 441—77.13(249A). When binaural amplification is recommended prior approval shall be obtained from the fiscal agent before payment can be made. Payment for binaural amplification shall be made when:

a. A child needs the aid for speech development, or

b. The aid is needed for educational or vocational purposes, or

c. The aid is for a blind individual.

Payment for binaural amplification shall also be considered where the recipient's hearing loss has caused marked restriction of daily activities and constriction of interests resulting in seriously impaired ability to relate to other people, or where lack of binaural amplification poses a hazard to a recipient's safety. (Cross-reference 78.28(4)"*b*")

78.14(7) *Payment for hearing aids.*

a. Payment for hearing aids shall be acquisition cost plus a dispensing fee covering the fitting and service for six (6) months.

(1) For service in the office, the dispensing fee shall not exceed $159.

(2) For service out of the office, the dispensing fee shall not exceed $174.90.

b. Payment will be made for the ear mold, not to exceed $21.20.

c. Payment for batteries shall be made only when they are requested by the recipient.

d. Payment will be made for routine service after the first six (6) months, not to exceed $13.30 per year.

e. Payment for repairs shall be made for the charge to the dealer for parts and labor by the manufacturer or manufacturer's depot and for a service charge when this charge is made to the general public.

f. Payment for the replacement of a hearing aid less than four (4) years old shall require prior approval. Payment shall be approved when the original hearing aid is lost or broken beyond repair or there is a significant change in the person's hearing which would require a different hearing aid. (Cross-reference 78.28(4)*"a"*)

This rule is intended to implement Iowa Code sections 249A.2(6), 249A.4, and 1983 Iowa Acts, chapter 201, section 5, subsection 1.

441—78.15(249A) Orthopedic shoes. Payment will be approved for orthopedic shoes when prescribed in writing by a physician or a podiatrist. The prescription shall include the date, patient's diagnosis, the reason orthopedic shoes are needed, the probable duration of need, and a specific description of any modifications the shoes must include. The prescription shall be given to the local office of the department of human services which will issue an authorization to an orthopedic shoe dealer for the purchase of the shoes. When the modifications are of a nature that the dealer is not able to perform the work, an authorization shall be issued to a shoe repair shop which specializes in orthopedic work.

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

441—78.16(249A) Community mental health centers. Payment will be approved for all reasonable and necessary services provided by a psychiatrist on the staff of a community mental health center. Payment will be approved for services provided by a clinical psychologist, social worker or psychiatric nurse on the staff of the center, subject to the following conditions:

78.16(1) Payment to a community mental health center will be approved for reasonable and necessary services provided to medical assistance recipients by a psychiatrist, psychologist, social worker or psychiatric nurse on the staff of the center under the following conditions:

a. Services must be rendered under the supervision of a board eligible or board certified psychiatrist—All services must be performed under the supervision of a board eligible or board certified psychiatrist subject to the conditions set forth in 78.16(1)*"b"* with the following exceptions:

(1) Services by staff psychiatrists, or

(2) Services rendered by psychologists meeting the requirements of the National Register of Health Service Providers in Psychology, or

(3) Services provided by a staff member, listed in this subrule, performing the preliminary diagnostic evaluation of medical assistance recipients for voluntary admission to one of the state mental health institutes.

b. Supervisory process.

(1) Each patient shall have an initial evaluation completed which shall include at least one (1) personal interview with a board eligible or board certified psychiatrist. This must be accomplished prior to admission of the first claim for services rendered to that patient.

(2) Not later than four (4) weeks following the date of the first interview with the psychiatrist there shall be a patient staffing. The staffing shall occur at a joint meeting of the staff member providing the service and a board certified or board eligible psychiatrist. During the staffing

the staff member providing the service shall, when necessary, first review the case history and then present any additional essential data which has been collected since the initial psychiatric evaluation such as reports from other agencies and institutions and data obtained from subsequent patient contact. As a result of dialogue between the psychiatrist and staff member, the diagnosis, treatment needs and treatment plan shall be delineated. The result of the staffing shall be recorded by the staff person providing the service and countersigned by the psychiatrist and placed in the patient's permanent record.

(3) Not later than four (4) months after the initial staffing and each four (4) months thereafter there shall be a documented review of the case by the psychiatrist and staff member to evaluate and revise or change the treatment plan as necessary.

(4) The staffing for patients at four (4) weeks and subsequent periodic four (4)-month reviews are not payable as separate services under the program. These reviews shall be documented in the record and are subject to audit by the department of human services.

78.16(2) Not later than four (4) months after the initial staffing and each four (4) months thereafter there shall be a documented review of the case by the psychiatrist and primary therapist to evaluate and revise or change the treatment plan as necessary.

78.16(3) The staffing of patients at four (4) weeks and the subsequent periodic four (4) month reviews are not payable as separate services under the treatment program. These reviews shall be documented in the record and are subject to audit by the department of human services.

78.16(4) Clinical records of medical assistance patients shall be available to the carrier on request. All these records shall be held confidential.

78.16(5) At the time of application for participation in the program the center will be provided with a form on which to list its professional staff. The center shall report acquisitions or losses of professional staff to the carrier within ten (10) days.

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

441—78.17(249A) Physical therapists. Payment will be approved for the same services payable under Title XVIII of the Social Security Act (Medicare).

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

441—78.18(249A) Screening centers. Payment will be approved for health screening as defined in subrule 84.1(1) for individuals under twenty-one (21) years of age who are eligible for medical assistance.

78.18(1) Payment will be made for immunizations only when provided by the screening center on the same date as the screening examination.

78.18(2) Payment will be approved for necessary laboratory service related to an element of screening when performed by the screening center and billed as a separate item.

78.18(3) Payment will be approved for four (4) screenings in the first year of life, two (2) screenings between the ages of one (1) and two (2), one (1) screening between ages two (2) and three (3), one (1) screening between ages three (3) and four (4), one (1) screening between ages four (4) and six (6) (recommended for preschool physical), one (1) screening between ages six (6) and nine (9), one (1) screening between ages nine (9) and thirteen (13), one (1) screening between ages thirteen (13) and seventeen (17), and one (1) screening between ages seventeen (17) and twenty-one (21).

78.18(4) When it is established by the periodicity schedule in 78.18(3) that an individual is in need of screening the individual will receive a notice that screening is due.

78.18(5) When an individual is screened, a member of the screening center shall complete a medical history. The medical history shall become part of the individual's medical record.

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

441—78.19(249A) Rehabilitation agencies. Payment will be made for the same services payable under the Medicare program (Title XVIII of the Social Security Act).

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

441—78.20(249A) Independent laboratories. Payment will be made for the same services payable under the Medicare program (Title XVIII of the Social Security Act).

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

441—78.21(249A) Rural health clinics. Payment will be made to rural health clinics for the same services payable under the Medicare program (Title XVIII of the Social Security Act). Payment will be made for sterilization in accordance with 78.1(16).

441—78.22(249A) Family planning clinics. Payment on a cost related rate per visit basis will be approved for services provided by family planning clinics. Payment will be made for sterilizations in accordance with 78.1(16).

441—78.23(249A) Other clinic services. Payment will be made on a cost related rate per visit basis to facilities not part of a hospital, funded publicly or by private contributions, which provide medically necessary treatment by or under the direct supervision of a physician or dentist to outpatients. Payment will be made for sterilizations in accordance with 78.1(16).

441—78.24(249A) Psychologists. Payment will be approved for services authorized by state law when they are provided by the psychologist in the psychologist's office, a hospital, or intermediate or residential care facility.

78.24(1) Payment for covered services provided by the psychologist shall be made on a fee for service basis.

a. Payment shall be made only for time spent in face-to-face consultation with the client.

b. Time spent with clients shall be rounded to the quarter hour.

78.24(2) Payment will be approved for the following psychological procedures:

a. Individual outpatient psychotherapy or other psychological procedures not to exceed one (1) hour per week or forty (40) hours per calendar year, or

b. Couple, marital, family, or group outpatient therapy not to exceed one and one-half (1½) hours per week or sixty (60) hours during any calendar year, or

c. A combination of individual and group therapy not to exceed the cost of forty (40) individual therapy hours during any calendar year.

d. Psychological examinations and testing for purposes of evaluation, placement, psychotherapy, or assessment of therapeutic progress, not to exceed eight (8) hours during any calendar year.

e. Mileage at the same rate as in 78.1(8) when the following conditions are met:

(1) It is necessary for the psychologist to travel outside of the home community, and

(2) There is no qualified mental health professional more immediately available in the community, and

(3) The recipient has a medical condition which prohibits travel.

f. Covered procedures necessary to maintain continuity of psychological treatment during periods of hospitalization or convalescence for physical illness.

g. Procedures provided within a licensed hospital, residential treatment facility, day hospital, or nursing home as part of an approved treatment plan and a psychologist is not employed by the facility.

78.24(3) Payment will not be approved for the following services:

a. Psychological examinations performed without relationship to evaluations or psychotherapy for a specific condition, symptom, or complaint.

b. Psychological examinations covered under Part B of Medicare, except for the Part B Medicare deductible and coinsurance.

c. Psychological examinations employing unusual or experimental instrumentation.

d. Individual and group psychotherapy without specification of condition, symptom, or complaint.

e. Sensitivity training, marriage enrichment, assertiveness training, growth groups or marathons, or psychotherapy for nonspecific conditions of distress such as job dissatisfaction or general unhappiness.

78.24(4) A peer review committee shall be appointed by the department giving consideration to a recommendation of the Iowa psychological association and shall use current standards of the American psychological association for reviewing claims.

78.24(5) The following services shall require peer review.

a. Protracted therapy beyond sixteen (16) visits. These cases shall be reviewed following the sixteenth therapy session and periodically thereafter.

b. Any service which does not appear necessary or appears to fall outside the scope of what is professionally appropriate or necessary for a particular condition.

This rule is intended to implement Iowa Code sections 249A.4 and 249A.15.

441—78.25(249A) Maternal health centers. Payment will be made for prenatal and post partum care to include nutrition counseling and social services provided by bachelor's degree nutritionists, bachelor's degree social workers, physicians, and nurse practitioners employed or on contract with the center. Payment will be made on a fee-for-service basis which will include all prenatal and post partum care.

Services provided by maternal health centers shall be performed under the direct personal supervision of a physician.

Direct personal supervision in the center setting does not mean that the physician must be present in the same room with the professional, however, the physician must be present on the site and immediately available to provide assistance and direction throughout the time services are being provided.

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

441—78.26(249A) Ambulatory surgical center services. Ambulatory surgical center services are those services furnished by an ambulatory surgical center in connection with a covered surgical procedure.

The covered services provided by an ambulatory surgical center shall be the same as those covered by the Medicare program. Covered surgical procedures shall be those medically necessary procedures that are eligible for payment and under the same circumstances as physicians' services specified in 78.1(249A) performed on an eligible recipient.

78.26(1) Abortion procedures are only covered when criteria in subrule 78.1(17) are met.

78.26(2) Sterilization procedures are only covered when criteria in subrule 78.1(16) are met.

78.26(3) Preprocedure review by the Iowa Foundation for Medical Care (IFMC) is required if ambulatory surgical centers are to be reimbursed for certain frequently performed surgical procedures as set forth under subrule 78.1(19). Criteria are available from IFMC, 3737 Woodland Avenue, Suite 500, West Des Moines, Iowa 50265, or in local hospital utilization review offices. (Cross-reference 78.28(6)

This rule is intended to implement 1985 Iowa Acts, chapter 259, section 3.

441—78.27(249A) Genetic consultation clinics.

78.27(1) Genetic consultation clinic services may include:

a. Physical examination of an affected family member.

b. Diagnosis and explanation of the disease and its effects.

c. Recommendations for medical management.

d. Prognosis.

e. Explanation of inheritance patterns.

f. Discussion of risk for future pregnancies.

g. Referral to appropriate agency.

78.27(2) Genetic services are payable when a genetic disorder or birth defect is suspected or confirmed and the services contribute to the treatment of the recipient or provide family planning information to the recipient.

78.27(3) Services are limited to an initial diagnostic visit not to exceed two (2) hours and follow-up services not to exceed one (1) hour annually. Additional services up to an additional two (2) hours of initial diagnostic visits and an additional one (1) hour of annual follow-up may be provided if there is documentation attached outlining the diagnostic and consultative problems that require the services of a comprehensive genetic center or one (1) or more genetic subspecialists.

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

441—78.28(249A) List of medical services and equipment requiring prior approval, preprocedure review or preadmission review.

78.28(1) Services, procedures, and medications prescribed by a physician (M.D. or D.O.) which are subject to prior approval or preprocedure review are as follows:

a. Prior approval is required for amphetamines and combinations of amphetamines with other therapeutic agents and amphetamine-like sympathomimetic compounds used for obesity control, including any combination of these compounds with other therapeutic agents. Payment for these medications will be provided when there is a diagnosis of narcolepsy, hyperkinesis in children, or senile depression and not for obesity control. (Cross-reference 78.1(2)*"a"*(2)

b. Prior approval is required for multiple vitamins, tonic preparations and combinations with minerals, hormones, stimulants or other compounds which are available as separate entities for treatment of specific conditions. Payment for these vitamins, preparations, or compounds will be approved when there is a specifically diagnosed vitamin deficiency disease. (Prior approval is not required for products principally marked as prenatal vitamin-mineral supplements.) (Cross-reference 78.1(2)*"a"*(2)

c. Gastrointestinal surgery for treatment of obesity requires prior approval.

(1) The following medical information shall be submitted for review prior to approval for obesity surgery:

A complete history and physical examination of the patient preoperatively including weight and height.

A medical evaluation of endocrine and emotional status of the patient preoperatively. When there has been a history of psychiatric illness, a psychiatric evaluation will be required.

Preoperatively routine laboratory analysis of the patient such as CBC and urinalysis; liver function studies; SMA-12; triglycerides; thyroid function tests, where indicated; arterioblood gas studies; pulmonary function studies, where indicated; electrolytes; and EKG.

Reports of specialists when needed because of exception request.

(2) The request will be approved based on the following criteria:

The patient shall be at least one hundred seventy-five percent (175%) of the ideal weight according to the mean weight (medium frame) on the Metropolitan Life Insurance Company weight scale.

The patient shall be between the ages of twenty (20) and fifty-five (55).

There shall be proven refractoriness to medical therapy for three (3) years.

If an alcoholic, the patient shall not have consumed alcoholic beverages for at least three (3) years preceding the operation.

There shall be no nonreversible sequela of systemic disease, for example, a stroke.

Exceptions to the above criteria shall be considered when there is a severe complication of obesity including but not limited to a skeletal problem, severe heart condition or diabetes and an appropriate specialist has submitted information which outlines the severity of the condition and the need for the obesity surgery. (Cross-reference 78.1(11)

d. Prescription or nonprescription nutritional supplements require prior approval and shall be approved for payment for a recipient who needs the supplement due to a specifically diagnosed disease or condition which results in a metabolic or digestive disorder which prevents the person from obtaining the necessary nutritional value from usual foods and which cannot be managed by avoidance of certain food products. (Cross-reference 78.1(2)*"e"*)

e. Preprocedure review by the Iowa Foundation for Medical Care (IFMC) will be required if payment under Medicaid is to be made for certain frequently performed surgical procedures which have a wide variation in the relative frequency the procedures are performed. Preproce-

dure surgical review applies to surgeries performed in hospitals (outpatient and inpatient) and ambulatory surgical centers. Approval by IFMC will be granted only if the procedures are determined to be necessary based on the condition of the patient and on the published criteria established by the department and the IFMC. If not so approved by the IFMC, payment will not be made under the program to the physician or to the facility in which the surgery is performed. The criteria are available from IFMC, 3737 Woodland Avenue, Suite 500, West Des Moines, Iowa 50265, or in local hospital utilization review offices.

The "Preprocedure Surgical Review List" shall be published by the department in the provider manuals for physicians, hospitals, and ambulatory surgical centers. (Cross-reference 78.1(19)

78.28(2) Dental services which must be submitted for prior approval are as follows:

a. Oral prophylaxis including necessary scaling and polishing more frequently than every six (6) months. Payment shall be approved for a person who because of a physical or mental disability cannot maintain adequate oral hygiene at home and prophylaxis is necessary more frequently. (Cross-reference 78.4(1)*"b"*(12)

b. Apicoectomy, performed as separate surgical procedure; apicoectomy, performed in conjunction with endodontic procedure; apical curettage; root resection; excision of hyperplastic tissue. Payment will be approved for surgical endodontic treatment when nonsurgical treatment has been attempted and a reasonable time has elapsed after which failure has been demonstrated. (Cross-reference 78.4(1)*"c"*(2)

c. Periodontic services, subject to the requirements of 78.4(1)*"d."*

(1) Subgingival curettage is approved for payment when provided in periodontal case type I, II, or III and only when interproximal and subgingival calculus is evident in X rays or when justified as documented that curettage scaling or root planning is required in addition to routine prophylaxis. (Cross-reference 78.4(1)*"d"*)

(2) Surgical procedures are approved for payment when it is treatment for periodontal case type II or III, and only after a reasonable length of time following conservative treatment, and only when the patient has demonstrated reasonable oral hygiene unless the person is unable to do so because of a physical or mental disability, or in cases which demonstrate gingival hyperplasia resulting from drug therapy. (Cross-reference 78.4(1)*"d"*)

d. Endodontic services, subject to the requirements of 78.4(1)*"e."*

e. All cast restorations. (Cross-reference 78.4(1)*"f"*(4)

f. All crowns except stainless crowns on primary teeth or temporary stainless steel crowns on permanent teeth. Payment for gold crowns is only considered in exceptional cases such as when no other type of restoration can be used. (Cross-reference 78.4(1)*"f"*(6)

g. Cast post and core, steel post and composite or amalgam in addition to crown. (Cross-reference 78.4(1)*"f"*(7)

h. Fixed and removable prostheses subject to the itemization contained in 78.4(1)*"g."*

(1) Payment shall be approved for replacement of prostheses within a five (5)-year period only when it is necessary to prevent a significant disability.

(2) Payment shall be approved for partial dentures replacing anterior teeth only when the patient has less than four (4) posterior teeth in occlusion or the patient has a full denture in one arch, and a partial denture replacing posterior teeth is required in the opposing arch in order to balance the occlusion; or a partial denture replacing anterior teeth is being approved, and posterior teeth can be replaced with little additional cost. (Cross-reference 78.4(1)*"g"*(1)

(3) Payment shall be approved for only anterior fixed bridgework (including acid etch bridgework) for recipients whose medical condition precludes the use of a removable prosthesis. (Cross-reference 78.4(1)*"g"*(2)

i. Orthodontic services. A request to perform such a procedure must be accompanied by an interpreted cephalometric radiograph and study models trimmed so that the models simulate centric occlusion of the patient. A written plan of treatment must accompany the diagnostic aids. Posttreatment records must be furnished upon request of the fiscal agent. Payment shall be approved for the most handicapping malocclusions determined in a manner consistent with Handicapping Malocclusion Assessment to Establish Treatment Priority by J.A. Salzmann, D.D.S., American Journal of Orthodontics, October 1968. (Cross-reference 78.4(1)*"h"*(1)

78.28(3) Optometric services and eyeglasses which must be submitted for prior approval are as follows:

a. Tonometry if patient is under thirty-five. Payment shall be approved when the recipient exhibits signs or symptoms of glaucoma, the retina has an abnormal appearance or there is a family history of glaucoma.

b. Visual fields. Payment shall be approved under the same circumstances as 78.28(3)*"a"* or if there is a high tonometry reading.

c. Subnormal visual aids including hand magnifiers, loupes, telescopic spectacles or reverse Galilean telescope systems. Payment shall be approved when conventional glasses will not give adequate acuity based on the needs of the recipient and the visual aid will provide the acuity.

d. A second lens correction within a twenty-four (24)-month period. Payment will be approved when the recipient's vision has at least a five-tenths (.5) diopter of change in sphere or cylinder or ten (10) degree change in axis.

For all of the above, the optometrist shall furnish sufficient information to clearly establish that these procedures are necessary in terms of the visual condition of the patient. (Cross-references, 78.6(2) and 78.1(18).

78.28(4) Hearing aids which must be submitted for prior approval are:

a. Replacement of a hearing aid less than four (4) years old. Payment shall be approved when the original hearing aid is lost or broken beyond repair or there is a significant change in the person's hearing which would require a different hearing aid. (Cross-reference 78.4(1)*"f"*)

b. Binaural amplification. Payment shall be made when:

(1) A child needs the aid for speech development, or

(2) The aid is needed for educational or vocational purposes, or

(3) The aid is for a blind individual.

Payment for binaural amplification shall also be considered where the recipient's hearing loss has caused marked restriction of daily activities and constriction of interests resulting in seriously impaired ability to relate to other people, or where lack of binaural amplification poses a hazard to a recipient's safety. (Cross-reference 78.14(6)

78.28(5) Hospital services which must be subject to prior approval, preprocedure review or preadmission review are:

a. Any medical or surgical procedure requiring prior approval as set forth in chapter 78 is subject to the conditions for payment set forth although a request form does not need to be submitted by the hospital as long as the approval is obtained by the physician. (Cross-reference 441—78.1(249A)

b. All inpatient hospital admissions are subject to preadmission review. Payment for inpatient hospital admissions is approved when it meets the criteria for inpatient hospital care as determined by the IFMC or its delegated hospitals. Criteria are available from IFMC, 3737 Woodland Avenue, Suite 500, West Des Moines, Iowa 50265, or in local hospital utilization review offices. (Cross-reference 441—78.3(249A)

c. Preprocedure review by the IFMC is required if hospitals are to be reimbursed for the inpatient and outpatient surgical procedures set forth in subrule 78.1(19). Approval by the IFMC will be granted only if the procedures are determined to be necessary based on the condition of the patient and the criteria established by the department and IFMC. The criteria are available from IFMC, 3737 Woodland Avenue, Suite 500, West Des Moines, Iowa 50265, or in local hospital utilization review offices.

78.28(6) Ambulatory surgical centers are subject to prior approval and preprocedure review as follows:

a. Any medical or surgical procedure requiring prior approval as set forth in chapter 78 is subject to the conditions for payment set forth although a request form does not need to be submitted by the ambulatory surgical center as long as the prior approval is obtained by the physician.

b. Preprocedure review by the IFMC is required if ambulatory surgical centers are to be reimbursed for surgical procedures as set forth in subrule 78.1(19). Approval by the IFMC will be granted only if the procedures are determined to be necessary based on the condition of the patient and criteria established by the IFMC and the department. The criteria are available from IFMC, 3737 Woodland Avenue, Suite 500, West Des Moines, Iowa 50265, or in local hospital utilization review offices.

441—78.29(249A) Nurse-midwives. Payment will be made for services provided by nurse-midwives contingent upon the following criteria being met:

78.29(1) The services are performed in a system that allows for consultation, collaboration, and referral between certified nurse-midwives and physicians. The collaborating physician is not required to be on the premises.

78.29(2) The women served by a nurse-midwife must be examined by a physician on at least two (2) occasions during the pregnancy: an initial screening review of the women to determine the appropriateness for nurse-midwife care and during the last month of the pregnancy. A joint determination must be made by the nurse-midwife and the physician that the women are obstetrically low-risk and eligible for care by a nurse-midwife.

78.29(3) The nurse-midwife shall provide for referral for the infant's neonatal examination.

78.29(4) The nurse-midwife shall have promptly available the necessary equipment and personnel to handle emergencies.

78.29(5) The services of the nurse-midwife are provided in birth centers, hospitals, or clinics.

78.29(6) The nurse-midwife providing services in other than a hospital shall negotiate a written agreement with one or more hospitals for the prompt transfer of patients requiring care. The patient record information shall be transmitted with the patient at the time of transfer.

78.29(7) The nurse-midwife shall maintain a current and complete medical record for each patient and shall have the record available for reference.

The record shall have at least the following: Admitting diagnosis, physical examination, report of medical history, record of medical consultation where indicated, laboratory tests, X rays, delivery reports, anesthesia record and discharge summary.

78.29(8) Payment will be made to nurse-midwives directly only if they are not auxiliary personnel as defined in subrule 78.1(13) or if they are not hospital employees.

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

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CHAPTER 79
OTHER POLICIES RELATING TO PROVIDERS OF MEDICAL AND REMEDIAL CARE

[Prior to 7/1/83, Social Services(770), Ch 79]

441—79.1(249A) Principles governing reimbursement of providers of medical and health services. The basis of payment for services rendered by providers of service participating in the medical assistance program varies depending upon whether the provider is noninstitutional, such as physicians, dentists, and similar providers and on whether the provider is also eligible to participate in the Medicare program. Except as indicated, those providers of service eligible to participate in the Medicare program are reimbursed on the basis of Medicare methodology. Other types of providers are reimbursed by methodology established by the department. Providers of care must accept reimbursement based upon reasonable charges as determined by the department, making no additional charge to the recipient.

79.1(1) *Types of providers.*

a. Institutional-Medicare. Providers are reimbursed on the basis of retrospective reimbursement based on reasonable and proper costs of operation with suitable retroactive adjustments based on submission of fiscal and statistical reports by the provider. The retroactive adjustment represents the difference between the amount received by the provider during the year for covered services and the amount determined in accordance with an accepted method of cost apportionment to be the actual cost of services rendered to medical assistance recipients.

b. Institutional-departmental. Providers are reimbursed on the basis of prospective or retrospective cost-related reimbursement, depending on type of institution.

c. Noninstitutional-Medicare. Providers are reimbursed on the basis of usual, customary, and reasonable charges not to exceed the lesser of:

(1) The actual charge made by the provider of service,

(2) The customary charge made by the provider for the same or similar services, and

(3) The prevailing charges for the same or similar services in the locality served by the provider. The prevailing charges for the services in the locality are adjusted annually on the basis of an economic index but may not exceed the seventy-fifth percentile of the customary charges in the locality for each year.

d. Noninstitutional-departmental. Providers are reimbursed on the basis of a fixed fee for service. If product cost is involved in addition to service, reimbursement is based either on actual acquisition cost of the product to the provider or product cost is included as part of the fee for service. Increases in fixed fees are made periodically or on an annual basis provided for by statute.

79.1(2) *Basis of reimbursement of specific provider categories.*

Institutional	Basis of reimbursement	Upper limit
1. Home health agencies	Medicare less 6.35%	Reimbursement rate for agency in effect 6/30/85
2. Rehabilitation agencies	Medicare less 6.35%	Reimbursement rate for agency in effect 6/30/85
3. Rural health clinics	Medicare	Medicare upper limits
4. Skilled nursing facilities	Prospective reimbursement. (See 78.12(11)	
5. Hospitals	Prospective reimbursement. (See 79.1(3)	Per diem rate for hospital in effect 6/30/85
6. Family planning clinics	Prospective rate per clinic visit determined on basis of financial and statistical data submitted annually by clinic less 6.35%	Reimbursement rate for clinic in effect 6/30/85

7. Intermediate care facilities	See 81.10(1), 441—81.6(249A)	Per diem rate for facility in effect 6/30/85
8. Intermediate care facilities for the mentally retarded	See 441—82.5(249A)	
9. Iowa Veterans Home	Medicare (skilled) Intermediate (ICF) but not subject to the provisions of 81.6(16)	
10. State mental health institutes	Retrospective per diem rate based on Medicare principles	

Noninstitutional	Basis of reimbursement	Upper limit
1. Ambulance	Medicare less 6.35%	Medicare rate for provider in effect 6/30/85
2. Chiropractors	Medicare less 6.35%	Medicare rate for provider in effect 6/30/85
3. Medical equipment and prosthetic devices	Medicare (see 79.1(6) less 6.35%	Reimbursement rate for provider in effect 6/30/85
4. Podiatrists	Medicare less 6.35% (service) Fixed fee less 6.35% (orthotics)	Reimbursement rate for provider in effect 6/30/85
5. Physical therapists	Medicare less 6.35%	Reimbursement rate for provider in effect 6/30/85
6. Dentists	Medicare less 6.35%	Reimbursement rate for provider in effect 6/30/85
7. Laboratories	Medicare less 6.35%	Reimbursement rate for provider in effect 6/30/85
8. Psychologists	Fixed fee based on the fortieth percentile of psychologist profiles compiled for the fiscal year ending June 30, 1983, less 6.35%	Reimbursement rate for provider in effect 6/30/85
9. Optometrists	Fixed fee based on the twenty-eighth percentile of optometrist profiles compiled for the fiscal year ending June 30, 1983, plus maximum 3% increase effective 11/1/84 less 6.35%. Fixed fee for lenses, frames, and other optical materials at product acquisition cost.	Reimbursement rate for provider in effect 6/30/85 for professional services
10. Opticians	Fixed fee less 6.35%. Fixed fee for lenses, frames, and other optical materials at product acquisition cost.	Reimbursement rate for provider in effect 6/30/85 for professional services
11. Orthopedic shoes	Fixed fee less 6.35%	Reimbursement rate for provider in effect 6/30/85

12. Physicians (doctors of medicine or osteopathy)	Statewide prevailing fee for recognized specialties as determined by Medicare methodology, less 3.85%	Reimbursement rate for provider in effect 6/30/85
13. Prescribed drugs	Product costs and professional fee as determined according to 78.2(2).	Reimbursement rate for provider in effect 6/30/85 for professional services
14. Hearing aids	Fixed fee less 6.35% plus product acquisition cost	Reimbursement rate for provider in effect 6/30/85 for professional services
15. Audiologists	Fixed fee less 6.35%	Reimbursement rate for provider in effect 6/30/85
16. Community mental health centers	Physicians (see item 12 above) Psychologists, social workers, psychiatric nurses (fixed fee less 6.35%)	Reimbursement rate for center in effect 6/30/85
17. Screening centers	Fixed fee less 6.35%	Reimbursement rate for center in effect 6/30/85
18. Maternal health centers	Fixed fee less 6.35%	Reimbursement rate for center in effect 6/30/85
19. Ambulatory surgical centers	Medicare less 6.35%	Reimbursement rate for center in effect 6/30/85
20. Genetic consultation clinics	Fixed fee less 6.35%	Reimbursement rate for clinic in effect 7/1/85
21. Nurse-midwives	Fixed fee less 6.35%	Reimbursement rate in effect 4/1/86

79.1(3) *Reimbursement for hospitals.* Hospital reimbursement is prospective based on a per diem rate calculated for each hospital by establishing a base year per diem rate to which an annual index is applied.

a. The base rate shall be the medical assistance per diem rate as determined by the individual hospital cost report for the hospital's 1981 fiscal year as adjusted by Medicare except that with the following exceptions:

(1) No recognition will be given to the routine nursing salary cost differential allowed by Medicare.

(2) No recognition will be given to the professional component of hospital based physicians.

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

b. For hospitals where medical assistance recipients account for fifty-one percent (51%) or more of the hospital's total bed days the hospital and the department will negotiate an appropriate per diem rate.

c. Hospitals shall be reimbursed the lower of actual charges or the medical assistance cost per diem rate. The determination of the applicable rate shall be based on the hospital fiscal year aggregate of actual charges and medical assistance cost per diem rate. If an overpayment exists the hospital will refund or have the overpayment deducted from subsequent billings.

d. Hospital prospective reimbursement rates shall be established as of October 1, 1982, for the remainder of the applicable hospital fiscal year. Prior to the beginning of each succeeding hospital fiscal year, inpatient hospital prospective reimbursement rates shall be established and become effective for the period of one (1) year.

e. Hospitals shall submit a budget or other financial and statistical information no later than sixty (60) days following the completion of a project requiring certificate of need or section 1122 approval by the department of public health according to department of public health rules, 470—chapters 201 and 202.

The above budgets and related information will be subject to desk review and field audit, where deemed necessary. Upon completion of the audits, prospective rates may be adjusted, where indicated.

Failure of a hospital to timely submit the required information will result in no rate increase associated with these assets or services until the first day of the cost reporting period following the fiscal period in which the asset or service was placed into patient service. Where documentation is filed in a timely manner by the hospital, the new rate will be made effective retroactive to the date the new asset or service was placed into service or the old service discontinued.

f. The current method for submitting billing and cost reports shall be maintained. All cost reports will be subject to desk review audit and if necessary a field audit.

g. The reimbursement rate established for each hospital is subject to a reduction of three and eighty-five hundredths percent (3.85%).

79.1(4) ***Prohibition against reassignment of claims.*** No payment under the medical assistance program for any care or service provided to a patient by any health care provider shall be made to anyone other than the providers. However with respect to physicians, dentists or other individual practitioners direct payment may be made to the employer of the practitioner if the practitioner is required as a condition of employment to turn over fees to the employer; or where the care or service was provided in a facility, to the facility in which the care or service was provided if there is a contractual arrangement between the practitioner and the facility whereby the facility submits the claim for reimbursement; or to a foundation, plan or similar organization including a health maintenance organization which furnishes health care through an organized health care delivery system if there is a contractual agreement between organization and the person furnishing the service under which the organization bills or receives payment for the person's services. Payment may be made in accordance with an assignment from the provider to a government agency or an assignment made pursuant to a court order. Payment may be made to a business agent, such as a billing service or accounting firm, which renders statements and receives payment in the name of the provider when the agent's compensation for this service is (1) reasonably related to the cost or processing the billing; (2) not related on a percentage or other basis to the dollar amounts to be billed or collected; and (3) not dependent upon the actual collection of payment. Nothing in this rule shall preclude making payment to the estate of a deceased practitioner.

79.1(5) ***Prohibition against factoring.*** Payment under the medical assistance program for any care or service furnished to an individual by providers as specified in 79.1(1) shall not be made to or through a factor either directly or by virtue of power of attorney given by the provider to the factor. A factor is defined as an organization, collection agency, or service bureau which, or an individual who, advances money to a provider for accounts receivable which have been assigned or sold or otherwise transferred including transfer through the use of power of attorney to the organization or individual for an added fee or reduction of a portion of the accounts receivable. The term factor does not include business representatives such as billing agents or accounting firms which render statements and receive payments in the name of the individual provider provided that the compensation of the business representative for the service is reasonably related to the cost of processing the billings and is not related on a percentage or other basis to the dollar amounts to be billed or collected.

79.1(6) ***Reasonable charges for services, supplies, and equipment.*** For selected medical services, supplies, and equipment, including equipment servicing, which in the judgment of the Secretary of the Department of Health and Human Services generally do not vary significantly in quality from one provider to another, the upper limits for payments shall be the lowest charges for which the devices are widely and consistently available in a locality. For those selected services and items furnished under part B of Medicare and Medicaid, the upper limits shall be the lowest charge levels recognized under Medicare. For those selected services and items furnished only under Medicaid, the upper limits shall be the lowest charge levels determined by the department according to the Medicare reimbursement method.

a. For any noninstitutional item or service furnished under both Medicare and Medicaid, the department shall pay no more than the reasonable charge established for that item or service by the part B Medicare carrier serving part or all of Iowa. Noninstitutional services do not include practitioner's services, such as physicians, pharmacies, or out-patient hospital services.

b. For all other noninstitutional items or services furnished only under Medicaid, the department shall pay no more than the customary charge for a provider or the prevailing charges in the locality for comparable items or services under comparable circumstances, whichever is lower.

79.1(7) *Copayment by recipient.* A copayment in the amount specified shall be charged to recipients for the following covered services:

a. The recipient shall pay $1.00 copayment on each covered drug prescription, including each refill, and for total covered service rendered on a given date for podiatrists' services, chiropractors' services and services of independently practicing physical therapists.

b. Rescinded, effective December 1, 1983.

c. The recipient shall pay $2.00 copayment for total covered service rendered on a given date for medical equipment and appliances, prosthetic devices and sickroom supplies as defined in 441—78.10(249A); orthopedic shoes; services of audiologists, services of hearing aid dealers except the hearing aid, optometrists, opticians, rehabilitation agencies, psychologists and ambulance services.

d. The recipient shall pay $3.00 copayment for total covered service rendered on a given date for dental services and hearing aids.

e. Copayment charges are not applicable to individuals under age twenty-one (21).

f. Copayment charges are not applicable to family planning services or supplies.

g. Copayment charges are not applicable for a recipient receiving care in a hospital, skilled nursing facility, intermediate care facility, state mental health institution, residential care facility, or other medical institution if the individual is required, as a condition of receiving services in the institution, to spend for costs of necessary medical care all but a minimal amount of income for personal needs.

h. Copayment charges are not applicable on Medicare Part B covered services rendered to a Medicare eligible recipient when the provider is billing the Medicare program for the service as well as the medical assistance program.

i. Copayment charges are not applicable to services furnished pregnant women.

j. All providers are prohibited from offering or providing copayment related discounts, rebates, or similar incentives for the purpose of soliciting the patronage of medical assistance recipients.

k. Copayment charges are not applicable for emergency services as defined in 42 CFR 440.170(e), October 1, 1981.

l. Copayment charges are not applicable for services rendered by a health maintenance organization in which the recipient is enrolled.

79.1(8) Rescinded, effective July 1, 1985.

79.1(9) Rescinded, effective July 1, 1985.

79.1(10) No provider of service participating in the Medicaid program may deny care or services to an individual eligible for care or services under the program because of the individual's inability to pay a copayment. However, this rule does not change the fact that a recipient is liable for the charges and it does not preclude the provider from attempting to collect them.

This rule is intended to implement Iowa Code section 249A.4 and 1985 Iowa Acts, House File 771, sections 10 and 15.

441—79.2(249A) Sanctions against provider of care. The department reserves the right to impose sanctions against any practitioner or provider of care who has violated the requirements for participation in the medical assistance program.

79.2(1) *Definitions.*

"Affiliates" means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

"Fiscal agent" means an organization which processes and pays provider claims on behalf of the department.

"Person" means any natural person, company, firm, association, corporation, or other legal entity.

"Probation" means a specified period of conditional participation in the medical assistance program.

"Provider" means an individual, firm, corporation, association, or institution which is providing or has been approved to provide medical assistance to a recipient pursuant to the state medical assistance program.

"Suspension from participation" means an exclusion from participation for a specified period of time.

"Suspension of payments" means the withholding of all payments due a provider until the resolution of the matter in dispute between the provider and the department.

"Termination from participation" means a permanent exclusion from participation in the medical assistance program.

"Withholding of payments" means a reduction or adjustment of the amounts paid to a provider on pending and subsequently submitted bills for purposes of offsetting overpayments previously made to the provider.

79.2(2) *Grounds for sanctioning providers.* Sanctions may be imposed by the department against a provider for any one (1) or more of the following reasons:

a. Presenting or causing to be presented for payment any false or fraudulent claim for services or merchandise.

b. Submitting or causing to be submitted false information for the purpose of obtaining greater compensation than that to which the provider is legally entitled, including charges in excess of usual and customary charges.

c. Submitting or causing to be submitted false information for the purpose of meeting prior authorization requirements.

d. Failure to disclose or make available to the department or its authorized agent, records of services provided to medical assistance recipients and records of payments made for those services.

e. Failure to provide and maintain the quality of services to medical assistance recipients within accepted medical community standards as adjudged by professional peers.

f. Engaging in a course of conduct or performing an act which is in violation of state or federal regulations of the medical assistance program, or continuing that conduct following notification that it should cease.

g. Failure to comply with the terms of the provider certification on each medical assistance check endorsement.

h. Overutilization of the medical assistance program by inducing, furnishing or otherwise causing the recipient to receive services or merchandise not required or requested by the recipient.

i. Rebating or accepting a fee or portion of a fee or a charge for medical assistance patient referral.

j. Violating any provision of Iowa Code chapter 249A, or any rule promulgated pursuant thereto.

k. Submission of a false or fraudulent application for provider status under the medical assistance program.

l. Violations of any laws, regulations, or code of ethics governing the conduct of occupations or professions or regulated industries.

m. Conviction of a criminal offense relating to performance of a provider agreement with the state or for negligent practice resulting in death or injury to patients.

n. Failure to meet standards required by state or federal law for participation, for example, licensure.

o. Exclusion from Medicare because of fraudulent or abusive practices.

p. Documented practice of charging recipients for covered services over and above that paid for by the department, except as authorized by law.

q. Failure to correct deficiencies in provider operations after receiving notice of these deficiencies from the department.

r. Formal reprimand or censure by an association of the provider's peers for unethical practices.

s. Suspension or termination from participation in another governmental medical program such as workers' compensation, crippled children's services, rehabilitation services or Medicare.

t. Indictment for fraudulent billing practices, or negligent practice resulting in death or injury to the provider's patients.

u. Failure to repay or make arrangements for the repayment of identified overpayments or otherwise erroneous payments.

79.2(3) *Sanctions.* The following sanctions may be imposed on providers based on the grounds specified in 79.2(2).

a. A term of probation for participation in the medical assistance program.

b. Termination from participation in the medical assistance program.

c. Suspension from participation in the medical assistance program. This includes when the department is notified by the Health Care Financing Administration, Department of Health and Human Services, that a practitioner has been suspended from participation under the Medicare program. These practitioners shall be suspended from participation in the medical assistance program effective on the date established by the Health Care Financing Administration and at least for the period of time of the Medicare suspension.

d. Suspension or withholding of payments to provider.

e. Referral to peer review.

f. Prior authorization of services.

g. One hundred percent (100%) review of the provider's claim prior to payment.

h. Referral to the state licensing board for investigation.

i. Referral to appropriate federal or state legal authorities for investigation and prosecution under applicable federal or state laws.

79.2(4) *Imposition and extent of sanction.*

a. The decision on the sanction to be imposed shall be the commissioner's or designated representative's except in the case of a provider terminated from the Medicare program.

b. The following factors shall be considered in determining the sanction or sanctions to be imposed:

(1) Seriousness of the offense.
(2) Extent of violations.
(3) History of prior violations.
(4) Prior imposition of sanctions.
(5) Prior provision of provider education.
(6) Provider willingness to obey program rules.
(7) Whether a lesser sanction will be sufficient to remedy the problem.
(8) Actions taken or recommended by peer review groups or licensing boards.

79.2(5) *Scope of sanction.*

a. The sanction may be applied to all known affiliates of a provider, provided that each decision to include an affiliate is made on a case by case basis after giving due regard to all relevant facts and circumstances. The violation, failure, or inadequacy of performance may be imputed to a person with whom the violator is affiliated where the conduct was accomplished in the course of official duty or was effectuated with the knowledge or approval of that person.

b. Suspension or termination from participation shall preclude the provider from submitting claims for payment whether personally or through claims submitted by any clinic, group, corporation, or other association to the department or its fiscal agent for any services or supplies provided under the medical assistance program except for those services provided prior to the suspension or termination.

c. No clinic, group, corporation, or other association which is the provider of services shall submit claims for payment to the department or its fiscal agent for any services or supplies provided by a person within the organization who has been suspended or terminated from participation in the medical assistance program except for those services provided prior to the suspension or termination.

d. When the provisions of paragraph 79.2(5)*"c"* are violated by a provider of services which is a clinic, group, corporation, or other association, the department may suspend or terminate the organization, or any other individual person within the organization who is responsible for the violation.

79.2(6) *Notice of sanction.* When a provider has been sanctioned, the department shall notify as appropriate the applicable professional society, board of registration or licensure, and federal or state agencies of the findings made and the sanctions imposed.

79.2(7) *Notice of violation.* Should the department have information that indicates that a provider may have submitted bills or has been practicing in a manner inconsistent with the program requirements, or may have received payment for which the provider may not be properly entitled, the department shall notify the provider of the discrepencies noted. Notification shall set forth:

a. The nature of the discrepancies or violations,

b. The known dollar value of the discrepancies or violations,

c. The method of computing the dollar value,

d. Notification of further actions to be taken or sanctions to be imposed by the department, and

e. Notification of any actions required of the provider. The provider shall have fifteen (15) days subsequent to the date of the notice prior to the department action to show cause why the action should not be taken.

79.2(8) *Suspension or withholding of payments pending a final determination.* Where the department has notified a provider of a violation pursuant to 79.2(7) or an overpayment, the department may withhold payments on pending and subsequently received claims in an amount reasonably calculated to approximate the amounts in question or may suspend payment pending a final determination. Where the department intends to withhold or suspend payments it shall notify the provider in writing.

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

441—79.3(249A) Maintenance of clinical and fiscal records by provider of service. Providers of service shall maintain clinical and fiscal records in support of services for which a charge is made to the program and shall make such records available to duly authorized representatives of the department on request. The fiscal records shall support each item of service for which a charge is made to the program and the clinical records shall specify the procedure or procedures performed, the dates of service, the medications or other supplies or services prescribed or provided to the recipient together with information concerning progress of treatment. The clinical and fiscal records shall be retained for a minimum of five (5) years. After five (5) years the records may be destroyed.

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

441—79.4(249A) Appeal by provider of care. Providers may appeal decisions of the department according to rules in Iowa Code—chapter 7.

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

441—79.5(249A) Nondiscrimination on the basis of handicap. All providers of service shall comply with section 504 of the Rehabilitation Act of 1973 and Federal regulations 45CFR Part 84, April 28, 1977, which prohibit discrimination on the basis of handicap in all Department of Health and Human Services funded programs.

This rule is intended to implement Iowa Code subsection 249A.4(6).

441—79.6(249A) Provider participation agreement. Providers of medical and health care wishing to participate in the program shall execute an agreement with the department on Form XIX (PA-1), Agreement Between Provider of Medical and Health Services and the Iowa Department of Human Services re Participation in the Medical Assistance Program. In this agreement, the provider agrees to the following:

79.6(1) To maintain clinical and fiscal records as specified in rule 79.3(249A).

79.6(2) That the charges as determined in accordance with the department's policy shall be the full and complete charge for the services provided and no additional payment shall be claimed from the recipient or any other person for services provided under the program.

79.6(3) That it is understood that payment in satisfaction of the claim will be from federal and state funds and any false claims, statements, or documents, or concealment of a material fact may be prosecuted under applicable federal and state laws.

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

441—79.7(249A) Medical assistance advisory council.

79.7(1) *Officers.* Officers shall be a chairperson, and a vice-chairperson.

a. Elections shall be held each year at the meeting held in January.

b. The term of office shall be one (1) year. Officers shall serve no more than two (2) terms.

c. The vice-chairperson shall serve in the absence of the chairperson.

d. The chairperson and vice-chairperson shall have the right to vote on any issue before the council.

e. The chairperson shall appoint a nominating committee of not less than three (3) members and shall appoint other committees approved by the council.

79.7(2) *Alternates.* Each organization represented may select one (1) alternate as representative when the primary appointee is unable to be present. Alternates may attend any and all meetings of the council, but only one (1) representative of each organization shall be allowed to vote.

79.7(3) *Expenses.* The travel expenses of the public representatives and other expenses, such as those for clerical services, mailing, telephone, and meeting place, shall be the responsibility of the department of human services. The department shall arrange for a meeting place, related services, and accommodations.

79.7(4) *Meetings.* The council shall meet at least four (4) times each year. At least two (2) of these meetings shall be with the department of human services. Additional meetings may be called by the chairperson, upon written request of at least fifty percent (50%) of the members, or by the commissioner of the department of human services.

a. Meetings shall be held in the Des Moines, Iowa, area, unless other notification is given.

b. Written notice of council meetings shall be mailed at least two (2) weeks in advance of such meetings. Each notice shall include an agenda for the meeting.

79.7(5) *Procedures.*

a. A quorum shall consist of fifty percent (50%) of the voting members.

b. Where a quorum is present, a position is carried by two-thirds (⅔) of the council members present.

c. Minutes of council meetings and other written materials developed by the council shall be distributed by the department to each member and alternate and to the executive office of each organization or body represented.

d. Notice shall be made to the representing organization when the member, or alternate, has been absent from three (3) consecutive meetings.

e. In cases not covered by these rules, Robert's Rules of Order shall govern.

79.7(6) *Duties.* The medical assistance advisory council shall:

a. Make recommendations on the reimbursement for medical services rendered by providers of services.

b. Assist in identifying unmet medical needs and maintenance needs which affect health.

c. Make recommendations for objectives of the program and for methods of program analysis and evaluation, including utilization review.

f. Recommend ways in which needed medical supplies and services can be made available most effectively and economically to the program recipients.

g. Advise on such administrative and fiscal matters as the commissioner of the department of human services may request.

h. Advise professional groups and act as liaison between them and the department.

i. Report at least annually to the appointing authority.

j. Perform other functions as may be provided by state or federal law or regulation.

k. Communicate information considered by the council to the member organizations and bodies.

79.7(7) *Responsibilities.*

a. Recommendations of the council shall be advisory and not binding upon the department of human services or the member organizations and bodies. The department will consider all advice and counsel of the council.

b. The council may choose subjects for consideration and recommendation. It shall consider all matters referred to it by the department of human services.

c. Any matter referred by a member organization or body shall be considered upon an affirmative vote of the council.

d. The department shall provide the council with reports, data, and proposed and final amendments to rules, regulations, laws, and guidelines, for its information, review, and comment.

e. The department shall present the biennial budget for the medical assistance program for review and comment.

f. The department shall permit staff members to appear before the council to review and discuss specific information and problems.

g. The department shall maintain a current list of members and alternates on the council.

441—79.8(249A) Requests for prior authorization. When the fiscal agent has not reached a decision on a request for prior authorization after sixty (60) days from the date of receipt by the fiscal agent, the request will be approved.

79.8(1) All requests for prior approval shall be made on Form XIX P Auth (SDC), Request for Prior Authorization.

Requests for prior approval shall be sent to SDC, P.O. Box 10394, Des Moines, Iowa 50306. The request should include the relevant criteria applicable to the particular service, medication or equipment, for which prior approval is sought, according to the criteria outlined in rule 441—78.28(249A). Copies of history and examination results may be attached rather than incorporated in the letter.

79.8(2) The policy applies to services or items specifically designated as requiring prior authorization.

79.8(3) The provider shall receive a notice of approval or denial for all requests.

79.8(4) Prior authorizations approved because a decision is not timely made shall not be considered a precedent for future similar requests.

79.8(5) Approved prior authorization applies to covered services and does not apply to the recipient's eligibility for medical assistance.

79.8(6) If a provider is unsure if an item or service is covered because it is rare or unusual, the provider may submit a request for prior approval in the same manner as other requests for prior approval in 79.8(1).

79.8(7) Requests for prior approval of services shall be reviewed according to rule 441—79.9(249A) and the conditions for payment as established by rule in 441—chapter 78.

Where ambiguity exists as to whether a particular item or service is covered, requests for prior approval shall be reviewed according to the following criteria in order of priority:

a. The conditions for payment outlined in the provider manual with reference to coverage and duration.

b. The determination made by the Medicare program unless specifically stated differently in state law or rule.

c. The recommendation to the department from the appropriate advisory committee.

d. Whether there are other less expensive procedures which are covered and which would be as effective.

e. The advice of an appropriate professional consultant.

79.8(8) The amount, duration and scope of the Medicaid program is outlined in 441—chapters 78, 79, 81, 82 and 85. Additional clarification of the policies is available in the provider manual distributed and updated to all participating providers.

79.8(9) Recipients shall receive a notice of decision upon a denial of request for prior approval pursuant to 441—chapter 7. The notice of decision to the recipient, Form MA-3028, shall be mailed within five (5) working days of the date the prior approval form is returned to the provider.

79.8(10) If a request for prior approval is denied by the fiscal agent, the request may be resubmitted for reconsideration with additional information justifying the request. The aggrieved party may file an appeal in accordance with 441—chapter 7.

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

441—79.9(249A) General provisions for Medicaid coverage applicable to all Medicaid providers and services.

79.9(1) Medicare definitions and policies shall apply to services provided unless specifically defined differently.

79.9(2) The services covered by Medicaid shall:

a. Be consistent with the diagnosis and treatment of the patient's condition.

b. Be in accordance with standards of good medical practice.

c. Be required to meet the medical need of the patient and be for reasons other than the convenience of the patient or the patient's practitioner or care-giver.

d. Be the least costly type of service which would reasonably meet the medical need of the patient.

e. Be eligible for federal financial participation unless specifically covered by state law or rule.

f. Be within the scope of the licensure of the provider.

g. Be provided with the full knowledge and consent of the recipient or someone acting in the recipient's behalf unless otherwise required by law or court order or in emergency situations.

h. Be supplied by a provider who is eligible to participate in the Medicaid program. The provider must use the billing procedures and documentation requirements described in 441—chapters 78 and 80.

79.9(3) Providers shall supply all the same services to Medicaid eligibles served by the provider as are offered to other clients of the provider.

79.9(4) Recipients must be informed before the service is provided that the recipient will be responsible for the bill if a noncovered service is provided.

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

441—79.10(249A) Requests for preadmission review. The inpatient hospitalization of Medicaid recipients is subject to preadmission review by the Iowa Foundation for Medical Care (IFMC) as required in rule 441—78.3(249A).

79.10(1) The patient's admitting physician, the physician's designee or the hospital will contact the IFMC to request approval of Medicaid coverage for the hospitalization, according to instructions issued to providers by the IFMC and instructions in the Medicaid provider's manual.

79.10(2) Medicaid payment will not be made to the hospital if the IFMC denies the procedure requested in the preadmission review.

79.10(3) A letter of denial will be issued by the IFMC to the patient, physician and hospital when a request is denied. The patient, physician or hospital can request a reconsideration of the decision by filing a written request with the IFMC within sixty (60) days of the date of the denial letter.

79.10(4) A denial by the IFMC of a request for reconsideration can be appealed by the aggrieved party to the department according to 441—chapter 7.

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

441—79.11(249A) Requests for preprocedure surgical review. The Iowa Foundation for Medical Care (IFMC) conducts a preprocedure review of certain frequently performed surgical procedures to determine the necessity of the procedures and if Medicaid payment will be approved according to requirements found in subrules 78.1(19), 78.3(18), and 78.26(3).

79.11(1) Approval must be requested by the physician from the IFMC when the physician expects to perform a surgical procedure appearing on the department's preprocedure surgical review list published in the Medicaid providers' manual.

All requests for preprocedure surgical review shall be made according to instructions issued to physicians, hospitals and ambulatory surgical centers appearing in the Medicaid providers' manual and instructions issued to providers by the IFMC.

79.11(2) The physician shall be issued a validation number for each request by the IFMC and advised if payment for the procedure will be approved or denied.

79.11(3) Medicaid payment will not be made to the physician and other medical personnel or the facility in which the procedure is performed, i.e., hospital or ambulatory surgical center, if the IFMC does not give approval.

79.11(4) A denial letter will be issued by the IFMC to the patient, physician and facility when the requested procedure is not approved. The patient, physician or facility can request a reconsideration of the decision by filing a written request with the IFMC within sixty days of the date of the denial letter.

79.11(5) A denial letter of a request for reconsideration by the IFMC can be appealed by the aggrieved party to the department in accordance with 441—chapter 7.

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

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CHAPTER 80
PROCEDURE AND METHOD OF PAYMENT
[Prior to 7/1/83, Social Services(770), Ch 80]

441—80.1(249A) The fiscal agent function in medical assistance.

80.1(1) *General administrative responsibilities of fiscal agent.* The fiscal agent designated by the department will perform the following primary functions:

a. Receive, process and pay claims submitted by providers of medical and remedial care participating in the program.

b. Make available instructional materials and billing forms to providers participating in the program.

c. Provide reports, statistical and accounting information as required by the department.

d. Participate with staff of the department in analysis and evaluation of policies and procedures.

e. In cooperation with the department develop and carry out a continuous program of cost and utilization review which is applicable to all groups of providers participating in the program. The purpose of cost and utilization review is to assure that only required medical and health services are being provided to recipients of medical assistance in accordance with department policy and that the cost of the services is not in excess of that charged the general public.

80.1(2) *Method of selection of fiscal agent.* The department shall publish a request for proposal announcing the forthcoming selection of a fiscal agent for the medical assistance program and outline the elements of the fiscal agent contract. The department will receive sealed bids from prospective fiscal agents for the medical assistance program. Basis of competitive bidding will be a per claim rate which would be applicable to all claims processed by the fiscal agent under the program in combination with an evaluation of technical, business and financial aspects of the bidders. A certified check payable to the Iowa department of human services in the amount of $50,000 shall be filed with each proposal. This check may be cashed and the proceeds retained by the department as liquidated damages if the bidder fails to execute a contract and file security as required by the specifications issued by the department. Proposals containing any reservations not provided for in the specifications may be rejected and the department reserves the right to waive technicalities and to reject any or all bids.

80.1(3) *Reimbursement of fiscal agent for performance of contract.* All allowable costs other than amount paid providers of medical and remedial care and services shall be referred to as administrative costs.

a. Rate per claim. Administrative costs other than those not associated with the processing of claims as set forth below shall be based on a fixed rate per claim handled. The fiscal agent will bill the department once each month the sum of the bid price multiplied by the number of original adjudicated claims.

b. Costs not associated with processing of claims. Costs not associated with processing claims will be established by contract with the fiscal agent. The fiscal agent will bill the department under separate voucher for these services according to the dates agreed upon by contract.

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

441—80.2(249A) Submission of claims. Providers of medical and remedial care participating in the program will submit claims for services rendered to the fiscal agent on at least a monthly basis. Following audit of the claim the fiscal agent will make payment to the provider of care.

80.2(1) Claims for payment for services provided recipients who are Medicare beneficiaries shall be submitted on forms specified for that program.

80.2(2) Claims for payment for services provided recipients who are not Medicare beneficiaries shall be submitted on the following forms:

a. Ambulance services shall submit claims on Form XIX AMB-1, Ambulance Claim.

b. Audiologists and hearing aid dealers shall submit claims on HCFA-1500, Health Insurance Claim Form.

c. Chiropractors shall submit claims on Form HCFA-1500, Health Insurance Claim Form.

d. Community Mental Health Centers shall submit claims on Form HCFA-1500, Health Insurance Claim Form.

e. Dentists shall submit claims on Form XIX DENT-1, Dental Claim.

f. Practitioners and institutions providing screening services shall submit claims on Form XIX SCR-1, Screening Claim.

g. Practitioners and institutions providing family planning services shall submit claims on Form HCFA-1500, Health Insurance Claim Form.

h. Home health agencies shall submit claims on Form UB-82-HCFA-1450.

i. Hospitals providing inpatient care or outpatient services shall submit claims on Form UB-82-HCFA-1450.
HOSP-2, Outpatient Hospital Claim.

j. Laboratories shall submit claims on Form HCFA-1500, Health Insurance Claim Form.

k. Medical equipment, appliance and sickroom supply dealers shall submit claims on Form HCFA-1500, Health Insurance Claim Form.

l. Opticians shall submit claims on Form HCFA-1500, Health Insurance Claim Form.

m. Optometrists shall submit claims on Form HCFA-1500, Health Insurance Claim Form.

n. Orthopedic shoe dealers shall submit claims on Form HCFA-1500, Health Insurance Claim Form.

o. Pharmacies shall submit claims on the Universal Pharmacy Claim Form.

p. Independently practicing physical therapists shall submit claims on Form HCFA-1500, Health Insurance Claim Form.

q. Physicians shall submit claims on Form HCFA-1500, Health Insurance Claim Form.

r. Podiatrists shall submit claims on Form HCFA-1500, Health Insurance Claim Form.

s. Rehabilitation agencies shall submit claims on Form UB-82-HCFA-1450.

t. Rural health clinics shall submit claims on Form HCFA-1500, Health Insurance Claim Form.

u. Skilled nursing facilities shall submit claims on Form UB-82-HCFA-1450.

v. Maternal health centers shall submit claims on Form HCFA-1500, Health Insurance Claim Form.

w. Ambulatory surgical centers shall submit claims on Form HCFA-1500, Health Insurance Claim Form.

x. Independently practicing psychologists shall submit claims on Form HCFA-1500, Health Insurance Claim Form.

y. Genetic consultation clinics shall submit claims on Form HCFA-1500, Health Insurance Claim Form.

z. Nurse-midwives shall submit claims on Form HCFA-1500, Health Insurance Claim Form.

80.2(3) Providers shall purchase or copy their supplies of forms HCFA-1450 and HCFA-1500 for use in billing.

441—80.3(249A) Amounts paid provider from other sources. The amount of any payment made directly to the provider of care by the recipient, relatives, or any source shall be deducted from the established cost standard for the service provided to establish the amount of payment to be made by the carrier.

441—80.4(249A) Time limit for submission of claims and claim adjustments.

80.4(1) *Submission of claims.* Payment will not be made on any claim where the amount of time that has elapsed between the date the service was rendered and the date the initial claim is received by the fiscal agent exceeds three hundred sixty-five (365) days except that payment for claims submitted beyond the three hundred sixty-five (365)-day limit shall be considered if retroactive eligibility on newly approved cases is made which exceeds three hundred sixty-five (365) days or if attempts to collect from a third party payer delays the submission of a claim.

80.4(2) *Claim adjustments.* A provider's request for an adjustment to a paid claim must be received by the fiscal agent within one (1) year from the date the claim was paid in order to have the adjustment considered.

This rule is intended to implement Iowa Code sections 249A.3, 249A.4 and 249A.12.

441—80.5(249A) Authorization process.

80.5(1) *Identification cards.* A medical identification card shall be issued to recipients for use in securing medical and health services available under the program. The cards are issued by the department on a monthly basis and are valid only for the month of issuance. Payment will be made for services provided an ineligible recipient when verification establishes that the recipient was issued a medical identification card for the month in which the service was provided.

80.5(2) *Third party liability.* When a third party liability for medical expenses exists, this resource shall be utilized before payment is made through the medical assistance program except when otherwise authorized by the department.

80.5(3) *Skilled nursing facilities.* When authorizing payment for skilled nursing care, family income shall be applied against the cost of care with the following exceptions.

a. Any income committed for the current month's maintenance expense of the recipient or noninstitutionalized ineligible spouse and dependent children in the home during the month of entry is not applied against the cost of care.

b. The recipient shall be allowed to keep $25 per month for personal needs.

c. Ongoing client participation shall be determined in accordance with rule 75.5(249A).

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

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CHAPTER 81
INTERMEDIATE CARE FACILITIES

[Prior to 7/1/83, Social Services(770), Ch 81]
[Prior to 2/11/87, Human Services(498)]

441—81.1(249A) Definitions.

"Activities director" means a person who meets the qualifications of 470—subrule 58.26(3) implementing chapter 135C.

"Administrator" means a person licensed in the state as a nursing home administrator or, in the case of a hospital qualifying as an intermediate care facility, by the hospital administrator, with the necessary authority and responsibility for management of the facility and implementation of administrative policies.

"Beginning eligibility date" means date of an individual's admission to the facility or date of eligibility for medical assistance, whichever is the later date.

"Consultant social worker" means a person who meets one of the following criteria:

a. Has a degree from an accredited four (4)-year college in social work, sociology, psychology, guidance and counseling or vocational rehabilitation and at least two (2) years full-time paid employment in a social work capacity with a public or private agency.

b. Has a degree from an accredited four (4)-year college and at least four (4) years experience in a social work capacity with a public or private agency.

c. Has five (5) years experience in a social work capacity in a public or private agency.

"Department" means the Iowa department of human services.

"Dietitian" means a person who is eligible for registration by the American Dietetic Association under its requirements in effect on January 17, 1974; or has a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management, has one (1) year of supervisory experience in the dietetic service of a health care institution, and participates annually in continuing dietetic education.

"Discharged resident" means a resident whose accounts and records have been closed out and whose personal effects have been taken from the facility. When a resident is discharged, the facility shall notify the department via Form AA-4166-0, Case Activity Report.

"Facility" means a licensed health care facility certified in accordance with the provisions 45 CFR 249.12 to provide intermediate health services.

"Health services supervisor" means a registered nurse or licensed practical or vocational nurse who is currently licensed to practice in the state.

a. In the case of facilities where a licensed practical or vocational nurse serves as the supervisor of health services, consultation shall be provided by a registered nurse through formal contract, at regular intervals, but not less than four (4) hours weekly. When the health services supervisor is a licensed practical nurse, the requirement for registered nurse consultation will be met only if the health services supervisor is also on duty during the period the consultation functions are performed.

b. Licensed practical or vocational nurses serving as health services supervisors shall have training that includes either graduation from a state approved school of practical nursing or education and authority responsible for licensing of practical nurses to provide a background that is equivalent to graduation from a state approved school of practical nursing, or have successfully completed the public health services examination for waivered licensed practical nurses.

c. Other categories of licensed personnel with special training in the care of residents may serve as charge nurse, provided that the person is licensed by the state in such category following completion of a course of training which includes at least the number of classroom and practice hours in all of the nursing subjects included in the program of a state approved school of practical or vocational nursing.

"Social worker" means a person who meets one of the following criteria:

a. Has a bachelor's degree in social work from an accredited four (4)-year college.

b. Is a graduate of an accredited four (4)-year college and has had at least one (1) year of full-time paid employment in a social work capacity with a public or private agency.

c. Has been employed in a social work capacity for a minimum of four (4) years in a public or private agency.

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

81.2 Rescinded, effective 11/21/79.

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

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

441—81.4(249A) Arrangements with residents.

81.4(1) *Resident Care agreement.* The Resident Care Agreement, Form MA-2138-0, shall be used as a three (3) party contract among the facility, the resident, and the department to spell out the duties, rights and obligations of all parties.

81.4(2) *Financial participation by resident.* Each resident shall retain twenty-five dollars ($25) per month of income for personal needs. The balance of the resident's monthly income shall be applied toward the cost of care. A resident's income may include any voluntary payments made by family members toward cost of care of the resident. The resident's income shall be paid toward the total cost of care for the month before any state payment is made. The state will pay the balance of the cost of care for the remainder of the month. The facility shall make arrangements directly with the resident for payment of the portion of the total cost of care covered by the resident's monthly income.

81.4(3) *Personal needs account.* When a facility manages the personal needs funds of a resident, it shall establish and maintain a system of accounting for expenditures from the resident's personal needs funds. The personal needs funds shall be deposited in a single checking account, not commingled with trust funds from any other facility, nor commingled with facility operating funds except for facility funds, not to exceed five hundred dollars ($500), deposited to cover bank charges, and have in the account name the terms "Resident Trust Funds." The funds shall be deposited in a bank within the state of Iowa insured by FDIC. Expense for bank service charges for this account is an allowable expense under rule 441—81.6(249A) if the service cannot be obtained free of charge. The department shall charge back to the facility any maintenance item included in the computation of the audit cost that is charged to the resident's personal needs when the charge constitutes double payment. Unverifiable expenditures charged to personal needs accounts may be charged back to the facility. The accounting system is subject to audit by representatives of the department and shall meet the following criteria:

a. Upon admittance, a ledger sheet shall be credited with the resident's total incidental money on hand. Thereafter, the ledger shall be kept current on a monthly basis. The facility may combine the accounting with the disbursement section showing the date, amount given the resident, and the resident's signature. A separate ledger shall be maintained for each resident.

b. When something is purchased for the resident and is not a direct cash disbursement, each expenditure item in the ledger shall be supported by a signed, dated receipt. The receipt shall indicate the article furnished for the resident's benefit.

c. Personal funds shall only be turned over to the resident, the resident's guardian, or other persons selected by the resident. With the consent of the resident, when the resident is able and willing to give consent the administrator may turn over personal funds to a close relative or friend of the resident to purchase a particular item. A signed, dated receipt shall be required to be deposited in the resident's files.

d. The ledger and receipts for each resident shall be made available for periodic audits by an accredited department representative. Audit certification shall be made by the department's representative at the bottom of the ledger sheet. Supporting receipts may then be destroyed.

e. Upon a patient's death, a receipt shall be obtained from the next of kin or the resident's guardian before releasing the balance of the personal needs funds. In the event there is no next of kin available and the recipient has been receiving a grant from the department for all or part of the personal needs, any funds shall revert to the department. In the event that an estate is opened, the department shall turn the funds over to the estate.

81.4(4) *Safeguarding personal property.* The facility shall safeguard the resident's personal possessions. Safeguarding shall include, but is not limited to:

a. Providing a method of identification of the resident's suitcases, clothing, and other personal effects, and listing these on an appropriate form attached to the resident's record at the time of admission. These records shall be kept current. Any personal effects released to a relative of the resident shall be covered by a signed receipt.

b. Providing adequate storage facilities for the resident's personal effects.

c. Insuring that all mail is delivered unopened to the resident to whom it is addressed, except in those cases where the resident is too confused, as documented in the person's permanent medical record, to receive it, in which case the mail is held unopened for the resident's conservator or relatives. Mail may be opened by the facility in cases where the resident or relatives or guardian have given permission in writing for mail to be opened and read to the resident.

441—81.5(249A) Discharge and transfer.

81.5(1) *Notice.* When a public assistance recipient requests transfer or discharge, or another person requests this for the recipient, the administrator shall promptly notify the local office of the department. This shall be done in sufficient time to permit a social service worker to assist in the planning for the transfer or discharge.

81.5(2) *Case activity report.* A Case Activity Report, Form AA-4166-0, shall be submitted to the department whenever a Medicaid applicant or recipient enters the facility, changes level of care, is hospitalized, leaves for visitation, or is discharged from the facility.

81.5(3) *Plan.* The administrator and staff shall assist the resident in planning for transfer or discharge through development of a discharge plan. In as far as possible, the same persons participating in the decision to admit the resident in rule 81.3(3), shall be involved in the discharge planning.

81.5(4) *Transfer records.* When a resident is transferred to another facility, transfer information shall be summarized from the facility's records in a copy to accompany the resident. This information shall include:

a. A transfer form of diagnosis.

b. Aid to daily living information.

c. Transfer orders.

d. Nursing care plan.

e. Physician's orders for care.

f. The resident's personal records.

g. When applicable, the personal needs fund record.

h. Resident care review team assessment.

81.5(5) *Unused client participation.* When a resident leaves the facility during the month any unused portion of the resident's client participation shall be refunded.

441—81.6(249A) Financial and statistical report. All facilities in Iowa wishing to participate in the program shall submit a Financial and Statistical Report for Nursing Homes, Form AA-4036-0, to the department. These reports shall be based on the following rules.

81.6(1) *Failure to maintain records.* Failure to adequately maintain fiscal records, including census records, medical charts, ledgers, journals, tax returns, canceled checks, source documents, invoices, and audit reports by or for a facility may result in the penalties specified in subrule 81.14(1).

81.6(2) *Accounting procedures.* Financial information shall be based on that appearing in the audited financial statement. Adjustments to convert to the accrual basis of accounting shall be made when the records are maintained on other accounting bases. Facilities which are a part of a larger health facility extending short-term, intensive, or other health care not generally considered nursing care may submit a cost apportionment schedule prepared in accordance with recognized methods and procedures. A schedule shall be required when necessary for a fair presentation of expense attributable to intermediate care facility patients.

81.6(3) *Submission of reports.* The report shall be submitted to the department no later than three (3) months after the close of each six (6) months' period of the facility's established fiscal year. Failure to submit the report within this time shall reduce payment to seventy-five percent (75%) of the current rate. The reduced rate shall be paid for no longer than three (3) months, after which time no further payments will be made.

81.6(4) *Payment at new rate.* When a new rate is established, payment at the new rate shall be effective with services rendered as of the first day of the month in which the report is postmarked, or if the report was personally delivered, the first day of the month in which the report was received by the department. Adjustments shall be included in the payment the third month after the receipt of the report.

Notwithstanding the above, facilities which file their cost reports between July 1, 1985, and December 31, 1985, shall be limited to their Medicaid rate in effect on June 30, 1985.

81.6(5) *Accrual basis.* Facilities not using the accrual basis of accounting shall adjust recorded amounts to the accrual basis. Expenses which pertain to an entire year shall be included in each six (6)-month report in equal amounts. Records of cash receipts and disbursements shall be adjusted to reflect accruals of income and expense.

81.6(6) *Census of public assistance recipients.* Census figures of public assistance recipients shall be obtained on the last day of the month ending the reporting period.

81.6(7) *Patient days.* In determining in-patient days, a patient day is that period of service rendered a patient between the census taking hours on two (2) successive days, the day of discharge being counted only when the patient was admitted that same day.

81.6(8) *Opinion of accountant.* The department may require that an opinion of a certified public accountant or public accountant accompany the report when adjustments made to prior reports indicate disregard of the certification and reporting instructions.

81.6(9) *Calculating patient days.* When calculating patient days, facilities shall use an accumulation method.

a. Census information shall be based on a patient status at midnight each day. A patient whose status changes from one class to another shall be shown as discharged from the previous status and admitted to the new status on the same day.

b. When a recipient is on a reserve bed status and the department is paying on a per diem basis for the holding of a bed, or any day a bed is reserved for a public assistance or nonpublic assistance patient and a per diem rate for the bed is charged to any party, the reserved days shall be included in the total census figures for in-patient days.

81.6(10) *Revenues.* Revenues shall be reported as recorded in the general books and records. Expense recoveries credited to expense accounts shall not be reclassified in order to be reflected as revenues.

a. Routine daily services shall represent the established charge for daily care. Routine daily services are those services which include room, board, nursing services, and such services as supervision, feeding, incontinency, and similar services, for which the associated costs are in nursing service.

b. Revenue from ancillary services provided to patients shall be applied in reduction of the related expense.

c. Revenue from the sale of medical supplies, food or services to employees or nonresidents of the facility shall be applied in reduction of the related expense. Revenue from the sale to private pay residents of items or services which are included in the medical assistance per diem will not be offset.

d. Investment income adjustment is necessary only when interest expense is incurred, and only to the extent of the interest expense.

e. Laundry revenue shall be applied to laundry expense.

f. Accounts receivable charged off or provision for uncollectible accounts shall be reported as a deduction from gross revenue.

81.6(11) *Limitation of expenses.* Certain expenses that are not normally incurred in providing patient care shall be eliminated or limited according to the following rules.

a. Federal and state income taxes are not allowed as reimbursable costs.

b. Fees paid directors and nonworking officers' salaries are not allowed as reimbursable costs.

c. Bad debts are not an allowable expense.

d. Charity allowances and courtesy allowances are not an allowable expense.

e. Personal travel and entertainment are not allowable as reimbursable costs. Certain expenses such as rental or depreciation of a vehicle and expenses of travel which include both business and personal costs shall be prorated. Amounts which appear to be excessive may be limited after consideration of the specific circumstances. Records shall be maintained to substantiate the indicated charges.

(1) Commuter travel by the owner(s), owner-administrator(s), administrator, nursing director or any other employee is not an allowable cost (from private residence to facility and return to residence).

(2) The expense of one car or one van or both designated for use in transporting patients shall be an allowable cost. All expenses shall be documented by a sales slip, invoice or other document setting forth the designated vehicle as well as the charges incurred for the expenses to be allowable.

(3) Each facility which supplies transportation services as defined in Iowa Code section 601J.1, subsection 1, shall provide current documentation of compliance with or exemption from public transit coordination requirements as found in Iowa Code chapter 601J and 820—[09,A] chapter 2 of the department of transportation rules at the time of annual contract renewal. Failure to cooperate in obtaining or in providing the required documentation of compliance or exemption after receipt from the Iowa department of transportation, public transit division shall result in disallowance of vehicle costs and other costs associated with transporting residents.

(4) Expenses related to association business meetings, limited to individual members of the association who are members of a national affiliate, and expenses associated with workshops, symposiums, and meetings which provide administrators or department heads with hourly credits required to comply with continuing education requirements for licensing, are allowable expenses.

(5) Travel of an emergency nature required for supplies, repairs of machinery or equipment, or building is an allowable expense.

(6) Travel for which a patient must pay is not an allowable expense.

(7) Allowable expenses in subparagraphs (2) through (5) above are limited to six percent (6%) of total administrative expense.

f. Entertainment provided by the facility for participation of all residents who are physically and mentally able to participate is an allowable expense except that entertainment for which the patient is required to pay is not an allowable expense.

g. Loan acquisition fees and standby fees are not considered part of the current expense of patient care, but should be amortized over the life of the related loan.

h. A reasonable allowance of compensation for services of owners or immediate relatives is an allowable cost, provided the services are actually performed in a necessary function. For this purpose, the following persons are considered immediate relatives: husband and wife; natural parent, child and sibling; adopted child and adoptive parent; stepparent, stepchild, stepbrother, and stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, and sister-in-law; grandparent and grandchild. Adequate time records shall be maintained. Adjustments may be necessary to provide compensation as an expense for non-

salaried working proprietors and partners. Members of religious orders serving under an agreement with their administrative office are allowed salaries paid persons performing comparable services. When maintenance is provided these persons by the facility consideration shall be given to the value of these benefits and this amount shall be deducted from the amount otherwise allowed for a person not receiving maintenance.

(1) Compensation means the total benefit received by the owner or immediate relative for services rendered. It includes salary amounts paid for managerial, administrative, professional, and other services; amounts paid by the facility for the personal benefit of the proprietor or immediate relative; the cost of assets and services which the proprietor or immediate relative receives from the facility; and deferred compensation.

(2) Reasonableness requires that the compensation allowance be the same amount as would ordinarily be paid for comparable services by comparable institutions, and depends upon the facts and circumstances of each case.

(3) Necessary requires that the function be such that had the owner or immediate relative not rendered the services, the facility would have had to employ another person to perform the service, and be pertinent to the operation and sound conduct of the institution.

(4) The base maximum allowed compensation for an administrator involved in ownership or immediate relative is $1,703 per month plus $18.16 per month per licensed bed capacity for each bed over sixty (60), not to exceed $2,522 per month. An administrator is considered to be involved in ownership of a facility when the administrator has ownership interest of five percent (5%) or more.

On a semiannual basis, the maximum allowed compensation amounts for administrators or relatives involved in ownership shall be increased or decreased by the inflation factor applied to facility rates as defined by subrule 81.6(16)*"a."*

(5) The maximum allowed compensation for an assistant administrator involved in ownership or immediate relative in facilities having a licensed capacity of one hundred fifty-one (151) or more beds is $950 per month. An assistant administrator is considered to be involved in ownership of a facility when the assistant administrator has ownership interest of five percent (5%) or more.

(6) The maximum allowed compensation for a nursing director involved in ownership or immediate relative is sixty percent (60%) of the amount allowed for the administrator, or $950 per month, whichever is greater. The nursing director shall be a licensed registered or practical nurse. A nursing director is considered to be involved in ownership of a facility when the nursing director has ownership interest of five percent (5%) or more.

i. Management fees shall be computed on the same basis as the administrator's salary, but shall have the amount paid the resident administrator deducted. When the parent company can separately identify accounting costs, the costs are allowed.

j. Depreciation based upon tax cost using only the straight-line method of computation, recognizing the estimated useful life of the asset as defined in the American Hospital Association Useful Life Guide, 1983 edition, may be included as a patient cost. When accelerated methods of computation have been elected for income tax purposes, an adjustment shall be made. For change of ownership, refer to subrule 81.6(12).

k. Necessary and proper interest on both current and capital indebtedness is an allowable cost.

(1) Interest is the cost incurred for the use of borrowed funds. Interest on current indebtedness is the cost incurred for funds borrowed for a relatively short term. Interest on capital indebtedness is the cost incurred for funds borrowed for capital purposes.

(2) "Necessary" requires that the interest be incurred on a loan made to satisfy a financial need of the provider, be incurred on a loan made for a purpose reasonably related to patient care, and be reduced by investment income except where the income is from gifts and grants whether restricted or unrestricted, and which are held separate and not commingled with other funds.

(3) "Proper" requires that interest be incurred at a rate not in excess of what a prudent borrower would have had to pay in the money market on the date the loan was made, and be paid to a lender not related through control or ownership to the borrowing organization.

(4) Interest on loans is allowable as cost at a rate not in excess of the amount an investor could receive on funds invested in the locality on the date the loan was made.

(5) Interest is an allowable cost when the general fund of a provider borrows from a donor-restricted fund, a funded depreciation account of the provider, or the provider's qualified pension fund, and pays interest to the fund, or when a provider operated by members of a religious order borrows from the order.

(6) When funded depreciation is used for purposes other than improvement, replacement or expansion of facilities or equipment related to patient care, allowable interest expense is reduced to adjust for offsets not made in prior years for earnings on funded depreciation. A similar treatment will be accorded deposits in the provider's qualified pension fund where the deposits are used for other than the purpose for which the fund was established.

l. Costs applicable to supplies furnished by a related party or organization are a reimbursable cost when included at the cost to the related party or organization. The cost shall not exceed the price of comparable supplies that could be purchased elsewhere.

(1) Related means that the facility, to a significant extent, is associated with or has control of or is controlled by the organization furnishing the services, facilities, or supplies.

(2) Common ownership exists when an individual or individuals possess significant ownership or equity in the facility and the institution or organization serving the provider.

(3) Control exists where an individual or an organization has power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution.

(4) When the facility demonstrates by convincing evidence that the supplying organization is a bona fide separate organization; that a substantial part of its business activity of the type carried on with the facility is transacted with others and there is an open competitive market for the type of services, facilities, or supplies furnished by the organization; that the services, facilities, or supplies are those which commonly are obtained by similar institutions from other organizations and are not a basic element of patient care ordinarily furnished directly to patients by the institutions; and that the charge to the facility is in line with the charge for the services, facilities, or supplies in the open market and no more than the charge made under comparable circumstances to others by the organization for the services, facilities, or supplies, the charges by the supplier shall be allowable costs.

m. When the operator of a participating facility rents from a nonrelated party, the amount of rent expense allowable on the cost report shall be based on the cost of the facility as identified in subrule 81.6(12), paragraph *"a,"* plus the landlord's other expenses and a reasonable rate of return, not to exceed actual rent payments.

When the operator of a participating facility rents the building from a related party, the amount of rent expense allowable on the cost report shall be no more than the amortized cost of the facility as identified in subrule 81.6(12), paragraph *"a,"* plus the landlord's other expenses.

The landlord must be willing to provide documentation of these costs for rental arrangements.

n. Depreciation, interest and other capital costs attributable to construction of new facilities, expanding existing facilities, or the purchase of an existing facility, are allowable expenses only if prior approval has been gained through the health planning process specified in rules of the public health department, 470—chapter 201.

81.6(12) *Termination or change of owner.*

a. A participating facility contemplating termination of participation or negotiating a change of ownership shall provide the department of human services with at least sixty (60) days' prior notice. A transfer of ownership or operation terminates the participation agreement.

A new owner or operator shall establish that the facility meets the conditions for participation and enter into a new agreement. The person responsible for transfer of ownership or for termination is responsible for submission of a final financial and statistical report through the date of the transfer. No payment to the new owner will be made until formal notification is received. The following situations are defined as a transfer of ownership:

(1) In the case of a partnership which is a party to an agreement to participate in the medical assistance program, the removal, addition, or substitution of an individual for a partner in the association in the absence of an express statement to the contrary, dissolves the old partnership and creates a new partnership which is not a party to the previously executed agreement and a transfer of ownership has occurred.

(2) When a participating nursing home is a sole proprietorship, a transfer of title and property to another party constitutes a change of ownership.

(3) When the facility is a corporation, neither a transfer of corporate stock nor a merger of one or more corporations with the participating corporation surviving is a transfer of ownership. A consolidation of two or more corporations resulting in the creation of a new corporate entity constitutes a change of ownership.

(4) When a participating facility is leased, a transfer of ownership is considered to have taken place. When the entire facility is leased, the total agreement with the lessor terminates. When only part of the facility is leased, the agreement remains in effect with respect to the unleased portion, but terminates with respect to the leased portion.

b. No increase in the value of property shall be allowed in determining the Medicaid rate for the new owner with any change of ownership (including lease agreements). When filing the first cost report, the new owner shall either continue the schedule of depreciation and interest established by the previous owner, or the new owner may choose to claim the actual rate of interest expense. The results of the actual rate of interest expense shall not be higher than would be allowed under the Medicare principles of reimbursement and shall be applied to the allowed depreciable value established by the previous owner, less any down payment made by the new owner.

c. Other acquisition costs of the new owner such as legal fees, accounting and administrative costs, travel costs and the costs of feasibility studies attributable to the negotiation or settlement of the sale or purchase of the property shall not be allowed.

d. In general, the provisions of Section 1861(v)(1)(0) of the Social Security Act regarding payment allowed under Medicare principles of reimbursement at the time of a change of ownership shall be followed, except that no return on equity or recapture of depreciation provisions shall be employed.

e. A new owner or lessee wishing to claim a new rate of interest expense must submit documentation which verifies the amount of down payment made, the actual rate of interest, and the number of years required for repayment with the next semiannual cost report. In the absence of the necessary supportive documentation, interest and other property costs for all facilities which have changed or will change ownership shall continue at the rate allowed the previous owner.

81.6(13) Rescinded, effective 1/1/86.

81.6(14) *Payment to new home.* A new home for which cost has not been established shall receive the prevailing maximum allowable cost ceiling. At the end of three (3) months operation a financial and statistical report shall be submitted and the cost established. Subsequent reports shall be submitted from the beginning day of operation to the end of the fiscal year or six (6) months interim period, whichever comes first, and each six (6) months thereafter.

81.6(15) *Payment to new owner.* An existing facility with a new owner shall continue with the previous owner's per diem rate until a new financial and statistical report has been submitted and a new rate established, not to exceed private pay charges. The facility may submit a report for the period from beginning of actual operation to the end of the fiscal year or may submit two (2) cost reports within the fiscal year provided the second report covers a period of six (6) months ending on the last day of the fiscal year. The facility shall notify the

department of the date its fiscal year will end and of the reporting option selected.

81.6(16) *Establishment of ceiling and reimbursement rate.*

a. An inflation factor will be considered in determining the facility's prospective payment rate. The rate will be determined by using the change in the weighted average cost per diem of the compilation of various costs and statistical data as found in the two (2) most recent reports of "unaudited compilation of various cost and statistical data." The percentage increase of this weighted average will be the basis for the next semiannual inflation factor. This factor shall not exceed five percent (5%) on a semiannual basis.

b. An incentive factor shall be determined at the beginning of the state's fiscal year based upon the June 30, 1986, "unaudited compilation of various costs and statistical data." The incentive factor shall be equal to one-half (½) the difference between the forty-sixth percentile of allowable costs and the seventy-four percentile of allowable costs. Notwithstanding the foregoing, under no circumstances shall the incentive factor be less than $1 per patient day or more than $1.75 per patient day.

c. The reimbursement rate shall be established by determining, on a per diem basis, the allowable cost plus the established inflation factor plus the established incentive factor, subject to the maximum allowable cost ceiling.

d. For nonstate owned intermediate care facilities, an additional factor in determining the reimbursement rate shall be arrived at by dividing total reported patient expenses by total patient days during the reporting period. Total patient days for purposes of this computation shall be in-patient days as determined in subrule 81.6(7) or eighty percent (80%) of the licensed capacity of the facility, whichever is greater.

e. Beginning July 1, 1986, the basis for establishing the maximum reimbursement rate for intermediate care facilities shall be the fifty-fifth percentile of participating facilities' per diem rates as calculated from the June 30, 1986, report of "unauditied compilation of various costs and statistical data."

This rule is intended to implement Iowa Code sections 249A.2(6), 249A.3(2)9*"a,"* 249A.4, 249A.16 and 1986 Iowa Acts, chapter 1246, sections 309 and 314.

441—81.7(249A) Continued review. The Iowa foundation for medical care shall be responsible for reviews for need of continued care in intermediate care facilities.

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

441—81.8(249A) Quality of care review. The Iowa foundation for medical care shall be responsible for quality of care studies in intermediate care facilities.

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

441—81.9(249A) Records.

81.9(1) *Content.* The facility shall as a minimum maintain the following records:

a. All records required by the department of public health and the department of inspections and appeals.

b. Records of all treatments, drugs, and services for which vendors' payments have been made or are to be made under the medical assistance program, including the authority for and the date of administration of the treatment, drugs, or services.

c. Documentation in each resident's records which will enable the department to verify that each charge is due and proper prior to payment.

d. Financial records maintained in the standard, specified form including the facility's most recent audited cost report.

e. All other records as may be found necessary by the department in determining compliance with any federal or state law or rule or regulation promulgated by the United States Department of Health and Human Services or by the department.

f. Census records to include the date, number of residents at the beginning of each day, names of residents admitted, and names of residents discharged.

(1) Census information shall be provided for residents in skilled, intermediate, and residential care.

(2) Census figures for each type of care shall be totaled monthly to indicate the number admitted, the number discharged, and the number of patient days.

(3) Failure to maintain acceptable census records shall result in the per diem rate being computed on the basis of one hundred percent (100%) occupancy and a request for refunds covering indicated recipients of nursing care which have not been properly accounted for.

g. Resident accounts.

h. Inservice education program records.

i. Inspection reports pertaining to conformity with federal, state and local laws.

j. Residents' personal records.

k. Residents' medical records.

l. Disaster preparedness reports.

81.9(2) *Retention.* Records shall be retained in the facility for a minimum of three (3) years or until an audit is performed on those records, whichever is longer.

81.9(3) *Change of owner.* All records shall be retained within the facility upon change of ownership.

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

441—81.10(249A) Payment procedures.

81.10(1) *Method of payment.* Facilities shall be reimbursed under a cost-related vendor payment program. A per diem rate shall be established based on information submitted according to rule 441—81.6(249A). The per diem rate shall be no greater than the maximum reasonable cost determined by the department.

81.10(2) *Authorization of payment.* The department shall authorize payment for care in a facility. The authorization shall be obtained prior to admission of the resident, whenever possible. When only a distinct part of the total facility has been certified as an intermediate care facility, payment will be approved through the medical assistance program only for residents who occupy beds in the certified part of the facility.

81.10(3) *Determination of client participation.* All resident income, determined in accordance with 441—75.5(249A), above $25 per month allowance for personal needs shall be applied to the cost of nursing care. Residents with earned income shall retain $65 of that income for a personal allowance.

a. Residents in the following situations shall apply income toward the cost of care beginning with the first month of admission in the following circumstances:

(1) Residents leaving the facility for the purpose of hospitalization or skilled care who remain on the medical assistance program and later return to the facility.

(2) Persons eligible for medical assistance transferring from residential care to intermediate care.

(3) Residents changing from private pay status to medical assistance status while residing in an intermediate care facility.

(4) Residents transferring from an intermediate care facility, in-state or out-of-state, to an Iowa intermediate care facility.

b. Residents moving from an independent living arrangement to an intermediate care facility may retain enough first month income to meet the maintenance or living expenses connected with the previous living arrangement. In such cases the department shall determine how much of the resident's income is available for first month client participation.

81.10(4) *Periods authorized for payment.*

a. Payment shall be made on a per diem basis for the portion of the month the resident is in the facility.

b. Payment will be authorized as long as the resident is certified as needing care in an intermediate care facility.

c. Payment will be approved for the day of admission but not the day of discharge or death.

d. Payment will be approved for periods the residents is absent overnight for purpose of visitation or vacation. The facility will be paid to hold the bed for a period not to exceed eigh-

teen (18) days in any calendar year. Additional days shall be based upon a recommendation by the resident's physician in the plan of care that additional days would be rehabilitative.

e. Payment will be approved for a period not to exceed ten (10) days in any calendar month when the resident is absent due to hospitalization. Payment will not be authorized for over ten (10) days for any continuous hospital stay whether or not the stay extends into a succeeding month or months.

f. Payment for periods when residents are absent for visitation or hospitalization will be made at seventy-five percent (75%) of the allowable audited costs for those beds, not to exceed the maximum reimbursement rate.

g. Payment for residents determined by utilization review to require the residential level of care shall be made at the maximum state supplementary assistance rate. This rate is effective as of the date of final notice by utilization review that the lower level of care is required.

81.10(5) *Supplementation.* Only the amount of client participation may be billed to the resident for the cost of care. No supplementation of the state payment shall be made by any person.

Exception: The resident, the resident's family, or friends may pay to hold the resident's bed in cases where a resident spends over eighteen (18) days on yearly visitation (or longer under 81.10(4)*"d"*) or spends over ten (10) days on a hospital stay. When the resident is not discharged from the facility, these payments shall not exceed seventy-five percent (75%) of the allowable audited costs for the facility, not to exceed the maximum reimbursement rate. When the resident is discharged, the facility may handle the holding of the reserve bed in the same manner as a private paying resident.

Exception: Payments made by the resident's family toward cost of care of the resident shall not be considered as supplementation so long as the payments are included in client participation and are not over and above the payment made by the state for care of the resident.

81.10(6) *Payment for out-of-state care.* Payment will be made for care in out-of-state intermediate care facilities. Out-of-state providers will be reimbursed at the same intermediate care facility rate they are receiving from their state of residence or the Iowa maximum, whichever is lower.

81.10(7) *Comparative charges between private pay and Medicaid residents.* The department shall not pay intermediate care facilities a per diem rate in excess of the average per diem rate charged to private pay residents.

a. The intermediate care facility shall recompute the average per diem rate on a facility-wide, private pay basis twice yearly. This computation shall coincide with the preparation of the financial and statistical report for nursing homes, Form AA—4036-0 which is submitted to the department.

b. An individual private pay resident's rate shall be computed by accumulating the six (6) months' total charges for the individual and dividing the total charges by the total number of days in which the bed was occupied by or was being held for the resident. The total monthly charges will include the basic charge per day plus any standard charges for extra care and service.

c. To compute the facilitywide average private pay per diem rate, the facility shall accumulate total monthly changes for all private pay residents for the six (6)-month period and divide by the total patient days for all private pay residents for the same period to arrive at the private pay average per diem rate for the entire facility.

This rule is intended to implement Iowa Code sections 249A.2(6), 249A.3(2)*"a,"* 249A.4, and 249A.12.

441—81.11(249A) Billing procedures.

81.11(1) *Claims.* Claims for service must be received by the department by the fifth working day following the last day of the month in which service was provided. Claims shall be submitted to the Data Processing Section, Quality Assurance Unit, Iowa Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114.

a. When payment is made, the facility will receive a copy of Form AA-4163-0, Long Term Care Billing Claim and Payment Register. The right-hand copy of the original shall be returned to the department as a claim for the next month.

b. When there has been a new admission, a discharge, a correction, or a claim for a reserved bed, the facility shall also submit Form AA-4164-0, Long Term Care Changes Notice, with the claim.

81.11(2) Reserved.

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

441—81.12(249A) Closing of facility. When a facility is planning on closing, the department shall be notified at least sixty (60) days in advance of the closing. Plans for the transfer of residents receiving medical assistance shall be approved by the local office of the department.

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

441—81.13(249A) Conditions of participation for intermediate care facilities. All intermediate care facilities must enter into a contractual agreement with the department which sets forth the terms under which they will participate in the program.

81.13(1) *Procedures for establishing health care facilities as Title XIX facilities.* All survey procedures and certification process shall be in accordance with Department of Health and Human Services publication "State Survey Agency Long Term Care Manual."

a. The facility shall obtain the applicable license from the department of inspections and appeals.

b. The facility shall request an application, Form 470—0254, Institutional Medicaid Provider Application, from the department.

c. The department shall transmit an application form and copies of standards to the facility.

d. The facility shall complete its portion of the application form and submit it to the department.

e. The department shall review the application form and forward it to the department of inspections and appeals.

f. The department of inspections and appeals shall schedule and complete a survey of the facility.

g. The department of inspections and appeals shall notify the facility of any deficiencies and ask for a plan for the correction of the deficiencies.

h. The facility shall submit a plan of correction within thirty (30) days of the date of survey. This plan must be approved before the facility can be certified.

i. The department of inspections and appeals shall evaluate the survey findings and plan of correction and either recommend the facility for certification or recommend denial of certification. The date of certification will be the date of approval of the plan of corrections.

j. When certification is recommended, the department of inspections and appeals shall notify the department recommending terms and conditions of a provider agreement.

k. The department shall review the certification data and:

(1) Transmit the provider agreement as recommended, or

(2) Transmit the provider agreement for a term less than recommended by the department of inspections and appeals or elect not to execute an agreement for reasons of good cause as defined in 81.13(2)*"c."*

81.13(2) *Title XIX provider agreements.* The health care facility must be recommended for certification by the department of inspections and appeals for participation as an intermediate care facility before a provider agreement may be issued. All survey procedures and certification process shall be in accordance with Department of Health and Human Services publication "Providers Certification State Operations Manual." The effective date of a provider agreement may not be earlier than the date of certification.

a. Terms of the agreement for facilities without deficiencies are as follows:

(1) The provider agreement shall be issued for a period not to exceed twelve months.

(2) The provider agreement shall be for the term of and in accordance with the provisions of certification, except that for good cause, the department may elect to execute an agreement for a term less than the period of certification, elect not to execute an agreement for reasons of good cause, or cancel an agreement.

b. Terms of the agreement for facilities with deficiencies are as follows:

(1) A new provider agreement may be executed for a period not to exceed sixty (60) days from the time required to correct deficiencies up to a period of twelve (12) months.

(2) A new provider agreement may be issued for a period of up to twelve (12) months subject to automatic cancellation sixty (60) days following the scheduled date for correction unless required corrections have been completed or unless the survey agency finds and notifies the department that the facility has made substantial progress in correcting the deficiencies and has resubmitted in writing a new plan of correction acceptable to the survey agency.

(3) There will be no new agreement when the facility continues to be out of compliance with the same standard(s) at the end of the term of agreement.

c. The department may, for good cause, elect not to execute an agreement. Good cause shall be defined as the case where the applicant is participating or has previously participated in the intermediate care facility program and said applicant has in the past demonstrated a continued or repeated failure to operate any previously or currently certified facility or facilities in compliance with the rules and regulations governing the intermediate care facility program.

d. The department may at its option extend an agreement with a facility for two (2) months under the following conditions:

(1) The health and safety of the residents will not be jeopardized thereby and,

(2) The extension is necessary to prevent irreparable harm to the facility or hardship to the resident or,

(3) It is impracticable to determine whether the facility is complying with the provisions and requirements of the provider agreement.

e. When it becomes necessary for the department to cancel or refuse to renew a Title XIX provider agreement, federal financial participation may continue for thirty (30) days beyond the date of cancellation, if the extension is necessary to ensure the orderly transfer of residents.

f. When the department of inspections and appeals survey indicates deficiencies in the areas of the Life Safety Code (LSC) or environment and sanitation, a timetable detailing corrective measures shall be submitted to the department of inspections and appeals before a provider agreement can be issued. This timetable shall not exceed two (2) years from the date of initial certification and shall detail corrective steps to be taken and when corrections will be accomplished. The following shall apply in these instances:

(1) The department of inspections and appeals shall determine that the facility can make corrections within the two (2)-year period.

(2) During the period allowed for corrections, the facility shall be in compliance with existing state fire safety and sanitation codes and regulations.

(3) The facility shall be surveyed at least semiannually until corrections are completed. Facility must have made substantial effort and progress in its plan of correction as evidenced by work orders, contracts, or other evidence.

81.13(3) *Policies and procedures.* The facility shall have written policies and procedures available to staff, residents, their families or legal representatives and the public. Policies and procedures shall be developed by the administration and the facility's professional staff or the administrative body responsible for the operation of the facility. These policies shall govern all areas of service provided by the facility and shall include as a minimum the following:

a. The policies governing the admission, transfer and discharge of residents shall assure that:

(1) Only those persons shall be accepted whose needs can be met by the facility directly or in cooperation with community resources or other providers.

(2) As changes occur in residents' physical or mental condition necessitating service or care which cannot be adequately provided by the facility, residents shall be transferred promptly to hospital, skilled nursing facilities or other appropriate facilities.

(3) Except in the case of an emergency, the resident, next of kin, attending physician and the responsible agency, if any, shall be consulted at least five (5) days in advance of the transfer or discharge of the resident, and casework services or other means shall be utilized to assure that adequate arrangements exist for meeting the resident's needs through other resources.

b. Policies shall define the uses of chemical and physical restraints, identify the professional personnel who may authorize the application of restraints in emergencies and shall describe the mechanism for monitoring and controlling their use.

c. Policies shall define procedures for submission of complaints and recommendations by residents and for assuring response and disposition.

d. There shall be written policies governing access to, duplication of, and dissemination of information from the resident's record.

e. The services policy shall describe the types of services to be provided, directly or under written agreement. These services shall include physician, nursing, dietary, rehabilitative, pharmaceutical and social services.

f. The rights of residents shall be defined, in accordance with subrule 81.13(6).

g. The emergency policy shall describe the care of residents in emergencies, when acutely ill, mentally or emotionally disturbed or difficult to manage.

h. The protection of property policy shall describe the protection afforded residents' property rights and monies.

i. The visitation policy shall describe arrangements for residents to receive visitors and for residents to make outside visits.

j. The policies and procedures shall provide that a public assistance recipient may be involuntarily discharged or transferred only for

(1) Medical reasons,

(2) The resident's welfare or that of other residents, or

(3) Nonpayment except as prohibited by the medical assistance program.

81.13(4) *Distinct part requirement.* All nursing homes which provide intermediate nursing care and also provide other types of care shall set aside a distinct or identifiable part for the provision of the intermediate nursing care.

a. The distinct part shall meet the following conditions:

(1) The distinct part shall meet all requirements for an intermediate care facility.

(2) The distinct part shall be identifiable as a unit such as a designated group of rooms, an entire ward or contiguous wards, wings, floor, or building. It shall consist of all beds and related facilities in the unit for whom payment is being made for intermediate care facility services. It shall be clearly identified and licensed by the department of inspections and appeals.

(3) The appropriate personnel shall be assigned to the identifiable unit and shall work regularly therein. Immediate supervision of staff shall be provided in the unit at all times by qualified personnel as required for licensure.

(4) The distinct part may share such central services and facilities as management services, dietary services, building maintenance and laundry with other units.

(5) When members of the staff share time between units of the facility, written records shall be maintained of the time assigned to each unit.

b. Hospitals and skilled nursing homes participating as intermediate care facilities shall meet all of the same conditions applicable to free standing intermediate care facilities.

c. Nothing herein shall be construed as requiring transfer of a resident within or between facilities when in the opinion of the attending physician the transfer might be harmful to the physical or mental health of the resident. The opinion of the physician shall be recorded on the resident's medical chart and stands as a continuing order unless the circumstances requiring the exception change.

81.13(5) *Civil rights.* The intermediate care facility shall comply with Title VI of the Civil Rights Act of 1964 in all areas of administration including admissions, records, services and physical facilities, room assignments and transfers, attending physicians' privileges and referrals. Written statements of compliance shall be available to residents, employees, attending physicians and other members of the public.

81.13(6) *Rights of residents.*

a. Facilities shall have a written policy statement setting forth the rights of residents. The statement shall ensure that all residents are:

(1) Fully informed of their rights and responsibilities as a resident and of all rules and regulations governing resident conduct and responsibilities. The information must be provided prior to or at the time of admission or, in the case of residents already in the facility, upon the facility's adoption or amendment of resident right policies, and its receipt must be acknowledged by the resident in writing.

(2) Fully informed in writing prior to or at the time of admission and during the stay, of services available in the facility, and of related charges including any charges for services not covered under the Title XIX program or not covered by the facility's basic per diem rate;

(3) Fully informed by a physician of the resident's health and medical condition unless medically contraindicated as documented by a physician in the resident record, and be afforded the opportunity to participate in the planning of total care and medical treatment and to refuse treatment, and participate in experimental research only upon informed written consent of the resident.

(4) Encouraged and assisted, throughout the period of stay, to exercise rights as a resident and as a citizen, and to this end may voice grievances and recommend changes in policies and services to facility staff and to outside representatives of their choice, free from restraint, interference, coercion, discrimination, or reprisal. Policies shall define procedures for submittal of complaints and recommendations by residents and shall assure response and disposition.

(5) Allowed to manage their personal financial affairs, and to the extent, under written authorization by the resident, that the facility assists in management, that it is carried out in accordance with rule 81.4(3).

(6) Free from mental and physical abuse, and free from chemical and physical restraints except as follows: When authorized in writing by a physician for a specified period of time; when necessary in an emergency to protect the resident from injury or to protect others, in which case restraints may be authorized by designated professional personnel who promptly report the action taken to the physician.

(7) Ensured confidential treatment of all information contained in records, including information contained in an automatic data bank, and written consent shall be required for the release of information of persons not otherwise authorized under law to receive it;

(8) Treated with consideration, respect, and full recognition of their dignity and individuality, including privacy in treatment and in care for personal needs.

(9) Not required to perform services for the facility;

(10) Free to communicate, associate and meet privately with persons of their choice unless to do so would infringe upon the rights of other residents, and send and receive personal mail unopened;

(11) Free to participate in activities of social, religious, and community groups at their discretion.

(12) Free to retain and use personal clothing and possessions as space permits.

(13) When married, ensured privacy for visits by the spouse; if both are residents in the facility, they are permitted to share a room, unless medically contraindicated.

b. Facilities shall ensure that all rights and responsibilities of the resident devolve to the resident's guardian, next of kin, or sponsoring agency or agencies, where:

(1) A resident is adjudicated incompetent in accordance with state law; or

(2) The physician has documented in the resident's record the specific impairment that has rendered the resident incapable of understanding their rights.

81.13(7) *Staffing requirements.* The facility shall maintain methods of administrative management which assure that the facility is efficiently organized to meet the varying needs of its residents for health and maintenance services and personal care. There shall be on duty all hours of each day, staff sufficient in number and qualifications to carry out the policies, responsibilities, and programs of the facility.

a. The facility shall comply with staffing requirements for intermediate care facilities set forth by the department of inspections and appeals.

b. The facility shall be administered by a person meeting the requirements of an administrator as defined in rule 441—81.1(249A).

c. Immediate supervision of the facility's health services on all days of each week shall be by a registered nurse or licensed practical or vocational nurse employed full-time on the day shift in the intermediate care facility and who is currently licensed to practice in the state.

d. Staffing requirements in a facility shall take into consideration the needs of residents as well as the size of the facility. The number and level of personnel sufficient to meet the needs of residents should be judged in terms of assisting residents to learn to live with their condition, to care for themselves, giving assistance in maintaining optimal physical and psychological functioning, encouraging participation in activities programs, protecting from accident and injury by appropriate measures, and assuring that the routine, special and emergency needs of all residents are met at all times.

e. The adequacy of the staffing pattern is dependent upon the stated purposes and objectives of the facility and admission policies, nonresident related functions performed by the staff, physical layout of the facility, level of preparation of the staff, and characteristics and intensity of resident needs.

f. Each facility shall designate a health services supervisor who meets the requirements of a health services supervisor as defined in rule 441—81.1(249A). The health services supervisor shall have experience in clinical supervision of geriatrics or mental retardation and in rehabilitative services, and shall have interest and ability in teaching others and assisting them in improving their skills. The facility shall have evidence of a valid and current licensure of the health services supervisor. This person shall be assigned exclusively to health services, and cannot be shared with other parts of the institution. The responsibilities of the health services supervisor are primarily administrative and supervisory. These duties shall be in writing and shall include items (1) to (15) below. The health services supervisor may be involved in direct nursing care only if these duties have been completed.

(1) Participation with the administrator and key staff in the formulation of written policies and procedures that directly or indirectly influence resident care including personnel policies;

(2) Assuring that the health needs of the residents are met by assigning a sufficient number of supportive personnel for each tour of duty;

(3) Conducting staff meetings at least monthly and maintaining minutes in sufficient detail to document proceedings and actions;

(4) Development of job descriptions for health personnel;

(5) Ensuring that all notes are informative and descriptive of the health care rendered and the residents' response to care;

(6) Assists in the development of admission policies and when necessary participates in the selection of prospective residents in terms of their health care needs and the staff competencies available;

(7) Reviews the health requirements of each resident admitted to the facility and assists the attending physician in planning for the resident's care.

(8) Visits each resident daily to evaluate the resident's immediate physical condition and to receive resident's comments relating to needs and problems; reviews health records, medication cards, health care plans and staff assignments;

(9) Arranges work schedule to allow time for supervision and evaluation of the performance of the health care staff;

(10) Keeps the administrator informed of the status of the residents and other related matters through written reports and verbal communication;

(11) Assigns duties and responsibilities to all health personnel in accordance with their competence and preparation;

(12) Develops and has accessible in writing, clearly defined health service objectives that are specific, practicable, and attainable, yet flexible enough to meet the need of the residents;

(13) Formulates mechanisms for regular evaluation of health care procedures and techniques based on such criteria as proper bed and chair positioning, use of safety and supportive devices, freedom from decubitus ulcers, good personal hygiene and encouraging out-of-bed activities as permitted;

(14) Responsibility for teaching, providing and coordinating rehabilitative health care including activities of daily living, including toilet training to promote and maintain optimal physical and mental functioning;

(15) Supervises the serving of proper diets to assure that individuals unable to feed themselves are fed and to assure that individuals requiring special eating utensils have them; notes and records special problems relating to eating and fluid intake.

g. When a facility employs a registered nurse consultant, the responsibilities of the nurse consultant are clearly defined in the contract. These responsibilities include:

(1) Consultation to the health services supervisor in the overall management of the health services with particular attention to the identification of health needs of each resident and plan to meet these needs; and

(2) Review of medications at least monthly if the facility does not employ a registered nurse part time.

h. The administrator or an individual on the professional staff of the facility shall be designated as resident services director and shall be assigned responsibility for the coordination and monitoring of the residents' overall plans of care. The resident service director is responsible for assuring that:

(1) The resident overall plan of care is based upon admission information, including the physician's specific medication and treatment orders and related therapeutic regimen together with observations of the staff as well as information elicited from the resident. The doctor's orders are the foundation upon which the various services build their plans into the component of an overall plan of care. The plan includes four (4) service areas: health care, rehabilitation, special services and resident activities.

(2) Resident plan of care is individualized, written in terms of short and long range goals, is understandable and utilized.

(3) The plan is revised and updated as needed based on resident's changing profile of needs.

(4) Resident needs are met through utilization of appropriate staff, and community resources.

(5) The resident is involved, whenever possible, in the preparation of the plans of care.

(6) The plan has no conflict or overlapping of services.

(7) The schedule for administration of services adheres to the policies and procedures relative to the particular service.

(8) Effective rapport is established with residents and acts as liaison between residents and responsible persons or agencies.

(9) Through cooperation with the administrator, in-service educational training is provided in the field of long-term care and health services administration.

i. A designated staff member suited by training or experience in food management or nutrition shall be responsible for planning and supervision of menus and meal service. The designated staff member shall meet one of the following criteria:

(1) Is a qualified dietitian meeting the requirements of a dietitian as defined in rule 441—81.1(249A).

(2) Is a graduate of a dietetic program, corresponding or classroom approved by the American Dietetic Association.

(3) Is a graduate of a state approved course that provides ninety (90) hours or more of classroom instruction in food service supervision and has experience as a supervisor in a health care institution with consultation from a dietary consultant.

(4) When the requirements for dietary supervisor are met by 81.13(7)"*i*"(2), or (3), the facility must employ a consultant dietitian meeting the requirements of a dietitian as defined in rule 441—81.1(249A). The consultant's visits are scheduled to be of sufficient duration and at a time convenient to work with nursing staff on resident care plans, consult with the administrator and others on the terms listed in (5) below. Documentation of consultation shall be available for review in the facility.

(5) Responsibilities of the consultant dietitian include as a minimum the following functions:

Furnish a curriculum via establishing qualifications as a dietitian.

Provide consultation to the food service supervisor and the administrator regarding priorities, planning policies and procedures, and similar matters, based on initial and ongoing evaluations of the food service department.

Provide information and education on nutrition and modified diets to residents and to families of residents as needed. Diet instructions will be provided the residents in accordance with the physician's orders.

Take diet histories, when such would be valuable, in order to find ways to meet the resident's nutrient needs.

Record pertinent data on the resident's medical charts as needed.

Provide consultation to allied professional health workers regarding diet and nutrition problems, including resident care plans and cases reviewed.

Assist in maintaining adequate nutrition referral procedures.

Provide consultation to the food service supervisor, including the areas of purchasing, preparation and service, menu-planning and modified diets, equipment selection and utilization, as well as employing, scheduling and evaluating food service personnel, cost control procedures, principles of food service sanitation, designing and directing of records which are needed for the food service operation.

Plan and implement in-service education for the staff of the facility in all areas involved in food service operation, and in meeting the nutritional needs of the residents.

Provide a written, signed summary report of consultation, activities, observations and recommendations of each consultation visit to the administrator and food service supervisor.

j. When the facility does not employ a licensed pharmacist, it shall have formal arrangements with a licensed pharmacist to provide consultation on methods and procedures for ordering storage, administration and disposal and recordkeeping of drugs and biologicals. The formal arrangements with the licensed pharmacist shall be in writing, and delineate the services to be provided. The consultant's visits are scheduled to be of sufficient duration and at a time convenient to work with nursing staff on resident care plan, consult with the administrator and others on developing and implementing policies and procedures, and planning in-service training and staff development for employees. Documentation of consultation shall be available for review in the facility.

k. Each facility shall designate a staff member to be responsible for developing and implementing the social services program and for the integration of social services with other elements of the plan of care. This requirement may be met in either of the following ways:

(1) The designated staff person is a social worker meeting the requirements of a social worker as defined in rule 441—81.1(249A).

(2) A person not meeting the requirements of a social worker may be designated if the facility also employs a consultant social worker meeting the requirements of a consultant social worker as defined in rule 441—81.1(249A). The consultant's visits are scheduled to be of sufficient duration and at a time convenient to work with the designated social services staff per-

son on resident care plans, consult with the administrator and others on developing and implementing policies and procedures, and planning in-service training and staff development for employees. Documentation of consultation shall be available for review in the facility.

l. A staff member meeting the requirements of an activities director as defined in rule 441—81.1(249A) shall be responsible for the direction and supervision of the activities program.

81.13(8) *Arrangements for services.*

a. The facility has direct responsibility for providing physical therapy, occupational therapy, speech therapy and audiology.

These institutional services shall be maintained through a written agreement with an outside resource in those instances where the facility does not employ a qualified professional person to render a required service. The responsibilities, function, and objectives and the term of agreement with each resource shall be delineated in writing and signed by the administrator or authorized representative and the resource.

b. When a facility enters into an agreement with a consultant dietitian, pharmacy consultant, registered nurse consultant or social service consultant, minimum requirements set forth in 81.13(7) shall be met.

c. Medical and remedial services arrangements shall be maintained through which medical and remedial services required by the resident but not regularly provided within the facility can be obtained promptly when needed.

(1) Agreements shall specify that the facility retains professional and administrative responsibility for the services rendered.

(2) The outside resource, when acting as a consultant, apprises the administrator of recommendations, plans for implementation, and continuing assessment through dated, signed reports, which are retained by the administrator for follow-up action and evaluation of performance.

81.13(9) *Responsible staff members.* Staff members shall be on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire or other emergenies. Twenty-four (24)-hour health service requires that the number and level of personnel is sufficient to meet the total needs of the residents. Responsible staff members shall be employees of the facility who have had both training and experience in handling emergencies in the absence of licensed and professional staff members.

81.13(10) *Environmental and sanitation conditions.*

a. The residents' living areas shall be designed and equipped for the comfort and privacy of the resident. Each room shall be equipped with or conveniently located near adequate toilet and bathing facilities appropriate in number, size, and design to meet the needs of residents. Each room shall be at or above grade level and each resident room shall contain a suitable bed, closet space which provides security and privacy for clothing and personal belongings, and other appropriate furniture.

(1) Resident bedrooms shall have no more than four (4) beds. Single resident rooms shall measure at least one hundred (100) square feet and multiresident rooms at least eighty (80) square feet per bed. The survey agency may waive in existing buildings, for periods as deemed appropriate, provisions which, if rigidly enforced, would result in unreasonable hardship upon the facility but only when the waiver is in accordance with the particular needs of the residents and will not adversely affect their health and safety.

(2) Each room shall have an individual reading light, bedside cabinet, comfortable chair, and storage space for clothing and other possessions. Each room shall have a night light. To ensure privacy in multipatient rooms, each bed shall have flame retardant cubicle curtains or partitions.

(3) Each resident room shall have handwashing facilities with both hot and cold running water, unless provided in adjacent toilet or bathroom facilities. The temperature of hot water accessible to patients should not exceed 110°F at the fixture.

(4) At least one (1) toilet, enclosed in a separate room or stall and equipped with a call signal, shall be provided for each eight (8) beds.

(5) Each floor shall have at least one (1) toilet room large enough to accommodate a wheelchair and resident transfer.

(6) Each bathtub or shower shall be equipped with a call signal and shall ensure patient privacy. At least one (1) bathing facility shall be large enough to accommodate a wheelchair and attendant.

(7) Substantially secured and conveniently located grab bars and other safeguards against slipping shall be installed in all toilet and bathing compartments.

b. The facility shall have available at all times a quantity of linen adequate for proper care and comfort of residents. Each bed shall be equipped with clean linen.

(1) The supply of linen shall be at least three (3) times that necessary for the number of occupied beds.

(2) The sorting of soiled linen, laundering, and extraction shall be done in one room, ironing, folding, and storage of clean linen shall be done in separate rooms, if available, and reverse exhaust fans shall be utilized to prevent cross contamination.

(3) The clean linen and clothing shall be stored in clean, dry dust-free areas easily accessible to the nurses' station.

(4) The soiled linen and clothing shall be placed in suitable bags or containers in well-ventilated areas, separate from clean linen, and shall not be permitted to accumulate in the facility.

c. An adequate supply of hot water for resident use shall be available at all times. Temperature of hot water at plumbing fixtures used by residents shall be automatically regulated by control valves.

d. Corridors used by residents shall be equipped with firmly secured handrails.

e. Provision shall be made for isolating residents with infectious diseases. Procedures for isolation techniques shall be established in writing and followed by all personnel. The following procedures shall be followed:

(1) Provision shall be made for isolating the resident, as necessary, in a single room which is equipped with a private toilet and handwashing facilities.

(2) Contaminated laundry shall be kept in clearly marked bags and handled separately.

(3) When nondisposable dishes and flatware are used in serving patients in isolation, they shall be kept clearly marked, and handled separately. When disposables are used, they shall be placed in clearly marked containers and promptly destroyed.

(4) Staff, visitors and others in contact with infectious residents shall use special gowns or clothing which shall be removed and hands shall be carefully washed after contact.

f. The facility shall provide one or more areas for resident dining, diversional, and social activities. Areas used for corridor traffic shall not be considered as areas for dining, diversional or social activities.

g. When a multipurpose room is used for dining, diversional and social activities, there shall be sufficient space to accommodate all activities and to prevent their interference with each other.

h. The facility shall arrange menus and meal service so that at least three (3) meals or their equivalent are served daily, at regular times, with not more than fourteen (14) hours between a substantial evening meal and breakfast. Bedtime snacks of nourishing quality shall be offered routinely to all residents not on diets prohibiting bedtime nourishment.

i. The menus shall be planned and followed to meet nutritional needs of residents, in accordance with physician's orders and to the extent medically possible, in accordance with the recommended dietary allowances of the food and nutrition board of the national research council, national academy of sciences.

j. All food shall be procured, stored, prepared, distributed and served under sanitary conditions.

(1) Food shall be stored, prepared and transported at appropriate temperatures and by methods to prevent contamination. Potentially hazardous food, that is, any perishable food which consists of milk products, meats, poultry, fish, shellfish, or other ingredients capable of supporting rapid growth of harmful micro-organisms, should reach the resident at safe temperatures of 45°F or below or 140°F or above.

(2) Handwashing facilities including hot and cold water, soap and individual towels shall be provided in kitchen areas.

(3) Procedures and maintenance schedules for dishwashing and clean equipment and work areas shall be posted and followed consistently.

(4) Waste which is not disposed by mechanical means shall be kept in leak proof non-absorbent containers with close-fitting covers and disposed of daily. Nondisposable containers shall be cleaned daily.

(5) Written reports of inspections by state or local health authorities shall be on file with notation made of action taken by the facility to comply with any recommendations.

k. Individuals needing special equipment, implements or utensils to assist them when eating shall have the items provided.

l. When the facility accepts or retains individuals in need of medically prescribed special diets, the menus for the diets shall be planned by a professionally qualified dietitian and approved by the attending physician, and the facility shall provide supervision of the preparation and serving of the meals.

m. Services shall be provided for therapy and areas for such services shall be of sufficient size and of appropriate design to accommodate necessary equipment, conduct examinations and provide treatment.

(1) Each rehabilitation services area shall be accessible to residents.

(2) Equipment shall be structurally sound and routinely calibrated and principles of electrical safety shall be observed.

(3) Equipment shall be periodically inspected and maintained.

n. The facility shall be accessible to and functional for residents, personnel and the public. All necessary accommodations shall be made to meet the needs of persons with semiambulatory disability, sight and hearing disability, disabilities of coordination, as well as other disability in accordance with American National Standards Institute Standard No. A117.1.

81.13(11) *Health care plan.* A written health care plan shall be developed and implemented by appropriate staff for each resident in accordance with instructions of the attending or staff physician and shall be reviewed at least quarterly. The health care plan shall be incorporated in the overall plan of care and shall be readily available for use by all personnel caring for the resident.

a. The health care plan shall be personalized for the individual resident and indicate the care to be given, goals to be accomplished and the methods, approaches and modifications necessary to achieve best results for the resident. The role of each service shall be clearly described in the plan and is part of the total resident care plan.

b. Relevant information from the resident care plan shall be available with other information that is transmitted when the resident is transferred to another institution or referred for continuing care by other agencies upon discharge to the community.

c. The resident shall be made aware of the goal of care and, where appropriate, participate in the development of the plan.

d. The health services supervisor shall be responsible for preparing, reviewing, supervising the implementation, and revising the written health care plan.

81.13(12) *Emergency care of residents.*

a. There shall be written procedures for personnel to follow in an emergency, including care of the resident, notification of the attending physician and other persons responsible for the resident, arrangements for transportation, hospitalization, or other appropriate services.

b. Written arrangements shall be made for emergency physician services when the attending physician or alternate is not immediately available.

c. The name and telephone numbers of emergency physicians shall be available.

d. The name and telephone number of the resident's next of kin or other responsible person, and responsible agency, if applicable, to be contacted in an emergency shall be in the resident's record.

e. A written report is required on any accident or unusual incident involving a resident. The incident report shall be completed in duplicate, one to the administrator and one as a record, and shall include the name of the resident, witnesses if indicated, date, time, and extent of the accident or incident, the circumstances under which it occurred, and the action taken.

f. An emergency medication kit, the content of which has been determined on the advice of a physician, a pharmacist, and a registered nurse, shall be maintained in a locked and sealed compartment. The policies shall delineate the staff that are permitted to use the contents of the kit in an emergency or to have access to the keys to obtain the kit for a qualified person.

81.13(13) *Restorative nursing care.*

a. Restorative nursing care shall be provided to each resident to achieve and maintain the highest possible degree of function, self-care and independence.

b. The therapists and health service personnel shall participate in the planned restorative training program. Health service personnel shall routinely perform restorative measures in their daily care of residents.

81.13(14) *Physician's certification.* The facility shall maintain policies and procedures to assure that each resident's health care is under the continuing supervision of a physician who sees the resident as needed.

The resident shall be admitted only upon the recommendation of a physician and the overall plan of care based upon the attending physician's orders shall be reviewed and revised in consultation with the health care supervisor at intervals appropriate to the needs of the resident.

81.13(15) *Drugs and biologicals.*

a. Medications administered to a resident shall be ordered either in writing or orally by the resident's attending or staff physicians. Oral orders shall be given only to a licensed nurse, pharmacist or physician and shall be immediately recorded and signed by the person receiving the order with verbal orders being countersigned or confirmed in writing by the attending physician within forty-eight (48) hours.

(1) Medications shall be administered by methods stated in the physician's order and given on time.

(2) Verbal orders shall be countersigned or confirmed in writing by the attending physician within forty-eight (48) hours.

(3) Drugs for outpatient use shall be released to a resident upon discharge only after proper labeling by the pharmacist for outpatient use, and only on written authorization by the attending physician. A notation of drugs taken away by the patient on discharge shall be entered in the patient's medical record.

b. Medication not specifically limited as to time or number of doses when ordered shall be controlled by automatic stop orders or other methods in accordance with written policies and state law governing these procedures.

c. Self-administration of medication shall be allowed only with permission of the resident's attending physician.

(1) Drugs brought to the facility by the resident shall be used only if they have been positively identified as to name and strength and shall be used only upon the written orders of the attending physician.

(2) Self-administration of medications by a resident shall be periodically checked by the health services supervisor to determine that the resident is taking medications as directed and that they are properly and safely stored.

(3) Drugs for outpatient use shall be released to a resident upon discharge only after labeling for outpatient use by the pharmacist, and only on written authorization by the

attending physician. A notation of drugs released to resident upon discharge is entered in the resident's record.

d. A registered nurse shall review each resident's medications monthly and notify the physician when changes are appropriate. This review shall include procedures of administration, recording of medication, possible drug reactions and interactions, and follow-up of medication errors. Documentation of the review of each resident's medication shall be accomplished in the following manner:

(1) When there are no problems the registered nurse shall note in the record that the medications have been reviewed.

(2) When there are problems, the registered nurse shall contact the attending physician and note the contact and corrective action in the record.

e. Medications shall be reviewed quarterly by the attending or staff physician on a quarterly basis.

f. All personnel administering medications shall have completed a state-approved training program in medication administration.

(1) The facility's records of all personnel whose assignments include administration of medication shall reflect that the individuals have successfully completed a state-approved program, and have had additional orientation to the facility policies and procedures.

(2) Registered nurses and licensed practical nurses are deemed to meet the requirement for completion of a state-approved program in medication administration.

(3) The policies governing the administration of drugs and biologicals shall include provision for establishing procedures to ensure that drugs and biologicals are administered in a safe and acceptable manner by qualified personnel, administering and monitoring drugs on an individual basis, and adequately maintaining records thereof and identify the licensed personnel (pharmacist, physicians, or nurse) eligible and available to receive physician's oral orders for prescription drugs when a licensed nurse is not on duty.

(4) Drugs and biologicals shall be prepared and administered during the same shift by the same person.

(5) A list of appropriate and approved abbreviations shall be in the facility's policy manual.

(6) Current reference material on use of drugs shall be readily available.

81.13(16) *Personal hygiene, grooming and other personal services.* Residents shall be trained to exercise maximum independence in health, hygiene and grooming practices.

a. Every resident who does not eliminate properly shall be engaged in a toilet training program.

b. Procedures shall be established for assuring that residents maintain normal weights.

c. Provisions shall be made to furnish and maintain in good repair, and to encourage the use of dentures, eyeglasses, hearing aids, braces or other medical appliances and equipment as prescribed by appropriate specialists.

81.13(17) *Clothing.* Each resident shall have an adequate allowance of the resident's own neat, clean, suitable and seasonable clothing which is, where necessary, properly marked with the resident's name. Residents shall be dressed daily unless contraindicated in written medical orders. Storage space for clothing to which the resident has access shall be provided.

81.13(18) *Social services.* The facility shall provide or arrange for social services as needed by the resident, designed to promote preservation of the resident's physical and mental health. A plan for this care shall be recorded in the resident's record and shall be periodically evaluated in conjunction with the resident's total plan of care.

81.13(19) *Activities program.*

a. The facility shall provide an activities program designed to encourage restoration to self-care and maintenance of normal activity.

b. A plan for independent and group activities shall be developed for each resident in accordance with needs and interests.

(1) The plan shall be incorporated in the overall plan of care and shall be reviewed with the resident at least quarterly and altered as needed.

(2) Residents, both ambulatory and nonambulatory, are encouraged but not forced, to participate in planned activities appropriate to the resident's needs.

c. Staffing for the activity program shall be provided on the minimum basis of thirty-five (35) minutes per licensed bed per week. This time shall be spent in working with the organized activity program.

d. The facility shall provide adequate indoor and outdoor space and sufficient equipment and materials to support independent and group activities.

e. When multipurpose space is used, scheduling shall be made so that one activity does not interfere with another.

81.13(20) *Rehabilitative services.*

a. The facility shall provide, according to the needs of the residents, specialized and supportive rehabilitative services. These may be provided either directly or through arrangements with qualified outside resources.

b. Rehabilitative services shall be provided under a written plan of care, developed in consultation with the attending physician and, when necessary, an appropriate therapist.

81.13(21) *Inservice education program.*

a. The facility shall have in writing, an ongoing inservice educational program that begins with orientation and continues throughout the duration of employment for all staff members.

b. Inservice training shall include as a minimum the following:

(1) Prevention and control of infections.

(2) Fire prevention and safety.

(3) Accident prevention.

(4) Confidentiality of patient information.

(5) Preservation of resident dignity, including protection of privacy and personal and property rights.

(6) Problems and needs of resident specifically related to advanced age.

c. Time shall be provided for all staff to attend outside workshops and continuing educational programs.

d. There shall be a record of the content and attendance at each session.

81.13(22) *Reasonable charges.* Participation in the medical assistance program shall be limited to providers of service who accept, as payment in full, the amounts paid in accordance with the fee structure established for intermediate care facilities.

81.13(23) *Records.*

a. The facility shall maintain organized records for each resident, retained at a location that is conveniently accessible to appropriate staff. Records shall include as a minimum:

(1) Identification information and admission data, including past resident medical and social history.

(2) Copies of initial and periodic examinations, evaluations, and progress notes including all plans of care and any modifications thereto and discharge summaries.

(3) An overall plan of care setting forth goals to be accomplished, prescribing an integrated program of individual designed activities, therapies, and treatments necessary to achieve the goals and indicating which professional service or individual is responsible for each element of care or service prescribed in the plan.

(4) Entries describing treatments and services rendered and medications administered.

(5) All symptoms and other indications of illness or injury including the date, time, and action taken regarding each.

b. Protection of resident record information shall be adequately safeguarded against destruction, loss, or unauthorized use.

c. Records shall be retained for a minimum of three (3) years following a resident's discharge.

81.13(24) *Transfer agreement.*

a. The facility shall have in effect a written transfer agreement with one or more hospitals sufficiently close to the facility to make feasible the transfer between them of residents and their records, which provides the basis for an effective working arrangement under which in-patient hospital care or other hospital services are available promptly to the facility's residents when needed.

b. Any facility which does not have an agreement in effect but which is found by the survey agency to have attempted in good faith to enter into an agreement with a hospital shall be considered to have an agreement in effect if and for so long as the survey agency finds that to do so is in the public interest and essential to assuring intermediate care facility services for eligible persons in the community.

81.13(25) *Life safety code.* Each intermediate care facility shall meet the provisions of the life safety code of the national fire protection association as are applicable to institutional occupancies, with the following exceptions:

a. For facilities of fifteen (15) beds or less, the state survey agency may apply the lodging or rooming houses section of the residential occupancy requirements of the code for intermediate care facilities primarily engaged in the treatment of alcoholism and drug abuse, if all of those residents are certified by a physician or psychologist to be:

(1) Ambulatory,

(2) Engaged in active programs for rehabilitation which are designed to and can reasonably be expected to lead to independent living and,

(3) Capable of following directions and taking appropriate action for self-preservation under emergency conditions.

b. In accordance with criteria issued by the Secretary of the Department of Health and Human Services, the state survey agency may waive the application to any such facility of specific provisions of the code, for periods as it deems appropriate, which provisions if rigidly applied would result in unreasonable hardship upon a facility, but only if the waiver will not adversely affect the health and safety of the residents.

81.13(26) *Disaster preparedness.* The facility shall have a written and regularly rehearsed plan for staff and residents in case of fire, explosion, or other emergency. The written plan shall include procedures for the care of casualties of residents and personnel arising from a disaster. The plan shall be developed and maintained with the assistance of qualified fire, safety, and other appropriate experts, and shall be posted throughout the facility. The plan shall be rehearsed at least semiannually on each tour of duty and a written report and evaluation of each rehearsal shall be maintained.

81.13(27) *Facilities for the physically handicapped.* The facility shall be accessible to and functional for the residents, personnel and the public. All the necessary accommodations shall be made to meet the needs of persons with semiambulatory disability, disabilities of coordination, as well as other disability in accordance with American National Standards Institute (ANSI) Standard No. A117.1(1961) American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable By, the Physically Handicapped.

81.13(28) *Appeals of decertification actions.* A facility that has been surveyed by the department of inspections and appeals and found to be in substantial noncompliance with these rules may be denied continued program certification.

a. When decertification is contemplated, the department of inspections and appeals shall send timely and adequate notice to the facility in accordance with 42 CFR 431.151 through 431.154 as amended to October 1, 1985.

b. Requests for a hearing shall be made to the department of inspections and appeals within fifteen (15) days of receipt of the notice of decertification.

(1) When a hearing is held, it shall be in accordance with rules 470—chapter 173.

(2) When a final decision is issued by the department of inspections and appeals, that decision is binding upon the department.

c. The department will only hear appeals in cases where it acts independently of the department of inspections and appeals in initiating decertification action in accordance with 81.13(2)*"b"* or *"c."*

d. At any time prior to or subsequent to an evidentiary hearing, the department of inspections and appeals will be willing to negotiate an amicable resolution or discuss the possibility of settlement with the facility owner.

81.13(29) *Respite care for Title XIX waiver recipients.* Intermediate care facilities may be used to provide respite care as defined in rule 441—83.1(249A) to eligible individuals in the Title XIX waiver program.

This rule is intended to implement Iowa Code sections 249A.2(6) and 249A.3(2)*"a"* and 1984 Iowa Acts, chapter 1310, section 3.

441—81.14(249A) Audits.

81.14(1) *Audit of financial and statistical report.*

Authorized representatives of the department or the Department of Health and Human Services shall have the right, upon proper identification, to audit, using generally accepted auditing procedures, the general financial records of a facility to determine if expenses reported on the Financial and Statistical Report for Nursing Homes, Form AA-4036-0, are reasonable and proper according to the rules set forth in 441—81.6(249A). The aforementioned audits may be done either on the basis of an on-site visit to the facility, their central accounting office, or office(s) of their agent(s).

a. When a proper per diem rate cannot be determined, through generally accepted and customary auditing procedures, the auditor shall examine and adjust the report to arrive at what appears to be an acceptable rate and shall recommend to the department that the indicated per diem should be reduced to seventy-five percent (75%) of the established payment rate for the ensuing six (6)-month period and if the situation is not remedied on the subsequent Financial and Statistical Report for Nursing Homes, Form AA-4036-0, the health facility shall be suspended and eventually canceled from the intermediate care facility program, or

b. When a health facility continues to include as an item of cost an item or items which had in a prior audit been removed by an adjustment in the total audited costs, the auditor shall recommend to the department that the per diem be reduced to seventy-five percent (75%) of the current payment rate for the ensuing six (6)-month period. The department may, after considering the seriousness of the exception, make the reduction.

81.14(2) *Audit of proper billing and handling of patient funds.*

a. Field auditors of the department of inspections and appeals, or representatives of Health and Human Services, upon proper identification, shall have the right to audit billings to the department and receipts of client participation, to ensure the facility is not receiving payment in excess of the contractual agreement and that all other aspects of the contractual agreement are being followed, as deemed necessary.

b. Field auditors of the department of inspections and appeals or representatives of Health and Human Services, upon proper identification, shall have the right to audit records of the facility to determine proper handling of patient funds in compliance with subrule 81.4(3).

c. The auditor shall recommend and the department shall request repayment by the facility to either the department or the resident(s) involved, any sums inappropriately billed to the department or collected from the resident.

d. The facility shall have sixty (60) days to review the audit and repay the requested funds or present supporting documentation which would indicate that the requested refund amount, or part thereof, is not justified.

e. When the facility fails to comply with paragraph *"d,"* the requested refunds may be withheld from future payments to the facility. The withholding shall not be more than twenty-five percent (25%) of the average of the last six (6) monthly payments to the facility. The withholding shall continue until the entire requested refund amount is recovered. If in the event the audit results indicate significant problems, the audit results may be referred to the attorney general's office for whatever action may be deemed appropriate.

f. When exceptions are taken during the scope of an audit which are similar in nature to the exceptions taken in a prior audit, the auditor shall recommend and the department may, after considering the seriousness of the exceptions, reduce payment to the facility to seventy-five percent (75%) of the current payment rate.

This rule is intended to implement Iowa Code sections 249A.2(6), 249A.3(2)*"a"* and 249A.12.

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CHAPTER 82
INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

[Prior to 7/1/83, Social Services(770), Ch 82]
[Prior to 2/11/87, Human Services(498)]

441—82.1(249A) Definitions.

"Department" means the Iowa department of human services.

"Qualified mental retardation professional" means a person who qualifies under one of the following categories:

1. A psychologist with at least a master's degree from an accredited program and one (1) year of experience in treating the mentally retarded.
2. A physician licensed under state law to practice medicine or osteopathy and one (1) year experience in treating the mentally retarded.
3. An educator with a degree in education from an accredited program and one (1) year experience in working with the mentally retarded.
4. A social worker with a bachelor's degree in social work from an accredited program, or a bachelor's degree in a field other than social worker and at least three (3) years social work experience under the supervision of a qualified social worker, and one (1) year experience in working with the mentally retarded.
5. A physical or occupational therapist who has one (1) year experience in treating the mentally retarded.
6. A speech pathologist or audiologist who is licensed, when applicable, by the state in which practicing, and has one (1) year experience in treating the mentally retarded.
7. A registered nurse who has one (1) year of experience in treating the mentally retarded.
8. A therapeutic recreation specialist who is a graduate of an accredited program and, where applicable, is licensed or registered in the state where practicing, and who has one (1) year of experience in working with the mentally retarded.

This rule is intended to implement Iowa Code section 249A.12.

441—82.2(249A) Licensing and certification. In order to participate in the program, a facility shall be licensed as a hospital, skilled nursing home, intermediate care facility, an intermediate care facility for the mentally retarded by the department of inspections and appeals under chapter 64* of rules of the department of inspections and appeals. The facility shall meet the following conditions of participation:

82.2(1) *Conformity with laws.* The facility shall conform with federal, state, and local laws, codes, and regulations pertaining to health and safety, including procurement, dispensing, administration, safeguarding, and disposal of medications and controlled substances; building, construction, maintenance and equipment standards; sanitation; communicable and reportable diseases; and post-mortem procedures.

82.2(2) *General administrative policies and practices.*

a. The facility shall have a written philosophy, objectives, and goals, that are available for distribution to staff, consumer representatives, and the interested public. The philosophy, objectives, and goals shall include at least:

(1) The facility's role in the state comprehensive program for the mentally retarded.

(2) The facility's goals for its residents.

(3) The facility's concept of its relationship to the parents of its residents, or to their surrogates.

b. The facility shall have a written statement of policies and procedures concerning the rights of residents that assure the civil rights of all residents.

c. The facility shall have written policies and procedures that protect the financial interests of residents; provide for counseling of the resident concerning use of large sums accrued; protect these funds; and permit normalized and normalizing possession and use of money by residents for work payment and property administration.

d. Policies and procedures in the major operating units of the facility shall be described in manuals that are current, relevant, available, and followed.

*Until transition from health department, see 470—ch 64.

e. The facility shall have a plan for a continuing management audit to ensure compliance with state laws and regulations and for effective implementation of its stated policies and procedures.

f. A governing body of the facility shall exercise general direction and shall establish policies concerning the operation of the facility and the welfare of the individuals served.

g. The governing body shall establish appropriate qualifications for the chief executive officer in terms of education, experience, personal factors, and skills.

h. The chief executive officer shall make arrangements so that some one individual is responsible for the administrative direction of the facility at all times.

i. A table of organization shall provide for and show the major operating programs of the facility, with staff division; and the administrative personnel in charge of program and division, and their lines of authority, responsibility, and communication.

j. The administration of the facility shall provide for effective staff and resident participation and communication.

(1) Standing committees appropriate to the facility, such as human rights, research review, and infection shall be constituted and shall meet regularly. Committees shall include the participation of direct-care staff, whenever appropriate.

(2) Minutes and reports of staff meetings, and of standing and ad hoc committee meetings shall include records of recommendations and their implementation, and shall be kept and filed.

k. There shall be an active program of ready, open, and honest communication with the residents and families.

(1) The facility shall maintain active means of keeping resident's families or surrogates informed of activities related to the residents that may be of interest to them or of significant changes in the resident's condition.

(2) Communications to the facility from resident's relatives shall be promptly and appropriately handled and answered.

(3) Close relatives and parent surrogates shall be permitted to visit at any reasonable hour, and without prior notice unless contraindicated by the resident's needs. Steps shall be taken, however, so that the privacy and rights of the other residents are not infringed by this practice.

(4) Parents shall be permitted to visit all parts of the facility that provide services to residents.

(5) Frequent and informal visits home shall be encouraged and the regulations of the facility shall facilitate rather than inhibit the visitations.

82.2(3) *Disclosure of ownership.* The facility shall supply to the licensing agency full and complete information, and promptly report any changes which would affect the current accuracy of the information, as to identify:

a. Each person having a direct or indirect ownership interest of five percent (5%) or more in the facility and the owner in whole or in part of any property or assets (stock, mortgage, deed of trust, note or other obligation) secured in whole or in part by the facility.

b. In case a facility is organized as a corporation, also of each officer and director of the corporation.

c. In case a facility is organized as a partnership, also of each partner.

82.2(4) *Transfer agreement.* The facility shall have in effect a transfer agreement with one or more hospitals sufficiently close to the facility to make feasible the transfer between them of residents and their records, which provide the basis for effective working arrangements under which inpatient hospital care or other hospital services are available promptly to the facility's residents when needed. Any facility which does not have an agreement but has attempted in good faith to enter into an agreement with a hospital shall be considered to have an agreement so long as it is in the public interest and essential to assuring intermediate care facility services for eligible persons in the community.

82.2(5) *Admission and release.*

a. Residents shall be admitted only when it has been determined that the resident is in need of the care and services provided by the institution.

b. No individual whose needs cannot be met by the facility shall be admitted to it. The number admitted as residents to the facility shall not exceed:

(1) Its rated capacity; and

(2) Its provisions for adequate programming

c. The laws, regulations, and procedures concerning admission, readmission, and release shall be summarized and available for distribution.

d. The residential facility shall admit only residents who have had a comprehensive evaluation by an appropriately constituted interdisciplinary team covering physical factors, emotional factors, social factors, and cognitive factors.

e. Initial service need shall be defined without regard to the actual availability of the desirable options.

(1) All available and applicable programs of care, treatment, and training shall be investigated and weighed and the deliberations and findings recorded.

(2) Admissions to the residential facility shall occur only when it is determined to be the optimal available plan.

(3) Where admission is not the optimal measure, but must nevertheless be recommended or implemented, its appropriateness shall be clearly acknowledged and plans shall be initiated for the continued and active exploration of alternatives.

f. Within the period of one (1) month after admission there shall be:

(1) A review and updating of the preadmission evaluation.

(2) A prognosis that can be used for programming and placement.

(3) Direct-care personnel participation in the aforementioned activities.

(4) Recorded in the residents unit record the results of the evaluations.

(5) A written interpretation of the evaluation, in action terms, which is made to the direct care personnel responsible for carrying out the resident's program, the special services staff responsible for carrying out the resident's program, and the resident's parents or surrogates.

g. There shall be a regular, at least annual, joint review of the status of each resident by all relevant personnel including personnel in the living unit, with program recommendations for implementation. This review shall include:

(1) Consideration of the advisability of continued residence and alternative programs.

(2) At the time of the resident's attaining majority, or when the resident becomes emancipated prior thereto, the need for guardianship of the resident and the exercise of the resident's civil and legal rights.

h. The results of these reviews shall be recorded in the resident's unit record, made available to relevant personnel, interpreted to the resident's parents or surrogates who shall be involved in planning and decision-making, and interpreted to the resident, when appropriate.

i. At the time of permanent release or transfer, there shall be recorded a summary of findings, progress, and plans.

j. Planning for release shall include provision for appropriate services, including protective supervision and other follow-up services in the resident's new environment. Procedures shall be established so parents or guardians who request the release of a resident are counseled concerning the advantages and disadvantages of the release.

k. When a resident is transferred to another facility, there shall be written evidence of the reason for the transfer, and, except in an emergency, prior knowledge, and ordinarily the written consent, of the resident and guardian.

l. In the event of any unusual occurrence, including serious illness or accident, impending death, or death, the resident's next of kin, or the person who functions in that capacity, such as a guardian or citizen advocate, shall be notified promptly.

m. When death occurs any autopsy shall be performed by a qualified physician, so selected as to be free of any conflict of interest or loyalty; and the family shall be told of the autopsy findings, if they so desire.

82.2(6) *Active treatment.* Active treatment includes:

a. Regular participation in professionally developed and supervised activities, experiences, or therapies.

b. An individual written plan of care which:

(1) Sets forth measurable goals or behaviorially stated objectives.

(2) Prescribes an integrated program of individually designed activities, experiences or therapies necessary to attain or maintain the optimal physical, intellectual, social, or vocational functioning of which the individual is presently or potentially capable.

c. An interdisciplinary professional evaluation that:

(1) Provides for a complete medical, social, and psychological diagnosis and evaluation.

(2) Provides for evaluation of the individual's need for institutional care.

(3) Is conducted by a physician, a social worker and other professionals.

(4) At least one member of the team is a qualified mental retardation professional.

d. Reevaluation medically, socially, and psychologically at least annually by staff involved in carrying out the resident's plan of care including:

(1) Review of progress toward meeting plan objectives.

(2) Appropriateness of the plan of care.

(3) Assessment of continuing need for institutional care.

(4) Consideration of alternate methods of care.

e. An individual post-institutional plan developed prior to discharge by a qualified mental retardation professional and other appropriate professionals which includes provision for appropriate services, protective supervision, and other follow-up services in resident's new environment.

82.2(7) *Administrative management.* The facility shall maintain methods of administration which assure that:

a. Except in the case of an emergency, the resident, next of kin, attending physician, and the responsible agency, if any, are consulted in advance of the transfer or discharge of any resident, and casework services or other means are utilized to assure that adequate arrangements exist for meeting the resident's needs through other resources.

b. A written account, available to residents and their families, is maintained on a current basis for each resident with:

(1) Written receipts for all personal possessions and funds received by or deposited with the facility.

(2) Written receipt for all disbursements made to or on behalf of the resident.

82.2(8) *Personnel policies.*

a. The hiring, assignment, and promotion of employees shall be based on their qualifications and abilities, without regard to sex, race, color, creed, age, ethnic, or national origin.

b. Written job descriptions shall be available for all positions.

c. Licensure, certification, or standards such as are required in community practice shall be required for all comparable positions in the facility.

d. Ethical standards or professional conduct, as developed by professional societies, shall be recognized as applying in the facility.

e. There shall be an authorized procedure, consistent with due process, for suspension or dismissal of an employee for cause.

f. The facility's personnel policies and practices shall be in writing and available to all its employees.

g. Written policy shall prohibit mistreatment, neglect, or abuse of residents. Alleged violations shall be reported immediately, and there shall be evidence that:

(1) All alleged violations are thoroughly investigated.

(2) The results of the investigation are reported to the chief executive officer, or designated representative within twenty-four (24) hours of the report of the incident.

(3) Appropriate sanctions are invoked when the allegation is substantiated.

h. Staffing shall be sufficient so that the facility is not dependent upon the use of residents or volunteers for productive services. There shall be a written policy to protect residents from exploitation when engaged in productive work.

i. Appropriate to the size and nature of the facility there shall be a staff training program that includes:

(1) Orientation for all new employees to acquaint them with the philosophy, organization, program, practices, and goals of the facility.

(2) Inservice training for employees who have not achieved the desired level of competence, and continuous inservice training to update and improve the skills and competencies of all employees.

(3) Supervisory and management training for all employees in, or candidates for, supervisory positions.

j. Where appropriate to the size and nature of the facility, there shall be an individual designated to be responsible for staff development and training.

k. Written policies shall be in effect to ensure that employees with symptoms or signs of communicable disease are not permitted to work.

82.2(9) *Administrator.* The institution shall be administered by a person licensed in the state as a nursing home administrator, or a qualified mental retardation professional with at least one year of administrative experience or, in the case of a hospital qualifying as an institution for the mentally retarded or persons with related conditions, by the hospital administrator. The administrator shall have the necessary authority and responsibility for management of the institution and implementation of administrative policies.

82.2(10) *Qualified mental retardation professional.* The institution shall provide for a qualified mental retardation professional who is responsible for supervising the implementation of each resident's individual plan of care, integrating the various aspects of the institution's program, recording each resident's progress, and initiating periodic review of each individual plan of care for necessary modifications or adjustments.

82.2(11) *Arrangements for services.*

a. The facility shall maintain effective arrangements for required institutional services through a written agreement with an outside resource in those instances where the facility does not employ a qualified professional person to render a required service. The responsibilities, functions and objectives and the terms of agreement with each resource shall be delineated in writing and signed by the administrator or authorized representatives and the resource.

b. The facility shall maintain effective arrangements through which medical and remedial services required by the resident but not regularly provided within the facility can be obtained promptly when needed.

82.2(12) *Staff-resident relationships and activities.*

a. The primary responsibility of living unit staff shall be to devote their attention to the care and development of the residents as follows:

(1) Living unit personnel shall train residents in activities of daily living and in the development of self-help and social skills.

(2) Appropriate provisions shall be made to ensure that the efforts of the staff are not diverted from these responsibilities by excessive housekeeping and clerical duties, or other nonresident-care activities.

b. Members of the living unit staff from all shifts shall participate in activities relative to the care and development of the resident including appropriate referral, planning, initiation, coordination, implementation, follow-through, monitoring, and evaluation.

c. There shall be specific evaluation and program plans for each resident that are:

(1) Available to direct care staff in each living unit.

(2) Reviewed by a member or members of an interdisciplinary program team at least monthly, with documentation of the review entered in the resident's record.

d. Activity schedules shall be developed for each resident, and shall be available to direct care staff and shall be implemented daily.

(1) The schedules shall not permit "dead time" of unscheduled activity of more than three (3) hours of continuous duration.

(2) The schedules shall allow for individual or group free activities, with appropriate materials, as specified by the program team.

e. Multiple-handicapped and nonambulatory residents shall:

(1) Spend a major portion of their waking day out of bed.

(2) Spend a portion of their waking day out of their bedroom areas.

(3) Have planned daily activity and exercise periods.

(4) Be rendered mobile wherever possible by various methods and devices.

f. All residents shall have planned periods out of doors on a year-round basis.

g. Residents shall be permitted personal possessions, such as toys, books, pictures, games, radios, arts and crafts materials, religious articles, toiletries, jewelry and letters.

h. There shall be a written statement of policies and procedures for the control and discipline of residents that is available in each living unit; available to parents or guardians; and, where appropriate, formulated with resident participation.

i. Corporal punishment shall not be permitted. Residents shall not discipline other residents, except as part of an organized self-government program that is conducted in accordance with written policy.

j. Seclusion, defined as the placement of a resident alone in a locked room, shall not be employed.

k. Except as provided in paragraph "*m*" of this subrule, physical restraint shall be employed only when absolutely necessary to protect the resident from injury to self or others. Restraint shall not be employed as punishment, for the convenience of staff, or as a substitute for program.

(1) The facility shall have a written policy that defines the use of restraint, the staff members who must authorize its use, and a mechanism for monitoring and controlling its use.

(2) Orders for restraints shall not be in force for longer than twelve (12) hours.

(3) A resident placed in restraint shall be checked at least every thirty (30) minutes by appropriately trained staff and a record of the checks shall be kept.

(4) Mechanical restraints shall be designed and used so as not to cause physical injury to the resident, and so as to cause the least possible discomfort. Opportunity for motion and exercise shall be provided for a period of not less than ten (10) minutes during each two (2) hours in which restraint is employed.

(5) Totally enclosed cribs and barred enclosures shall be considered restraints. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered to be restraints, but shall be designed and applied under the supervision of a qualified professional person, and in accordance with principles of good body alignment, concern for circulation, and allowance for change of position.

l. Chemical restraint shall not be used excessively as punishment, for convenience of staff, as a substitute for program, or in quantities that interfere with a resident's habilitation program.

m. Behavior modification programs involving the use of time-out devices or the use of aversive stimuli shall be:

(1) Reviewed and approved by the facility's human rights committee or the appropriate qualified mental retardation professional.

(2) Conducted only with the consent of the affected resident's parents or surrogates.

(3) Described in written plans that are kept on file in the facility.

(4) Applied in the case of restraints employed as time-out devices, only during conditioning sessions, and only in the presence of the trainer.

(5) Not used for more than one (1) hour in the case of removal from a situation for time-out purposes, and this procedure shall be used only during the conditioning program, and only under the supervision of the trainer.

82.2(13) *Clothing.*

a. Each resident shall have an adequate allowance of neat, clean, suitable, and seasonable clothing.

b. Each resident shall have the resident's own clothing, which is, when necessary, properly marked with the resident's name.

c. Residents shall be dressed daily in their own clothing, unless contraindicated in written medical orders.

d. Residents shall as appropriate, be trained and encouraged to:

(1) Select their daily clothing.

(2) Dress themselves.

(3) Change their clothes to suit the activities in which they engage.

e. Storage space for clothing to which the resident, including those in wheelchairs, has access shall be provided.

82.2(14) *Health, hygiene, and grooming.*

a. Residents shall be trained to exercise maximum independence in health, hygiene, and grooming practices, including bathing, brushing teeth, shampooing, combing and brushing hair, shaving and caring for toenails and fingernails.

b. Every resident who does not eliminate appropriately and independently shall be engaged in a toilet training program.

(1) The training program shall be applied systematically and regularly.

(2) Records shall be kept of the progress of each resident receiving toilet training.

(3) Residents who are incontinent shall be immediately bathed or cleansed upon voiding and soiling, unless specifically contraindicated by the training program in which they are enrolled, and all soiled items shall be changed.

c. Procedures shall be established for:

(1) Monthly weighing of residents, with greater frequency for those with special needs.

(2) Quarterly measurement of height, until the age of maximum growth.

(3) Maintenance of weight and height records.

(4) Assuring that residents maintain normal weights.

d. Orders prescribing bed rest or prohibiting residents from being taken out-of-doors shall be reviewed by a physician at least every three (3) days.

e. Provisions shall be made to furnish and maintain in good repair, and to encourage the use of, dentures, eyeglasses, hearing aids, braces, and so forth, prescribed by appropriate specialists.

82.2(15) *Grouping and organization of living units.* Residents of grossly different ages, developmental levels, and social needs shall not be housed in close physical or social proximity, unless the housing is planned to promote the growth and development of all those housed together. Residents who are mobile-nonambulatory, deaf, blind, epileptic, and so forth, shall be integrated with peers of comparable social and intellectual development, and shall not be segregated on the basis of their handicaps.

82.2(16) *Resident-living staff.*

a. There shall be sufficient, appropriately qualified, and adequately trained personnel to conduct the resident-living program. Resident-living personnel shall be administratively responsible to a person whose training and experience is appropriate to the program.

b. Regardless of the organization or design of resident-living units, the overall staff-resident ratios are as follows unless program needs justify otherwise:

(1) For units including children under the age of six (6) years, severely and profoundly retarded, severely physically handicapped, and residents who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior, the overall ratio, allowing for five (5)-day workweek plus holiday, vacation, and sick time, is 1 to 2.

(2) For units serving moderately retarded residents requiring habit training, the overall ratio is 1 to 2.5.

(3) For units serving residents in vocational training programs and adults who work in sheltered employment situations, the overall ratio is 1 to 5.

82.2(17) *Design and equipage of living unit.*

a. Bedrooms shall:

(1) Be on or above street grade level.

(2) Be outside rooms.

(3) Accommodate no more than four (4) residents. Any deviation from this size shall be justified on the basis of meeting the program needs of the specific residents being served.

(4) Provide at least eighty (80) square feet per resident in multiple sleeping rooms, and not less than one hundred (100) square feet in single rooms.

b. Each resident shall be provided with:

(1) A separate bed of proper size and height for the convenience of the resident.

(2) A clean, comfortable mattress.

(3) Bedding, appropriate for weather and climate.

(4) Appropriate furniture, such as a chest of drawers, a table or desk, and an individual closet with clothes racks and shelves accessible to the resident.

c. Space shall be provided for equipment for daily out-of-bed activity for all residents not yet mobile, except those who have a short-term illness, or those very few for whom out-of-bed activity is a threat to life.

d. Suitable storage shall be provided for personal possessions, such as toys and individual prosthetic equipment, so that they are accessible to the resident for use.

e. Toilets, bathtubs, and showers shall provide for individual privacy unless specifically contraindicated by program needs.

f. When the facility accepts physically handicapped residents, water closets and bathing and toileting appliances shall be equipped for use by the physically handicapped.

g. Each habitable room shall have direct outside ventilation by means of windows, louvers, air conditioning, or mechanical ventilation horizontally and vertically.

h. Each habitable room shall have at least one (1) window.

i. Floors shall provide a resilient, nonabrasive, and slip-resistant surface. Carpeting used in units serving residents who crawl or creep shall be nonabrasive.

j. Temperature and humidity shall be maintained within a normal comfort range by heating, air conditioning, or other means. The heating apparatus employed shall not constitute a burn hazard to the residents.

k. The temperature of the hot water at all taps to which residents have access shall be controlled by the use of thermostatically controlled mixing valves or by other means, so that it does not exceed 110 degrees Fahrenheit.

l. Emergency lighting of stairs and exits, with automatic switches, shall be provided in units housing more than fifteen (15) residents.

m. There shall be adequate clean linen and dirty linen storage areas for each living unit.

82.2(18) *Programs and services provisions.* In addition to the resident-living services, residents shall be provided with professional and special programs and services, in accordance with their needs for these programs and services.

a. Programs and services provided by the facility, or to the facility by agencies outside it, or by persons not employed by it, shall meet the standards for quality of services as stated in these rules, and all contracts for the provision of the services shall stipulate that these standards will be met.

b. There shall be interdisciplinary teams with persons drawn from, or representing, those professions, disciplines, or service areas included in these rules which are relevant in each particular case for evaluating the resident's needs, planning an individualized habilitation program to meet identified needs, and periodically reviewing the resident's responses to the program and revising the program accordingly.

82.2(19) *Health services.* The facility shall provide health services which ensure that each resident receives treatments, medications, diet, and other health services as prescribed and planned, all hours of each day, in accordance with the following:

a. The immediate supervision of the facility's health services on all days of each week shall be by a registered nurse or licensed practical or vocational nurse employed full-time on the day shift in the facility and who is currently licensed to practice in the state; provided, that:

(1) In the case of facilities where a licensed practical or vocational nurse serves as the supervisor of health services, consultation is provided by a registered nurse, through formal contract, at regular intervals, but not less than four (4) hours weekly.

(2) Licensed practical or vocational nurses serving as health services supervisors have training that includes either graduation from a state approved school of practical nursing or education and other training that is considered by the state authority responsible for licensing of practical nurses to provide a background that is equivalent to graduation from a state approved school of practical nursing, or have successfully completed the public health service examination for waivered licensed practical or vocational nurses.

(3) Other categories of licensed personnel with special training in the care of residents may serve as charge nurse, provided that the person is licensed by the state in a category following completion of a course of training which includes at least the number of classroom and practice hours in all of the nursing subjects included in the program of a state approved school of practical or vocational nursing as evidenced by a report to the single state agency by the agency or agencies of the state responsible for the licensure of the personnel comparing the courses in the respective curricula.

b. Responsible staff members shall be on duty and awake at all times to ensure prompt, appropriate action in cases of injury, illness, fire, or other emergencies.

c. An institution with fifteen (15) beds or less which has only residents certified by a physician as not in need of professional nursing services meets the health services supervisor and responsible staff member standards when:

(1) There is a formal contract for the services of a registered nurse or public health nurse to visit as required for minor illnesses, injuries, or emergencies.

(2) There is consultation on the health aspects of the individual plan of care.

(3) There is a responsible staff member on duty at all times who is immediately accessible to residents.

d. A written health care plan shall be developed and implemented by appropriate staff for each resident in accordance with instructions of the attending or staff physician. The plan shall be reviewed and revised as needed, but not less often than quarterly.

e. Nursing services, including restorative nursing, shall be provided in accordance with the needs of the residents.

82.2(20) *Dental services.*

a. There shall be comprehensive diagnostic services for all residents which include a complete extra and intraoral examination, utilizing all diagnostic aids necessary to properly evaluate the resident's oral condition, within a period of one (1) month following admission unless an examination was done within six (6) months of admission. The results shall be received and reviewed by the facility and shall be entered in the resident's record.

b. There shall be comprehensive treatment services for all residents which include:

(1) Provision for dental treatment.

(2) Provision for emergency treatment on a twenty-four (24)-hour, seven (7)-days-a-week basis by a qualified dentist.

(3) A recall system that will ensure that each resident is reexamined at specified intervals in accordance with needs, but at least annually.

c. There shall be education and training in the maintenance of oral health which includes:

(1) A dental hygiene program that includes imparting information regarding nutrition and diet control measures to residents and staff, and instruction of residents and staff in living units in proper oral hygiene methods.

(2) Instruction of parents or surrogates in the maintenance of proper oral hygiene, where appropriate.

d. A permanent dental record shall be maintained for each resident. A summary dental progress report shall be entered in the resident's unit record at stated intervals. A copy of the permanent dental record shall be provided to a facility to which a resident is transferred.

e. There shall be a formal arrangement for providing qualified and adequate dental services to the facility, including care in dental emergencies on a twenty-four (24)-hour, seven (7)-days-a-week basis.

f. There shall be available sufficient, appropriately qualified dental personnel, and necessary supporting staff, to carry out the dental services program.

(1) All dentists providing services to the facility shall be fully licensed to practice in the state in which the facility is located.

(2) All dental hygienists providing services to the facility shall be licensed to practice in the state in which the facility is located.

82.2(21) *Training and habilitation services.*

a. Training and habilitation services defined as the facilitation of the intellectual, sensorimotor, and affective development of the individual, shall be available to all residents, regardless of chronological age, degree of retardation, or accompanying disabilities or handicaps.

b. Individual evaluations of residents shall:

(1) Be based upon the use of empirically reliable and valid instruments, whenever these tools are available.

(2) Provide the basis for prescribing an appropriate program of training experiences for the resident.

c. There shall be written training and habilitation objectives for each resident that are:

(1) Based upon complete and relevant diagnostic and prognostic data.

(2) Stated in specific behavioral terms that permit the progress of the individual to be assessed.

d. There shall be evidence of training and habilitation services activities designed to meet the training and habilitation objectives set for every resident. There shall be a functional training and rehabilitation record for each resident, maintained by, and available to, the training and habilitation staff.

e. Appropriate training and habilitation programs shall be provided residents with hearing, vision, perceptual, or motor impairments, in cooperation with appropriate staff.

f. There shall be available sufficient, appropriately qualified training and habilitation personnel, and necessary supporting staff, to carry out the training and habilitation program. Supervision of delivery of training and habilitation services shall be the responsibility of a person who is a qualified mental retardation professional.

82.2(22) *Food and nutrition services.*

a. Food services shall include:

(1) Menu planning.

(2) Initiating food orders or requisitions.

(3) Establishing specifications for food purchases and insuring that the specifications are met.

(4) Storing and handling of food.

(5) Food preparation.

(6) Food serving.

(7) Maintaining sanitary standards in compliance with state and local regulations.

(8) Orientation, training, and supervision of food service personnel.

b. A nourishing, well-balanced diet, shall be provided to all residents. Modified diets shall be:

(1) Prescribed by the resident's program team with a record of the prescription kept on file.

(2) Planned, prepared, and served by persons who have received adequate instruction.

(3) Periodically reviewed and adjusted as needed.

c. The food and nutrition needs of residents shall be met in accordance with the recommended allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences, adjusted for age, sex, activity, and disability, through a nourishing, well-balanced diet unless contraindicated by medical needs.

d. Denial of a nutritionally adequate diet shall not be used as a punishment. At least three (3) meals shall be served daily, at regular times with:

(1) Not more than a fourteen (14)-hour span between a substantial evening meal and breakfast of the following day.

(2) Not less than ten (10) hours between breakfast and the evening meal of the same day.

(3) Meal times comparable to those normally existing in the community.

e. Menus shall be written in advance. Menus shall provide a sufficient variety of foods served in adequate amounts at each meal, and shall be different for the same days of each week and adjusted for seasonal changes. Records of menus as served shall be filed and maintained for at least thirty (30) days. Records of food purchased for preparation shall be filed and maintained for at least thirty (30) days.

f. Food shall be served:

(1) In appropriate quantity.

(2) At appropriate temperature.

(3) In a form consistent with the developmental level of the resident.

(4) With appropriate utensils.

g. Dry or staple food items shall be stored at least twelve (12) inches above the floor, in a ventilated room not subject to sewage or waste water backflow, or contamination by condensation, leakage, rodents, or vermin. Perishable foods shall be stored at the proper temperatures to conserve nutritive values. Food served to residents and not consumed shall be discarded. Effective procedures for cleaning all equipment and work areas shall be followed consistently. Handwashing facilities, including hot and cold water, soap, and paper towels, shall be provided adjacent to work areas.

h. All residents, including the mobile nonambulatory, shall eat or be fed in dining rooms, except where contraindicated for health reasons, or by decision of the team responsible for the resident's program. Table service shall be provided for all who can and will eat at a table, including residents in wheelchairs. Dining areas shall be equipped with tables, chairs, eating utensils, and dishes designed to meet the developmental needs of each resident.

i. Dining rooms shall be adequately supervised and staffed for the direction of self-help dining procedures, and to assure that each resident receives an adequate amount of food.

j. Residents shall be provided with systematic training to develop appropriate eating skills, utilizing adaptive equipment where it serves developmental process.

k. Direct-care staff shall be trained in and shall utilize proper feeding techniques. Residents shall eat in an upright position unless medically contraindicated. Residents shall eat in a manner consistent with their developmental needs.

l. There shall be a sufficient number of competent personnel to fulfill the food and nutrition needs of residents.

m. In facilities of twenty (20) beds or more, food and nutrition services shall be directed by a dietitian who:

(1) Is eligible for registration by the American Dietetic Association.

(2) Has a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management, has one (1) year of supervisory experience in the dietetic service of a health care institution, and participates annually in continuing dietetic education.

n. In facilities with less than twenty (20) beds, food and nutrition services shall be directed by a designated staff member suited in food management or nutrition for these duties by training and experience.

82.2(23) *Medical service.*

a. Medical services shall be rendered directly, through personal contact between physicians and residents, and indirectly, through contact between physicians and other persons working with the residents.

b. Electroencephalographic services shall be available as necessary. There shall be evidence, as may be provided by a record of the deliberations of a utilization review committee, that hospital and laboratory services are utilized in accordance with proper professional standards.

c. Physicians shall participate, when appropriate:

(1) In the continuing interdisciplinary evaluation of individual residents, for the purposes of initiation, monitoring, and follow-up of individualized habilitation programs.

(2) In the development for each resident of a detailed, written statement of case management goals, encompassing the areas of physical and mental health, education, and functional and social competence; and a management plan detailing the various habilitation or rehabilitation modalities that are to be applied in order to achieve the specified goals, with clear designation of responsibility for implementation.

d. The statement of treatment goals and management plans shall be reviewed and updated:

(1) As needed, but at least annually.

(2) To ensure continuing appropriateness of the goals, consistency of management methods with the goals, and the achievement of progress toward the goals.

e. There shall be preventive health services to residents which include:

(1) Means for the prompt detection and referral of health problems, through adequate medical surveillance, periodic inspection, and regular medical examination.

(2) Annual physical examinations that include examination of vision and hearing, and routine screening laboratory examinations, as determined necessary by the physician, and special studies when the index of suspicion is high.

(3) Immunization, using as a guide the recommendations of the United States Public Health Service Advisory Committee on Immunization practices and of the Committee on the Control of Infectious Diseases of the American Academy of Pediatrics.

(4) Tuberculosis control, in accordance with the recommendations of the American College of Chest Physicians and/or the section on diseases of the chest of the Academy of Pediatrics, as appropriate to the facility's population.

(5) Reporting of communicable diseases and infections in accordance with law.

f. There shall be a formal arrangement for qualified medical care for the facility, including care for medical emergencies on a twenty-four (24)-hour, seven (7)-days-a-week basis. A physician, fully licensed to practice medicine in the state in which the facility is located, shall be designated to be responsible for maintaining the general health conditions and practices of the facility.

g. The facility shall maintain effective arrangements through which medical and remedial services required by the resident but not regularly provided within the facility can be obtained promptly when needed.

h. There shall be adequate space, facilities, and equipment, to fulfill the medical needs of the residents.

82.2(24) *Nursing services.*

a. Residents shall be provided with nursing services in accordance with their needs.

b. Nursing services to residents shall include as appropriate:

(1) Registered nurse participation in the preadmission evaluation study and plan; the evaluation study, program design, and placement of the resident at the time of admission to the facility; the periodic reevaluation of the type, extent, and quality of services and

programming; the development of discharge plans; and the referral to appropriate community resources.

(2) Training in habits in personal hygiene, family life, sex education, including family planning and venereal disease counseling.

(3) Control of communicable diseases and infections through identification and assessment, reporting to medical authorities, and implementation of appropriate protective and preventive measures.

(4) Development of a written plan for each resident to provide for nursing services as a part of the total habilitation program.

(5) Modification of the nursing plan, in terms of the resident's daily needs, at least annually for adults and more frequently for children, in accordance with developmental changes.

c. A registered nurse shall participate, as appropriate, in the planning and implementation of training of facility personnel. Direct-care personnel shall be trained in:

(1) Detecting signs of illness or dysfunction that warrant medical or nursing intervention.

(2) Basic skills required to meet the health needs and problems of the residents.

(3) First aid in the presence of accident or illness.

d. There shall be available sufficient, appropriately qualified nursing staff, which may include currently licensed practical nurses and other supporting personnel, to carry out the various nursing service activities. The individual responsible for the delivery of nursing services shall have knowledge and experience in the field of developmental disabilities.

e. Nursing service personnel at all levels of experience and competence shall be:

(1) Assigned responsibilities in accordance with their qualifications.

(2) Delegated authority commensurate with their responsibilities.

(3) Provided appropriate professional nursing supervision.

82.2(25) *Pharmacy services.*

a. Pharmacy services shall be provided under the direction of a qualified licensed pharmacist. There shall be a formal arrangement for qualified pharmacy services, including provision for emergency service, by means appropriate to the facility.

b. There shall be a current pharmacy manual that:

(1) Includes policies and procedures, and defines the functions and responsibilities relating to pharmacy services.

(2) Is revised annually to keep abreast of current developments in services and management techniques.

c. There shall be a formulary system approved by the responsible physician and pharmacist, and by other appropriate facility staff. Copies of the facility's formulary and of the American Hospital Formulary Service shall be located and available, as appropriate to the facility.

d. Upon admission of the resident, a medication history of prescriptions and nonprescription drugs used shall be obtained where possible, preferably by the pharmacist, and this information shall be entered in the resident's record for the information of the staff. The pharmacist shall:

(1) Receive the original, or a direct copy, of the physician's drug treatment order.

(2) Maintain for each resident an individual record of all medications, prescription and nonprescription, dispensed, including quantities and frequency of refills.

(3) Participate, as appropriate in the continuing interdisciplinary evaluation of individual residents for the purposes of initiation, monitoring, and follow-up of individualized habilitation programs.

(4) Establish quality specifications for drug purchases, and ensure that they are met.

e. A pharmacist or registered nurse shall:

(1) Regularly review the record of each resident on medication for potential adverse reactions, allergies, interactions, contraindications, rationality, and laboratory test modifications.

(2) Advise the physician of any recommended changes with reasons, and with an alternate drug regimen.

f. Written policies and procedures that govern the safe administration and handling of all drugs shall be developed by the responsible pharmacist, physician, nurse and other professional staff, as appropriate to the facility. There shall be a written policy governing the self-administration of drugs, whether prescribed or not. The compounding, packaging, labeling, and dispensing of drugs, including samples and investigational drugs, shall be done by the pharmacist, or under the pharmacist's supervision, with proper controls and records. Each drug shall be identified up to the point of administration. Wherever practical, drugs that require dosage measurement shall be dispensed by the pharmacist in a form ready to be administered to the resident.

g. Medications shall not be used by any resident other than the one for whom they were issued. Only appropriately trained staff shall be allowed to administer drugs.

h. Drugs shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security. All drugs shall be kept under lock and key except when authorized personnel are in attendance. The security requirements of federal and state laws shall be satisfied in storerooms, pharmacies, and living units. Poisons, drugs used externally, and drugs taken internally shall be stored on separate shelves or in separate cabinets, at all locations. Medications that are stored in a refrigerator containing things other than drugs shall be kept in a separate compartment with proper security. When there is a drug storeroom separate from the pharmacy, there shall be a perpetual inventory of receipts and issues of all drugs by the storeroom.

i. Discontinued and outdated drugs, and containers with worn, illegible, or missing labels, shall be returned to the pharmacy for proper disposition.

j. There shall be automatic stop orders on all drugs. There shall be a drug recall procedure that can be readily implemented. Medication errors and drug reactions shall be recorded and reported immediately to the practitioner who ordered the drug. There shall be a procedure for reporting adverse drug reactions to the Federal Food and Drug Administration.

k. There shall be an emergency kit readily available to each living unit and constituted so as to be appropriate to the needs of its residents.

82.2(26) *Physical and occupational therapy services.*

a. Physical and occupational therapy service shall be provided:

(1) Directly, through personal contact between therapist and residents.

(2) Indirectly, through contact between therapists and other persons involved with the residents.

b. Physical therapy and occupational therapy staff shall provide treatment training programs that are designed to:

(1) Preserve and improve abilities for independent function, such as range of motion, strength, tolerance, coordination, and activities of daily living.

(2) Prevent, insofar as possible, irreducible or progressive disabilities, through means such as the use of orthotic and prosthetic appliances, assistive and adoptive devices, positioning, behavior adaptations, and sensory stimulation.

c. The therapist shall function closely with the resident's primary physician and with other medical specialists. Treatment-training progress shall be regularly recorded, evaluated periodically, and used as the basis for continuation or change of the resident's program.

d. Evaluation results, treatment objectives, plans, and procedures and continuing observations of treatment progress shall be:

(1) Recorded accurately, summarized, and communicated.

(2) Used in evaluating progress.

(3) Included in the resident's unit record.

e. There shall be available sufficient, appropriately qualified staff, and supporting personnel, to carry out the various physical and occupational therapy services, in accordance with stated goals and objectives.

(1) The occupational therapist shall be a person who is a graduate of an occupational therapy curriculum accredited jointly by the Council on Medical Education of the American Medical Association and the American Occupational Therapy Association; or is eligible for certification by the American Occupational Therapy Association; or has two (2) years of appropriate experience as an occupational therapist, and has achieved a satisfactory grade on a proficiency examination approved by the Secretary of Health and Human Services, except that the determinations of proficiency shall not apply with respect to persons initially licensed by a state or seeking initial qualifications as an occupational therapist after December 31, 1977.

(2) The physical therapist shall be a person who is licensed as a physical therapist by the state in which practicing; and has graduated from a physical therapy curriculum approved by the American Physical Therapy Association, or by the Council on Medical Education and Hospitals of the American Medical Association and the American Physical Therapy Association; or prior to January 1, 1966, was admitted to membership by the American Physical Therapy Association, or was admitted to registration by the American Registry of Physical Therapists, or has graduated from a physical therapy curriculum in a four (4)-year college or university approved by a state department of education; or has two (2) years of appropriate experience as a physical therapist, and has achieved a satisfactory grade on a proficiency examination approved by the Secretary of Health and Human Services, except that the determinations of proficiency shall not apply with respect to persons initially licensed by a state or seeking qualification as a physical therapist after December 31, 1977; or was licensed or registered prior to January 1, 1966, and prior to January 1, 1970, had fifteen (15) years of full-time experience in the treatment of illness or injury through the practice of physical therapy in which services were rendered under the order and direction of attending and referring physicians; or if trained outside the United States, was graduated since 1928 from a physical therapy curriculum approved in the country in which the curriculum was located and in which there is a member organization of the World Confederation for Physical Therapy, meets the requirements for membership in a member organization of the World Confederation for Physical Therapy, has one (1) year of experience under the supervision of an active member of the American Physical Therapy Association, and has successfully completed a qualifying examination as prescribed by the American Physical Therapy Association.

(3) The occupational therapy assistant shall be a person who is eligible for certification as a certified occupational therapy assistant by the American Occupational Therapy Association; or has two (2) years of appropriate experience as an occupational therapy assistant, and has achieved a satisfactory grade on a proficiency examination approved by the Secretary of Health and Human Services, except that such determination of proficiency shall not apply with respect to persons initially licensed by a state or seeking initial qualification as an occupational therapy assistant after December 31, 1977.

(4) The physical therapist assistant shall be a person who is licensed as a physical therapist assistant, if applicable, by the state in which practicing.

Has graduated from a two (2)-year college-level program approved by the American Physical Therapy Association.

Has two (2) years of appropriate experience as a physical therapist assistant, and has achieved a satisfactory grade on a proficiency examination approved by the Secretary of Health and Human Services. The determinations of proficiency shall not apply with respect to persons initially licensed by a state or seeking initial qualification as a physical therapist assistant after December 31, 1977.

(5) The occupational therapy assistant and the physical therapist assistant shall work under the supervision of a qualified therapist.

(6) Physical and occupational therapy personnel shall be assigned responsibilities in accordance with their qualifications, delegated authority commensurate with their responsibilities, and provided appropriate professional direction and consultation.

f. There shall be adequate space, facilities, equipment, supplies, and resources to provide efficient and effective physical and occupational therapy services.

82.2(27) *Psychological services.*

a. Psychological services shall be rendered:

(1) Directly, through personal contact between psychologists and residents.

(2) Indirectly, through contact between psychologists and other persons involved with the residents.

b. Psychologists shall participate, when appropriate, in the continuing interdisciplinary evaluation of individual residents, for the purposes of initiation, monitoring and follow-up of individualized habilitation programs.

c. The reporting and dissemination of evaluation results shall be done in such a manner as to:

(1) Promptly provide information useful to staff working directly with the resident.

(2) Maintain accepted standards of confidentiality.

d. Psychologists shall participate, when appropriate, in the development of written, detailed, specific and individualized habilitation program plans that:

(1) Provide for periodic review, follow-up, and updating.

(2) Are designed to maximize each resident's development and acquisition of perceptual skills, sensorimotor skills, self-help skills, communication skills, social skills, self-direction, emotional stability, and effective use of time including leisure time.

e. There shall be available sufficient, appropriately qualified staff, and necessary supporting personnel, to carry out the various psychological service activities, in accordance with the needs of the following functions:

(1) Psychological services to residents, including evaluation, consultation, therapy, and program development.

(2) Administration and supervision of psychological services.

(3) Staff training.

f. Psychologists providing services to the facility shall have at least a master's degree from an accredited program and experience or training in the field of mental retardation.

82.2(28) *Recreation services.*

a. Recreation services shall be coordinated with other services and programs provided the residents, in order to make the fullest possible use of the facility's resources and to maximize benefits to the residents.

b. Records concerning residents shall include:

(1) Periodic surveys of their recreation interests.

(2) The extent and level of each resident's participation in the activities program.

c. There shall be sufficient, appropriately qualified recreation staff, and necessary supporting staff to carry out the various recreation services in accordance with stated goals and objectives.

d. Personnel conducting the recreation program shall have:

(1) A bachelor's degree in recreation, or in a specialty area, such as art, music, or physical education; or

(2) An associate degree in recreation and one (1) year of experience in recreation; or

(3) A high school diploma, or an equivalency certificate; and two (2) years of experience in recreation, or one (1) year of experience in recreation plus completion of comprehensive inservice training in recreation; or

(4) Demonstrated proficiency and experience in conducting activities in one or more program areas.

e. Recreation areas and facilities shall be designated and constructed or modified so as to be easily accessible to all residents regardless of their disabilities.

f. Recreation equipment and supplies in sufficient quantity and variety shall be provided to carry out the stated objectives of the activities programs.

82.2(29) *Social services.*

a. Social services, as part of an interdisciplinary spectrum of services, shall be provided to the residents through use of social work methods directed toward:

(1) Maximizing the social functioning of each resident.

(2) Enhancing the coping capacity of the family.

(3) Asserting and safeguarding the human and civil rights of the retarded and their families and fostering the human dignity and personal worth of each resident.

b. During the evaluation process, which may or may not lead to admission, the resident and family shall be helped by social workers to consider alternative services, based on the retarded person's status and salient family and community factors, and make a responsible choice as to whether and when residential placement is indicated.

c. Social workers shall participate, when appropriate, in the continuing interdisciplinary evaluation of individual residents for the purposes of initiation, monitoring, and follow-up of individualized habilitation programs.

d. During the retarded person's admission to, and residence in, the facility, or while receiving services from the facility, social workers shall, as appropriate:

(1) Help the staff to individualize and understand the needs of the resident and family in relation to each other; understand social factors in the resident's day-to-day behavior, including staff-resident relationships; and prepare the resident for changes in living situation.

(2) Help the family to develop constructive and personally meaningful ways to support the resident's experience in the facility, through counseling concerned with problems associated with changes in family structure and functioning, and referral to specific services, as appropriate.

(3) Help the family to participate in planning for the resident's return to home or other community placement.

e. After the resident leaves the facility, social workers shall provide systematic follow-up to assure referral to appropriate community agencies.

f. There shall be available sufficient, appropriately qualified staff and necessary supporting personnel to carry out the various social service activities.

(1) A social worker providing service to the facility shall be a person who is licensed, if applicable, by the state in which practicing, is a graduate of a school of social work accredited or approved by the Council on Social Work Education, and has one (1) year of social worker experience in a health care setting.

(2) Social work assistants or aides employed by the facility shall work under the supervision of a qualified social worker.

82.2(30) *Speech pathology and audiology services.*

a. Speech pathology and audiology services shall be rendered through:

(1) Direct contact between speech pathologists, audiologists, and residents.

(2) Working with other personnel, such as teachers and direct-care staff, in implementing communication improvement programs in environmental settings.

b. Speech pathology and audiology services available to the facility shall include:

(1) Screening and evaluation of residents with respect to speech and hearing functions.

(2) Comprehensive and audiological assessment of residents, as indicated by screening results, to include tests of puretone air and bone conduction, speech audiometry, and other procedures, as necessary, and to include assessment of the use of visual cues.

(3) Assessment of the use of amplification.

(4) Provision for procurement, maintenance, and replacement of hearing aids, as specified by a qualified audiologist.

(5) Comprehensive speech and language evaluation of residents, as indicated by screening results, including appraisal of articulation, voice, rhythm, and language.

(6) Participation in the continuing interdisciplinary evaluation of individual residents for purposes of initiation, monitoring, and follow-up of individualized habilitation programs.

(7) Treatment services interpreted as an extension of the evaluation process, that include direct counseling with residents; consultation with appropriate staff for speech improvement and speech education activities; and collaboration with appropriate staff to develop specialized programs for developing the communication skills of individuals in comprehension, for example, speech, reading, auditory training, and hearing aid utilization; as well as expression, for example, improvement in articulation, voice, rhythm, and language.

(8) Participation in in-service training programs for direct-care and other staff.

c. Evaluation and assessment results shall be reported accurately and systematically, and in a manner as to:

(1) Where appropriate, provide information useful to other staff working directly with the resident.

(2) Provide evaluative and summary reports for inclusion in the resident's unit record.

d. Continuing observations of treatment progress shall be:

(1) Recorded accurately, summarized, and communicated.

(2) Utilized in evaluating progress.

e. There shall be available sufficient, appropriately qualified staff, and necessary supporting personnel to carry out the various speech pathology and audiology services, in accordance with stated goals and objectives.

(1) Staff who assume independent responsibilities for clinical services shall be a person who is licensed, if applicable, by the state in which practicing; and is eligible for a certificate of clinical competence in the appropriate area granted by the American Speech and Hearing Association; or meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification.

(2) Adequate, direct, and continuing supervision shall be provided personnel, volunteers, or supportive personnel utilized in providing clinical services.

f. There shall be adequate space, facilities, equipment, and supplies to provide efficient and effective speech pathology and audiology services.

82.2(31) *Maintenance of resident records.*

a. A record shall be maintained for each resident that is adequate for:

(1) Planning and continuous evaluating of the resident's habilitation program.

(2) Furnishing documentary evidence of the resident's progress and response to the habilitation programs.

(3) Protecting the legal rights of the residents, facility and staff.

b. All entries in the resident's record shall be legible, dated, and authenticated by signature and identification of the individual making the entry.

c. Symbols and abbreviations shall be used in record entries only when a legend is provided to explain them.

82.2(32) *Contents of records.*

a. The following information shall be obtained and entered in the resident's record at the time of admission to the facility:

(1) Name, date of admission, date of birth, place of birth, citizenship status, marital status, and social security number.

(2) Father's name and birthplace, mother's maiden name and birthplace, and parent's marital status.

(3) Name and address of parents, legal guardian, or next of kin.

(4.) Sex, race, height, weight, color of hair, color of eyes, identifying marks, and recent photograph.

(5) Reason for admission or referral problem.

(6) Type and legal status of admission.

(7) Legal competency status.

(8) Language spoken or understood.

(9) Sources of support, including social security, veterans' benefits, and insurance.

(10) Information relevant to religious affiliation.

(11) Report of the preadmission evaluation.

(12) Reports of previous histories and evaluations.

b. Within the period of one month after admission there shall be entered in the resident's record:

(1) A report of the review and updating of the preadmission evaluation.

(2) A statement of prognosis that can be used for programming and placement.

(3) A comprehensive evaluation and individual program plan, designed by an interdisciplinary team.

c. Records during residence shall include:

(1) Reports of accidents, seizures, illnesses, and treatments thereof, and immunizations.

(2) Records of all periods of restraint with justification and authorization for each.

(3) Reports of regular, at least annual, review and evaluation of the program, developmental progress, and status of each resident.

(4) Observations of the resident's response to the program, recorded with sufficient frequency to enable evaluation of its efficacy.

(5) Records of significant behavior incidents.

(6) Records of family visits and contacts.

(7) Records of attendance and leaves.

(8) Correspondence pertaining to the resident.

(9) Periodic updating of the information recorded at the time of admission.

(10) Appropriate authorizations and consents.

d. At the time of discharge from the facility, a discharge summary shall be prepared.

82.2(33) *Confidentiality of records.*

a. All information contained in a resident's records, including information contained in an automated data bank, shall be considered confidential.

b. The record shall be the property of the facility, whose responsibility it is to secure the information against loss, defacement, tampering, or use by unauthorized persons.

c. There shall be written policies governing access to, duplication of, and dissemination of information from the record.

d. Written consent of the resident, when competent, or guardian shall be required for the release of information to persons not otherwise authorized to receive it.

82.2(34) *Central record service.*

a. The facility shall maintain an organized central record service for the collection and dissemination of information regarding residents.

b. Records shall be readily accessible to authorized personnel where a centralized system is used. Appropriate records shall be available in the resident living units.

c. There shall be a master alphabetical index of all residents admitted to the facility.

d. Records shall be retained for a period consistent with the statute of limitations of the state in which the facility is located and Department of Health and Human Services regulations.

82.2(35) *Record personnel.*

a. There shall be available sufficient, appropriately qualified staff and necessary supporting personnel to facilitate the accurate processing, checking, indexing, filing, and prompt retrieval of records and record data.

b. There shall be adequate space, facilities, equipment, and supplies to provide efficient and effective record services.

82.2(36) *Research.* When the facility conducts research, it shall follow, and comply with the statement of assurance on research involving human subjects required by the United States Department of Health and Human Services for projects supported by that department.

82.2(37) *Life safety code.* The facility shall meet the provisions of the Fire Safety Code of the National Fire Protection Association (23rd edition, 1973) as are applicable to institutional occupancies; except that:

a. For facilities of fifteen (15) beds or less, the Lodging or Room Houses section of the residential occupancy requirements of the code may apply when all residents are currently certified by a physician or a psychologist as ambulatory, receiving active treatment, and capable of following directions and taking appropriate action for self-preservation under emergency conditions.

b. In accordance with criteria issued by the Secretary of Health and Human Services, the state survey agency may waive the application to any such facility of specific provisions of the code, for periods as it deems appropriate, which provisions if rigidly applied would result in unreasonable hardship upon a facility, but only when a waiver will not adversely affect the health and safety of the residents.

82.2(38) *Safety.*

a. There shall be a written staff organization plan and detailed, written procedures, which are clearly communicated to, and periodically reviewed with, staff for meeting all potential emergencies and disasters pertinent to the area, such as fire, severe weather, and missing persons. The plans and procedures shall be posted at suitable locations throughout the facility.

b. Evacuation drills shall be held at least quarterly, for each shift of facility personnel and under varied conditions in order to:

(1) Ensure that all personnel on all shifts are trained to perform assigned tasks.

(2) Ensure that all personnel on all shifts are familiar with the use of the firefighting equipment in the facility.

(3) Evaluate the effectiveness of disaster plans and procedures.

c. Evacuation drills shall include actual evacuation of residents to safe areas during at least one drill each year, on each shift. There shall be special provisions for the evacuation of the physically handicapped such as fire chutes and mattress loops with poles. There shall be a written, filed report and evaluation of each evacuation drill. All accidents shall be investigated and corrective action shall be taken.

d. The facility shall be accessible to and functional for residents, personnel, and the public. All necessary accommodations are made to meet the needs of persons with semiambulatory disabilities, sight and hearing disabilities, disabilities of coordination, as well as other disabilities in accordance with the American National Standards Institute Standard No. A117.1(1961) American Standard Specification for Making Buildings and Facilities Accessible to, and Useable by, the Physically Handicapped.

The survey agency may waive in existing buildings, for periods as deemed appropriate, specific provisions of the American National Standards Institute Standard No. A117.1(1961) which, if rigidly enforced, would result in unreasonable hardship upon the facility, but only when a waiver will not adversely affect the health and safety of residents.

e. Paint used inside the facility shall be lead free. Old paint or plaster containing lead shall have been removed, or covered in a manner not accessible to residents.

82.2(39) *Sanitation.* There shall be records that document strict compliance with the sanitation, health, and environmental safety codes of the state or local authorities having primary jurisdiction over the facility. Written reports of inspections by state or local health authorities and records of action taken on their recommendations, shall be kept on file at the facility.

82.2(40) *Environment.* The facility shall maintain conditions relating to environment and sanitation as set forth below:

a. Resident living areas shall be designed and equipped for the comfort and privacy of the resident. Each room shall be equipped with or conveniently located near adequate toilet and bathing facilities appropriate in number, size, and design to meet the needs of the residents. Each room shall be at or above grade level. Each resident room shall contain a suitable bed, closet space which provides security and privacy for clothing and personal belongings, and other appropriate furniture.

b. The facility shall have available at all times a quantity of linen essential for proper care and comfort of residents. Each bed shall be equipped with clean linen.

82.2(41) *Functions, personnel and facilities.* Adequate, modern administrative support shall be provided to efficiently meet the needs of, and contribute to, program services for residents, and to facilitate attainment of the goals and objectives of the facility.

a. There shall be adequate documentation of the purchasing process.

b. The inventory control system and stockroom operation shall be adequate.

c. There shall be appropriate storage facilities for all supplies and surplus equipment.

d. There shall be sufficient trained and experienced personnel to accomplish the necessary purchase, supply, and property control functions.

82.2(42) *Communications.*

a. There shall be adequate communication services, including adequate telephone service, whenever residents are in the facility.

b. The communication system shall assure:

(1) Prompt contact of on-duty personnel.

(2) Prompt notification of responsible personnel in the event of emergency.

82.2(43) *Engineering and maintenance.*

a. The facility shall have an appropriate and written preventive maintenance program.

b. There shall be sufficient trained and experienced personnel to accomplish the required engineering and maintenance functions.

82.2(44) *Laundry services.* Laundry services shall be managed so that daily clothing and linen needs are met without delay.

82.2(45) *Respite care for Title XIX waiver recipients.* Intermediate care facilities for the mentally retarded may be used to provide respite care as defined in rule 441—83.1(249A) to eligible individuals in the Title XIX waiver program.

This rule is intended to implement Iowa Code chapter 249A and 1984 Iowa Acts, Senate File 2351, section 3.

441—82.3(249A) Conditions of participation for intermediate care facilities for the mentally retarded. All intermediate care facilities for the mentally retarded must enter into a contractual agreement with the department which sets forth the terms under which they will participate in the program.

82.3(1) *Procedures for establishing health care facilities as Title XIX facilities.* All survey procedures and the certification process shall be in accordance with Department of Health and Human Services publication "Providers Certification State Operations Manual."

a. The facility shall obtain the applicable license from the department of inspections and appeals.

b. The facility shall request an application, Form 470-0254, Institutional Medicaid Provider Application, from the department.

c. The department shall transmit an application form and copies of standards to the facility.

d. The facility shall complete its portion of the application form and submit it to the department.

e. The department shall review the application form and forward it to the department of inspections and appeals.

f. The department of inspections and appeals shall schedule and complete a survey of the facility.

g. The department of inspections and appeals shall notify the facility of any deficiencies and ask for a plan for the correction of the deficiencies.

h. The facility shall submit a plan of correction within thirty (30) days of the date of survey. This plan must be approved before the facility can be certified.

i. The department of inspections and appeals shall evaluate the survey findings and plan of correction and either recommend the facility for certification or recommend denial of certification. The date of certification will be the date of approval of the plan of corrections.

j. When certification is recommended, the department of inspections and appeals shall notify the department recommending terms and conditions of a provider agreement.

k. The department shall review the certification data and:

(1) Transmit the provider agreement as recommended, or

(2) Transmit the provider agreement for a term less than recommended by the department of inspections and appeals or elect not to execute an agreement for reasons of good cause as defined in subrule 82.3(2)*"c."*

82.3(2) *Title XIX provider agreements.* The health care facility must be recommended for certification by the Iowa department of inspections and appeals for participation as an intermediate care facility for the mentally retarded before a provider agreement may be issued.

All survey procedures and certification processes shall be in accordance with Department of Health and Human Services publication "Providers Certification State Operations Manual." The effective date of a provider agreement may not be earlier than the date of certification.

a. Terms of the agreement for facilities without deficiencies are as follows:

(1) The provider agreement shall be issued for a period not to exceed twelve (12) months.

(2) The provider agreement shall be for the term of and in accordance with the provisions of certification, except that for good cause, the department may elect to execute an agreement for a term less than the period of certification, elect not to execute an agreement for reasons of good cause, or cancel an agreement.

b. Terms of the agreement for facilities with deficiencies are as follows:

(1) A new provider agreement may be executed for a period not to exceed sixty (60) days from the time required to correct deficiencies up to a period of twelve (12) months.

(2) A new provider agreement may be issued for a period of up to twelve (12) months subject to automatic cancellation sixty (60) days following the scheduled date for correction unless required corrections have been completed or unless the survey agency finds and notifies the department that the facility has made substantial progress in correcting the deficiencies and has resubmitted in writing a new plan of correction acceptable to the survey agency.

(3) There will be no new agreement when the facility continues to be out of compliance with the same standard(s) at the end of the term of agreement.

c. The department may, for good cause, elect not to execute an agreement. Good cause shall be defined as a continued or repeated failure to operate an intermediate care facility for the mentally retarded in compliance with rules and regulations of the program.

d. The department may at its option extend an agreement with a facility for two (2) months under either of the following conditions:

(1) The health and safety of the residents will not be jeopardized thereby and the extension is necessary to prevent irreparable harm to the facility or hardship to the resident.

(2) It is impracticable to determine whether the facility is complying with the provisions and requirements of the provider agreement.

e. When it becomes necessary for the department to cancel or refuse to renew a Title XIX provider agreement, federal financial participation may continue for thirty (30) days beyond the date of cancellation if the extension is necessary to ensure the orderly transfer of residents.

f. When the department of inspections and appeals survey indicates deficiencies in the areas of the Life Safety Code (LSC) or environment and sanitation, a timetable detailing corrective measures shall be submitted to the department of inspections and appeals before a provider agreement can be issued. This timetable shall not exceed two (2) years from the date of initial certification and shall detail corrective steps to be taken and when corrections will be accomplished. The following shall apply in these instances.

(1) The department of inspections and appeals shall determine that the facility can make corrections within the two (2)-year period.

(2) During the period allowed for corrections, the facility shall be in compliance with existing state fire safety and sanitation codes and regulations.

(3) The facility shall be surveyed at least semiannually until corrections are completed. The facility must have made substantial effort and progress in its plan of correction as evidenced by work orders, contracts, or other evidence.

82.3(3) *Appeals of decertification.* A facility may appeal a decertification action according to subrule 81.13(28).

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

82.4 Rescinded, effective March 1, 1987.

441—82.5(249A) Financial and statistical report. All facilities wishing to participate in the program shall submit a Financial and Statistical Report for Nursing Homes—Mentally Retarded, Form AA-4039-0, to the department. These reports shall be based on the following rules.

82.5(1) *Failure to maintain records.* Failure to maintain and submit adequate accounting or statistical records shall result in termination or suspension of participation in the program.

82.5(2) *Accounting procedures.* Financial information shall be based on that appearing in the audited financial statement. Adjustments to convert to the accrual basis of accounting shall be made when the records are maintained on other accounting bases. Facilities which are a part of a larger health facility extending short-term, intensive, or other health care not generally considered nursing care may submit a cost apportionment schedule prepared in accordance with recognized methods and procedures. The schedule shall be required when necessary for a fair presentation of expense attributable to intermediate care facility patients.

82.5(3) *Submission of reports.* The report shall be submitted to the department no later than three (3) months after the close of each six (6)-month period of the facility's established fiscal year. Failure to submit the report within this time shall reduce payment to seventy-five percent (75%) of the current rate. The reduced rate shall be paid for no longer than three (3) months, after which time no further payments will be made.

82.5(4) *Payment at new rate.* When a new rate is established, payment at the new rate shall be effective with services rendered as of the first day of the month in which the report is postmarked, or if the report was personally delivered, the first day of the month in which the report was received by the department. Adjustments shall be included in the payment the third month after the receipt of the report.

82.5(5) *Accrual basis.* Facilities not using the accrual basis of accounting shall adjust recorded amounts to the accrual basis. Expenses which pertain to an entire year shall be included in each six (6)-month report in equal amounts. Records of cash receipts and disbursements shall be adjusted to reflect accruals of income and expense.

82.5(6) *Census of public assistance recipients.* Census figures of public assistance recipients shall be obtained on the last day of the month ending the reporting period.

82.5(7) *Patient days.* In determining in-patient days, a patient day is that period of service rendered a patient between the census-taking hours on two successive days, the day of discharge being counted only when the patient was admitted that same day.

82.5(8) *Opinion of accountant.* The department may require that an opinion of a certified public accountant or public accountant accompany the report when adjustments made to prior reports indicate disregard of the certification and reporting instructions.

82.5(9) *Calculating patient days.* When calculating patient days, facilities shall use an accumulation method.

a. Census information shall be based on a patient status at midnight each day. A patient whose status changes from one class to another shall be shown as discharged from the previous status and admitted to the new status on the same day.

b. When a recipient is on a reserve bed status and the department is paying on a per diem basis for the holding of a bed, or any day a bed is reserved for a public assistance or nonpublic assistance patient and a per diem rate for the bed is charged to any party, the reserved days shall be included in the total census figures for in-patient days.

82.5(10) *Revenues.* Revenues shall be reported as recorded in the general books and records. Expense recoveries credited to expense accounts shall not be reclassified in order to be reflected as revenues.

a. Routine daily services shall represent the established charge for daily care. Routine daily services are those services which include room, board, nursing services, and such services as supervision, feeding, incontinuency, and similar services, for which the associated costs are in nursing service.

b. Revenue from ancillary services provided to patients shall be applied in reduction of the related expense.

c. Revenue from the sale of medical supplies, food or services to employees or nonresidents of the facility shall be applied in reduction of the related expense. Revenue from the sale to

private pay residents of items or services which are included in the medical assistance per diem will not be offset.

d. Investment income adjustment is necessary only when interest expense is incurred, and only to the extent of the interest expense.

e. Laundry revenue shall be applied to laundry expense.

f. Accounts receivable charged off or provision for uncollectible accounts shall be reported as a deduction from gross revenue.

82.5(11) *Limitation of expenses.* Certain expenses that are not normally incurred in providing patient care shall be eliminated or limited according to the following rules.

a. Federal and state income taxes are not allowed as reimbursable costs. These taxes are considered in computing the fee for services for proprietary institutions.

b. Fees paid directors and nonworking officer's salaries are not allowed as reimbursable costs.

c. Personal travel and entertainment are not allowed as reimbursable costs. Certain expenses such as rental or depreciation of a vehicle and expenses of travel which include both business and personal shall be prorated. Amounts that appear excessive may be limited after considering the specific circumstances. Records shall be maintained to substantiate the indicated charges.

d. Loan acquisition fees and standby fees are not considered part of the current expense of patient care, but should be amortized over the life of the related loan.

e. A reasonable allowance of compensation for services of owners or immediate relatives is an allowable cost, provided the services are actually performed in a necessary function. For this purpose, the following persons are considered immediate relatives: husband and wife; natural parent, child and sibling; adopted child and adoptive parent; stepparent, stepchild, stepbrother and stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, and sister-in-law; grandparent and grandchild. Adequate time records shall be maintained. Adjustments may be necessary to provide compensation as an expense for nonsalaried working proprietors and partners. Members of religious orders serving under an agreement with their administrative office are allowed salaries paid persons performing comparable services. When maintenance is provided these persons by the facility, consideration shall be given to the value of these benefits and this amount shall be deducted from the amount otherwise allowed for a person not receiving maintenance.

(1) Compensation means the total benefit received by the owner or immediate relative for services rendered. It includes salary amounts paid for managerial, administrative, professional, and other services; amounts paid by the facility for the personal benefit of the proprietor or immediate relative; the cost of assets and services which the proprietor or immediate relative receives from the facility; and deferred compensation.

(2) Reasonableness—requires that the compensation allowance be such an amount as would ordinarily be paid for comparable services by comparable institutions, and depends upon the facts and circumstances of each case.

(3) Necessary—requires that the function be such that had the owner or immediate relative not rendered the services, the facility would have had to employ another person to perform the service, and be pertinent to the operation and sound conduct of the institution.

(4) The base maximum allowed compensation for an administrator involved in ownership or an immediate relative is $1,703 per month plus $18.16 per month per licensed bed capacity for each bed over sixty (60), not to exceed $2,522 per month. An administrator is considered to be involved in ownership of a facility when the administrator has ownership interest of five percent (5%) or more.

On a semiannual basis, the maximum allowed compensation amounts for administrators or relatives involved in ownership shall be increased or decreased by the inflation factor applied to facility rates as defined by subrule 81.6(16)*"a."*

(5) The maximum allowed compensation for an assistant administrator involved in ownership or immediate relative in facilities having a licensed capacity of one hundred fifty-one (151) or more beds is $950.00 per month. An assistant administrator is considered to be involved in

ownership of a facility when the assistant administrator has ownership interest of five percent (5%) or more.

(6) The maximum allowed compensation for a nursing director involved in ownership or immediate relative is sixty percent (60%) of the amount allowed for the administrator, or $950.00 per month, whichever is greater. The nursing director shall be a licensed registered or practical nurse. A nursing director is considered to be involved in ownership of a facility when the nursing director has ownership interest of five percent (5%) or more.

f. Management fees shall be computed on the same basis as the administrator's salary, but shall have the amount paid the resident administrator deducted. When the parent company can separately identify accounting costs, the costs are allowed.

g. Depreciation based upon tax cost using only the straight-line method of computation, recognizing the estimated useful life of the asset as defined in the American Hospital Association Useful Life Guide, may be included as a patient cost. When accelerated methods of computation have been elected for income tax purposes, an adjustment shall be made. For change of ownership, refer to subrule 82.5(12).

h. Necessary and proper interest on both current and capital indebtedness is an allowable cost.

(1) Interest is the cost incurred for the use of borrowed funds. Interest on current indebtedness is the cost incurred for funds borrowed for a relatively short term. Interest on capital indebtedness is the cost incurred for funds borrowed for capital purposes.

(2) Necessary—requires that the interest be incurred on a loan made to satisfy a financial need of the provider, be incurred on a loan made for a purpose reasonably related to patient care, and be reduced by investment income except where the income is from gifts and grants whether restricted or unrestricted, and which are held separate and not commingled with other funds.

(3) "Proper"—requires that interest be incurred at a rate not in excess of what a prudent borrower would have had to pay in the money market on the date the loan was made, and be paid to a lender not related through control or ownership to the borrowing organization.

(4) Interest on loans is allowable as cost at a rate not in excess of the amount an investor could receive on funds invested in the locality on the date the loan was made.

(5) Interest is an allowable cost when the general fund of a provider borrows from a donor-restricted fund, a funded depreciation account of the provider, or the provider's qualified pension fund, and pays interest to the fund, or when a provider operated by members of a religious order borrows from the order.

(6) When funded depreciation is used for purposes other than improvement, replacement or expansion of facilities or equipment related to patient care, allowable interest expense is reduced to adjust for offsets not made in prior years for earnings on funded depreciation. A similar treatment will be accorded deposits in the provider's qualified pension fund where the deposits are used for other than the purpose for which the fund was established.

i. Costs applicable to supplies furnished by a related party or organization are a reimbursable cost when included at the cost to the related party or organization. The cost shall not exceed the price of comparable supplies that could be purchased elsewhere.

(1) Related means that the facility, to a significant extent, is associated with or has control of or is controlled by the organization furnishing the services, facilities, or supplies.

(2) Common ownership exists when an individual or individuals possess significant ownership or equity in the facility and the institution or organization serving the provider.

(3) Control exists where an individual or an organization has power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution.

(4) When the facility demonstrates by convincing evidence that the supplying organization is a bona fide separate organization; that a substantial part of its business activity of the type carried on with the facility is transacted with others and there is an open competitive market for the type of services, facilities, or supplies furnished by the organization; that the services, facilities, or supplies are those which commonly are obtained by

similar institutions from other organizations and are not a basic element of patient care ordinarily furnished directly to patients by the institutions; and that the charge to the facility is in line with the charge for services, facilities, or supplies in the open market and no more than the charge made under comparable circumstances to others by the organization for the services, facilities, or supplies, the charges by the supplier shall be allowable costs.

j. When the operator of a participating facility rents from a nonrelated party, the amount of rent expense allowable on the cost report shall be based on the cost of the facility as identified in subrule 82.5(12), paragraph *"a,"* plus the landlord's other expenses and a reasonable rate of return, not to exceed actual rent payments.

When the operator of a participating facility rents the building from a related party, the amount of rent expense allowable on the cost report shall be no more than the amortized cost of the facility as identified in subrule 82.5(12), paragraph *"a,"* plus landlord's other expenses.

The landlord must be willing to provide documentation of these costs for rental arrangements.

k. Each facility which supplies transportation services as defined in Iowa Code section 601J.1, subsection 1, shall provide current documentation of compliance with or exemption from public transit coordination requirements as found in Iowa Code chapter 601J and 820—[09,A] chapter 2 of the department of transportation rules at the time of annual contract renewal. Failure to cooperate in obtaining or in providing the required documentation of compliance or exemption after receipt from the Iowa department of transportation, public transit division shall result in disallowance of vehicle costs and other costs associated with transporting residents.

l. Depreciation, interest and other capital costs attributable to construction of new facilities, expanding existing facilities, or the purchase of an existing facility, are allowable expenses only if prior approval has been gained through the health planning process specified in rules of the public health department, 470—chapter 201.

82.5(12) *Termination or change of owner.*

a. A participating facility contemplating termination of participation or negotiating a change of ownership shall provide the department with at least sixty (60) days' prior notice. A transfer of ownership or operation terminates the participation agreement. A new owner or operator shall establish that the facility meets the conditions for participation and enter into a new agreement. The person responsible for transfer of ownership or for termination is responsible for submission of a final financial and statistical report through the date of the transfer. No payment to the new owner will be made until formal notification is received. The following situations are defined as a transfer of ownership:

(1) In the case of a partnership which is a party to an agreement to participate in the medical assistance program, the removal, addition, or substitution of an individual for a partner in the association, in the absence of an express statement to the contrary, dissolves the old partnership and creates a new partnership which is not a party to the previously executed agreement and a transfer of ownership has occurred.

(2) When a participating nursing home is a sole proprietorship, a transfer of title and property to another party constitutes a change of ownership.

(3) When the facility is a corporation, neither a transfer of corporate stock nor a merger of one or more corporations with the participating corporation surviving is a transfer of ownership. A consolidation of two or more corporations resulting in the creation of a new corporate entity constitutes a change of ownership.

(4) When a participating facility is leased, a transfer of ownership is considered to have taken place. When the entire facility is leased, the total agreement with the lessor terminates. When only part of the facility is leased, the agreement remains in effect with respect to the unleased portion, but terminates with respect to the leased portion.

b. No increase in the value of the property shall be allowed in determining the Medicaid rate for the new owner with any change of ownership (including lease agreements). When filing the first cost report, the new owner shall either continue the schedule of depreciation and interest established by the previous owner, or the new owner may choose to claim the actual rate of interest expense. The results of the actual rate of interest expense shall not be higher than would be allowed under the Medicare principles of reimbursement and shall be

applied to the allowed depreciable value established by the previous owner, less any down payment made by the new owner.

c. Other acquisition costs of the new owner such as legal fees, accounting and administrative costs, travel costs and the costs of feasibility studies attributable to the negotiation or settlement of the sale or purchase of the property shall not be allowed.

d. In general, the provisions of Section 1861(v)(1)(0) of the Social Security Act regarding payment allowed under Medicare principles of reimbursement at the time of a change of ownership shall be followed, except that no return on equity or recapture of depreciation provisions shall be employed.

e. A new owner or lessee wishing to claim a new rate of interest expense must submit documentation which verifies the amount of down payment made, the actual rate of interest, and the number of years required for repayment with the next seminannual cost report. In the absence of the necessary supportive documentation, interest and other property costs for all facilities which have changed or will change ownership shall continue at the rate allowed the previous owner.

82.5(13) Rescinded, effective 1/1/86.

82.5(14) *Payment to new home.* A new home for which cost has not been established shall receive the prevailing maximum allowable cost ceiling. At the end of three (3) months' operation a financial and statistical report shall be submitted and the cost established. Subsequent reports shall be submitted from the beginning day of operation to the end of the fiscal year or six (6) months' interim period, whichever comes first, and each six (6) months thereafter.

82.5(15) *Payment to new owner.* An existing facility with a new owner shall continue with the previous owner's per diem rate until a new financial and statistical report has been submitted and a new rate established. The facility may submit a report for the period from beginning of actual operation to the end of the fiscal year or may submit two (2) cost reports within the fiscal year provided the second report covers a period of six (6) months ending on the last day of the fiscal year. The facility shall notify the department of the date its fiscal year will end and of the reporting option selected.

82.5(16) *Limitation on reimbursement rate.* For nonstate owned intermediate care facilities for the mentally retarded, the reimbursement rate shall be determined by dividing total reported patient expenses by total patient days during the reporting period. Total patient days for purposes of the computation shall be inpatient days as determined in subrule 82.5(7) or eighty percent (80%) of the licensed capacity of the facility, whichever is greater.

This rule is intended to implement Iowa Code sections 249A.12 and 249A.16.

441—82.6(249A) Eligibility for services.

82.6(1) *Interdisciplinary team.* The initial evaluation for admission shall be conducted by an interdisciplinary team. The team shall consist of a physician, a social worker, and other professionals. At least one member of the team shall be a qualified mental retardation professional.

82.6(2) *Evaluation.* The evaluation shall include a comprehensive medical, social, and psychological evaluation. The comprehensive evaluation shall include:

a. Diagnoses, summaries of present medical, social and where appropriate, developmental findings, medical and social family history, mental and physical functional capacity, prognoses, range of service needs, and amounts of care required.

b. An evaluation of the resources available in the home, family, and community.

c. An explicit recommendation with respect to admission or in the case of persons who make application while in the facility, continued care in the facility. Where it is determined that intermediate care facility for the mentally retarded services are required by an individual whose needs might be met through the use of alternative services which are currently unavailable, this fact shall be entered in the record, and plans shall be initiated for the active exploration of alternatives.

d. An individual plan for care shall include diagnosis, symptoms, complaints or complications indicating the need for admission, a description of the functional level of the resident; written objective; orders as appropriate for medications, treatments, restorative and rehabilitative services, therapies, diet, activities, social services, and special procedures designed to meet the objectives; and plans for continuing care, including provisions for review and necessary modifications of the plan, and discharge.

e. Written reports of the evaluation and the written individual plan of care shall be delivered to the facility and entered in the individual's record at the time of admission or, in the case of individuals already in the facility, immediately upon completion.

82.6(3) *Certification statement.* Eligible individuals may be admitted to an intermediate care facility for the mentally retarded upon the certification of a physician that there is a necessity for care at the facility. Eligibility shall continue as long as a valid need for the care exists.

This rule is intended to implement Iowa Code section 249A.12.

441—82.7(249A) Initial approval for ICF/MR care. Payment will be made for intermediate care facility for the mentally retarded care only upon certification of need for this level of care by a licensed physician of medicine or osteopathy and approval by the Iowa foundation for medical care which is designated as the professional standards review organization for the state.

This rule is intended to implement Iowa Code section 249A.12.

441—82.8(249A) Determination of need for continued stay. Certification of need for continued stay shall be made according to procedures established by the Iowa foundation for medical care.

This rule is intended to implement Iowa Code section 249A.12.

441—82.9(249A) Arrangements with residents.

82.9(1) *Resident care agreement.* The Resident Care Agreement, Form MA-2151-0, shall be used as a three (3)-party contract among the facility, the resident, and the department to spell out the duties, rights, and obligation of all parties.

82.9(2) *Financial participation by resident.* Each resident shall retain $25.00 per month of income for personal needs. Residents with earned income shall retain $65.00 of that income for a personal allowance. The balance of monthly income shall be applied toward the cost of care. The facility shall make arrangements with the resident for payment of such excess funds.

82.9(3) *Personal needs account.* When a facility manages the personal needs funds of a resident, it shall establish and maintain a system of accounting for expenditures from the resident's personal needs funds. The department shall charge back to the facility any maintenance item included in the computation of the audit cost that is charged to the resident's personal needs account when the charge constitutes double payment. Unverifiable expenditures charged to personal needs accounts may be charged back to the facility. The accounting system is subject to audit by representatives of the department of inspections and appeals and shall meet the following criteria:

a. Upon admittance, a ledger sheet shall be credited with the resident's total incidental money on hand. Thereafter, the ledger shall be kept current on a monthly basis. The facility may combine the accounting with the disbursement section showing the date, amount given the resident, and the resident's signature. A separate ledger shall be maintained for each resident.

b. When something is purchased for the resident and is not a direct cash disbursement, each expenditure item in the ledger shall be supported by a signed, dated receipt. The receipt shall indicate the article furnished for the resident's benefit.

c. Personal funds shall only be turned over to the resident, the resident's guardian, or other persons selected by the resident. With the consent of the resident, when the resident

is able and willing to give consent, the administrator may turn over personal funds to a close relative or friend of the resident to purchase a particular item. A signed, itemized, dated receipt shall be required to be deposited in the resident's files.

d. The receipts for each resident shall be kept until canceled by auditors.

e. The ledger and receipts for each resident shall be made available for periodic audits by an accredited department of inspections and appeals representative. Audit certification shall be made by the department's representative at the bottom of the ledger sheet. Supporting receipts may then be destroyed.

f. Upon a patient's death, a receipt shall be obtained from the next of kin or the resident's guardian before releasing the balance of the personal needs funds. When the recipient has been receiving a grant from the department for all or part of the personal needs, any funds shall revert to the department. The department shall turn the funds over to the resident's estate.

82.9(4) *Safeguarding personal property.* The facility shall safeguard the resident's personal possessions. Safeguarding shall include, but is not limited to:

a. Providing a method of identification of the resident's suitcases, clothing, and other personal effects, and listing these on an appropriate form attached to the resident's record at the time of admission. These records shall be kept current. Any personal effects released to a relative of the resident shall be covered by a signed receipt.

b. Providing adequate storage facilities for the resident's personal effects.

c. Ensuring that the resident is accorded privacy and uncensored communication with others by mail and telephone and with persons of the resident's choice except when therapeutic or security reasons dictate otherwise. Any limitations or restrictions imposed shall be approved by the administrator and the reasons noted shall be made a part of the resident's record.

This rule is intended to implement Iowa Code section 249A.12.

441—82.10(249A) Discharge and transfer.

82.10(1) *Notice.* When a public assistance recipient requests transfer or discharge, or another person requests this for the recipient, the administrator shall promptly notify the local office of the department. This shall be done in sufficient time to permit a social service worker to assist in the decision and planning for the transfer or discharge.

82.10(2) *Case activity report.* A Case Activity Report, Form AA-4166-0, shall be submitted to the department whenever a Medicaid applicant or recipient enters the facility, changes level of care, is hospitalized, leaves for visitation, or is discharged from the facility.

82.10(3) *Plan.* The administrator and staff shall assist the resident in planning for transfer or discharge through development of a discharge plan.

82.10(4) *Transfer records.* When a resident is transferred to another facility, transfer information shall be summarized from the facility's records in a copy to accompany the resident. This information shall include:

a. A transfer form of diagnosis.

b. Aid to daily living information.

c. Transfer orders.

d. Nursing care plan.

e. Physician's or qualified mental retardation professional's orders for care.

f. The resident's personal records.

g. When applicable, the personal needs fund record.

82.10(5) *Income refund.* When a resident leaves the facility during the month, any unused portion of the resident's income shall be refunded.

This rule is intended to implement Iowa Code section 249A.12.

441—82.11(249A) Continued stay review. The Iowa foundation for medical care shall be responsible for reviews of each resident's need for continuing care in intermediate care facilities for the mentally retarded.

This rule is intended to implement Iowa Code section 249A.12.

441—82.12(249A) Quality of care review. The Iowa foundation for medical care shall carry out the quality of care studies in intermediate care facilities for the mentally retarded.

This rule is intended to implement Iowa Code section 249A.12.

441—82.13(249A) Records.

82.13(1) *Content.* The facility shall as a minimum maintain the following records:

a. All records required by the department of public health amd the department of inspections and appeals.

b. Medical records as required by section 1902(a)(31) of Title XIX of the Social Security Act.

c. Records of all treatments, drugs and services for which vendors' payments have been made or are to be made under the medical assistance program, including the authority for and the date of administration of the treatment, drugs, or services.

d. Documentation in each resident's records which will enable the department to verify that each charge is due and proper prior to payment.

e. Financial records maintained in the standard, specified form including the facility's most recent audited cost report.

f. All other records as may be found necessary by the department in determining compliance with any federal or state law or rule or regulation promulgated by the United States Department of Health and Human Services or by the department.

g. Census records to include the date, number of residents at the beginning of each day, names of residents admitted, and names of residents discharged.

(1) Census information shall be provided for residents in skilled, intermediate, and residential care.

(2) Census figures for each type of care shall be totalled monthly to indicate the number admitted, the number discharged, and the number of patient days.

(3) Failure to maintain acceptable census records shall result in the per diem rate being computed on the basis of one hundred percent (100%) occupancy and a request for refunds covering indicated recipients of nursing care which have not been properly accounted for.

h. Resident accounts.

i. Inservice education program records.

j. Inspection reports pertaining to conformity with federal, state, and local laws.

k. Residents' personal records.

l. Residents' medical records.

m. Disaster preparedness reports.

82.13(2) *Retention.* Records shall be retained in the facility for a minimum of five (5) years or until an audit is performed on those records, whichever is longer.

82.13(3) *Change of owner.* All records shall be retained within the facility upon change of ownership.

This rule is intended to implement Iowa Code section 249A.12.

441—82.14(249A) Payment procedures.

82.14(1) *Method of payment.* Facilities shall be reimbursed under a cost-related vendor payment program. A per diem rate shall be established based on information submitted according to rule 441—82.5(249A).

82.14(2) *Payment responsibility.* The department shall send the resident's county of legal settlement Form MA-2152-0, ICF/MR Placement Statement, notifying them of the resident's entry into the facility.

82.14(3) *Determination of client participation.* There will be no client participation during the first month for a new admission. When the expected length of stay in the facility is one month or less, there shall be no client participation during the first thirty (30) days.

82.14(4) *Periods authorized for payment.*

a. Payment shall be made on a per diem basis for the portion of the month the resident is in the facility.

b. Payment will be authorized as long as the resident is certified as needing care in an intermediate care facility for the mentally retarded.

c. Payment will be approved for the day of admission but not the day of discharge or death.

d. Payment will be approved for periods the resident is absent to visit home for a maximum of thirty (30) days annually. Additional days may be approved for special programs of evaluation, treatment or habilitation outside the facility. Documentation as to the appropriateness and therapeutic value of resident visits and outside programming, signed by a physician or qualified mental retardation professional, shall be maintained at the facility.

e. Payment will be approved for a period not to exceed ten (10) days in any calendar month when the resident is absent due to hospitalization. Payment will not be authorized for over ten (10) days for any continuous hospital stay whether or not the stay extends into a succeeding month or months.

f. Payment for periods when residents are absent for visitation or hospitalization will be made at eighty percent (80%) of the allowable audited costs for those beds, not to exceed the maximum reimbursement rate.

82.14(5) *Supplementation.* Only the amount of client participation may be billed to the resident for the cost of care. No supplementation of the state payment shall be made by any person.

Exception: The resident, the resident's family or friends may pay to hold the resident's bed in cases where a resident spends over thirty (30) days on yearly visitation or spends over ten (10) days on a hospital stay. When the resident is not discharged from the facility, the payments shall not exceed eighty percent (80%) of the allowable audited costs for the facility, not to exceed the maximum reimbursement rate. When the resident is discharged, the facility may handle the holding of the reserve bed in the same manner as a private paying resident.

82.14(6) *Payment for out-of-state care.* Payment will be made for care in out-of-state intermediate care facilities for the mentally retarded. The rate of the payment will be negotiated by the department and the facility. The payment shall be subject to the same maximum paid to facilities in the state of Iowa.

This rule is intended to implement Iowa Code section 249A.12.

441—82.15(249A) Billing procedures.

82.15(1) *Claims.* Claims for service must be received by the department by the fifth working day following the last day of the month in which service was provided. Claims shall be submitted to the Data Processing Section, Quality Assurance Unit, Iowa Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114.

a. When payment is made, the facility will receive a copy of Form AA-4163-0, Residential Care Billing Claim and Payment Register. The right-hand copy of the original shall be returned to the department as a claim for the next month.

b. When there has been a new admission, a correction, or a claim for a reserved bed, the facility shall also submit Form AA-4164-0, Residential Care Changes Notice, with the claim.

82.15(2) Reserved.

This rule is intended to implement Iowa Code section 249A.12.

441—82.16(249A) Closing of facility. When a facility is planning on closing, the department shall be notifed at least sixty (60) days in advance of the closing. Plans for the transfer of residents receiving medical assistance shall be approved by the local office of the department.

This rule is intended to implement Iowa Code section 249A.12.

441—82.17(249A) Audits.

82.17(1) *Audits of financial and statistical report.* Authorized representatives of the department or the Department of Health and Human Services shall have the right, upon proper identification, to audit, using generally accepted auditing procedures, the general financial records of a facility to determine if expenses reported on the Financial and Statistical Report for Nursing Homes—Mentally Retarded, Form AA-4039-0, are reasonable and proper according to the rules set forth in 441—82.5(249A). The aforementioned audits may be done either on the basis of an on-site visit to the facility, their central accounting office, or office(s) of their agents.

a. When a proper per diem rate cannot be determined, through generally accepted auditing procedures, the auditor shall examine and adjust the report to arrive at what appears to be an acceptable rate and shall recommend to the department that the indicated per diem should be reduced to seventy-five percent (75%) of the established payment rate for the ensuing six (6)-month period and if the situation is not remedied on the subsequent Financial and Statistical Report for Nursing Homes—Mentally Retarded, Form AA-4039-0, the facility shall be suspended and eventually canceled from the intermediate care facility program, or

b. When a facility continues to include as an item of cost an item or items which had in a prior audit been removed by an adjustment in the total audited costs, the auditor shall recommend to the department that the per diem be reduced to seventy-five percent (75%) of the current payment rate for the ensuing six (6)-month period. The department may, after considering the seriousness of the exception, make the reduction.

82.17(2) *Auditing of proper billing and handling of patient funds.*

a. Field auditors of the department of inspections and appeals or representatives of Health and Human Services, upon proper identification, shall have the right to audit billings to the department and receipts of client participation, to ensure the facility is not receiving payment in excess of the contractual agreement and that all other aspects of the contractual agreement are being followed, as deemed necessary.

b. Field auditors of the department of inspections and appeals or representatives of Health and Human Services, upon proper identification, shall have the right to audit records of the facility to determine proper handling of patient funds in compliance with subrule 82.9(3).

c. The auditor shall recommend and the department shall request repayment by the facility to either the department or the resident(s) involved, such sums inappropriately billed to the department or collected from the resident.

d. The facility shall have sixty (60) days to review the audit and repay the requested funds or present supporting documentation which would indicate that the requested refund amount, or part thereof, is not justified.

e. When the facility fails to comply with paragraph *"d"* the requested refunds may be withheld from future payments to the facility. The withholding shall not be more than twenty-five percent (25%) of the average of the last six (6) monthly payments to the facility. The withholding shall continue until the entire requested refund amount is recovered. If in the event the audit results indicate significant problems, the audit results may be referred to the attorney general's office for whatever action may be deemed appropriate.

f. When exceptions are taken during the scope of an audit which are similar in nature to the exceptions taken in a prior audit, the auditor shall recommend and the department may, after considering the seriousness of the exceptions, reduce payment to the facility to seventy-five percent (75%) of the current payment rate.

These rules are intended to implement Iowa Code sections 249A.2, 249A.3 and 249A.12.

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CHAPTER 83
TITLE XIX WAIVER SERVICES
[Prior to 2/11/87, Human Services(498)]

441—83.1(249A) Program purpose and definitions. Title XIX waiver services are services provided to maintain individuals in their own homes or communities who would otherwise require care in medical institutions.

Payment for educational, vocational and prevocational services is prohibited under Title XIX waiver services. Payment for room and board is excluded except for respite care.

"Adult day care" means those services and standards as described in 441—chapter 171.

"Blind individual" means an individual who has a central visual acuity of 20/200 or less in the better eye with the use of corrective lens or visual field restriction to 20 degrees or less.

"Case management" means those services as described in 441—chapter 131.

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

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

"Disabled person" means an individual who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which has lasted or is expected to last for a continuous period of not less than twelve (12) months. A child under the age of eighteen (18) is considered disabled if the child suffers a medically determinable physical or mental impairment of comparable severity.

"Homemaker services" means those services described in 441—chapter 180.

"Intradepartmental board for supplemental security income deeming determinations" means the board which has the authority under part 416 of Title 20 of the Code of Federal Regulations to grant exceptions to supplemental security income deeming rules on a case-by-case basis.

"Personal care services" means those services and standards as described in 441—chapter 177 with the exception of 177.3(1), 177.4(1)*"a,"* 177.4(6), 177.4(7), 177.4(8), 177.7(249), 177.8(249) and 177.9(249).

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

"Residential treatment and residential care services" for an adult means services and standards described in 441—chapter 207.

"Respite care" means temporary care to an eligible individual to provide relief to the usual caregiver(s) through the use of foster care facilities and services, residential treatment and residential care services, hospitals, intermediate care facilities, intermediate care facilities for the mentally retarded, skilled nursing facilities and in-home health services.

"Substantial gainful activity" means productive activities which add to the economic wealth, or produce goods or services to which the public attaches a money value.

"Title XIX medical institution" means a hospital, intermediate care facility, skilled nursing facility or intermediate care facility for mentally retarded which has been approved as a Title XIX vendor.

441—83.2(249A) Allowable services. Services allowable under the model waiver are homemaker services, case management, adult day care, personal care services, residential treatment and residential care services and respite care.

Respite care is limited to thirty-six (36) days per individual during a twelve (12)-month period.

441—83.3(249A) Application.

83.3(1) Application for Title XIX waiver services shall be made by completing the Application for Medical Assistance or State Supplementary Assistance, Form PA-1107-0, and the Application for Title XIX Home and Community Based Services, Form MA-3033. The application process as specified in rules 441—76.1(249A) to 441—76.6(249A) shall be followed. Individuals who have been placed on the waiting list shall complete a new application at the time their name comes up on the waiting list.

83.3(2) Reserved.

441—83.4(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—chapter 7 and rule 441—130.5(234). The applicant or recipient is entitled to appeal the level of care determination to the Iowa foundation for medical care by sending a letter requesting an appeal to the foundation.

441—83.5(249A) Eligibility criteria. An individual must meet the following criteria to be eligible for model waiver services.

83.5(1) The individual must be determined to be blind or disabled as determined by the receipt of social security disability benefits, or a disability determination made by the bureau of medical services. Form PA-2128-4, Medical Report on Disability and Form PA-2129-4, Social History Report must be submitted to the bureau of medical services for use in making the disability determination according to supplemental security income guidelines as per Title XVI of the Social Security Act.

83.5(2) The individual must be ineligible for medical assistance under other Title XIX programs or coverage groups, with the exception of the medically needy program and the cases approved by the Intradepartmental Board for Supplemental Security Income Deeming Determinations.

83.5(3) Individuals shall meet the eligibility requirements of the supplemental security income program except for the following:

a. The individual is under eighteen (18) years of age, unmarried and not the head of a household and is ineligible for supplemental security income because of the deeming of the parent's(s') income and resources.

b. The individual is married and is ineligible for supplemental security income because of the deeming of the spouse's income or resources.

c. The individual is ineligible for supplemental security income due to excess income and the individual's income does not exceed three hundred percent (300%) of the maximum monthly payment for one (1) person under supplemental security income.

83.5(4) The individual must be certified as being in need of care in a hospital, intermediate care facility, intermediate care facility for the mentally retarded or skilled nursing facility. The Iowa foundation for medical care shall be responsible for approval of the certification of the level of care.

Title XIX waiver services will not be provided when the individual is an inpatient in a medical institution.

83.5(5) Individuals must demonstrate a need for services and the needed services must be available in accordance with subrule 130.3(4)*"b."*

83.5(6) The monthly cost of Title XIX waiver services necessary to maintain the individual at home shall not exceed the costs set forth in subrule 130.3(4)*"c."*

83.5(7) The individual shall have a service plan certified by the physician in accordance with subrule 130.7(2)*"h."*

83.5(8) The individual must be within the first fifty (50) names on a log to be maintained by the bureau of medical services. The model waiver is limited to fifty (50) individuals at any one time. The local office shall contact the bureau of medical service by the end of the second work day after the receipt of an Application for Title XIX Home and Community Based Waiver, Form MA-3033. On the third work day after the receipt of the Application for Title XIX

Home and Community Based Waiver, individuals will be entered on the log by the bureau of medical services according to the following:

a. Individuals shall be entered on the log on the basis of the date a complete Form MA-3033, Application for Title XIX Home and Community Based Waiver is date stamped in the local office. Individuals who have a pending application with the intradepartmental board for supplemental security income deeming determination shall be entered on the log first. In the event that more than one application is received at one time, individuals shall be entered on the log on the basis of the day of the month of their birthday, lowest number being first on the log. Any subsequent tie shall be decided by the month of birth, January being month one and the lowest number.

b. Individuals who do not fall within the top fifty (50) names shall have their application rejected but their names shall be maintained on the log. As slots become open, individuals will be selected from the log to maintain fifty (50) individuals on the program based on their order on the log.

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

441—83.6(249A) Effective date of eligibility.

83.6(1) Deeming of parental income and resources ceases and eligibility shall be effective with the month following the month in which an individual requires care in a medical institution.

83.6(2) Deeming of spousal income and resources ceases and eligibility shall be effective the month following the month in which an individual requires care in a medical institution.

83.6(3) Eligibility for individuals covered under subrule 83.5(3)*"c"* shall exist after the individuals 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.

441—83.7(249A) Client participation. Individuals must contribute their predetermined client participation to the cost of Title XIX waiver services. If the sum of the third party payment and client participation equals or exceeds the reimbursement established by the service worker, Title XIX will make no payments for services. However, Title XIX will make payments to Title XIX medical vendors.

Client participation shall be computed by deducting the following from the client's total income:

83.7(1) A single recipient shall be allowed the current supplemental security income standard for a recipient in the recipient's own home.

83.7(2) If need exists, an amount shall be diverted from the recipient's income for the maintenance needs of the spouse or the spouse and the dependent child(ren) of the recipient at home, not to exceed the following amounts:

a. For the maintenance needs of the spouse only, an amount which, when combined with the spouse's own income, equals the supplemental security income federal benefit rate for a couple in their own home.

b. For the maintenance needs of a spouse and dependent child(ren) an amount which, when combined with the income of the spouse and dependent child(ren), equals the current schedule of living costs for a family of the same size in the aid to dependent children program.

c. No diversion from the recipient's income shall be made for maintenance needs of a spouse or dependents who are receiving supplemental security income, state supplementary assistance or aid to dependent children.

83.7(3) There shall be deducted from the individual's available income, amounts for incurred expenses for the individual's medical or remedial care which are not subject to payment by a third party, and necessary medical or remedial care which is recognized under state law, but not covered by Medicaid. Medicare and individual or family health insurance premiums, excluding premiums for indemnity or income policies shall be deducted.

441—83.8(249A) Redetermination. A complete redetermination of eligibility for waiver services shall be done every six (6) months.

A redetermination of continuing eligibility factors shall be made when a change in circumstances occurs that affects eligibility in accordance with rule 441—83.5(249A).

441—83.9(249A) County reimbursement. The county board of supervisors shall reimburse the department for the state portion of the cost of Title XIX home and community based services to mentally retarded or mentally ill persons with legal settlement in the county. The county shall enter into a Title XIX Waiver Payment Agreement, Form MA-2171 with the department for reimbursement of services provided to mentally ill and mentally retarded persons.

These rules are intended to implement 1984 Iowa Acts, chapter 1310, section 3 and Iowa Code chapter 249A.

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CHAPTER 84
EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT

[Prior to 7/1/83, Social Services (770), Ch 84]
[Prior to 2/11/87, Human Services(498)]

441—84.1(249A) Definitions.

"Diagnosis" is the determination of the nature of physical or mental disease or abnormality.

"Screening" is the use of quick, simple procedures which can be carried out with large groups of people to sort out apparently well persons from those who have a disease or abnormality and to identify those in need of more definitive study. The screening process includes:

1. Physical measurements.
2. Unclothed physical inspection.
3. Developmental assessments.
4. Vision screening.
5. Hearing screening.
6. Ear, nose, mouth, throat, and teeth inspection.
7. Hematocrit or hemoglobin.
8. Rapid urine screening.
9. Review of immunization status.
10. Sickle cell, when appropriate.
11. Serology, when appropriate.
12. Lead poisoning, when appropriate.
13. Cardiac auscultation, when appropriate.

441—84.2(249A) Eligibility. All persons eligible for medical assistance under age twenty-one (21) are eligible for early and periodic screening, diagnosis, and treatment.

441—84.3(249A) Resources. Screening may be done at a screening center or by a private physician.

441—84.4(249A) Referral.

84.4(1) The availability of early and periodic screening shall be discussed with the aid to dependent children payee at the time of application and periodically thereafter, but no less often than at the time of the regular semiannual review.

84.4(2) Screening shall be offered to each eligible individual according to the periodicity schedule in subrule 78.18(3) when screening has been accepted, or on at least an annual basis when screening has been rejected.

84.4(3) When an individual has not had a screening examination during the preceding twelve (12) months, the worker shall discuss the desirability of the screening with the recipient at the time of the next review. When the recipient agrees to the referral, the worker shall complete Form MA-2119-0, Referral for Screening, and have the recipient sign it.

441—84.5(249A) Follow up. Follow-up services shall be provided when a referral for screening was accepted, but sixty (60) days have elapsed and no screening examination has been performed, and when a screening examination discloses a possible abnormal condition and a referral was made for further diagnosis or treatment and such diagnosis or treatment has not been received within a period of sixty (60) days from the date of the screening examination.

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

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CHAPTER 85
INPATIENT PSYCHIATRIC SERVICES FOR INDIVIDUALS AGE 65 AND OVER AND UNDER AGE 21

[Prior to 7/1/83, Social Services(770), Ch 85]
[Prior to 2/11/87, Human Services(498)]

441—85.1(249A) Inpatient psychiatric facility.

85.1(1) With respect to individuals age sixty-five (65) and over, an inpatient psychiatric facility is an establishment that is licensed pursuant to public health department rule 470—51.33(135B) in Iowa or another state to provide inpatient psychiatric care and is certified to participate in the Medicare program.

85.1(2) With respect to individuals under age twenty-one (21), inpatient psychiatric services shall be provided by a psychiatric facility licensed pursuant to public health department rule 470—51.33(135B) or an inpatient program in such a psychiatric facility, either of which is accredited by the joint commission on the accreditation of hospitals.

441—85.2(249A) Eligibility of individuals under age twenty-one (21).

85.2(1) *Age.* The individual shall be under twenty-one (21) years of age. When treatment in the facility is provided immediately preceding the individual's twenty-first birthday, coverage continues to be available until the twenty-second birthday or until service is no longer required, whichever is earlier.

85.2(2) *Period of eligibility.* The individual is considered to be an inpatient until unconditionally discharged or, if earlier, attains age twenty-two (22) as specified in 85.2(1). Coverage extends until the last day of the month of the discharge or the twenty-second birthday. While on inpatient status the eligible individual is entitled to the full scope of medical assistance benefits.

85.2(3) *Certification of need for care.* An independent team shall certify that inpatient services can be reasonably expected to improve the individual's condition or prevent further regression so that ongoing inpatient services eventually will no longer be required, and that outpatient services are not presently a viable alternative.

a. The preadmission evaluation shall be performed within forty-five (45) days prior to the proposed date for admission to the facility.

(1) The preadmission evaluation should be performed by a community mental health center in those localities where this service is available. Otherwise, the evaluation should be performed by a team consisting of a physician and a social worker who may be from the local office of the department of human services.

(2) The evaluation shall be submitted to the institution indicated on or prior to the date of the patient's admission.

b. For emergency admissions, a certification shall be provided by the interdisciplinary team defined in 85.7(3), responsible for the plan within fourteen days after admission.

c. When an individual makes application subsequent to admission, a certification by the team responsible for care shall be provided and cover any period prior to application for which claims are to be made.

85.2(4) *Financial eligibility for individuals under age twenty-one (21).* The aid to dependent children program income and resource standards applicable to the size of the individual's family shall be considered in determining financial eligibility. When the individual is unmarried and living with a parent or parents, the total income and resources of the family unit shall be considered in determining financial eligibility of the individual in the institution. This consideration continues until the individual reaches age twenty-one (21) so long as the individual continues to reside with the parent or parents. In other situations, income and resources shall be considered subject to the following conditions:

a. When the individual is unmarried and in an independent living arrangement or nonparental living arrangement, only income and resources attributable to the individual are considered available in determining financial eligibility.

b. When the individual is married, regardless of living arrangement, the aid to dependent children income and resource standards applicable to the size of the individual's family shall be considered in determining financial eligibility. This standard also applies when the individual is separated from spouse and dependents, but responsible for their support.

441—85.3(249A) Eligibility of individuals age sixty-five (65) and over. Individuals shall meet the financial eligibility requirements set forth in the department's subrule 75.1(4).

441—85.4(249A) Client participation.

85.4(1) *Individuals under age twenty-one (21).*

a. When an individual is unmarried and entered the institution from a nonparental or independent living arrangement and has income of such individual's own, then all monthly income in excess of $25.00 per month for personal requirements and after disregards applicable in the aid to dependent children program shall be applied against the cost of care in the institution. Income of the individual's parents or other family members will not be considered in determining the amount of client participation.

b. A married individual or an unmarried individual who enters the institution from a parental home is not required to contribute to the cost of care in the institution.

85.4(2) *Individuals age sixty-five (65) and over.* Client participation in the cost of care will be determined in accordance with rule 441—75.5(249A).

441—85.5(249A) Responsibilities of hospitals.

85.5(1) *Maintenance of records.* Each hospital shall maintain medical records that meet the standards of the joint commission of accreditation of hospitals. The records shall clearly indicate that the patient is involved in an active treatment program that has as its goal the return of the patient to a higher level of social and emotional functioning. The record shall be

comprehensive in all areas and contain a treatment plan for each patient. The treatment plan shall be based upon the assessment of the patient's fundamental needs.

a. There shall be documentation that a physical examination is done within twenty-four (24) hours after admission.

b. There shall be documentation that there is an assessment procedure for early detection of mental health problems that are life-threatening or indicative of severe personality disorganization or deterioration. The psychiatric evaluation shall include, but is not limited to the following items:

(1) History of psychological problem areas.
(2) Family history.
(3) Previous psychiatric treatment.
(4) Direct psychological observations and behavioral appraisal.
(5) When indicated, intellectual, projective, and personality testing.
(6) When indicated, evaluation of language, cognition, self-help, and social-effective and visual motor functioning.

c. In child and adolescent programs, the psychiatric evaluation shall also include an assessment of the developmental/chronological age of the patient, including, but not limited to, the following areas:

(1) A developmental history from the prenatal period to the present.
(2) The rate of progress.
(3) Developmental milestones.
(4) Developmental problems.
(5) An evaluation of the patient's strengths as well as problems.
(6) An assessment of the patient's developmental needs appropriate to the patient's age which shall include a detailed appraisal of peer and group relationships.

d. There shall be a social assessment which includes information relating to the following areas:

(1) Environment and home.
(2) Religion.
(3) Childhood history.
(4) Military service history.
(5) Financial status.
(6) Drug and alcohol usage among other members of the family or household.
(7) Evaluation of the patient's family circumstances, including the constellation of the family group, the current living situation, and all social, religious, ethnic, cultural, financial, emotional, and health factors.
(8) Evaluation of the expectations of the family regarding the patient's treatment, the degree to which they expect to be involved, and their expectations regarding the length of time and type of treatment required.

e. The complete physical examination, psychiatric evaluation, aod social assessment shall be done as soon as possible, but in no case later than thirty days after payments are initiated for care provided.

f. Progress shall be reviewed regularly at multidisciplinary case conferences that are oriented toward evaluation of the individual patient's treatment plan as well as evaluation of the patient's progress in meeting the stated treatment goals. Results of these reviews shall be entered in the patient's record. Progress notes shall be entered in the patient's record and include the following:

(1) Chronological documentation of the patient's clinical course.
(2) Documentation of all treatment rendered to the patient.
(3) Documentation of the implementation fo the treatment plan.
(4) Descriptions of each change in each of the patient's conditions.
(5) Descriptions of responses to and outcomes of treatment.
(6) Descriptions of the responses of the patient, patient's family, or significant intercurrent events.

g. The review of the treatment plan shall be done at least quarterly and shall clearly indicate:

(1) That all appropriate measures are being used for the treatment of the patient, and

(2) That continued treatment in the hospital is necessary.

h. The review shall be a substantive evaluation which clearly documents the care, treatment, and progress of the patient.

i. There shall be a plan for meeting the current personal, financial, and social needs of the patient and for handling and protecting the funds and other resources of the patient. This should be done in cooperation with other community agencies.

85.5(2) *Social work services.* Social work services shall be provided to:

a. Maintain patients at or restore them to the greatest possible degree of health and independent functioning, including provision of medical and social history to assist in diagnosis and treatment plans.

b. Assist patients in having and using effectively the institutional treatment and rehabilitative resources available in the community that are necessary for health improvement and recovery, specifically in carrying out the plan of treatment.

c. Encourage the development and maintenance of family and community interests and ties, and maximum independence in the management of the patient's affairs.

d. Where indicated, assist patients in planning for and returning home or to other alternate care, and in evaluating need and arranging for guardianship.

85.5(3) *Comprehensive plan for aftercare.* A comprehensive plan for aftercare shall be prepared for each patient. The plan shall reflect a full utilization of appropriate community resources. Discharge planning should begin soon after the admission of the patient to the hospital.

a. Discharge planning and aftercare services shall be made in cooperation with and closely coordinated with other community services.

b. After receiving the necessary consents for release of information, the hospital shall supply appropriate clinical information to the referral agencies.

441—85.6(249A) Responsibility of department for alternate care arrangements.

85.6(1) *Development of resources.* The division of mental health/mental retardation/developmental disabilities and the division of social services shall work together in developing and extending existing alternate care resources to assure the availability of appropriate and suitably located resources. These resources shall be utilized by persons released from the psychiatric facility and those who otherwise would need care in these institutions.

85.6(2) *Type of resources.* Alternate care resources include care in the patient's own or a relative's home with necessary supportive services, particularly homemaker services; foster family care; nursing homes; county care facilities; halfway houses; day care centers; mental health centers; psychiatrists in private practice; and other programs providing less than total hospitalization.

85.6(3) *Responsibility of participating facilities.* Each hospital, working in cooperation with local agencies, shall be assisted by the department in locating alternate care resources and appropriate alternate methods of care.

85.6(4) *Social services.* Patients discharged from a psychiatric facility or those in need of alternate care arrangement who otherwise would be cared for in these facilities shall have access to an array of necessary social services. These services shall include:

a. Counseling and other assistance, including protective services, to assist persons:

(1) To understand and carry out the hospital's recommendation for continuing care and services.

(2) To plan for and select the alternate care arrangements most appropriate to the patient's physical, emotional, social, and personal needs. As much as possible, the individual shall have the right of free choice.

(3) To live outside the hospital. To assist the individual, the hospital shall share necessary information and recommendations with appropriate people involved in the patient's continued care.

(4) To secure and use appropriate community services.

(5) To develop or maintain family and community ties and to participate in community activities.

(6) To secure needed medical care.

(7) To arrange for transfer to another type of alternate care or return to the psychiatric hospital, when necessary.

b. Homemaker services when needed to assist aged persons to live in their own or a relative's home as an alternate care arrangement.

c. Foster family care for those persons who need a family environment which cannot be provided in their own homes.

441—85.7(249A) Additional requirements for individuals under age twenty-one (21).

85.7(1) *Active treatment.* Inpatient psychiatric services shall involve active treatment. Active treatment means implementation of a professionally developed and supervised individual plan of care that is developed and implemented by an interdisciplinary team no later than fourteen (14) days after admission and is designed to achieve the recipient's discharge from inpatient status at the earliest possible time.

85.7(2) *Individual plan of care.* An individual plan of care is a written plan developed for each recipient by an interdisciplinary team to improve the recipient's condition to the extent that inpatient care in no longer necessary. The plan shall meet the requirements of 85.5(1) and (2).

85.7(3) *Interdisciplinary team.* The team shall include as a minimum either a board-eligible or board-certified psychiatrist or a clinical psychologist who has a doctoral degree, a physician licensed to practice medicine or osteopathy, and one of the following:

a. A psychiatric social worker.

b. A registered nurse with specialized training or one (1) year's experience in treating mentally ill individuals.

c. An occupational therapist who is licensed and who has specialized training or one (1) year of experience in treating mentally ill individuals.

d. A psychologist who has a master's degree in clinical psychology or has been licensed in the state of Iowa.

441—85.8(249A) Date of approval. The effective date of approval shall be determined in accordance with rule 441—76.5(249A), but shall be no earlier than July 1, 1979.

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CHAPTER 86
MEDICALLY NEEDY
[Prior to 2/11/87, Human Services(498)]

441—86.1(249A) Definitions.

"ADC related" shall mean those persons who would be eligible for aid to dependent children except for income or resources.

"Aged" shall mean a person sixty-five (65) years of age or older.

"Applicant" shall mean a person for whom assistance is being requested.

"Blind" shall mean a person with central visual acuity of 20/200 or less in the better eye with use of corrective lens or visual field restriction to twenty (20) degrees or less.

"Certification period" shall mean the period of time not to exceed two (2) consecutive months in which an individual is eligible or conditionally eligible for Medicaid as medically needy.

"CMAP related" shall mean those individuals under age twenty-one (21) who would be eligible for ADC except for income or resources and who do not qualify as dependent children.

"Conditionally eligible recipient" shall mean a medically needy person who has completed the application process and has been assigned a certification period and spenddown amount but who has not spent down for the certification period.

"Disabled" shall mean a person who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which has lasted or is expected to last for a continuous period of not less than twelve (12) months.

"Eligible recipient" shall mean a medically needy person who has income at or less than the medically needy income level (MNIL) or who has reduced excess income through spenddown to the MNIL during the certification period.

"Incurred medical expenses" shall mean (1) medical bills paid by a recipient or responsible relative during the retroactive certification period or certification period or (2) unpaid medical expenses for which the recipient or responsible relative remains obligated.

"Medically needy income level" (MNIL) shall mean one hundred thirty-three percent (133%) of the ADC schedule of basic needs (payment level) based on family size. (See subrule 41.8(2)).

"Medically need person" shall mean an ADC, CMAP or SSI related individual whose resources are within medically needy limitations and whose income is no more than the MNIL or whose income has been reduced to the MNIL through the spenddown process.

"Necessary medical and remedial services" shall mean medical services recognized by law which are currently covered under the Iowa Medicaid program.

"Noncovered Medicaid services" shall mean medical expenses that are not covered under Medicaid because the provider was not enrolled in Medicaid, the bill is for a responsible relative who is not in the Medicaid eligible group or the bill is for services delivered before the start of a certification period.

"Obligated medical expense" shall mean a medical expense for which the recipient or responsible relative continues to be legally liable.

"Responsible relative" shall mean spouse, parent(s), stepparent, living in the household of the eligible recipient.

"Retroactive certification period" shall mean three calendar months prior to the date of application for applications filed on or after February 1, 1985, two (2) calendar months for applications filed on or after January 1, 1985, and one (1) calendar month for applications filed on or after December 1, 1984.

"Spenddown" shall mean the process by which a medically needy person obligates excess income for allowable medical expenses to reduce income to the appropriate MNIL.

"SSI related" shall mean those aged, blind, or disabled persons who would be eligible for supplemental security benefits except for income.

This rule is intended to implement Iowa Code section 249A and 1985 Iowa Acts, chapter 239, section 7.

441—86.2(249A) Application. An application for the ADC related or CMAP related medically needy program shall be submitted to the local office of the department of human services on the Public Assistance Application, Form PA-2207-0, or Form PA-2230-0 (Spanish). The application shall be signed by a spouse, both parents, or a parent and stepparent whose income and resources are considered in determining eligibility.

An application for the SSI related medically needy program shall be submitted to the local office of the department of human services on the Application for Medical Assistance, Form PA-1107-0.

86.2(1) Each person wishing to do so shall have the opportunity to apply for assistance without delay. When a parent is in the home with a child and is not prevented from acting on the child's behalf by reason of physical or mental impairment, a parent shall make the application.

86.2(2) An applicant may be assisted by other persons in the application process. The client may be accompanied and represented by these persons when contacting the local office. When the applicant has a guardian or conservator, the guardian or conservator shall participate in the application process.

86.2(3) The applicant shall immediately be given an application form to complete. When the applicant requests that the forms be mailed, the local office shall send the necessary forms in the next outgoing mail.

86.2(4) A new application shall be made whenever a person is added to the eligible group, when a responsible relative becomes a member of the household, or when the certification period has expired.

86.2(5) The date of application shall be the date an identifiable application is received in the local office. An identifiable application is a signed application containing the client's name and address.

This rule is intended to implement Iowa Code section 249A.4 and 1985 Iowa Acts, chapter 239, section 7.

441—86.3(249A) Application processing.

86.3(1) The eligibility decision shall be based primarily on information furnished by the applicant. The local office shall assist the applicant, when requested, in providing information needed to determine eligibility and amount of assistance.

86.3(2) In processing an application the local office shall conduct at least one face-to-face interview with the applicant prior to approval of the application for assistance.

In those instances where an application has been filed to add a person to an existing eligible group, the face-to-face interview requirement shall be waived.

86.3(3) The applicant shall report no later than at the time of the face-to-face interview any change as defined in 86.6(4). Any change which occurs after the face-to-face interview shall be reported by the applicant within five (5) days from the date the change occurred.

In those instances where an application has been filed to add a person to an existing eligible group, the five (5)-day requirement for reporting changes shall be waived. These applicants and eligible groups shall be subject to the recipient's ten (10)-day-reporting requirement as defined in 86.6(4).

86.3(4) The local office shall notify the applicant in writing of additional information or verification that is required to establish eligibility for assistance. Failure of the applicant to supply the information or verification, or refusal by the applicant to authorize the local office to secure the information or verification from other sources, shall serve as a basis for denial of assistance. Five (5) working days shall be allowed for the applicant to supply the required information or verification. Any time taken beyond the five (5) days shall be considered a delay on the part of the applicant, unless the local office extends the deadline because the applicant is making every effort to secure the information or verification but is unable to do so.

86.3(5) All eligibility factors shall be reviewed on reapplications. A face-to-face interview is not required for reapplications if the last face-to-face interview was less than six (6) months ago and there has not been a break in assistance.

86.3(6) In determining disability a medical report from a qualified physician and a social history must be obtained. A physician and social worker, qualified by professional training and experience, must review the medical report and social history and determine on behalf of the department whether the person meets the definition of disability.

a. The medical report shall be submitted on Form PA-2128-4, Medical Report on Disability, except when equivalent information regarding diagnosis, prognosis and effect on activity is contained in a written, detailed statement. The social history report shall be submitted on Form PA-2129-4, Social History Report, except when equivalent information regarding capabilities, skills, living conditions and attitudes of the applicant is contained in a written, detailed statement. The medical report on disability and social history report must describe the current condition of the applicant based upon an examination made within six (6) months of the date of application.

b. The physician must determine whether reexamination of the person's medical condition will be necessary for periodic redeterminations of eligibility. The physician and social worker must review reexamination reports and the social history to determine whether the person continues to meet the definition of disability.

c. When an applicant is receiving social security disability benefits no further determination of disability is necessary.

This rule is intended to implement Iowa Code section 249A.4 and 1985 Iowa Acts, chapter 239, section 7.

441—86.4(249A) Time limit for decision. The applicant shall receive a written notice of approval, conditional eligibility, or denial as soon as possible, but no later than forty-five (45) days from the date of application. This time standard shall apply except in unusual circumstances such as when the local office and the applicant have made every reasonable effort to secure necessary information which has not been supplied by the date the time limit has expired, or because of emergency situations, such as fire, flood or other conditions beyond the administrative control of the local office.

In the event disability has not been determined after sixty (60) days, the application shall be denied.

This rule is intended to implement Iowa Code section 249A.4 and 1985 Iowa Acts, chapter 239, section 7.

441—86.5(249A) Effective date of approval.

86.5(1) Eligibility during the certification period shall be effective as of the first day of the first month of the certification period when the medically needy income level (MNIL) is met.

86.5(2) The effective date of retroactive eligibility shall be as specified in 441—86.1(249A) when the individual:

a. Received any covered medical service during the retroactive period which is still not paid, and

b. Would have been eligible for medical assistance benefits in the month services were received if they had applied, regardless of whether the individual was alive when the application for medical assistance was made.

The applicant need not be eligible in the certification period to be eligible in any month of the retroactive period.

This rule is intended to implement Iowa Code section 249A.4 and 1984 Iowa Acts, chapter 1310, section 3.

441—86.6(249A) Responsibilities of recipients.

86.6(1) The recipient shall cooperate by giving complete and accurate information needed to establish eligibility. Failure to do so shall serve as a basis for cancellation of assistance.

86.6(2) The recipient shall supply additional information needed to establish eligibility within five (5) working days from the date a written request is mailed by the local office to the recipient's current mailing address or given to the recipient. The recipient shall give written permission for release of information on Authorization for Release of Information, Form PA-2206-0, when the recipient is unable to furnish information needed to establish eligibility. Failure to

supply the information or refusal to authorize the local office to secure the information from other sources shall serve as a basis for cancellation of assistance.

86.6(3) The recipient shall cooperate with the department whenever the recipient's case is selected by quality control or Project Integrity for verification of eligibility. Failure to do so shall serve as a basis for cancellation of assistance.

86.6(4) The recipient or individual applying to be added to an existing eligible group shall timely report any change in the following circumstances:

a. Income from all sources, any change in full-time or part-time employment status, and any changes in dependent care expenses.

b. Resources.

c. Members of the household.

d. Change of mailing or living address.

e. Payment for child support, alimony or dependents.

f. Change in medical resources.

86.6(5) A report shall be considered timely when made within ten (10) days from:

a. The receipt of resources or increased or decreased income.

b. The date dependent care expenses increase or decrease or the date full-time or part-time employment status changes.

c. The date the address changes.

d. The date a person enters or leaves the household.

e. The date the payment increases or decreases for child support, alimony or dependents which is paid by the recipient, responsible relative or sponsor.

f. The date the applicant or recipient becomes aware of a change in medical resources.

86.6(6) When a change is not timely reported, any excess medical assistance paid shall be subject to recovery from the applicant or recipient.

This rule is intended to implement Iowa Code section 249A.4 and 1985 Iowa Acts, chapter 239, section 7.

441—86.7(249A) Effective date of change. After assistance has been approved, changes reported during the month will be effective the first day of the next calendar month, provided timely notice is not required as specified in subrule 7.7(1) and the certification has not expired. When an application is completed to add a new person to the eligible group, and that person meets the eligibility requirements, assistance shall be effective the first of the month in which the application was filed.

This rule is intended to implement Iowa Code section 249A.4 and 1984 Iowa Acts, chapter 1310, section 3.

441—86.8(249A) Coverage groups.

86.8(1) *Pregnant women.* Medicaid shall be available to all pregnant women as specified in subrule 75.1(14) who would be eligible for ADC except for income or resources or who would be eligible for SSI except for income.

86.8(2) *ADC related persons under age twenty-one (21).* Medicaid shall be available to all persons under age twenty-one (21) who would be eligible for ADC except for income or resources.

86.8(3) *CMAP related individuals under age twenty-one (21).* Medicaid shall be available to all individuals under age twenty-one (21), including the unborn, who would be eligible for ADC except for income or resources and who do not qualify as dependent children as specified in subrule 75.1(15).

86.8(4) *SSI related persons.* Medicaid shall be available to all persons who would be eligible for SSI except for income.

This rule is intended to implement Iowa Code section 249A.4 and 1985 Iowa Acts, chapter 239, section 7.

441—86.9(249A) Resources and income of persons considered.

86.9(1) Resources and income of all responsible relatives and of all potentially eligible individuals living together except as specified in subrule 86.9(2) shall be considered in determining eligibility.

86.9(2) The amount of income of the responsible relative that has been counted as available to an ADC household shall not be considered in determining the countable income for the medically needy eligible group.

This rule is intended to implement Iowa Code section 249A.4 and 1984 Iowa Acts, chapter 1310, section 3.

441—86.10(249A) Resources.

86.10(1) The resource limitation for a single individual shall be $1,800.

86.10(2) The resource limitations for two (2) or more persons shall be $2,700.

86.10(3) Disposal of resources for less than fair market value by SSI related applicants or recipients shall be treated according to policies specified in rule 441—75.6(249A).

86.10(4) The resources of ADC and CMAP related persons shall be treated according to ADC policies.

86.10(5) The resources of SSI related persons shall be treated according to SSI policies.

This rule is intended to implement Iowa Code section 249A.4 and 1985 Iowa Acts, chapter 239, section 7.

441—86.11(249A) Income.

86.11(1) All unearned and earned income, unless specifically exempted, disregarded, deducted for work expenses, or diverted shall be considered in determining initial and continuing eligibility.

86.11(2) ADC policies as specified in subrules 41.7(1) through 41.7(8), 41.7(9) *"c," "g," "h," "i,"* and 41.7(10) regarding treatment of all earned and unearned income are applied to ADC and CMAP related groups in determining initial and continuing eligibility unless otherwise specified in these rules.

86.11(3) SSI policies as specified in federal SSI regulations regarding treatment of all earned and unearned income are applied to SSI related groups in determining initial and continuing eligibility.

86.11(4) The monthly income shall be determined prospectively unless actual income is available.

86.11(5) The income for the certification period shall be determined by adding both months' net income together to arrive at a total.

The income for the retroactive certification period shall be determined by adding each month of the retroactive period to arrive at a total.

This rule is intended to implement Iowa Code section 249A.4 and 1984 Iowa Acts, chapter 1310, section 3.

441—86.12(249A) Medically needy income level (MNIL).

86.12(1) The MNIL is based on one hundred thirty-three and one-third percent of the ADC schedule of basic needs calculated according to federal formula based on family size as follows:

Number of Persons	1	2	3	4	5	6	7	8	9	10
	433	433	508	591	658	725	800	875	941	1,033

Each additional person 108

86.12(2) When determining household size for the MNIL all potential eligibles and all individuals whose income is considered as specified in rule 441—86.9(249A) shall be included.

86.12(3) The MNIL for the certification period shall be determined by adding both months' MNIL to arrive at a total.

The MNIL for the retroactive certification period shall be determined by adding each month of the retroactive period to arrive at a total.

86.12(4) The total net countable income for the certification period shall be compared to the total MNIL for the certification period based on family size as specified in subrule 86.12(2).

a. If the total countable net income is equal to or less than the total MNIL, the medically needy individual(s) shall be eligible for Medicaid.

b. If the total countable net income exceeds the total MNIL, the medically needy individual(s) shall not be eligible for Medicaid unless incurred medical expenses equal or exceed the difference between the net income and the MNIL.

This rule is intended to implement Iowa Code section 249A.4 and 1985 Iowa Acts, chapter 239, section 7.

441—86.13(249A) Verification of medical expenses to be used in spenddown calculation. The applicant or recipient shall submit evidence of medical expenses on the Medical Expense Verification, Form MA-4069, which shall be completed by the medical provider. In cases where the provider is uncooperative or where returning to the provider would constitute an unreasonable requirement of the applicant or recipient, the form shall be completed by the worker. Verification of allowable expenses incurred for transportation to receive medical care as specified in rule 441—78.13(249A) shall be verified on Form MA-3022-1, Medical Transportation Claim.

Applicants who have not established that they met spenddown in the current certification period shall be allowed thirty-five (35) days following the end of the certification period to submit medical expenses for that period.

This rule is intended to implement Iowa Code section 249A.4 and 1984 Iowa Acts, chapter 1310, section 3.

441—86.14(249A) Spenddown calculation.

86.14(1) Incurred medical expenses shall be used to meet spenddown if not already used to meet spenddown in a previous certification period.

86.14(2) Incurred medical expenses which are not subject to payment by a third party shall be deducted in the following order:

a. Medicare and other health insurance premiums, deductibles, or coinsurance charges.

b. Medical expenses for necessary medical and remedial services that are recognized under state law but not covered by Medicaid.

c. Medical expenses for necessary medical and remedial services that are covered by Medicaid.

86.14(3) When incurred medical expenses have reduced income to the applicable MNIL, the individual(s) shall be eligible for Medicaid.

86.14(4) Persons receiving care in an intermediate care facility, an intermediate care facility for the mentally retarded, an institution for mental disease, or a skilled nursing facility shall be allowed to retain a personal needs allowance.

This rule is intended to implement Iowa Code section 249A.4 and 1985 Iowa Acts, chapter 239, section 7.

441—86.15(249A) Medicaid services. Persons eligible for Medicaid through the medically needy program will be eligible for all services covered by Medicaid except:

86.15(1) Care in an intermediate care facility or an intermediate care facility for the mentally retarded.

86.15(2) Care in an institution for mental disease.

86.15(3) Care in a skilled nursing facility.

This rule is intended to implement Iowa Code section 249A.4 and 1985 Iowa Acts, chapter 239, section 7.

441—86.16(249A) Right to appeal. The individual's right to appeal shall be as specified in 441—chapter 7.

This rule is intended to implement Iowa Code section 249A.4 and 1984 Iowa Acts, chapter 1310, section 3.

441—86.17 Rescinded, effective 1/1/86.

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

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CHAPTER 87*
MEDICAID PROVIDER AUDITS

[Prior to 2/11/87, Human Services(498)]

PREAMBLE

The purpose of this chapter is to defined steps which may be taken by the department of human services to ensure that provider payments for Medicaid services and supplies are made in accordance with provider manual and Medicaid rules.

441—87.1(249A) Definitions.

"Authorized representative" within the context of these rules means that person appointed to carry out audit procedures, including assigned auditors, fiscal agent consultants, or agents contracted for specific audits or audit procedures.

"Claim" means each record received by the department or its fiscal agent which tells the amount of requested payment and the service rendered by a specific and particular Medicaid provider to an eligible recipient.

"Clinical record" means a tangible and legible history which documents the criteria established for clinical records as set forth in rule 441—79.3(249A).

"Confidence level" means the probability that an overpayment or underpayment rate determined from a random sample of charges is less than or equal to the rate that exists in the universe from which the sample was drawn.

"Customary and prevailing" means (1) the most consistent charge by a Medicaid provider for a given service and (2) a fee within the range of usual charges for a given service billed by most providers with similar training and experience in the state of Iowa.

"Extrapolation" means that the total amount of overpayment or underpayment will be estimated by using sample data meeting the confidence level requirement.

"Fiscal record" means a tangible and legible history which documents the criteria established for fiscal records as set forth in rule 441—79.3(249A).

"Generally accepted auditing procedures" means those procedures published in Standards for Audit of Governmental Organizations, Programs, Activities & Functions, 1972 edition, by the Comptroller General of the United States.

"Overpayment" means any payment or portion of a payment made to a provider which is incorrect according to the laws and rules applicable to the Medicaid program and which results in a payment greater than that to which the provider is entitled.

"Procedure code" means the identifier which describes medical services performed or the supplies, drugs or equipment provided.

"Random sample" means a systematic (or every nth unit) sample for which each item in the universe has an equal probability of being selected.

"Underpayment" means any payment or portion of a payment not made to a provider for services delivered to eligible recipients according to the laws and rules applicable to the Medicaid program and to which the provider is entitled.

"Universe" means all items (claims), submitted by a specific provider for payment during a specific time period, from which a random sample will be drawn.

441—87.2(249A) Audit of clinical and fiscal records by the department.

87.2(1) Authorized representatives of the department shall have the right, upon proper identification, and using generally accepted auditing procedures, to review the clinical and fiscal records of the provider to determine whether:

a. The department has accurately paid claims for goods or services.

b. The provider has furnished the services to Medicaid recipients.

c. The provider has retained clinical and fiscal records which substantiate claims submitted for payment during the audit period.

87.2(2) Records generated and maintained by the department or its fiscal agent may be used by auditors and in all proceedings of the department.

This rule is intended to implement Iowa Code sections 249A.4 and 249A.5.

*Effective date of 3/1/86 delayed seventy days by the administrative rules review committee.

441—87.3(249A) Who shall be audited. Any Medicaid provider may be audited at any time at the discretion of the department.

This rule is intended to implement Iowa Code sections 249A.4 and 249A.5.

441—87.4(249A) Auditing procedures. The department will select the appropriate method of conducting an audit and will protect the confidential nature of the records being reviewed. The provider may be required to furnish records to the department. The provider may select the method of delivering any requested records to the department.

87.4(1) Audit procedures may include, but are not limited to, the following:

a. Comparing clinical and fiscal records with each claim.

b. Interviewing recipients of services, and employees of providers.

c. Examining third party payment records.

d. Comparing Medicaid charges with private patient charges to determine that the charge to Medicaid is not more than the customary and prevailing fee. Records of privately paying patients will be requested by subpoena.

87.4(2) Use of statistical sampling techniques. The department's procedures for auditing Medicaid providers may include the use of random sampling and extrapolation. When this procedure is used, all sampling will be performed within acceptable statistical methods, yielding not less than a ninety-five percent (95%) confidence level. Findings of the sample will be extrapolated to the universe for the audit period.

a. The audit findings generated through the audit procedure shall constitute prima facie evidence in all department proceedings of the number and amount of requests for payment as submitted by the provider.

b. When the department's audit findings have been generated through the use of sampling and extrapolation, and the provider disagrees with the findings, the burden of proof of compliance rests with the provider. The provider may present evidence to show that the sample was invalid. The evidence may include a one hundred percent (100%) audit of the universe of provider records used by the department in the drawing of the department's sample. Any such audit must:

(1) Be arranged and paid for by the provider,

(2) Be conducted by a certified, public accountant,

(3) Demonstrate that bills and records not reviewed in the department's sample were in compliance with program regulations, and

(4) Be submitted to the department with all supporting documentation.

This rule is intended to implement Iowa Code sections 249A.4 and 249A.5.

441—87.5(249A) Actions based on audit findings.

87.5(1) The department shall report the results of an audit of provider records to concerned parties consistent with the provisions of 441—chapters 9 and 79 and Iowa Code section 17A.2.

87.5(2) When an overpayment is found, the department may proceed with one or more of the following:

a. Request repayment in writing.

b. Impose sanctions provided for in rule 441—79.2(249A).

c. Investigate and refer to an agency empowered to prosecute as provided for in Iowa Code sections 249A.4 and 249A.5.

This rule is intended to implement Iowa Code sections 249A.4 and 249A.5.

441—87.6(249A) Appeal by provider of care. Providers may appeal decisions of the department according to rules in 441—chapter 7.

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

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CHAPTER 88
HEALTH MAINTENANCE ORGANIZATIONS
[Prior to 2/11/87, Human Services(498)]

PREAMBLE

This chapter contains rules governing health maintenance organizations (HMOs) as providers of medical services under the Medicaid program. The rules cover HMO eligibility to participate in Medicaid and requirements relating to reimbursement, record keeping, grievance procedures and enrollment and disenrollment procedures are set forth. Services covered by HMOs are specified and rules pertaining to emergency services, recipient access to services and patient education are included.

441—88.1(249A) Definitions.

"Capitation rate" shall mean the fee the department pays monthly to an HMO for each covered person for the provision of medical and health services whether or not the covered person receives services during the period covered by the fee.

"Contract" shall mean a contract between the department and an HMO for the provision of medical and health services to medical assistance recipients in which the HMO assumes a risk as defined in the contract. These contracts shall meet the requirements of the Code of Federal Regulations, Title 42, part 434 as amended to November 30, 1983.

"Covered services" shall mean all or a part of those medical and health services set forth in 441—chapter 78 and covered in the contract between the department and an HMO.

"Department" shall mean the Iowa department of human services.

"DHS/HMO review committee" shall mean a committee composed of representatives from the department. The committee shall review and render a decision on all requests for disenrollment from an HMO not automatically approvable.

"Emergency service" shall mean those medical and health services rendered under unforeseen conditions which require hospitalization or services necessary for the treatment of accidental injury, relief of acute pain, protection of the public health and the amelioration of illness, which, if not immediately diagnosed and treated, would result in risk of permanent damage to the patient's health.

"Enrollment area" shall mean the county or counties in which an HMO is licensed to operate by the state of Iowa and in which service capability exists as defined by the department and set forth in the contract. An enrollment area shall not be less than an entire county.

"Federally qualified HMO" shall mean an HMO qualified under Section 1315(a) of the Public Health Service Act as determined by the U.S. Public Health Service.

"Grievance" shall mean an incident, complaint, or concern which cannot be resolved in a manner satisfactory to enrolled recipients by the immediate response, verbal or otherwise, of the HMO staff member receiving the complaint or any complaint received in writing.

"Health maintenance organization (HMO)" shall mean a public or private organization that is licensed as an HMO under commerce department rules 191—chapter 40.

"Noncovered services" shall mean services covered under medical assistance which are not included in the HMO's contract with the department. Payment for these services will be made under ordinary medical assistance procedures.

"Participating providers" shall mean the providers of medical and health services who are contracted or employed by an HMO.

"Recipient" shall mean any person determined by the department to be eligible for medical assistance and for HMO enrollment except the following:

1. Medically needy recipients as defined in 441—chapter 86.
2. Waiver recipients as defined in 441—chapter 83.
3. Recipients over age sixty-five (65) and under age twenty-one (21) in psychiatric institutions as defined in 441—chapter 85.
4. Recipients who are Supplemental Security Income-related beneficiaries.
5. Recipients of the refugee medical assistance program who are subject to spend-down.
6. Automatic redetermination recipients as defined in rule 441—76.11(249A).

"Urgent nonemergency need" shall mean the existence of conditions due to an illness or injury which are not life threatening but which require expeditious treatment because of patient suffering or the prospect of the condition worsening without timely medical intervention.

441—88.2(249A) Eligible providers.

88.2(1) *Contracts with HMOs.* The department will enter into contracts for the scope of services specified in 441—chapter 78, or a part thereof, with an HMO licensed under the provisions of commerce department rules 191—chapter 40. The department must determine that the HMO meets the following additional requirements:

a. It will make the services it provides to its medical assistance enrollees as accessible to them (in terms of timeliness, duration and scope) as those services are accesssible to nonenrolled medical assistance recipients in the area served by the HMO.

b. It must provide satisfaction to the department against the risk of insolvency and assure that medical assistance recipients will not be responsible for its debts if it does become insolvent. Compliance shall exist with commerce department rules regarding deposit requirements at 191—40.12(514B) and reporting requirements at 191—40.14(514B).

88.2(2) *Method of selection of HMO.* In those counties served by a single HMO the department will attempt to negotiate a contract. In those counties served by two (2) or more HMOs the department will accept bids through requests for proposals when cost effective and administratively feasible.

a. Request for proposal. The department shall publish a request for proposal announcing the forthcoming selection of HMOs for a given county and outline the elements of the contract. The department will receive sealed bids from prospective HMOs. Basis of competitive bidding will be per capita rates for various risk groups in combination with qualitative evaluation of the HMOs, including but not limited to, quality of care, access to service, provider reputation, comprehensiveness of service package, federal qualification status, fiscal soundness, volume of business, and length of time in operation. Proposals containing any reservations not provided for in the specifications may be rejected and the department reserves the right to waive technicalities and to reject any or all bids.

b. Minimum contract requirements. The contract:

(1) Shall be in writing.

(2) Shall be renewable by mutual consent for a period of up to three (3) years.

(3) Shall list the services covered.

(4) Shall describe information access and disclosure.

(5) Shall list conditions for nonrenewal, termination, suspension, and modification.

(6) Shall specify the method and rate of reimbursement.

(7) Shall provide for disclosure of ownership and subcontractor relationship.

(8) Will be made with the licensee by the department.

88.2(3) *Termination of contract.* The department and an HMO may by mutual consent terminate a contract by either party giving one hundred twenty (120) days' written notice to the other party. The department may terminate or suspend a contract if the contract is determined by the department to be inconsistent with the overall goals and objectives of the Medicaid program. The determination shall be based on factors including, but not limited to, the following:

a. The HMO's delivery system does not assure medical assistance recipients adequate access to medical services.

b. The HMO's delivery system does not assure the availability of all services covered under the contract.

c. There are not proper assurances of financial solvency on the part of the HMO.

d. There is not substantial compliance with all provisions of the contract.

e. The HMO has discriminated against persons eligible to be covered under the contract on the basis of age, race, sex, religion, national origin, creed, color, physical or mental disability, political belief, health status, or the need for health services.

88.2(4) *Dispute resolution.*

a. Dissatisfied bidders. Any protest of the recommended contract award shall be submitted in writing to the director of the division of social services within three (3) days of receipt of notification. If a bidder is not satisfied with the decision of the director the bidder may appeal to the commissioner of the department who will issue the final decision.

b. Termination of contract. Prior to termination or suspension of a contract the department will send a notice to cure to the HMO specifying the number of days the HMO will have to correct the problem(s). Failure to correct the problem in the time given will result in termination or suspension. HMOs may appeal the decision of the department in the same manner as specified for disatisfied bidders.

441—88.3(249A) Enrollment.

88.3(1) *Enrollment area.* Counties in an HMO enrollment area will be designated as either voluntary or mandatory. In voluntary counties participation is not required but recipients may volunteer to join the HMO. In mandatory counties participation is required for recipients.

a. It is anticipated the following counties will be voluntary HMO counties:

Appanoose	Grundy	Marshall
Benton	Hamilton	Mills
Black Hawk	Hardin	Monona
Boone	Harrison	Monroe
Bremer	Henry	Montgomery
Buchanan	Ida	Muscatine
Butler	Iowa	Plymouth
Cass	Jackson	Polk
Cedar	Jasper	Pottawattamie
Cherokee	Jefferson	Poweshiek
Clayton	Johnson	Scott
Clinton	Jones	Shelby
Crawford	Keokuk	Story
Dallas	Lee	Tama
Davis	Linn	Van Buren
Delaware	Louisa	Wapello
Des Moines	Madison	Warren
Dubuque	Mahaska	Washington
Fayette	Marion	Woodbury

b. It is anticipated the following counties will become mandatory enrollment counties on or after January 1, 1988:

Clinton
Story
Polk
Pottawattamie

Prior to implementation of statewide mandatory enrollment, the department will conduct a mandatory pilot project in one county on or after January 1, 1988. The Council on Human Services will review all information from the mandatory pilot to determine whether to fully implement the mandatory provisions wherever possible.

88.3(2) *Voluntary enrollment.* Medical assistance recipients as defined in rule 441—88.1(249A) who are residents of a voluntary HMO enrollment county may enroll in the HMO by completing Form 470-2168, Request for HMO Enrollment or Information. Form 470-2168 will be available through the local office or the HMO. If the HMO receives the form it shall be forwarded to the local office within three (3) working days. Recipients will be accepted by the HMO in the order in which they apply without restrictions and up to the limits specified in subrule 88.3(6). Recipients who choose not to enroll in an HMO will be covered under regular medical assistance.

88.3(3) *Mandatory enrollment.* In a locality where the department has a contract with more than one HMO, the department will require whenever it is administratively feasible that all recipients enroll in the HMO of their choice. Administratively feasible means that a freedom-of-choice waiver has been received from the health care financing administration and the HMOs have the capacity to adequately serve the department's Medicaid population. Regular medical assistance coverage will not be an option to these recipients. Recipients must complete Form 470-2168, Request for HMO Enrollment or Information to become enrolled. The department will select an HMO for those recipients who fail to complete Form 470-2168. The recipient will be notified of the choice and given thirty (30) days to request a different HMO.

88.3(4) *Effective date.* The effective date of enrollment will be no later than the first day of the second month subsequent to the date on which the department receives Form 470-2168, Request for HMO Enrollment or Information. The recipients shall be entitled to regular Medicaid until the effective date of HMO enrollment which shall always be the first day of the month.

88.3(5) *Identification card.* The HMO will issue an appropriate identification card to the recipient within three (3) working days of receipt of enrollment information from the department.

88.3(6) *Limitations on enrollment.* The total number of enrolled medical assistance recipients and Part A and Part B Medicare beneficiaries may not exceed seventy-five percent (75%) of the HMO's total enrollment in accordance with 42 CFR 434.26 as amended to November 30, 1983. Enrollment of medical assistance recipients may be further limited by the contract.

441—88.4(249A) Disenrollment.

88.4(1) *Disenrollment request.* If the HMO is not federally qualified, a recipient may disenroll without good cause at any time. If the HMO is federally qualified, recipients will be enrolled for a six (6)-month period. During the first month of enrollment a recipient may disenroll at any time without good cause. Subsequent to the first month, a recipient may not disenroll for the remainder of the six (6)-month period except for good cause. On expiration of the six (6)-month period a recipient may disenroll at any time without good cause.

88.4(2) *Effective date.* Disenrollment will be effective no later than the first day of the second calendar month after the month in which the department receives notice of disenrollment. The recipient will remain enrolled in the HMO and the HMO will be responsible for services covered under the contract until the effective date of disenrollment which will always be the first day of a month.

88.4(3) *Disenrollment process.* The recipient or HMO must complete Form 470-2169, Request for HMO Disenrollment, which can be obtained through the HMO or the local department office. If the HMO receives a completed Form 470-2169 from the recipient, the HMO shall forward the form to the local office within three (3) working days. If the recipient must show good cause for disenrollment or if the HMO is requesting disenrollment, the determination as to whether disenrollment will occur shall be made by the DHS/HMO review committee within thirty (30) days. If the recipient or HMO disagree with the decision of the review committee, an appeal may be filed under the provisions of 441—chapter 7.

a. Request for disenrollment by the recipient. With prior approval of the review committee a recipient may be disenrolled when the recipient can demonstrate that services were untimely, inaccessible, of insufficient quality or otherwise inadequately provided.

b. Request for disenrollment by the HMO. With prior approval of the DHS/HMO Review Committee a recipient may be disenrolled when:

(1) There is evidence of fraud or forgery in the use of HMO services or in the application for HMO coverage.

(2) There is evidence of unauthorized use of the HMO identification card.

(3) Upon documentation the HMO has been unable after reasonable efforts to establish or maintain a satisfactory physician-patient relationship with the recipient.

88.4(4) *Disenrollments by the department.* Disenrollments will occur when:

a. The contract between the department and the HMO is terminated.

b. The recipient becomes ineligible for medical assistance. If the recipient becomes ineligible as a result of failure to file a monthy eligibility report and is later reinstated, HMO enrollment will be reinstated effective the same date.

c. The recipient permanently moves outside the HMO's enrollment area.

d. The recipient transfers to a category not eligible for HMO enrollment. See definition of recipient in rule 441—88.1(249A).

88.4(5) No disenrollment for health reasons. No recipient will be disenrolled from an HMO because of an adverse change in health status.

441—88.5(249A) Covered services.

88.5(1) *Amount, duration, and scope of services.* Except as provided for in the contract, HMOs will cover as a minimum all services covered by the medical assistance program as set forth in 441—chapter 78. The recipient will receive Form 470-2188, Individual Medical Assistance Identification Card, for those servcies not covered by the HMO. To the maximum extent possible, the HMO will make clients aware of alternate providers for services not covered by the HMO.

88.5(2) *Mandatory services.*

a. The HMO shall cover as a minimum the following services:

1. Inpatient hospital service.
2. Outpatient hospital service.
3. Physician services.
4. Family planning.
5. Home health agency services.
6. Early periodic screening, diagnosis and treatment for individuals under age twenty-one (21).
7. Laboratory and x-ray services.
8. Rural health clinic services (where available).
9. Nurse/midwife services (where available).

b. HMOs shall subcontract with local family planning clinics and centers funded by Title V.

88.5(3) *Excluded services.* Unless specifically included in the contract, HMOs will not be required to cover intermediate or skilled nursing facility care or inpatient psychiatric care provided by state administered psychiatric facilities.

88.5(4) *Restrictions and limitations.* If the HMO covers a type of service that is also covered under medical assistance, the HMO may not impose any restrictions or limitations on that service more stringent than those applicable in medical assistance according to the provisions of 441—chapter 78. The HMO may at its discretion offer services to recipients beyond the scope of medical assistance as defined in 441—chapter 78.

88.5(5) *Recipient use of HMO services.* A recipient enrolled in an HMO must use HMO providers of service. No payment will be made for services provided by non-HMO providers if the same type of service is covered by the HMO under its contract with the department except as provided in rule 441—88.6(249A).

441—88.6(249A) Emergency services.

88.6(1) *Availability of services.* The HMO will ensure that the services of a primary care physician are available on an emergency basis twenty-four (24) hours a day, seven (7) days a week, either through the HMO's own providers or through arrangements with other providers. In addition the HMO must provide payment within sixty (60) days of receipt of the bill for all services which are covered by the contract and furnished by providers that do not have arrangements with the HMO to provide services but which were needed immediately because of an injury or illness and the medical emergency does not permit a choice of provider.

88.6(2) *HMO payment liability.* HMO payment liability on account of injury or emergency illness is limited to emergency care required before the recipient can without medically harmful consequences return to the enrollment area or to the care of a provider with whom

the HMO has arrangements to provide services. If an ambulance is necessary to transport the recipient to follow-up treatment the HMO shall be financially liable. Benefits for continuing the follow-up treatment are provided only in the HMO's enrollment area.

If a recipient is injured or becomes ill and receives emergency services while temporarily outside the HMO's enrollment area, the HMO will pay the facility or person who rendered the emergency care for emergency medical servcies and medical services, for inpatient hospital services in a general hospital as a result of the emergency, and for emergency ambulance service.

88.6(3) *Notification and claim filing time spans.* The HMO may set notification and claim filing time limitations in the event of the provision of out-of-area emergency care. However, failure to give notice or file claims within those time limitations will not invalidate any claim if it can be shown not to have been reasonably possible to give such notice and that notice was in fact given as soon as was reasonably possible.

441—88.7(249A) Access to service.

88.7(1) *Choice of provider.* Recipients will have the opportunity to choose their health care professionals to the extent possible and medically appropriate from any of the HMO providers participating in the Medical project.

88.7(2) *Medical service delivery sites.* Medical service delivery sites must have the following specific characteristics:

a. Be located within thirty (30) miles of and accessible from the personal residences of covered persons.

b. Have sufficient staff resources to adequately provide the medical services contracted for by the site including physicians with privileges at one or more acute care hospitals.

c. Have arrangements for services to be provided by other providers where in-house capability to serve specific medical needs does not exist.

d. Meet the applicable standards for participating in the medical assistance program.

e. Be in compliance with all applicable local, state, and federal standards related to the service provided as well as those for fire and safety.

88.7(3) *Adequate appointment system.* The HMO shall have procedures for the scheduling of patient appointments which are appropriate to the reason for the visit as follows:

a. Patients with urgent nonemergency needs shall be seen within one (1) hour of presentation at an HMO medical service delivery site.

b. Patients with persistent symptoms shall be seen within forty-eight (48) hours of reporting of the onset of the persistent symptoms.

c. Patient routine visits shall be scheduled within four (4) to six (6) weeks of the date the patient requests the appointment.

d. Scheduling of appointments shall be by specific time intervals and not on a block basis.

88.7(4) *Adequate after hours call-in coverage.* The HMO must have in effect the following arrangements which provide for adequate after hours call-in coverage.

a. Twenty-four (24) -hour-a-day phone coverage shall exist.

b. If a physician does not respond to the initial telephone call there must be a written protocol specifying when a physician must be consulted. Calls requiring a medical decision shall be forwarded to the on-call physician and a response to each call which requires a medical decision must be provided by the physician within thirty (30) minutes.

c. Notations shall be made in the patient's medical record of relevant information related to an after-hours call.

88.7(5) *Adequate referral system.* The HMO must effect the following arrangements which provide for an adequate referral system:

a. A network of referral sources for all services that are covered in the contract and not provided by the HMO directly.

b. Procedures for the return of relevant medical information from referral sources including review of information by the referring physician, entry of information into the patient's medical record, and arrangements for periodic reports from on-going referral arrangements.

c. A notation for hospitalized patients in the medical record indicating the reason, date, and duration of hospitalization and entry of pertinent reports from the hospitalization and discharge planning in the medical record.

441—88.8(249A) Grievance procedures.

88.8(1) *Written procedure.* The HMO must have a written procedure by which recipients may express grievances, complaints, concerns, or recommendations, either individually or as a class and which:

a. Is approved by the department prior to use.

b. Acknowledges receipt of a grievance to the grievant.

c. Sets time frames for resolution including emergency procedures that are appropriate to the nature of the grievance and which requires that all grievances shall be resolved within thirty (30) days.

d. Assures the participation of persons with authority to require corrective action.

e. Includes at least one level of appeal.

f. Assures the confidentiality of the grievant.

88.8(2) *Written record.* All grievances, including informal or verbal complaints, which must be referred or researched for resolution must be recorded in writing. A log of the grievances must be maintained and made available at the time of audit and must include progress notes and resolutions.

88.8(3) *Information concerning grievance procedures.* The HMO's written grievance procedure must be provided to each newly covered recipient not later than the effective date of coverage.

88.8(4) *Appeals to the department.* A recipient who has exhausted the established grievance procedure of the HMO may appeal the issue to the department under the provisions of 441—chapter 7.

Instances where the substance of the grievance relates to department policy or procedure shall be appealed directly to the department.

88.8(5) *Periodic report to the department.* The HMO must make quarterly reports to the department summarizing grievances and resolutions as specified in the contract.

441—88.9(249A) Records and reports.

88.9(1) *Medical records system.* The HMO shall comply with the provisions of rule 441—79.3(249A) regarding maintenance and retention of clinical and fiscal records and in addition the HMO must maintain a medical records system that:

a. Identifies each medical record by state identification number.

b. Identifies the location of every medical record.

c. Places medical records in a given order and location.

d. Provides a specific medical record on demand.

e. Maintains the confidentiality of medical records information and releases the information only in accordance with established policy pursuant to subrule 88.9(3).

f. Maintains inactive medical records in a specific place.

g. Permits effective professional review in medical audit processes.

h. Facilitates an adequate system for follow-up treatment including monitoring and follow-up of off-site referrals and inpatient stays.

i. Meets state and federal reporting requirements applicable to HMOs.

88.9(2) *Content of individual medical record.* The HMO must have in effect arrangements which provide for an adequate medical recordkeeping system which includes a complete medical record for each covered person in accordance with provisions set forth in the contract.

88.9(3) *Confidentiality of records.* HMOs must maintain the confidentiality of medical record information and release the information only in the following manner:

a. All medical records of covered persons shall be confidential and shall not be released without the written consent of the covered persons or responsible party.

b. Written consent is not required for the transmission of medical record information to physicians, other practitioners, or facilities who are providing services to covered persons under

a subcontract with the HMO. This provision also applies to specialty providers who are retained by the HMO to provide services that are infrequently used or are of an unusual nature.

c. Written consent is not required for the transmission of medical record information to physicians or facilities providing emergency care pursuant to rule 441—88.6(249A).

d. Written consent is required for the transmission of the medical record information of a former covered person to any physician not connected with the HMO.

e. The extent of medical record information to be released in each instance shall be based upon tests of medical necessity and a "need to know" on the part of the practitioner or a facility requesting the information.

f. Medical records maintained by subcontractors must meet the requirements of this rule.

88.9(4) *Reports to the department.* Each HMO shall submit reports to the department as follows:

a. Annual audited financial statements no later than one hundred twenty (120) days after the close of the HMO's fiscal year.

b. Periodic financial, utilization, and statistical reports as required by the department under the contract.

88.9(5) *Audits.* The department or its designee and the U.S. Department of Health and Human Services (HHS) may evaluate through inspections or other means, the quality, appropriateness, and timeliness of services performed by the HMO. The department or HHS may audit and inspect any records of an HMO, or the subcontractor of the HMO that pertain to services performed and the determination of amounts paid under the contract. These records will be made available at times, places, and in a manner as authorized representatives of the department, its designee or HHS may request.

441—88.10(249A) Marketing.

88.10(1) *Marketing procedures.* All marketing plans, procedures, and materials used by the HMO must be approved in writing by the department prior to use. Door-to-door marketing and offering financial incentives will not be approved.

88.10(2) *Marketing representatives.* Marketing representatives utilized to market medical assistance recipients must be sufficiently trained and capable of performing marketing activities within the requirements of the contract. The HMO's marketing representatives must represent the HMO in an honest and straightforward manner. In its marketing presentations the HMO must include information which ensures that the marketing representative is not mistaken for a state or county employee.

88.10(3) *Marketing presentations.* The HMO may make marketing presentations in the local offices of the department or otherwise include the department in their marketing efforts at the discretion of the department.

88.10(4) *Marketing materials.* Written material must include a marketing brochure or a member handbook that fully explains the services available, how and when to obtain them, and special factors applicable to medical assistance recipients as specified in the contract.

441—88.11(249A) Patient education.

88.11(1) *Health education procedures.* The HMO will have written procedures for health education designed to prepare patients for participation in and reaction to specific medical procedures and to instruct patients in self-management of medical problems and in disease prevention. This service may be provided by any health practitioner or by any other person approved by the HMO.

88.11(2) *Use of services.* The HMO will have procedures in effect to orient covered persons in the use of all services provided. This includes but is not limited to written instructions regarding appropriate use of the referral system, grievance procedure, after hours call-in system, and provisions for emergency treatment.

88.11(3) *Patient rights and responsibilities.* The HMO will have in effect a written statement of patient rights and responsibilities which is available to patients upon request and which is sent to all new enrollees. The rights of the recipient to terminate enrollment shall be included.

441—88.12(249A) Reimbursement.

88.12(1) *Capitation rate.* In consideration for all services rendered by an HMO under a contract with the department the HMO will receive a payment each month for each covered recipient. This capitation rate represents the total obligation of the department with respect to the costs of medical care and services provided to covered recipients under the contract.

88.12(2) *Determination of rate.* The capitation rate is actuarially determined by the department at the beginning of each fiscal year with statistics and data concerning hospital and covered medical expenses in the HMO enrollment area during the preceding calendar year. The capitation rate may not exceed the cost to the department of providing the same services on a fee-for-service basis to an actuarially equivalent nonenrolled population group.

88.12(3) *Amounts not included in rate.* The captitation rate does not include any amounts for the recoupment of losses suffered by the HMO for risks assumed under the contract or any previous risk contract. Any savings realized by the HMO due to the expenditure for necessary health services by the enrolled population being less than the capitation rate paid by the department will be wholly retained by the HMO.

88.12(4) *Third party liability.* If a covered recipient has health insurance coverage or a responsible party other than the medical assistance program available for payment of medical expenses it is the right and responsibility of the HMO to investigate these third party resources and attempt to obtain payment. The HMO will retain all funds collected for third party resources. A complete record of all income from these sources must be maintained and made available to the department on request.

441—88.13(249A) Quality assurance. The HMO shall have in effect an internal quality assurance system which meets the requirements of 42 CFR 434.44 and a system of periodic medical audits meeting the requirements of 42 CFR 434.53, both as amended to November 30, 1983.

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

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CHAPTER 89
Reserved

TITLE IX
WORK INCENTIVE DEMONSTRATION

CHAPTER 90
WORK INCENTIVE DEMONSTRATION PROGRAM (WIN/CMS)
[Prior to 7/1/83, Social Services(770), Ch 90]
[Prior to 2/11/87, Human Services(498)]

441—90.1(249C) Program area. The department of human services is administering a work incentive demonstration program which consists of two (2) models, the WIN model and the CMS model. Services in the CMS model are provided by department of human services staff. Services in the WIN model are jointly provided by staff from the departments of human services and employment services.

90.1(1) *The following WIN model counties are mandatory counties.* Participation is required unless a client qualifies for an exemption.

Audubon	Henry	Sac
Carroll	Humboldt	Wapello
Cass	Jefferson	Webster
Crawford	Lee	
Des Moines	Montgomery	
Greene	Page	
Guthrie	Polk	
Hamilton	Pottawattamie	

90.1(2) *The following WIN model counties are volunteer counties.* Participation is not required but a client may volunteer for services.

Appanoose	Keokuk	Pocahontas
Boone	Louisa	Shelby
Calhoun	Lucas	Story
Dallas	Madison	Van Buren
Davis	Mahaska	Warren
Fremont	Marion	Wayne
Harrison	Mills	Wright
Jasper	Monroe	

90.1(3) *The following CMS model counties are mandatory counties.* Participation is required unless a client qualifies for an exemption.

Cherokee	Marshall	Woodbury
Hardin	Plymouth	

90.1(4) *The following CMS model counties are volunteer counties.* Participation is not required but a client may volunteer for services.

Poweshiek
Tama

This rule is intended to implement Iowa Code section 249C.3.

441—90.2(249C) Contract with job service. The department of human services shall contract with the department of employment services for employment related services which the department deems essential.

441—90.3(249C) Registration and referral requirements.

90.3(1) An application for assistance constitutes a registration for the work incentive program for all members of the aid-to-dependent-children case. All persons eligible for or receiving a grant under the aid-to-dependent-children program shall be referred unless the local office determines the person is exempt.

90.3(2) Registrants who are exempt from referral and participation may volunteer for services.

90.3(3) Registrants shall be exempt from referral when they qualify for exemption as specified in subrule 41.4(1).

441—90.4 Rescinded, effective August 1, 1986.

441—90.5 Rescinded, effective December 1, 1985.

441—90.6(249C) Call up.

90.6(1) Staff will call up registrants who have been referred in the following order:

a. Principal earner receiving ADC-UP assistance.

b. All clients volunteering for services.

c. All unemployed registrants.

d. All registrants who are employed less than one hundred twenty-nine (129) hours.

90.6(2) Reserved.

441—90.7(249C) Registrant assessment. Every registrant who is called up shall be assessed to determine employability potential and to determine services which may be needed to facilitate employment. Every registrant shall complete Self-Assessment, Form WI-2101, to provide a social and vocational profile and shall sign Your Rights and Responsibilities, Form WI-3305, acknowledging that a complete explanation of the WIN/CMS program has been provided.

441—90.8(249C) Medical examinations. An individual shall secure written documentation signed by a licensed health practitioner, licensed in Iowa or adjoining states, to verify a claimed illness or disability within forty-five (45) days of a written request by staff.

441—90.9(249C) Self-initiated training. Registrants who at the time of appraisal are already enrolled in self-initiated classroom training, including government sponsored training programs, can be required to participate in WIN/CMS activities when the training program does not meet acceptable criteria as prescribed by subrule 55.2(2).

441—90.10(249C) Case plan. Prior to active participation, a case plan shall be developed for each registrant using Case Plan, Form WI-3304. The case plan must be signed by the registrant, worker(s), and the project supervisor(s) before the registrant can become an active participant. Although the case plan must, to the maximum extent possible, reflect the goals of the registrant, final authority for content rests with staff.

441—90.11(249C) Registrant/participant status. Clients shall be considered registrants prior to case plan approval. After the case plan has been approved and signed by the project supervisors, clients shall be considered participants.

441—90.12(249C) Arranging for services. Staff is responsible for providing or arranging for employment-oriented services, as required to facilitate the registrants' successful participation, including client assessment or case management, employment education, transportation and referral for medical examination. Clients who are assigned to participate in vocational classroom training, job club, or work experience and use WIN/CMS funded child care shall be required to use child care facilities which meet state licensing or registration requirements. Rate of payment shall not exceed the going rate in the community. When child care payment is made directly to the client and the client is participating in vocational classroom training or work experience, the client shall provide WIN/CMS a receipt to verify payment to the child care provider. Subsequent child care payment shall be made only after receipts for prior child care payments have been provided.

This rule is intended to implement Iowa Code section 249C.3.

441—90.13(249C) Assignment to components. WIN/CMS components include vocational classroom training (provided by the individual education and training plan program), job club, and work experience.

Participants shall first be assigned to vocational classroom training or job club prior to work experience. Participants who are unable to secure employment of at least one hundred twenty-nine (129) hours per month within sixty (60) days after termination of vocational classroom training shall be assigned to job club. Participants who are unable to secure employment of at least one hundred twenty-nine (129) hours per month while in job club shall be assigned to work experience. Staff may also assign participants who have not been employed for at least three (3) consecutive years prior to registration or have not held a previous job for more than three (3) months to job-seeking skills training followed by placement in work experience prior to placement in job search activities.

With staff approval, participants may volunteer for assignment in more than one WIN/CMS component at a time. Participants who volunteer for optional activities shall continue to meet all participation requirements of the primary WIN/CMS component to which they were originally assigned by WIN/CMS. Participants who volunteer and are assigned to additional and optional component activities shall not be subject to sanctions for program infractions which occur while participating in optional component activities. Participants shall still be subject, however, to participation requirements and sanctions of mandatory components to which they are assigned.

Participants who are assigned to work experience and who volunteer for optional classroom training activities shall not be required to engage in job club activities after classroom training terminates if they are still assigned to work experience.

Participants who volunteer for assignment in optional work experience activities may be assigned to work sites for fewer than eight (8) hours per day, three (3) days per week and shall not be required to complete a six (6) month period of work experience participation.

Participants who are enrolled in individual education and training plan (IETP) program classroom training and other WIN/CMS activities shall receive a regular IETP program monthly participation allowance plus a daily WIN/CMS allowance for days when participating only in WIN/CMS activities. For those days when individuals participate in both the IETP program and other WIN/CMS activities, a supplemental WIN/CMS allowance shall be paid so that the combined WIN/CMS and prorated daily IETP program allowance equals $4.00 per day.

For purposes of proration, full-time IETP participants shall be considered to be receiving a daily allowance of $3.00. The daily allowance for part-time participants shall be determined by dividing the participant's monthly allowance by twenty-two (22).

90.13(1) *Assignment to vocational classroom training.* Participants who demonstrate capability for pursuing vocational classroom training and who express a desire to participate in vocational classroom training shall be considered for enrollment in the individual education and training plan program in accordance with that program's policy.

90.13(2) *Assignment to job club.* Participants who are assigned to job club shall receive one week of job-seeking skills training and shall then participate in a structured employment search activity for a period not to exceed three (3) weeks. Participants shall be assigned a maximum of four (4) hours per day in scheduled job club activities. Participants shall contact a minimum of twenty-five (25) employers per day to schedule employment interviews unless fewer contacts are required by staff. Scheduled activities and required hours of participation may be varied at the discretion of staff for job clubs operated in rural areas. Daily attendance during the one week of job-seeking skills training is required. The department may therefore require a participant who, for any reason, is absent during this week to repeat the entire week of training. WIN/CMS is authorized to substitute the standard four-week job club with other specialized job club or job search activities which staff deem more appropriate to individual client need.

a. Participants assigned to job club shall receive a participation allowance of $4.00 per day to cover costs of transportation and participation. This allowance will be paid in full at the start of participation. Job club participants who are required to repeat job-seeking skills training

because of absence with good cause as defined in 90.16(3) of these rules shall receive an additional allowance of $4.00 per day for each training day the participant is required to repeat. This allowance is to compensate for funds expended from the participant's original allowance.

b. Participants who are required to repeat because of absence without good cause shall not receive an additional allowance.

c. Staff may require job club participants to make up absences which occur during the three (3)-week job search period. Additional daily allowances shall not be paid to such individuals; required child care payment shall be allowed.

d. Job club participants who, during participation, obtain part-time employment of less than one hundred twenty-nine (129) hours per month shall be required to continue job club unless the scheduled job club hours conflict with the scheduled hours of employment. WIN/CMS shall require these individuals to participate in job club during those hours where no conflict with work hours exists.

e. Clients who remain unemployed after completing job club shall have formal WIN/CMS services suspended for thirty (30) days prior to referral to the work experience component. The thirty (30)-day suspension shall not apply to clients who are referred to IETP after job club participation. Clients placed in suspense shall be considered active job club participants. During the thirty (30)-day supension, clients shall not receive allowances for participation or child care. Staff shall encourage but not require clients who are in suspense to continue job search activities.

90.13(3) Rescinded, effective 7/1/86.

90.13(4) *Assignment to work experience.* Participants, who are employed less than one hundred twenty-nine (129) hours after job club or job search assignment, shall be referred to the work experience component. Participants who have been unemployed for at least three (3) consecutive years prior to registration or have not held previous jobs for more than three (3) consecutive months may be directly assigned to work experience placements at worksites approved by staff. Registrants may not volunteer for direct work experience placement.

a. Participants shall be assigned to worksites three (3) days per week, eight (8) hours per day, between the hours of 8 a.m. and 6 p.m., Monday through Friday, unless the participant agrees to another schedule. In addition to work experience, participants shall also be required to engage in job-seeking activities one day per week unless they are also participating in WIN/CMS classroom training activities. Reduced hours of participation shall be permitted if a worksite requires fewer hours than otherwise required by the program or when available transportation limits the number of hours an individual can participate.

b. Hours of required work experience participation shall be reduced by the number of hours employed. If hours of employment exceed twenty-four (24) hours per week, work experience participation shall not be required but clients shall still be required to engage in job-seeking activities one day per week.

c. Job-seeking activities for work experience participants shall include contacting a minimum of five (5) employers per week unless fewer are specified by staff.

d. Work experience assignments shall not exceed six (6) months in duration. Participants who are assigned to work experience may be reassigned to another WIN/CMS component to facilitate regular employment before completing six (6) months when it is felt that sufficient work experience has been gained. Individuals who complete six (6) months of work experience participation shall be reassigned to other WIN/CMS activities which will facilitate their entry into regular jobs. Participants who are still unable to secure regular employment may then be reassigned to work experience. Participants who are reassigned to classroom training, however, must participate in job club activities after leaving classroom training before reassignment to work experience.

e. When a worksite terminates in less than six (6) months, the participant shall be reassigned to other WIN/CMS activities unless another worksite can be arranged.

f. Worksites shall provide participants with work experience and on-the-job training opportunities while providing services which are of direct benefit to the community. Worksites shall be limited to public and nonprofit agencies. Participants may be placed at worksites with religious institutions only when work performed is nonsectarian and not in support of sectarian activities. Participants may not be used to replace regular employees in the performance of

nonsectarian work for the purpose of enabling regular employees to engage in sectarian activities.

g. Employers who participate in the work experience program will be referred to as sponsors. Sponsors who request work experience participant placements shall complete Sponsors Request for WEP Placement, Form WI-3302-0, for each type of position which they wish to fill and shall include a complete job description specifying all tasks performed by the participant. Work experience positions must contain the same job description and performance requirements that would exist if the sponsor were hiring an individual for the same position. The department has final authority to determine suitability of any work experience position offered by a sponsor. Work experience positions must meet additional criteria as follows:

(1) May not be related to political, electoral or partisan activities.

(2) May not be developed in response to or in any way associated with the existence of a strike, lockout or other bona fide labor dispute.

(3) Shall not violate any existing labor agreement between employees and employer.

(4) Shall comply with applicable state and federal health and safety standards.

(5) May not be used by sponsors to displace current employees nor may they be used in place of hiring staff for established vacant positions.

h. Vocational skills and interests which the registrant possesses shall be matched as closely as possible with the job description and skills requirement specified by the sponsor.

i. Participants shall interview for and accept positions offered by work experience sponsors. Participants shall present Referral for WEP Placement, Form WI-3303-0, to the sponsor at the interview. The form shall be completed by the sponsor and returned to WIN/CMS.

j. Although sponsors are expected to accept for placement work experience referrals made by WIN/CMS, sponsors may refuse any referrals they deem inappropriate for the position which they have available. Sponsors shall not discriminate because of race, color, religion, sex, age, creed, physical or mental disability, political affiliation or national origin against any WIN/CMS program participant. Sponsors who refuse a referral must notify WIN/CMS staff in writing of the reason for the refusal.

k. Sponsors shall complete and provide a monthly evaluation of the participant's performance using Work Experience Participant Evaluation, Form WI-1103-5 to WIN/CMS and the participant.

l. Sponsors shall complete Work Experience Participant Evaluation, WI-1103-5, at the time of termination for each work experience participant. When termination occurs at sponsor request the sponsor shall specify the reason for termination and identify those areas of individual performance which were unsatisfactory. For participants who leave to accept regular employment or reach their work experience placement time limit, the sponsor's evaluation shall indicate whether or not a positive job reference would be provided if the participant requested one.

m. Participants assigned to work experience shall receive a participation allowance of $4.00 per day to cover costs of transportation and participation. This allowance is paid each month at the start of participation.

This rule is intended to implement Iowa Code section 294C.3.

441—90.14(249C) Sanctions for volunteers. Volunteer registrants or participants who refuse to cooperate or participate as specified in these rules shall be removed from the work incentive demonstration program. Volunteers are not subject to financial sanctions. However, reinstatement shall follow the requirements and time frames specified for reinstatement of mandatory referrals. Volunteers whose referral status changes from volunteer to mandatory during a sanction period shall be rereferred and the volunteer sanction period dropped.

441—90.15(249C) Sanctions for mandatory registrants for refusal to cooperate. Mandatory registrants who refuse to cooperate during assessment and prior to initiating the case plan shall have their needs removed from the aid-to-dependent-children grant. The needs of the person can be included in the eligible group only after the individual assessment has been completed.

Sanctionable issues include: Registrant's refusal to appear for scheduled appointments, to participate in appraisal activities, to complete required physical examinations or to take required vocational or aptitude tests.

441—90.16(249C) Sanctions for mandatory registrants for failure to participate. Mandatory registrants who refuse to sign subsequent case plans after an initial case plan has been approved or refuse to participate in components other than classroom training and in accordance with other requirements specified in these rules shall have their needs removed from the aid-to-dependent-children grant for a three (3)-month period. Subsequent refusals after a first refusal occurs shall result in a six (6)-month sanction for each refusal.

90.16(1) Refusal to participate in classroom training. Mandatory registrants who refuse to participate in classroom training in accordance with policies specified in 441—chapter 55, shall be referred for participation in job club.

90.16(2) Sanctionable issues for participants who refuse to participate in job club, work experience or other scheduled meetings after an initial case plan has been signed as as follows:

a. Participants who are more than fifteen (15) minutes late without good cause on two (2) occasions shall be placed on probation; a third lateness shall result in sanction.

b. Participants who are absent without good cause shall be placed on probation. A second absence without good cause shall result in sanction.

c. Participant failure to notify work experience sponsors or WIN/CMS staff of absence shall be considered an unexcused absence. Two (2) unexcused absences shall result in sanction.

d. Participants who exhibit disruptive behavior shall be placed on probation; a second offense shall result in sanction. Disruptive behavior means the participant hinders the performance of other participants or staff, refuses to follow instructions, or uses abusive language.

e. Participants who refuse to secure required physical examinations shall be sanctioned.

f. Participants who make physical threats to other participants or staff shall be sanctioned.

g. Participants who refuse to accept work experience assignments shall be sanctioned.

h. Participants who fail to appear for work experience interviews shall be placed on probation. A second failure shall result in sanction.

i. Participants who refuse offers of employment or terminate employment without good cause within thirty (30) days of job entry shall be sanctioned. Good causes for refusing or terminating employment are: Job does not pay at least minimum wage, and violates applicable state or federal health and safety standards, is contrary to the participant's religious or ethical beliefs, transportation is not available or work requirements are beyond the mental or physical capabilities of the participant as documented by medical evidence or other reliable sources.

j. Participants who refuse to secure adequate child care when registered or licensed facilities are available shall be sanctioned.

k. Participants who are on probation in accordance with rules of this chapter and who incur any subsequent offense shall be sanctioned.

90.16(3) Grounds for good cause are:

a. Illness. When a participant is ill more than three (3) consecutive days, staff may require medical documentation of the illness. Medical documentation may also be required if illness is habitual.

b. Required in the home due to illness of another family member. Staff may require medical documentation for the same reasons as when a participant is ill.

c. Family emergency.

d. Bad weather.

e. Lack of transportation.

f. Absent due to job interview. When possible, the participant shall provide notice of the interview at least twenty-four (24) hours in advance including the name and address of the employer conducting the interview. When twenty-four (24)-hour notice is not possible, notice must be given as soon as possible and prior to the interview.

90.16(4) Duration of probationary periods. Job club participants who are placed on probation shall remain in a probationary status for the duration of job club participation. Work experience participants who are placed on probation shall remain in a probationary status for sixty (60) days. A second offense while a participant is on probation shall be considered refusal to participate and sanctions shall be imposed.

This rule is intended to implement Iowa Code section 249C.3.

441—90.17(249C) Letter of notification. Registrants and participants shall be sent a letter of notification of scheduled appointments, component assignments and probationary periods. Individuals who fail to appear for scheduled appointments after the first written notice has been sent shall be sent a second notice. A second failure to appear shall result in sanction.

441—90.18(249C) Notice of decision. The department will notify each registrant or participant who has completed Form SS-1120, Application for Social Services, when:

90.18(1) Services are approved, rejected or renewed.

90.18(2) Services are changed as a result of a review.

90.18(3) Services are canceled.

90.18(4) Services are terminated for failure to cooperate or participate and the income maintenance unit has been requested to impose a sanction.

441—90.19(249C) Right of appeal. Each applicant/recipient is entitled to a fair hearing regarding application for services, services being received or services which have been denied, reduced, canceled, or inadequately provided according to 441—chapter 7.

441—90.20(249C) Workers' compensation. The department shall provide workers' compensation coverage for all work experience participants.

441—90.21(249C) Registrant or participant return to inactive status. Staff is authorized to return registrants or participants to inactive status when they determine that additional WIN/CMS services are not required, are not available or are not suitable to the needs of the individual.

441—90.22(249C) Eligibility—termination. Eligibility for WIN/CMS terminates when the registrant or participant is no longer included in the eligible group.

These rules are intended to implement Iowa Code chapter 249C and 1984 Iowa Acts, chapter 1310, sections 3 and 10.

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CHAPTERS 91 to 94
Reserved

TITLE X
SUPPORT RECOVERY
CHAPTER 95
COLLECTIONS
[Prior to 7/1/83, Social Services(770), Ch 95]
[Prior to 2/11/87, Human Services(498)]

441—95.1(252B) Definitions.

"Caretaker" shall mean a custodial parent, relative or guardian whose needs are included in an assistance grant, paid according to chapter 239, or who is a recipient of nonassistance child support services according to 441—chapter 96.

"Consumer reporting agency" shall mean any person or organization which, for monetary fees, dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

"Current support" shall mean those payments received in the amount, manner and frequency as specified by an order for support and which are paid to the clerk of the district court, the public agency designated as the distributor of support payments as in interstate cases, or another designated agency. Payments to persons other than the clerk of the district court or other designated agency do not satisfy the definition of support pursuant to 1985 Iowa Code supplement section 598.22. In addition, current support shall include assessments received as specified pursuant to rule 441—156.1(234).

"Delinquent support" shall mean a payment, or portion of a payment, including interest, not received by the clerk of the district court or other designated agency at the time it was due. In addition, delinquent support shall also include assessments not received as specified pursuant to rule 441—156.1(234).

"Department" shall mean the department of human services.

"Dependent child" shall mean a person who meets the eligibility criteria established in Iowa Code chapter 234 or 239 and whose support is required by Iowa Code chapter 234, 239, 252A, 598 or 675.

"Director" shall mean the director of the child support recovery unit of the department of human services or the director's designee.

"Prepayment" shall mean a support payment or portion of a support payment designated to apply to a future period of support obligation.

"Public assistance" shall mean assistance provided according to Iowa Code chapter 239 or the cost of foster care provided by the department according to chapter 234.

"Responsible person" shall mean a parent, relative or guardian, or any other designated person declared to be legally liable for the support of a child or a child's caretaker.

This rule is intended to implement Iowa Code chapters 252C and 252D.

441—95.2(252B) Child support account. The child support recovery unit shall maintain a child support account for each client. The account, representing money due the department, shall cover all periods of time public assistance has been paid, commencing with the date of the assignment. The child support recovery unit will not maintain an interest bearing account.

This rule is intended to implement Iowa Code chapter 252C.

441—95.3(252B) Treatment of current and delinquent support. The amounts collected as support from the absent parent shall be considered as the required support obligation for the month in which it is received by the department. Any excess shall be treated as delinquent payments and shall be applied to the immediately preceding month, and then to the next immediately preceding month until all excess has been applied.

95.3(1) The first fifty dollars ($50) of the assigned current monthly support obligation, received by an Iowa clerk of court in any given month, shall be paid to the caretaker and de-

pendent children who are recipients of aid to dependent children. The month support is received by the department shall be used if any of the following apply:

a. The date support is received by the clerk of court is not provided on Form 470-0162, Receipt and Adjustment Form.

b. The support is received directly by the department from an out-of-state jurisdiction.

c. Support is paid voluntarily in the absence of a support order.

95.3(2) Less than fifty dollars ($50) shall be paid to an aid to dependent children recipient if the amount of assigned support received by an Iowa clerk of court or by the department in a month is less than fifty dollars ($50) or if the amount of the monthly support obligation is less than fifty dollars ($50).

95.3(3) When a delay in processing a current support payment by a clerk of court has prevented the issuance of a payment to a recipient in accordance with subrule 95.3(1) or 95.3(2), an additional payment shall be issued by the department in the amount that would have been paid had there been no delay.

95.3(4) Payment of up to fifty dollars ($50) in assigned support, to the aid to dependent children recipient, shall occur in the month following the month in which the monthly support obligation is applied to the child support account.

This rule is intended to implement Iowa Code sections 252B.3, 252B.4, and 252B.11.

441—95.4(252B) Prepayment of support. Prepayment shall be treated as attributable to the months for which it is designated. No such amounts shall be applied to future months unless amounts have been collected which fully satisfy the assigned support obligation for the current month and all past months.

441—95.5(252B) Lump sum settlement.

95.5(1) Any lump sum settlement of child support involving an assignment of child support payments shall be negotiated in conjunction with the child support recovery unit. The child support recovery unit shall be responsible for the determination of the amount due the department, including any accrued interest on the support debt computed in accordance with Iowa Code section 535.3 for court judgments. This determination of the amount due shall be made in accordance with Section 302.51, Code of Federal Regulations, Title 45. The director may waive collection of the accrued interest when negotiating a lump sum settlement of a support debt, if the waiver will facilitate the collection of the support debt.

95.5(2) The child support recovery unit shall be responsible for the determination of the department's entitlement to all or any of the lump sum payment in a paternity action.

This rule is intended to implement Iowa Code chapter 252C.

441—95.6(252B) Setoff against state income tax refund or rebate. A claim against a responsible person's state income tax refund or rebate will be made by the department when a support payment, assigned to the department, is delinquent as set forth in Iowa Code section 421.17(21). A claim against a responsible person's state income tax refund or rebate shall apply to delinquent support which the department is attempting to collect pursuant to chapter 96.

95.6(1) The department shall submit to the department of revenue and finance by the first day of each month, a list of responsible persons who are delinquent at least fifty dollars ($50) in support payments.

95.6(2) The department shall mail a pre-setoff notice, to a responsible person when:

a. The department is notified by the department of revenue and finance that the responsible person is entitled to a state income tax refund or rebate; and

b. The department makes claim to the responsible person's state income tax refund or rebate.

The pre-setoff notice will inform the responsible person of the amount the department intends to claim and apply to delinquent support.

95.6(3) When the responsible person wishes to contest a claim, a written request shall be submitted to the department within fifteen (15) days after the pre-setoff notice is mailed. When

the request is received within the fifteen (15)-day limit, a hearing shall be granted pursuant to rules in chapter 7.

95.6(4) The spouse's proportionate share of a joint return filed with a responsible person, as determined by the department of revenue and finance, shall be released by the department of revenue and finance unless other claims are made on that portion of the joint income tax refund. The request for release of a spouse's proportionate share shall be in writing and received by the department within fifteen (15) days after the mailing date of the pre-setoff notice.

95.6(5) Support recovery will make claim to a responsible person's state income tax refund or rebate when all current support payments or regular payments on the delinquent support were not paid for twelve (12) months preceding the month in which the pre-setoff notice was mailed. A regular payment toward delinquent support is defined as making a monthly payment. The state income tax refund of a responsible person may be claimed by the office of the department of inspections and appeals or the college aid program even if no claim for payment of delinquent support has been made by support recovery.

95.6(6) The department shall notify a responsible person of the final decision regarding the claim against the tax refund or rebate by mailing a final disposition of support recovery claim notice to the responsible person.

95.6(7) Setoffs shall be applied to delinquent support only. The department shall first apply the amount collected from a setoff action to delinquent support assigned to the department under chapters 239 and 234. The department shall then apply any amount remaining in equal proportions to delinquent support due individuals receiving nonassistance services.

This rule is intended to implement Iowa Code section 252B.3.

441—95.7(252B) Setoff against federal income tax refund.

95.7(1) A claim against a responsible person's federal income tax refund or rebate will be made by the department when delinquent support is owed; and

a. The department has taken at least one action to collect the delinquency (billing, location or legal action) within the current calendar year; and

b. The amount of delinquent support is:

(1) At least $150 when no support payments have been received in the twelve (12)-month period preceding the month of certification; or

(2) At least $500 although support payments have been made in the twelve (12)-month period preceding the month of certification and the support has been delinquent for three (3) months.

95.7(2) Rescinded, effective 2/1/84.

95.7(3) The department shall, by October 1 of each year, submit a notification(s) of liability for delinquent support to the federal office of child support enforcement.

95.7(4) Each taxpayer will receive a pre-setoff notice in writing, using address information available from the internal revenue service, stating the amount of the delinquent support certified for setoff.

a. Individuals who wish to dispute the setoff amount must notify the department within the time period specified in the pre-setoff notice.

b. Upon receipt of a complaint disputing the setoff amount, the department shall investigate its validity and respond to the taxpayer in writing within ten (10) days.

95.7(5) When the records of the department differ with those of the individual for determining the amount of the delinquent support, the individual may provide and the department will accept the amount calculated and certified by the clerk of court as the official pay record for the time period involved.

95.7(6) The department shall notify the federal office of child support enforcement, within time frames established by it, of any decrease in, or elimination of, an amount referred for setoff.

95.7(7) When an individual does not respond to the pre-setoff notice within the specified time even though the department later agrees a certification error was made, the person must wait for corrective action as specified in subrule 95.7(8).

95.7(8) The department shall refund the incorrect portion of a federal income tax setoff within thirty (30) days following verification of the setoff amount. Verification shall mean a listing from the federal office of child support enforcement containing the taxpayer's name and the amount of tax refund to which the taxpayer is entitled. The date the department receives the federal listing will be the beginning day of the thirty (30)-day period in which to make a refund.

The department shall refund the amount incorrectly set off to the taxpayer unless the taxpayer agress to apply the refund of the incorrect setoff to any other support obligation due. Prior to the receipt of the refund the taxpayer shall sign Form 470-2082, Adjustment of Federal Tax Setoff Agreement, agreeing to repay any amount of the setoff the Internal Revenue Service later requires the department to return.

95.7(9) Setoffs shall be applied to delinquent support only. The department shall first apply the amount collected from a setoff action to delinquent support assigned to the department under chapters 239 and 234. The department shall then apply any amount remaining in equal proportions to delinquent support due individuals receiving nonassistance services.

This rule is intended to implement Iowa Code section 252B.3.

441—95.8(96) Child support setoff of unemployment benefits. When job service notifies the child support recovery unit that an individual who owes a child support obligation being enforced by the child support recovery unit has been determined to be eligible for job insurance benefits, the unit will enforce a child support obligation owed by an absent parent but which is not being met by setoff job insurance benefits. "Owed but not being met" means either current child support not being met or arrearages that are owed.

95.8(1) The unit shall contact the absent parent by letter, using the address furnished to the unit by the department of employment services. An absent parent shall have ten (10) calendar days to respond to the letter and enter into a voluntary agreement for an amount to be withheld from job insurance benefits to be applied to the child support obligation.

95.8(2) The child support recovery unit may enter into a written voluntary arrangement with an absent parent for an amount of not less than twenty-five percent (25%) nor more than fifty percent (50%) to be deducted from job insurance benefits.

95.8(3) When the absent parent and the child support recovery unit fail to reach a written voluntary agreement the child support recovery unit shall initiate a garnishment action pursuant to Iowa Code chapter 642.

a. When the absent parent is supporting a spouse or dependent child living in the same home, fifty percent (50%) of the job insurance benefits shall be garnished for the delinquent support or fifty-five percent (55%) when the delinquency is more than twelve (12) weeks old.

b. When an absent parent is not supporting a second family, sixty percent (60%) of the job insurance benefits shall be garnished if the delinquency is less than twelve (12) weeks old and sixty-five percent (65%) if the delinquency is more than twelve (12) weeks old.

95.8(4) A receipt of the payments intercepted through job insurance benefits will be provided once a year, upon the request of an absent parent to the child support recovery unit.

This rule is intended to implement Iowa Code section 96.3 and 15 U.S.C.1673(b).

95.9 Reserved.

441—95.10(252C) Mandatory assignment of wages. The responsible person may be ordered to assign to the clerk of the district court, a portion of the responsible person's wages, periodic earnings or trust income to pay the support obligation when the child support recovery unit notifies the court of a default equal to at least one month's support obligation.

95.10(1) The child support recovery unit may, at any time, request the court to modify or revoke a mandatory assignment of a responsible person's wages if it is determined that:

a. The wage assignment is set at an amount which exceeds the federal maximum for garnishment.

b. The wage assignment was established when no minimum delinquency actually existed.

c. The delinquency has been paid.

d. The economic circumstances of the responsible person have changed significantly.

95.10(2) The responsible person, whose income has been assigned, may move to quash the order of assignment as shown under Iowa Code section 252D.2.

95.10(3) The child support recovery unit shall notify all responsible persons, who are directed to pay child support by court orders entered before July 1, 1984, of the mandatory assignment of income should the responsible person default.

95.10(4) The child support recovery unit shall send the notice of potential assignment of wages by certified mail to the responsible person's last known address or shall personally serve the responsible person with the notice in the manner provided for service of an original notice.

a. The notice shall be mailed or personally served to the responsible person at least fifteen (15) days prior to the entering of a default.

b. The responsible person may, at any time, waive the right to receive the notice, by certified mail or by personal service, by signing the Waiver of Notice, form CS-3212.

This rule is intended to implement Iowa Code chapter 252D.

441—95.11(252C) Establishment of an administrative order. The director may establish a support debt against a responsible person, when no court order has established such an obligation, and bring court action to collect the support debt.

95.11(1) When public assistance is paid to a child or children of the responsible person or to the dependent child's caretaker, a support debt is created and owed to the department.

a. The amount of the support debt shall be the amount of public assistance paid to the child or caretaker, unless limited by a court order or by the director. When no court order has established the support debt, the director may establish a support debt in an amount that is consistent with:

(1) The amount of public assistance paid to the child or child's caretaker.

(2) The needs of the dependent child or children.

(3) The schedule of minimum support guidelines as follows:

In ordering a responsible person to pay reasonable and necessary child support, the director shall set the monthly amount of the child support by multiplying the responsible person's monthly net income by the percentage indicated in the following guidelines, unless the director makes express findings of fact as to the reason for deviating from the guidelines. However, the director may set the child support above the amount in the guidelines without making express findings of fact if the parties expressly agree to the amount of the child support.

Monthly Net Income of Responsible Person	Number of Dependent Children						
	1	2	3	4	5	6	7 or more
$ 400 and below	Order based on the ability of the responsible person to provide support at these income levels, or at higher levels, if the responsible person has the ability to earn more.						
$ 401 - 500	14%	17%	20%	22%	24%	26%	28%
$ 501 - 550	15%	18%	21%	24%	26%	28%	30%
$ 551 - 600	16%	19%	22%	25%	28%	30%	32%
$ 601 - 650	17%	21%	24%	27%	29%	32%	34%
$ 651 - 700	18%	22%	25%	28%	31%	34%	36%
$ 701 - 750	19%	23%	27%	30%	33%	36%	38%
$ 751 - 800	20%	24%	28%	31%	35%	38%	40%
$ 800 - 850	21%	25%	29%	33%	36%	40%	42%
$ 851 - 900	22%	27%	31%	34%	38%	41%	44%
$ 901 - 950	23%	28%	32%	36%	40%	43%	46%
$ 951 - 1000	24%	29%	34%	38%	41%	45%	48%
$1001 and over	25%	30%	35%	39%	43%	47%	50%

(4) The responsible person's ability to pay.

b. The responsible person does not owe a support debt for the time period in which public assistance is paid to the responsible person for the person's own behalf for the benefit of the dependent child or the dependent child's caretaker.

95.11(2) For nonassistance cases the director may establish a support debt against a responsible person. The amount of the support debt shall be consistent with:

a. The needs of the dependent child or children.

b. The schedule of minimum support guidelines as set forth in subrule 95.11(1)*"a"*(3).

c. The responsible person's ability to pay support.

95.11(3) The director may petition an appropriate court for modification of a court order on the same grounds as a party to the court order can petition the court for modification.

95.11(4) When the director establishes a support debt against a responsible person, a notice of child support debt shall be served in accordance with the Iowa Rules of Civil Procedure. The notice shall include all of the rights and responsibilities shown in Iowa Code section 252C.10, subsection 3(1).

95.11(5) The responsible person may, within ten (10) calendar days after being served the notice of child support debt, request a negotiation conference with the office of the child support recovery unit which sent the notice.

Upon receipt of a request for a negotiation conference the child support recovery officer shall:

a. Schedule a conference at the earliest possible date.

b. Allow one alternate date for the conference should the responsible person be unable to attend the first scheduled conference.

c. Provide the responsible person with a written statement of the outcome of the conference and any modifications of the original notice.

95.11(6) The responsible person may request a court hearing regarding the child support debt established by the director.

a. The request for a hearing shall be in writing and sent to the office of the child support recovery unit which sent the original notice of the child support debt. The responsible person has twenty (20) days from the date the original notice of child support debt is served, or ten (10) days from the date the new notice is issued following the negotiation conference, whichever is later, to send the written request.

b. When a request for a court hearing is received from the responsible person, within the time limits allowed, the director shall schedule the hearing in the district court in the county in which the court order has been filed or the district court where the dependent child resides, if no court order has been filed.

95.11(7) The director may accept and respond to written requests for a court hearing beyond the time limits allowed in this rule.

95.11(8) If no request for a hearing is received from the responsible person at the local office of the child support recovery unit, the director may enter an order with the court.

a. The director shall send a copy of the order by regular mail, to the responsible person's last known address or the responsible person's attorney and shall include:

(1) The amount of monthly support to be paid, with directions as to the manner of payment.

(2) The amount of the support debt accrued in favor of the department or an individual.

(3) The name of the custodial parent or agency having custody of the dependent child and the name and birth date of the dependent child for whom the support is to be paid.

(4) A statement that the property of the responsible person is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien and execution and income tax setoff.

b. The director shall file a copy of the order with the clerk of the district court in the county in which the dependent child resides.

95.11(9) The effective date of the support obligation shall be the date the judge signs the court order or the date the director files the copy of the order with the clerk of the district court.

This rule is intended to implement Iowa Code chapter 252C.

441—95.12(252B) Procedures for providing information to consumer reporting agencies. The director shall make information available to consumer reporting agencies, upon their request, regarding the amount of overdue support owed by a responsible person only in cases where the overdue support exceeds one thousand dollars ($1,000).

95.12(1) Agencies shall request the information in writing from the Bureau of Collections, Department of Human Services, Hoover Sate Office Building, Des Moines, Iowa 50319-0114. Requests shall include the name of the responsible person and identifying information such as social security number or birthdate if requesting information on an individual. Agencies may also request a printout of all absent parents owing support in excess of one thousand dollars ($1,000).

95.12(2) A notice of proposed release of information shall be sent to the last known address of the responsible person thirty (30) calendar days prior to the release of the support arrearage information to a consumer reporting agency. This notice shall explain the information to be released and the methods available for contesting the accuracy of the information.

95.12(3) The responsible person may, within fifteen (15) calendar days of the date of the notice of proposed release of information, request a conference with the child support recovery officer to contest the accuracy of the information to be given to the consumer reporting agency. In contested cases no referral shall be made to the consumer reporting agency until after the amount of overdue support has been confirmed to exceed one thousand dollars ($1,000).

95.12(4) The director shall charge the consumer reporting agency a fee for providing the information not to exceed the actual cost to the state for providing the information.

This rule is intended to implement Iowa Code section 252B.8.

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◊ Two ARC's.

CHAPTER 96
NONASSISTANCE CHILD SUPPORT RECOVERY PROGRAM

[Prior to 7/1/83, Social Services(770), Ch 96]
[Prior to 2/11/87, Human Services(498)]

441—96.1(252B) Services available. The child support collection or paternity determination services established by the department for collection of child support from the absent parents of children receiving aid to dependent children shall be made available to any individual not otherwise eligible for aid to dependent children. The services shall be made available to individuals upon the completion and filing of an application with the child support recovery unit except for those individuals who are eligible for services under rule 441—96.10(252B).

The child support recovery unit shall provide the following services for the individual not otherwise eligible for the services as a public assistance recipient:

96.1(1) The location of the absent parent who owes a liability of support to any child in the custody of the individual, to be used for the enforcement and collection of child support and only from sources that permit the disclosure of information by the child support recovery unit.

96.1(2) Establishment of the paternity of any child of the individual.

96.1(3) Contacting the absent parent in regard to a support obligation in an attempt to secure voluntary compliance with said obligation.

96.1(4) Enforcing the court ordered obligation of the absent parent through contempt or other proceedings and initiating a uniform reciprocal enforcement of support action for reducing an obligation of support to court order where no such order is in existence.

96.1(5) The use of other legal and administrative tools as warranted including, but not limited to, income withholding, garnishment, attachment of a lien, execution of a lien, and income tax setoff to collect the support payments.

This rule is intended to implement Iowa Code section 252B.4.

441—96.2(252B) Limitation of services. The service is limited to the enforcement of child support obligations and alimony where a child support obligation is also involved. The service available is the same as that the department provides for aid to dependent children recipients. The primary emphasis of the unit is on the regular and periodic payment of the current support obligation. The child support recovery unit shall determine the amount of support upon the ability of the absent parent to pay, even when an existing court order provides a higher amount of support. The unit shall also determine the appropriate enforcement procedure to be utilized in each specific case.

441—96.3(252B) Denial or termination of services.

96.3(1) *Reasons for denial or termination.* Services to an applicant or recipient of nonpublic assistance support services may be denied or terminated when no known possibility of collecting support payments exists. Denial or termination of services may occur for one of more of the following reasons:

a. Upon receipt of a written or oral request from the applicant or client to terminate the case.

b. When all support obligations established by a court order have been collected and the support obligation has terminated.

c. When the responsible person is deceased and no further legal action can be taken to collect on the obligation.

d. When the applicant or client obtains the services of a private attorney to enforce or secure a support obligation.

e. When the absent parent cannot be located after all local, state, and federal location sources have been exhausted and no possibility of collecting support exists.

f. When the responsible person resides in a foreign country and there is not a support or reciprocity agreement with that country.

g. When a court rules the putative father is not the father of a child, blood tests exclude the putative father, or there is insufficient evidence for a court hearing to be held.

h. When the parental rights of the absent parent have been terminated and delinquent support is not owed by the absent parent.

i. When the responsible person is incarcerated, incapacitated, institutionalized, or receiving aid to dependent children.

j. When support services have been suspended for a period exceeding ninety (90) days.

96.3(2) *Notification.*

a. When services are denied or terminated, a notice shall be sent to the applicant or client at the last known address stating the reason(s) for denying or terminating the services, the effective date of the termination, and an explanation of the right to request a fair hearing, according to 441—chapter 7.

b. An individual shall not be notified when the status of the case changes from a nonassistance case to a case receiving aid to dependent children since support services are not interrupted.

This rule is intended to implement Iowa Code section 252B.4.

441—96.4(252B) Application for services. An individual requesting services under this chapter, except for those individuals eligible to receive support services in accordance with rule 441—96.10(252B), shall complete and return Form 470-0188, Application for Nonassistance Support Services, to the child support recovery unit serving the county where the individual resides.

This rule is intended to implement Iowa Code section 252B.4.

441—96.5(421) Setoff against state income tax refund or rebate. A setoff against an absent parent's income tax refund or rebate shall follow rule 441—95.6(421).

This rule is intended to implement Iowa Code section 421.17.

441—96.6(96) Setoff of unemployment benefits. A setoff of a responsible person's unemployment benefits shall be done in accordance with 441—95.8(96).

This rule is intended to implement Iowa Code section 96.3 and 15 U.S.C. 1673(b).

441—96.7(252C) Mandatory assignment of wages. The mandatory assignment of wages shall be done in accordance with rule 441—95.10(252C).

This rule is intended to implement Iowa Code chapter 252D.

441—96.8(252C) Establishment of an administrative order. The establishment of an administrative order shall follow rule 441—95.11(252C).

This rule is intended to implement Iowa Code chapter 252C.

441—96.9(252B) Setoff against a federal tax refund or rebate. A claim against a responsible person's refund or rebate shall follow subrules 95.7(3) to 95.7(9) with the addition of the following:

96.9(1) A claim against a responsible person's federal income tax refund or rebate shall be made by the department when all of the following requirements have been met:

a. Delinquent support is owed to or on behalf of a minor child.

b. A nonassistance application, if required according to rule 441—96.1(252B), has been filed and any application fee charged by the department has been paid.

c. The department has taken at least one action to collect the delinquency (billing, location or legal action) within the twelve (12) months preceding the setoff certification to the Internal Revenue Service.

d. The amount of delinquent support is at least $500 and the support has been delinquent for three (3) months preceding the certification to the Internal Revenue Service.

e. An individual receiving support services has furnished to the department the required monthly report of any support received as specified by rule 441—96.11(252B).

96.9(2) *Amount distributed.* The amount distributed to an individual shall be the amount remaining following payment of a support delinquency assigned to the department, less the

setoff fee.

96.9(3) *Distribution.* The department shall distribute to an individual the amount collected from a setoff according to subrule 95.7(9) within the following time frames:

a. Within six (6) months from the date the department applies a setoff amount from a joint income tax refund to the child support account of the responsible person, or

b. Within two (2) months from the date the department applies a setoff amount from a single income tax refund to the child support account of the responsible person.

96.9(4) *Repayment agreement.* Prior to receipt of the amount to be distributed the individual shall sign Form 470-2084, Repayment Agreement for Federal Tax Refund Setoff, agreeing to repay any amount of the setoff the Internal Revenue Service later requires the department to return.

This rule is intended to implement Iowa Code sections 252B.4 and 252B.11.

441—96.10(252B) Services available to canceled aid-to-dependent-children recipients. Support services shall automatically be provided for the five (5) months immediately following cancellation, without application or fee, to individuals who were eligible to receive support services as recipients of aid to dependent children and who were canceled from aid to dependent children. Continued support services shall not be provided to an individual who has been canceled from aid to dependent children when a claim of good cause, as defined in subrule 41.2(8), was valid at the time benefits were canceled or when one of the reasons for denial of services, listed in rule 441—96.3(252B) applies to the case.

Support services shall continue to be provided to eligible individuals without application immediately following the five (5) months of continued services subject to applicable fees.

96.10(1) *Notice of services.* Within forty-five (45) days from the date aid-to-dependent-children benefits are canceled or within fifteen (15) days from the date the unit is notified of the cancellation of benefits, the department shall forward Form CS-1113, Notice of Continued Support Services, to an individual's last known address to inform the individual of eligibility for and duration of the continued services.

96.10(2) *Termination of services.* An individual may request the department to terminate support services during, or at any time after, the five (5) months of continued services by the completion and return of the bottom portion of Form CS-1113, or in any other form of written communication, to the child support recovery unit.

Continued support services may be terminated at any time for any of the reasons listed in rule 441—96.3(252B).

96.10(3) *Reapplication for services.* An individual whose services were denied or terminated may reapply for services under this chapter by completing the application process as described in rule 441—96.4(252B), and paying the application fees described in rule 441—96.13(252B).

This rule is intended to implement Iowa Code section 252B.4.

441—96.11(252B) Responsibilities of recipients. The individual receiving nonassistance support services shall cooperate by giving complete and accurate information needed to establish and enforce a support obligation.

Form CS-1115, Report of Monthly Support Received, shall be forwarded to each individual receiving nonassistance support services at the end of each month with a postage-paid return envelope. The individual shall complete, sign, and return Form CS-1115 to the Child Support Recovery Unit, 5th Floor, Hoover Building, Des Moines, Iowa 50319-0114 by the tenth calendar day of each month to report whether support was received in the preceding month and the amount of support received.

Failure of the individual to return the completed form or to provide information needed to establish or enforce a support obligation, shall result in support services being suspended by the child support recovery unit for a period of ninety (90) days or until the requested information is received, whichever occurs first. Cases suspended for a period of ninety (90) days shall be closed by the child support recovery unit after a notice of decision is provided to the client.

This rule is intended to implement Iowa Code section 252B.4.

441—96.12(252B) Charging fees. The child support recovery unit may charge fees to persons who receive services according to rule 441—96.10(252B) following the five (5) months of continued services and to all other persons receiving nonassistance services. At the time of application or at the end of the five (5)-month period of continued services, persons shall be provided with a schedule of fees and the effective date of the fees. Revisions to the schedule of fees due to a change in charges set by federal agencies shall be provided to persons receiving services, thirty (30) days prior to the effective date of the change. Payment of fees must be in the form of a money order, cashier's check, or bank draft. Cash or personal checks will not be accepted.

This rule is intended to implement Iowa Code sections 252B.4 and 252B.11.

441—96.13(252B) Application fees. An individual who is required to complete Form 470-0188, Application For Nonassistance Support Services, according to rule 441—96.4(252B) shall be charged an application fee of five dollars ($5) at the time of initial application and any subsequent application for services. The application fee shall be paid to the local child support recovery unit by the individual prior to services being provided.

This rule is intended to implement Iowa Code sections 252B.4 and 252B.11.

441—96.14(252B) Procedures for providing information to consumer reporting agencies. The sharing of information on the amount of delinquent support owed by responsible persons shall follow rule 441—95.12(252B).

This rule is intended to implement Iowa Code section 252B.8.

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CHAPTERS 97 to 99
Reserved

TITLE XI
CHILDREN'S INSTITUTIONS

CHAPTER 100
Reserved

CHAPTER 101
IOWA STATE JUVENILE HOME
[Prior to 7/1/83, Social Services (770), Ch 101]
[Prior to 2/11/87, Human Services(498)]

441—101.1(218) Definitions.

"Contraband" shall mean weapons, alcohol, drugs, obscene materials as defined in Iowa Code section 728.1, paragraph (1), or materials advocating disruption of or injury to residents, employees, programs, or physical facilities. It shall also include anything which is illegal to possess under the law, materials which are used in the production of drugs or alcohol or used in conjunction with the taking of illicit drugs.

"Immediate family" shall mean spouse, child, parent, brother, sister, or grandparent.

"Resident" shall mean a child committed to the state director and admitted to the state juvenile home.

441—101.2(218) Visiting.

101.2(1) Visiting hours are from 10 a.m. to 4:30 p.m. Saturday and Sunday. The superintendent may designate certain weekdays or holidays for visiting. The resident shall be responsible for informing the visitor of the days. Visitation by the family will be encouraged and necessary flexibility in these hours and days will be allowed.

101.2(2) All visiting during times other than described in 101.2(1) shall have approval from the superintendent or designee prior to the day of visit.

101.2(3) Visitors shall check in with security staff upon arrival. The counselor on duty may request identification of the visitor. Failure to produce identification may result in denial of the visit.

101.2(4) Residents are permitted to visit with their parents or members of the immediate family. Family members under twelve (12) years of age may visit only with adult supervision. Friends may visit when approved by the administrative officer. Friends under eighteen (18) years of age may visit only with adult supervision.

101.2(5) Any visitor arriving on the grounds who is under the influence of or has been partaking of drugs or alcoholic beverages shall not be permitted a visit.

101.2(6) Residents shall have written authorization of the administrative officer in charge before accompanying parents of another student out on a visit.

101.2(7) Persons other than immediate family or legal counsel who wish to visit a resident must obtain prior approval from the superintendent or designee before visiting.

101.2(8) The superintendent reserves the right to limit or terminate visiting in all cases where doing so is in the best interests of the resident's personal and therapeutic needs. When limitations or termination of visiting rights occur, the superintendent or administrator in charge shall immediately notify persons involved why the action was taken, and a written report will be placed in the resident's file.

This rule is intended to implement Iowa Code section 218.4.

441—101.3(218) Interviews and statements.

101.3(1) All residents will be informed of their right to remain silent.

101.3(2) When the resident agrees, interviews will be granted at the discretion of the superintendent. Whenever an interview is granted, at least one staff person shall be present for the entirety of the interview and shall have the authority to terminate the interview any time the staff person feels the best interests of the resident are not being served.

101.3(3) The resident shall be represented by legal counsel during any interview being conducted to obtain information that will be or may be used in court against the resident.

101.3(4) Exceptions to 101.3(2) will be made only for the resident's own attorney or state officials acting in their official capacity.

101.3(5) The superintendent may deny an interview in situations deemed detrimental to the resident. The person requesting the interview shall be referred to the director, division of community programs, Iowa department of human services for approval.

101.3(6) Permission for written deposition may be granted by the superintendent following the aforementioned rules for granting interviews. One copy of the depositions shall be submitted to the superintendent. Voice recording of the interviews will not be permitted. This rule shall in no way restrict depositions ordered by the court.

This rule is intended to implement Iowa Code section 218.4.

441—101.4(218) Mail and packages.

101.4(1) Outgoing or incoming letters or packages shall not be opened, read, censored, or tampered with in any manner, except that institutional staff, in order to search for and seize contraband, may open, but not read, incoming mail or packages in the presence of the resident to whom the mail is directed or require that the resident open the letter or package in the staff's presence and disclose the contents.

101.4(2) Letters or packages found to contain contraband may be withheld, but both the sender and the intended receiver of the withheld mail shall be notified and given reasons for the action in writing within forty-eight (48) hours of the action.

101.4(3) When correspondence between a resident and another person is not considered to be in the best interest of and detrimental to the treatment plan of the resident, the superintendent or designee may terminate that correspondence. Just cause shall be shown and written notice provided to both correspondents.

101.4(4) When correspondence has been terminated as described in 101.4(3), either of the correspondents may request a review of the termination at any time.

101.4(5) Terminations under 101.4(3) shall be based on individual cases and not on groups or agencies.

This rule is intended to implement Iowa Code section 218.4.

441—101.5(218) Use of buildings and grounds.

101.5(1) When the residents are not using space or a facility, the space or facility may be available for public use at the discretion of the superintendent.

101.5(2) A deposit of fifteen dollars ($15) may be required twenty-four (24) hours in advance of reserving the canteen. The full deposit shall be refunded when the canteen is left in satisfactory condition.

101.5(3) Requests for use of the staff conference room, lounge, and chapel building shall be directed to the superintendent's secretary.

101.5(4) A twenty-five dollar ($25) deposit may be required for use of the recreation center facilities. The full deposit shall be refunded when the facilities are left in satisfactory condition.

a. An employee of the state juvenile home shall be present to supervise the group.

b. The group supervisor shall sign a release form and a form accepting responsibility for the group's supervision prior to the use of the facility.

c. Only facilities specifically requested and approved shall be used by the group.

101.5(5) The state juvenile home reserves the right to cancel an agreement to use facilities in the event of emergency or schedule changes where resident use takes priority.

This rule is intended to implement Iowa Code section 218.4.

441—101.6(218) Incoming phone calls. All incoming telephone calls for residents shall have approval of the superintendent or designee prior to the conversation. The identity of the caller shall be verified before approval is given. Telephone calls shall not be monitored.

This rule is intended to implement Iowa Code section 218.4.

441—101.7(218) Resident employment.

101.7(1) Employers, individuals, or organizations wishing to hire a resident of the institution shall receive approval from the superintendent or designee.

101.7(2) Child labor laws shall be adhered to.

101.7(3) The employer's legal and institutional responsibilities shall be documented by the superintendent or designee and communicated, including salary, supervision, transportation, and hours, to the residents' employer so as to clarify and document the resident-employer employment agreement.

101.7(4) The employer or superintendent or designee or resident has the right to terminate the employment at any time.

101.7(5) Residents shall be paid in accordance with minimum wage laws in effect for off-campus employment. Work of a more skilled nature shall be compensated accordingly.

101.7(6) All checks or money shall be turned into the business office for deposit in the resident's account, not given directly to the resident.

101.7(7) Behavior unacceptable to the employer shall be reported to the institution. Behavior unacceptable to an employer shall not subject the resident to any sanctions, punishment or punitive restriction of privileges, unless it constitutes a public offense or violates institutional rules and, in that case, it shall follow the normal discipline procedure or referral to court for prosecution. Runaway residents shall be reported to the institution immediately.

This rule is intended to implement Iowa Code section 218.4.

441—101.8(218) Tours. Tours of the facilities may be scheduled on weekdays from 8 a.m. to 4 p.m. by appointment through the superintendent or designee.

This rule is intended to implement Iowa Code section 218.4.

441—101.9(218) Acceptance.

101.9(1) Children shall be accepted for evaluation as diagnostic beds are available on a first-come-first-served basis.

101.9(2) Children shall be accepted into the regular program as treatment beds are available on a first-come-first-served basis.

101.9(3) No children adjudicated to have committed a delinquent act shall be admitted to the state juvenile home.

101.9(4) A certified copy of the court order which complies with Iowa Code chapter 232 and the relevant petitions must accompany the child to the institution.

This rule is intended to implement Iowa Code section 218.4.

441—101.10(218) Admission procedures. When a youth is to be admitted to the state juvenile home, arrangements shall be made for the actual admission between 8 a.m. and 4:30 p.m., Monday through Friday. The youth being admitted shall be accompanied by such youth's parents, when available. Whenever possible, a preadmission visit by the youth to the institution shall be arranged by the local office service worker.

This rule is intended to implement Iowa Code section 218.4.

441—101.11(218) Program assignment. Residents will be assigned to specific cottage programs, educational and vocational programs and special services, such as drug counseling, family therapy, or similar services, to meet the needs of each individual resident, taking into consideration the limitation of the availability of space and specific programs. It is the responsibility of the superintendent to notify the court when appropriate space or program is not available and to deny admission until these needs can be met.

This rule is intended to implement Iowa Code section 218.4.

441—101.12(218) Individual care plan.

101.12(1) Whenever a resident is placed in a treatment program in the institution, an individual care plan shall be developed within thirty (30) days.

101.12(2) The institution shall notify the resident, the resident's parents, the child's legal counsel, the court and the assigned service worker in writing of the time, date and nature of the individual care plan staffing at least ten (10) working days prior to the staffing.

101.12(3) The institution counselor shall ensure that the institution has completed an assessment of the resident prior to the individual care plan staffing.

This rule is intended to implement Iowa Code section 218.4.

441—101.13(218) Special staffing. Whenever special concerns and needs arise in the program of a resident, a meeting of institutional staff, assigned service worker and other relevant parties shall convene to evaluate and formulate appropriate changes in the care plan.

This rule is intended to implement Iowa Code section 218.4.

441—101.14(218) Isolation. Isolation is the placement of a resident in a locked room to control behavior. The resident's request to spend time in a private, unlocked room is not to be considered isolation and should be granted if feasible. Quarantine or other preventive health measures are not considered isolation but can only be ordered by a licensed physician. During nighttime lock-up, staff shall check each resident every fifteen (15) minutes, and the time of each check shall be recorded. At no time shall residents be out of audio contact with staff. Staff shall be available at all times to meet the physical needs of the residents.

101.14(1) Authority for isolation rests with the administrator or in the administrator's absence the staff person designated by the administrator. The administrator shall see the resident, assess the resident's needs, and seek professional consultation if indicated. Normally, written orders with date and time shall precede the placement of a resident in isolation. In emergencies, telephone orders may be accepted, to be followed promptly by a written order, dated and signed by the administrator or designee not later than four (4) hours after the telephone order.

101.14(2) An order for isolation is good for only four (4) hours. For every four (4)-hour period, the procedure in 101.14(1) shall be followed. The time the order is received will be recorded with the order on the order sheet. No nonmedical isolation will continue beyond twenty-four (24) hours.

101.14(3) In the absence of a written or telephone order, a resident may be placed in isolation as a protective measure for no more than one hour when such action is immediately necessary. At these times the designated staff person shall be notified immediately and either approve or disapprove the isolation. When the isolation is not approved, the child shall be released immediately from isolation. When isolation is approved, the designated staff person shall then visit the resident and, when isolation seems necessary, immediately notify the administrator. The approving staff person shall document observations fully on an appropriate progress report.

101.14(4) The following procedure shall be followed when a resident is in isolation:

a. Potentially dangerous articles shall be removed from the resident. This includes articles of clothing when there are reasonable grounds to believe such clothing constitutes a substantial threat to the health or safety of the resident. In no case shall underwear or all clothing be removed.

b. The physical needs of the resident shall be given prompt response.

c. Immediate counseling service shall be available.

101.14(5) The following shall be available to a child in isolation:

a. A clean dry room of moderate temperature, equipped with light sufficient for reading between the hours of 7 a.m. to 10 p.m.

b. Sufficient clothing to meet seasonal needs.

c. A bed, including blankets, sheets, pillow and pillow cases, and mattresses.

d. Personal hygiene supplies including soap, toothpaste, toothbrush, hairbrush, comb, towels, and toilet paper.

e. Minimum writing materials, pen, pencils, paper and envelopes.
f. Prescription eyeglasses, if needed.
g. Access to books, periodicals and other reading materials.
h. Adequate toilet facilities and bathing facilities.
i. Correspondence privileges generally applicable to all juveniles in the institution; and
j. Access to medical facilities including twenty-four (24) hour nursing service on call.

101.14(6) Any item described in subrule 101.14(5) that is determined by supervisory personnel to present an immediate danger to the child may be denied for the period during which the immediate danger exists, provided that a written report of what is denied, why, and for how long is included in the child's record.

101.14(7) A monitoring report with observations entered at no less than fifteen (15)-minute intervals shall be maintained and included in the resident's record. This report shall be retained in the resident's record. The report shall also include information as follows:
a. Identifying data concerning name, age.
b. Reason for isolation.
c. Period of time in isolation, and
d. Statement regarding status of resident after release from isolation.

This rule is intended to implement Iowa Code section 218.4.

441—101.15(218) Grievance procedure.

101.15(1) A resident shall have the right to file a grievance against a policy, program, or procedure.

101.15(2) The institution shall have a clearly written grievance procedure with at least one appeal level.

101.15(3) All grievances filed shall be heard.

This rule is intended to implement Iowa Code section 218.4.

441—101.16(218) Alleged child abuse. The department shall arrange for the investigation of any reported case of child abuse in which the alleged perpetrator is an employee of the institution or some other department of human services employee to be conducted by an agency other than the department of human services.

This rule is intended to implement Iowa Code section 218.4.

441—101.17(218) Temporary home visits.

101.17(1) Residents may be granted a temporary home visit for up to five (5) days for such reasons as to attend funerals, weddings, holiday functions, or job seeking; or for the primary purpose of exploring and improving family and community relations; or for the purpose of preplacement visits to foster or group homes to test the appropriateness of such a placement.

101.17(2) The court, the child's legal counsel, the resident's parents, the temporary placement, if different than the parents' home, and the assigned service worker shall be notified in writing five (5) working days in advance of a visit except in cases of emergency when phone calls to the previously discussed people followed by a written notice explaining the special circumstance shall be sufficient.

101.17(3) In all cases, the institutional superintendent or designee and the assigned service worker shall approve all temporary home visits in advance.

101.17(4) All temporary visit placements shall be investigated and approved as appropriate by the assigned service worker or probation officer in writing and in advance of any visit being scheduled.

101.17(5) In special cases which involve the treatment needs of the child, a temporary home visit may be extended when both the institutional superintendent or designee and the assigned service worker's supervisor agree that the proposed extension is appropriate and the bureau of children's services approves the special extension request. Approval of exceptions shall be made on the basis of the treatment needs of the child.

This rule is intended to implement Iowa Code section 218.4.

441—101.18(218) Prerelease staffing.

101.18(1) Thirty (30) days prior to any anticipated release from the regular program, a release staffing shall be held.

101.18(2) The institution shall supply written notice of the time, date, and intent of the release staffing at least five (5) working days prior to the staffing to the resident, the resident's parents, the court, the child's legal counsel, and the assigned service worker.

This rule is intended to implement Iowa Code section 218.4.

441—101.19(218) Attorney contacts. The resident shall have the right to contact the resident's attorney during normal business hours and at other times with prior approval of the attorney. The cost of the contacts shall be arranged prior to the contact being made. Children who do not have an attorney should be referred to the appropriate legal aide.

This rule is intended to implement Iowa Code section 218.4.

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CHAPTER 102
Reserved

CHAPTER 103
ELDORA TRAINING SCHOOL
[Prior to 7/1/83, Social Services(770), Ch 103]
[Prior to 2/11/87, Human Services(498)]

441—103.1(218) Definitions.

"Contraband" shall mean weapons, alcohol, drugs, obscene materials as defined in Iowa Code section 728.1, paragraph (1), or material advocating disruption of or injury to residents, employees, programs, or physical facilities. It shall also include anything which is illegal to possess under the law, materials which are used in the production of drugs or alcohol, or used in conjunction with the taking of illicit drugs.

"Immediate family" shall mean spouse, child, parent, brother, sister or grandparent.

"Resident" shall mean a child committed to the state director and admitted to the Eldora training school.

This rule is intended to implement Iowa Code section 218.4.

441—103.2(218) Visiting.

103.2(1) Visiting hours are from 10 a.m. to 4:30 p.m. on Saturdays and Sundays. The superintendent may designate certain weekdays or holidays for visiting. The resident shall be responsible for informing the visitor of the days. Visitation by the family will be encouraged and necessary flexibility in these hours and days will be allowed.

103.2(2) All visiting during times other than described in 103.2(1) shall have approval from the superintendent or designee prior to the day of visit.

103.2(3) Visitors shall check in with security staff upon arrival. The counselor on duty may request identification of the visitor. Failure to produce identification may result in denial of the visit.

103.2(4) Residents are permitted to visit with their parents or members of the immediate family. Family members under twelve (12) years of age may visit only with adult supervision. Friends may visit when approved by the counselor. Friends under eighteen (18) years of age may visit only with adult supervision.

103.2(5) Any visitor arriving on the grounds who is under the influence of or has been partaking of drugs or alcoholic beverages shall not be permitted a visit.

103.2(6) Residents must have written authorization of the cottage director concerned before accompanying parents of another student out on a visit.

103.2(7) Persons other than immediate family or legal counsel who wish to visit a resident must obtain prior approval from the superintendent or designee before visiting.

103.2(8) The superintendent reserves the right to limit or terminate visiting in all cases where doing so is in the best interests of the resident's personal and therapeutic needs. When limitations or termination of visiting rights occur, the superintendent or administrator in charge shall immediately notify persons involved why the action was taken and a written report will be placed in the resident's file.

This rule is intended to implement Iowa Code section 218.4.

441—103.3(218) Interviews and statements.

103.3(1) All residents will be informed of their right to remain silent.

103.3(2) When the resident agrees, interviews shall be granted at the discretion of the superintendent. Whenever an interview is granted, at least one staff person shall be present for the entirety of the interview and shall have the authority to terminate the interview any time such person feels the best interests of the resident are not being served.

103.3(3) The resident shall be represented by legal counsel during any interview being conducted to obtain information that will be or may be used in court against the resident.

103.3(4) Exceptions to 103.3(2) will be made only for the resident's own attorney or state officials acting in their official capacity.

103.3(5) The superintendent may deny an interview in situations deemed detrimental to the resident. The person requesting the interview shall be referred to the director, division of community programs, Iowa department of human services for approval.

103.3(6) Permission for written depositions may be granted by the superintendent following the aforementioned rules for granting interviews. One copy of such depositions shall be submitted to the superintendent. Voice recording of such interviews will not be permitted. This shall in no way restrict depositions ordered by the court.

This rule is intended to implement Iowa Code section 218.4.

441—103.4(218) Mail and packages.

103.4(1) Outgoing or incoming packages shall not be opened, read, censored, or tampered with in any manner, except that institutional staff, in order to search for and seize contraband, may open, but not read, incoming mail or packages in the presence of the resident to whom the mail is directed or require that the resident open the letter or package in the staff's presence and disclose the contents.

103.4(2) Letters or packages found to contain contraband may be withheld, but both the sender and the intended receiver of the withheld mail shall be notified and given reasons for the action in writing within forty-eight (48) hours of the action.

103.4(3) When correspondence between a resident and another person is not considered to be in the best interest of and detrimental to the treatment plan of the resident, the superintendent or designee may terminate that correspondence. Just cause shall be shown and written notice provided to both correspondents.

103.4(4) When correspondence has been terminated as described in 103.4(3), either of the correspondents may request a review of the termination at any time.

103.4(5) Termination under 103.4(3) shall be based on individual cases and not on groups or agencies.

This rule is intended to implement Iowa Code section 218.4.

441—103.5(218) Use of buildings and grounds.

103.5(1) When the residents are not using space or a facility, the space or facility may be available for public use at the discretion of the superintendent.

103.5(2) A deposit of fifteen dollars ($15) may be required twenty-four (24) hours in advance of reserving the canteen. The full deposit shall be refunded when the canteen is left in satisfactory condition.

103.5(3) Requests for use of the staff conference room, lounge, and chapel building shall be directed to the superintendent's secretary.

103.5(4) A twenty-five dollar ($25) deposit may be required for use of the recreation center facilities. The full deposit shall be refunded when the facilities are left in satisfactory condition.

a. An employee of the training school must be present to supervise the group.

b. The group supervisor must sign a release form and a form accepting responsibility for the group's supervision prior to the use of the facility.

c. Only facilities specifically requested and approved shall be used by the group.

103.5(5) The training school reserves the right to cancel an agreement to use facilities in the event of emergency or schedule changes where resident use takes priority.

This rule is intended to implement Iowa Code section 218.4.

441—103.6(218) Incoming phone calls. All incoming telephone calls for residents shall have approval of the superintendent or designee prior to the conversation. The identity of the caller shall be verified before approval is given. Telephone calls shall not be monitored.

This rule is intended to implement Iowa Code section 218.4.

441—103.7(218) Resident employment.

103.7(1) Employers, individuals, or organizations wishing to hire a resident of the institution shall receive approval from the superintendent or designee.

103.7(2) Child labor laws shall be adhered to.

103.7(3) The employers legal and institutional responsibilities shall be documented by the superintendent or designee and communicated, including salary, supervision, transportation, and hours, to the resident's employer so as to clarify and document the resident-employer employment agreement.

103.7(4) The employer or superintendent or designee or resident has the right to terminate the employment at any time.

103.7(5) Residents shall be paid in accordance with the minimum wage laws in effect for off-campus employment; work of a more skilled nature shall be compensated accordingly.

103.7(6) All checks or money shall be turned into the business office for deposit in the resident's account, not given directly to the resident.

103.7(7) Behavior unacceptable to the employer shall be reported to the institution. Behavior unacceptable to an employer shall not subject the resident to any sanctions, punishment or punitive restriction of privileges, unless it constitutes a public offense or violates institutional rules and, in that case, it shall follow the normal discipline procedure or referral to court for prosecution. Runaway residents shall be reported to the institution immediately.

This rule is intended to implement Iowa Code section 218.4.

441—103.8(218) Tours. Tours of the facilities may be scheduled on weekdays from 8 a.m. to 4 p.m. by appointment through the superintendent or designee.

This rule is intended to implement Iowa Code section 218.4.

441—103.9(218) Acceptance.

103.9(1) Children shall be accepted for evaluation as diagnostic beds are available on a first-come-first-served basis.

103.9(2) Children shall be accepted into the regular program as treatment beds are available on a first-come-first-served basis.

103.9(3) No child adjudicated a child in need of assistance shall be admitted to the Eldora training school except for diagnosis and evaluation and then only when a current petition is on file that alleges the child to have committed a delinquent act.

103.9(4) A certified copy of the court order which complies with Iowa Code chapter 232 and the relevant petitions must accompany the child to the institution.

This rule is intended to implement Iowa Code section 218.4.

441—103.10(218) Admission procedures. When a youth is to be admitted to the Eldora training school, arrangements shall be made for the actual admission between 8 a.m. and 4:30 p.m., Monday through Friday. The youth being admitted shall be accompanied by the youth's parents, when available. Whenever possible, a preadmission visit by the youth to the institution shall be arranged by the local office service worker.

This rule is intended to implement Iowa Code section 218.4.

441—103.11(218) Program assignment. Residents will be assigned to specific cottage programs, educational and vocational programs and special services, such as drug counseling, family therapy, or similar services, to meet the needs of each individual resident, taking into consideration the limitation of the availability of space and specific programs. It is the responsibility of the superintendent to notify the court when appropriate space or program is not available and to deny admission until these needs can be met.

This rule is intended to implement Iowa Code section 218.4.

441—103.12(218) Individual care plan.

103.12(1) Whenever a resident is placed in a treatment program in the institution, an individual care plan shall be developed within thirty (30) days.

103.12(2) The institution shall notify the resident, the resident's parents, the child's legal counsel, the court and the assigned service worker in writing of the time, date and nature of the individual care plan staffing at least ten (10) working days prior to the staffing.

103.12(3) The institution counselor shall ensure that the institution has completed an assessment of the resident prior to the individual care plan staffing.

This rule is intended to implement Iowa Code section 218.4.

441—103.13(218) Special staffing. Whenever special concerns and needs arise in the program of a resident, a meeting of institutional staff, assigned service worker and other relevant parties shall convene to evaluate and formulate appropriate changes in the care plan.

This rule is intended to implement Iowa Code section 218.4.

441—103.14(218) Detention.

103.14(1) When a student is placed in detention for inappropriate behavior, the client's situation shall be reviewed by a panel composed of two (2) staff members, one from clinical and one from another department, within twenty-four (24) hours to determine if the child should remain there, if so for how long and what the privileges will be during the stay. At no time shall detention be used for more than five (5) days for a single incident.

103.14(2) Within five (5) working days of a detention review, the service worker and the court shall receive a written report of the review which summarizes the incident as related by the resident and the staff, the review decision and the rationale behind the decision.

This rule is intended to implement Iowa Code section 218.4.

441—103.15(218) Grievance procedure.

103.15(1) A resident shall have the right to file a grievance against a policy, program or procedure.

103.15(2) The institution shall have a clearly written grievance procedure with at least one appeal level.

103.15(3) All grievances filed shall be heard.

This rule is intended to implement Iowa Code section 218.4.

441—103.16(218) Alleged child abuse. The department shall arrange for the investigation of any reported case of child abuse in which the alleged perpetrator is an employee of the institution or some other department of human services employee to be conducted by an agency other than the department of human services.

This rule is intended to implement Iowa Code section 218.4.

441—103.17(218) Temporary home visits.

103.17(1) Residents may be granted a temporary home visit for up to five (5) days for such reasons as to attend funerals, weddings, holiday functions, or job seeking; or for the primary purpose of exploring and improving family and community relations; or for the purpose of preplacement visits to foster or group homes to test the appropriateness of such a placement.

103.17(2) The court, the child's legal counsel, the resident's parents, the temporary placement, if different than the parents' home, and the assigned service worker shall be notified in writing five (5) working days in advance of a visit except in cases of emergency when phone calls to the previously discussed people followed by a written notice explaining the special circumstance shall be sufficient.

103.17(3) In all cases, the institutional superintendent or designee and the assigned service worker shall approve all temporary home visits in advance.

103.17(4) All temporary visit placements shall be investigated and approved as appropriate by the assigned service worker or probation officer in writing and in advance of any visit being scheduled.

103.17(5) In special cases which involve the treatment needs of the child, a temporary visit may be extended when both the institutional superintendent or designee and the assigned service worker's supervisor agree that the proposed extension is appropriate and the bureau of adult, children, and family services approves the special extension request. Approval of exceptions shall be made on the basis of the treatment needs of the child.

This rule is intended to implement Iowa Code section 218.4.

441—103.18(218) Prerelease staffing.

103.18(1) Thirty (30) days prior to any anticipated release from the regular program, a release staffing shall be held.

103.18(2) The institution shall supply written notice of the time, date, and intent of the release staffing at least five (5) working days prior to the staffing to the resident, the resident's parents, the court, the child's legal counsel, and the assigned service worker.

This rule is intended to implement Iowa Code section 218.4.

441—103.19(218) Attorney contacts. The resident shall have the right to contact the resident's attorney during normal business hours and at other times with prior approval of the attorney. The cost of the contacts shall be arranged prior to the contact being made. Children who do not have an attorney shall be referred to the appropriate legal aid.

This rule is intended to implement Iowa Code section 218.4.

441—103.20(218,242) Standards. The training school shall comply with the Standards for Juvenile Training Schools, 2nd Edition, January, 1983 (Supplement January, 1986), as promulgated by the Commission on Accreditation for Corrections. Copies of the standards may be obtained upon request at no more than the actual cost of reproduction from the Superintendent, State Training School, Eldora, Iowa 50627, 515/858-5402.

This rule is intended to implement Iowa Code sections 218.4 and 242.16.

441—103.21(218,242) Advisory committee. The department shall establish an advisory committee consisting of fifteen (15) persons appointed by the commissioner to review and make recommendations to the department regarding the programming and policies of the state training school.

103.21(1) *Membership.* Membership shall include representatives of the local community, the juvenile court, providers of juvenile services, state agencies concerned with juvenile services, and persons with expertise in the treatment of youth. No more than five (5) members of the advisory committee shall be state employees.

103.21(2) *Committee action.*

a. A quorum shall consist of two-thirds (2/3) of the members eligible to vote.

b. Where a quorum is present, a position is carried by a majority of the members eligible to vote.

103.21(3) *Committee minutes.* Copies of minutes are kept on file in the office of the Superintendent, State Training School, Eldora, Iowa 50627, 515/858-5402.

103.21(4) *Committee meetings.* The committee will meet at least three (3) times a year. Dates will be determined by the chair. Special meetings may be called by the chair or upon the written request of a majority of committee members. Any person wishing to make a presentation at a committee meeting shall notify the superintendent at least fifteen (15) calendar days prior to the council meeting.

103.21(5) *Robert's Rules of Order.* In cases not covered by these rules, Robert's Rules of Order shall govern.

This rule is intended to implement Iowa Code sections 218.4 and 242.16.

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CHAPTER 104
Reserved

TITLE XII
LICENSING AND APPROVED STANDARDS

CHAPTER 105
COUNTY AND MULTICOUNTY JUVENILE DETENTION HOMES AND COUNTY AND MULTICOUNTY JUVENILE SHELTER CARE HOMES

[Prior to 7/1/83, Social Services(770), Ch 105]
[Prior to 2/11/87, Human Services(498)]

441—105.1(232) Definitions.

"Chemical restraint" means the use of chemical agents including psychotropic drugs as a form of restraint. The therapeutic use of psychotropic medications as a component of a service plan for a particular child is not considered chemical restraint.

"Child care worker or house parent" shall mean an individual employed by a facility whose primary responsibility is the direct care of the children in the facility.

"Coed facility" shall mean a facility which has both sexes in residence.

"Control room" shall mean a locked room in a juvenile detention home, used for the purpose of isolation or seclusion of a child. A control room shall not be allowed in a juvenile shelter care home.

"County or multicounty" shall mean that the governing body is a county board of supervisors or a combination of representatives from county boards of supervisors.

"Facility" shall mean a county or multicounty "juvenile detention home" or county or multicounty "juvenile shelter care home" as those terms are defined in Iowa Code section 232.2.

"Family shelter home" means a family home providing temporary care for a child in a physically unrestricting home at any time between the child's initial contact with the juvenile authorities and the disposition of the case.

"Mechanical restraint" means restriction by the use of a mechanical device of a child's mobility or ability to use the hands, arms or legs.

"Prime programming time" is any period of the day when special attention or supervision is necessary, for example, upon awakening in the morning, during meals, later afternoon play, transitions between activities, evenings, and bedtime, weekends and holidays, in order to maintain continuity of programs and care. Prime programming time shall be defined by the facility and approved by the department of human services.

441—105.2(232) Building and grounds.

105.2(1) *Grounds.*

a. An outdoor play area of seventy-five (75) square feet per child shall be provided.

b. The play area shall be identified and kept free from hazards that could cause injury to a child.

c. Rubbish and trash shall be kept separated from the play area.

d. The grounds shall be adequately drained.

105.2(2) *Buildings.*

a. All living areas shall:

(1) Have screens on windows used for ventilation.

(2) Be maintained in clean, sanitary conditions, free from vermin, rodents, dampness, noxious gases, and objectionable odors.

(3) Be in safe repair.

(4) Provide for adequate lighting when natural sunlight is inadequate.

(5) Have heating and storage areas separated from sleeping or play areas.

(6) Have walls and ceilings surfaced with materials that are asbestos free.

b. All sleeping rooms shall be of finished construction and provide a minimum of sixty (60) square feet per child for multiple occupancy, eighty (80) square feet per child for single occupancy, and not sleep more than four (4) children per room.

(1) Facilities licensed prior to July 1, 1981 having a square foot area less than that required shall be considered to meet these standards.

(2) There shall be not more than four (4) youths per room in shelter and two (2) youths per room in detention. Sleeping areas shall be assigned on the basis of the individual child's needs for privacy and independence of group support. For detention facilities built prior to July 1, 1979, four (4) youths per room in detention may be allowed provided the minimum square feet per child requirement is met. When a detention facility licensed prior to July 1, 1979 remodels or makes an addition after July 1, 1979, only two (2) youths per room shall be allowed.

c. All rooms above ground shall:

(1) Have a ceiling height of at least seven (7) feet, six (6) inches.

(2) Have a window area of at least eight percent (8%) of the floor area unless mechanical ventilation is provided that is capable of removing dampness and odors.

d. All rooms below ground shall:

(1) Have a ceiling height of at least six (6) feet, eight (8) inches.

(2) Have a window area of at least two percent (2%) of the floor area unless mechanical ventilation is provided that is capable of removing dampness and odors.

(3) Have floor and walls constructed of concrete or other materials with an impervious finish and free from ground water leakage.

105.2(3) *Bedrooms.*

a. Each child in care shall have a solidly constructed bed.

b. Sheets, pillow cases and blankets shall be provided for each child and shall be kept clean and in good repair.

c. Each child in care shall have adequate storage space for private belongings.

d. No child over the age of five (5) years shall occupy a bedroom with a member of the opposite sex.

105.2(4) *Heating.*

a. The heating unit shall be so located and operated as to maintain the temperature in the living quarters at a minimum of sixty-five (65) degrees Fahrenheit during the day and fifty-five (55) degrees Fahrenheit during the night. Variances may be made in case of health problems. Temperature is measured at twenty-four (24) inches above the floor in the middle of the room.

b. All space heaters involving the combustion of fuel, such as gas, oil or similar fuel, shall be properly vented to the outside atmosphere.

c. Neither rubber nor plastic tubing shall be used as supply lines for gas or oil heaters.

d. The heating and cooling plant shall be checked yearly and kept in a safe working condition at all times.

105.2(5) *Bathroom facilities.*

a. Bathrooms shall have an adequate supply of hot and cold running water.

b. Each bathroom shall be properly equipped with toilet tissue, towels, soap, and other items required for personal hygiene unless children are individually given such items. Paper towels, when used, and toilet tissue shall be in dispensers. Detention facilities shall provide items required for personal hygiene but shall not be required to keep items in the bathrooms.

c. Toilets and baths or showers shall provide for individual privacy.

d. There shall be a shower or tub for each ten (10) children or portion thereof.

e. Tubs and showers shall have slip-proof surfaces.

f. At least one toilet and one lavatory shall be provided for each six (6) children or portion thereof.

g. Toilet facilities shall be provided with natural or artificial ventilation capable of removing odors and moisture.

h. Toilet facilities adjacent to a food preparation area shall be separated completely by a windowless door that completely fills the doorframe.

i. All toilet facilities shall be kept clean.

j. When more than one stool is used in one bathroom, partitions providing privacy shall be used.

k. Toilets, wash basins, and other plumbing or sanitary facilities shall be maintained in good operating condition.

105.2(6) *Food preparation and storage.*

a. Cracked dishes and utensils shall not be used in the preparation, serving, or storage of food.

b. Storage areas for perishable foods shall be kept at forty-five (45) degrees Fahrenheit or below.

c. Storage areas for frozen food shall be kept at zero degrees Fahrenheit or below.

d. Food that is to be served hot shall be maintained at one hundred forty (140) degrees Fahrenheit or above.

e. Food that is to be served cold shall be maintained at forty-five (45) degrees Fahrenheit or less.

f. The kitchen and food storage areas shall be kept clean and neat. Food shall not be stored on the floor.

g. The floor and walls shall be of smooth construction and in good repair.

105.2(7) *Personnel handling food.*

a. Shall be free of infection that might be transferred while preparing or handling food.

b. Shall be clean and neatly groomed.

c. Shall wear clean clothes.

d. Shall not use tobacco in any form while preparing or serving food.

105.2(8) *Dishwashing facilities.*

a. Manual dishwashing will be allowed in facilities that normally serve fifteen (15) or less people at one meal.

b. Automatic or commercial dishwashers shall be used in facilities normally serving more than fifteen (15) people at one meal, as long as the following conditions are met:

(1) When chemicals are added for sanitation purposes, they shall be automatically dispensed.

(2) Machines using hot water for sanitizing must maintain the wash water at least one hundred fifty (150) degrees Fahrenheit and rinse water at a temperature of at least one hundred eighty (180) degrees Fahrenheit or a single temperature machine at one hundred sixty-five (165) degrees Fahrenheit for both wash and rinse.

(3) All machines shall be thoroughly cleaned and sanitized at least once each day or more often if necessary to maintain satisfactory operating condition.

c. Soiled and clean dish table areas shall be of adequate size to accommodate the dishes for one meal.

d. All hand held food preparation and serving equipment shall be cleaned and sanitized following each meal. Dispensers, urns and similar equipment shall be cleaned and sanitized daily.

105.2(9) *Foods not prepared at site of serving.*

a. The place where food is prepared for off-site serving shall conform with all requirements for on-site food preparation.

b. Food shall be transported in covered containers or completely wrapped or packaged so as to be protected from contamination.

c. During transportation, and until served, hot foods shall be maintained at one hundred forty (140) degrees Fahrenheit or above and cold food maintained at forty-five (45) degrees Fahrenheit or below.

105.2(10) *Milk supply.* When fluid milk is used, it shall be pasteurized Grade "A".

105.2(11) *Public water supply.* The water supply is approved when the water is obtained from a public water supply system.

105.2(12) *Private water supplies.*

a. Each privately operated water supply shall be annually checked and evaluated for obvious deficiencies such as open or loose well tops or platforms and poor drainage around the wells.

b. As part of the evaluation, water samples must be collected and submitted by the department of human services worker or local health sanitarian to the state hygienic laboratory or other laboratory certified by the hygienic laboratory and analyzed for coliform bacteria and nitrate (NO^3) content.

c. When the water supply is obtained from more than one well, proof of the quality of the water from each well is required.

d. When no apparent deficiencies exist in the well and the water sample is approved, water safety requirements have been met.

e. When the water sample is not approved, the facility shall provide a written statement as to how the water supply will be upgraded.

f. A facility with unsafe water can meet water safety requirements by utilizing an alternative safe water source for foster children until the facility's own water supply is tested as safe. The Unsafe Water Sample Approval Form, SS-2208 must be completed and approved by the department.

105.2(13) *Heating or storage of hot water.* Each tank used for the heating or storage of hot water shall be provided with a pressure and temperature relief valve.

105.2(14) *Sewage treatment.*

a. Facilities shall be connected to public sewer systems where available.

b. Private disposal systems shall be designed, constructed, and maintained so that no unsanitary or nuisance conditions exist, such as surface discharge of raw or partially treated sewage or failure of the sewer lines to convey sewage properly.

105.2(15) *Garbage storage and disposal.*

a. A sufficient number of garbage and rubbish containers shall be provided to properly store all material between collections.

b. Containers shall be fly tight, leak proof, and rodent proof and shall be maintained in a sanitary condition.

105.2(16) *General.*

a. Facilities shall take sufficient measures to ensure the safety of the children in care.

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

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

d. Fuse boxes shall be inaccessible to children.

e. Facilities shall have written procedures for the handling and storage of hazardous materials.

f. Firearms are prohibited in shelter care and detention facilities.

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

h. The facility shall have policies regarding fishing ponds, lakes or any bodies of water located on or near the institution grounds and accessible to the children.

105.2(17) *Emergency evacuation.* All living units utilized by children shall have a posted plan for evacuation in case of fire or disaster with practice drills held at least every six (6) months.

105.2(18) *Fire inspection.* Each facility shall procure an annual fire inspection approved by the state fire marshal and shall meet the recommendations thereof.

105.2(19) *Local codes.* Each facility shall meet local building, zoning, sanitation and fire safety ordinances. Where no local standards exist, state standards shall be met.

441—105.3(232) Personnel policies.

105.3(1) *Policies in writing.* The following personnel policies and practices of the agency relating to a specific facility shall be described in writing and accessible to staff upon request:

a. Affirmative action and equal employment opportunity policies and procedures covering the hiring, assignment and promotion of employees.

b. Job descriptions for all positions.

c. Provisions for vacations, holidays and sick leave.

d. Effective, time-limited grievance procedures allowing the aggrieved party to bring the grievance to at least one level above that party's supervisor.

e. Authorized procedures, consistent with due process for the suspension and dismissal of an employee for just cause.

f. Written procedures for annual employee evaluation shall be in place for each facility and available to all staff upon request.

105.3(2) *Health of employees.* Staff who have direct client contact or are involved in food preparation shall be medically determined to be free of serious infectious communicable diseases and able to perform their duties. A statement by a physician (as defined in Iowa Code section 135.1) attesting to these facts shall be secured at the time of employment and whenever necessary thereafter and filed in the personnel records of that staff. A new statement shall be secured at least every three (3) years.

105.3(3) *Personnel records.* A record shall be maintained by the facility which contains at least the following:

a. Name, address, and social security number of employee.

b. A job application containing sufficient information to justify the initial and current employment.

c. Education and experience requirements. Applicants for positions having educational requirements shall be permanently employed only after the facility has obtained a certified copy of the transcript, diploma, or verification from the school or supervising agency. Applicants for positions having experience requirements shall be permanently employed only after the facility has obtained verification from the agency supervising the experience.

d. License requirements. Applicants for positions requiring licenses shall be permanently employed only after the facility has obtained written verification of their licenses. Evidence of renewal of licenses as required by the licensing agency shall be maintained in the personnel record.

e. References. At least two (2) written references or documentation of oral references shall be contained in the employee's personnel record. In case of unfavorable references, there shall be documentation of further checking to assure that the person will be a reliable employee.

f. After July 1, 1983, a written, signed and dated statement which discloses any substantiated instances of child abuse, neglect or sexual abuse committed by the applicant is required.

g. Documentation of the submission of Form SS-1606-0, Request for Child Abuse Information, to the registry and the registry response. The request may be submitted after probationary employment but the response must be received before permanent employment is assured.

h. A written, signed and dated statement furnished by the new applicant for employment which discloses any convictions of crimes involving the mistreatment or exploitation of a child.

i. Documentation of a check with the Iowa department of public safety on all new applicants for employment asking only whether the applicant has been convicted of a crime involving the mistreatment or exploitation of a child prior to permanently employing the individual. Department Form SS-2203, "Department of Public Safety Check," shall be used.

Any individual convicted of a crime involving the mistreatment or exploitation of a child shall not be employed by the facility.

j. Documentation of any checks with the Iowa department of public safety for persons hired prior to July 1, 1983 for whom the agency has reason to suspect a criminal record and asking only whether the employee has been convicted of a crime involving the mistreatment or exploitation of a child. Department Form SS-2203, "Department of Public Safety Check", shall be used.

k. Current information relative to work performance evaluation.

l. Records of preemployment health examination or a record of a health report as required in 105.3(2) as well as a written record of subsequent health services rendered to an employee as necessary to ensure that all facility employees are physically able to perform their duties.

m. Information on written current reprimands or commendations.

n. Position in the agency, and date of employment.

o. Information covered in paragraphs *"g," "i," "j,"* is confidential and may not be redisseminated to that particular applicant or employee.

441—105.4(232) Procedures manual. The facility shall have written policies and procedures specifying the manner in which the program of the facility is to be carried out.

441—105.5(232) Staff.

105.5(1) *Number of staff.*

a. Generally. A sufficient number of child care or house parent staff shall be on duty at all times so as to provide adequate coverage. The number of staff required will vary depending on the size and complexity of the program. All facilities shall have at least one staff person on duty. Facilities having six (6) or more residents shall have at least two (2) staff persons on duty at all times that children are usually awake and present in the facility. Coed facilities having more than five (5) residents should have both male and female staff on duty at all times. All child care or house parent staff shall be at least eighteen (18) years of age.

b. On-call system. There shall be an on-call system for coed facilities to provide that staff of the same sex as the resident shall perform the following:

(1) All personal body searches.

(2) Supervision of personal care.

c. Prime programming time. A minimum staff-child ratio of one child care worker or house parent to five (5) children shall be maintained during prime programming times.

d. Night hours. At night, there shall be a staff person awake in each living unit and making regular visual checks throughout the night. The visual checks shall be made at least every hour in shelter care and every half hour in detention. A log shall be kept of all checks, including the time of the check and any significant observations. There shall be an on-call system which allows backup within minutes for both child care staff and casework personnel.

105.5(2) *Staff composition.* The composition of the program staff shall be determined by the facility, based on an assessment of the needs of the children being served, the facility's goals, the programs provided, and all applicable federal, state and local laws and regulations.

105.5(3) *Staff development.* Staff development shall be appropriate to the size and nature of the facility. There shall be a written plan for staff training that includes:

a. Orientation for all new employees, to acquaint them with the philosophy, organization, program practices, and goals of the facility.

b. Training of new employees in areas related to their job assignments.

c. Provisions in writing for all staff members to improve their competency through such means as:

(1) Attending staff meetings;

(2) Attending seminars, conferences, workshops, and institutes;

(3) Visiting other facilities;

(4) Access to consultants;

(5) Access to current literature, including books, monographs, and journals relevant to the facility's services.

d. There shall be an individual designated responsible for staff development and training, who will complete a written staff development plan which shall be updated annually.

105.5(4) *Organization and administration.* Whenever there is a change in the name of the facility, the address of the facility, the executive, or the capacity, the information shall be reported to the licensing manager. A table of organization including the identification of lines of responsibility and authority from policymaking to service to clients shall be available to the licensing staff. An executive director shall have full administrative responsibility for carrying out the policies, procedures and programs.

This rule is intended to implement Iowa Code section 232.142.

441—105.6(232) Intake procedures.

105.6(1) *Admissions.* Admission to shelter care or detention shall be in accordance with Iowa Code sections 232.20, 232.21 and 232.22. In no case shall a youth be admitted to detention or shelter care when the resulting admission would exceed the facility's approved client capacity. The facility and referring agency shall agree upon service responsibilities at the time of admission.

105.6(2) *Agency or court order placement.* Each agency or court placing a child in a facility shall make available to the facility the following:

a. A placement agreement should accompany the child.

When this is not possible, a copy of the placement agreement shall be provided the facility within twenty-four (24) hours.

b. For court-ordered placements, a copy of the court order authorizing placement shall be provided to the facility within forty-eight (48) hours.

c. When the child is in the facility more than four (4) days, the following information shall be made available to the facility.

(1) All available psychological and psychiatric tests and reports concerning the child.

(2) Any available family social history.

(3) Any available school information.

105.6(3) *Self-referrals.* Any child admitting self to a facility shall be provided appropriate services. The facility shall notify the child's parents, guardian or the juvenile court as soon as possible concerning the child's admission to the facility but in any event the notification shall take place within forty-eight (48) hours after the child's admission. Self-referrals shall not be accepted for placement in detention.

105.6(4) *Person responsible.* Each agency shall designate who has the authority to do intake. This may include anyone trained in intake procedures and who is designated to do intake.

105.6(5) *Intake sheet.* An intake sheet shall be completed on each child containing at least the information specified in 105.17(2).

441—105.7(232) Assessments.

105.7(1) *Personal.* At the time of intake and throughout a child's stay, individual needs will be identified by staff. The initial and ongoing determination of each child's needs will be based on written and verbal information from referral sources, observable behavior at intake, initial interview with the youth or family, school contacts, physical examination, and other relevant materials. The individual assessment shall provide the basis for development of a care plan for each youth.

105.7(2) *Educational.* An educational assessment shall be developed by the staff and referring worker for each child. When appropriate, other agencies such as the public schools and the area education agency shall be involved.

441—105.8(232) Program Services.

105.8(1) *Care plan.* There shall be a written care plan developed for each resident remaining in the facility over four (4) days. The care plan will be based on individual needs determined through the assessment of each youth. The care plan shall be developed in consultation with child care services, probation services, social services and educational, medical, psychiatric and psychological personnel as appropriate. The plan shall include:

a. Identification of specific needs;

b. Description of planned service;

c. Which staff person(s) will be responsible for each element of the plan;

d. Where services are to occur;

e. Frequency of activities or services.

105.8(2) *Educational programs.* All children currently enrolled in a school shall continue in that school when possible, or in an appropriate alternative. Where educational assessments indicate an educational need for a child not currently enrolled in public schools, an alternative

shall be developed in cooperation with public schools, area education agency, and the referring worker. When an educational program is established within the facility it shall meet the educational and teaching standards established by the state department of public instruction. A child should be compelled to participate in an educational program only in compliance with the compulsory education law, Iowa Code chapter 299.

105.8(3) *Daily program.* The daily program shall be planned to provide a consistent, well structured, yet flexible framework for daily living, and shall be periodically reviewed and revised as the needs of the individual child or the living group change.

Attention shall be given to the special nature of the facility population and its resulting stresses, for example, rapid turnover in population and minimal screening at intake.

105.8(4) *Optional services.* When a facility provides services in addition to those required by these rules, they shall be clearly defined in writing.

105.8(5) *Recreation program.* The facility shall provide adequately designed and maintained indoor and outdoor activity areas, equipment, and equipment storage facilities appropriate for the age group which it serves. There shall be a variety of activity areas and equipment so that all children can be active participants in different types of individual and group sports and other motor activity.

a. Games, toys, equipment, and arts and crafts materials shall be selected according to age, number of children, and with consideration of the needs of children to engage in both active and quiet play. All materials shall be of a quality to assure safety and shall be of a type which allows imaginative play and creativeness.

b. The facility shall plan and carry out efforts to establish and maintain workable relationships with the community recreational resources. The facility staff shall enlist the support of these resources to provide opportunities for children to participate in community recreational activities.

105.8(6) *Health care.*

a. There shall be twenty-four (24)-hour emergency and routine medical and dental services available and provided as necessary. Provisions for these services shall be documented.

b. A facility shall not require medical treatment when the parent(s) or guardian of the child or the child objects to the treatment on the grounds that it conflicts with the tenets and practices of a recognized church or religious denomination of which the parent(s), guardian or child is an adherent. When imminent danger to the child's life or health exists, the facility shall refer the child's care to appropriate medical and legal authorities.

c. A facility shall have written procedures for staff members to follow in case of medical emergency.

105.8(7) *Counseling program.* Counseling services shall be related to the immediate problem, daily living skills, peer relationships, educational opportunities, vocational opportunities, future planning and preparation for placement, family counseling, and any other factors identified in the individual care plan. Counseling shall be done by appropriate staff personnel.

105.8(8) *Dietary program.* The facility shall provide properly planned, nutritious and inviting food and take into consideration the special food needs and tastes of children.

441—105.9(232) Drug utilization and control. The agency shall have written policies and procedures governing the methods of handling prescription drugs and over-the-counter drugs within the facility. No prescription or narcotic drugs are to be allowed in the facility without the authorization of a licensed physician.

105.9(1) *Approved drugs.* Only drugs which have been approved by the federal food and drug administration for use in the United States may be used.

105.9(2) *Prescribed by physician.* Drugs shall be prescribed by a physician licensed to practice in the state of Iowa or the state in which the physician is currently practicing.

105.9(3) *Dispensed from a licensed pharmacy.* Drugs provided to residents shall be dispensed only from a licensed pharmacy in the state of Iowa in accordance with the pharmacy

laws in the Code of Iowa or from a licensed pharmacy in another state according to the laws of that state or by a licensed physician.

105.9(4) *Locked cabinet.* All drugs shall be maintained in a locked cabinet. Controlled substances shall be maintained in a locked box within the locked cabinet. The cabinet key shall be in the possession of a staff person. A bathroom shall not be used for drug storage. A documented exception can be made by a physician for self-administered drugs as discussed in 105.9(17).

105.9(5) *Medications requiring refrigeration.* Medications requiring refrigeration shall be kept in a locked box in the refrigerator and separated from food and other items.

105.9(6) *Poisonous or caustic drugs.* All potent poisonous or caustic drugs shall be stored separately from other drugs and shall be plainly labeled and stored in a specific well-illuminated cabinet, closet or storeroom and made accessible only to authorized persons.

105.9(7) *Prescribed medications.* All prescribed medications shall be clearly labeled indicating the resident's full name, physician's name, prescription number, name and strength of the drug, dosage, directions for use, date of issue and name and address and telephone number of the pharmacy or physician issuing the drug. Medications shall be packaged and labeled according to state and federal guidelines.

105.9(8) *Medication containers.* Medication containers having soiled, damaged, illegible or makeshift labels shall be returned to the issuing pharmacist.

105.9(9) *Medication for discharged residents.* When a resident is discharged or leaves the facility, medication currently being administered shall be sent, in the original container, with the resident or with a responsible agent, and with the approval of the physician.

105.9(10) *Unused prescription drugs.* Unused controlled prescription drugs prescribed for residents shall be returned to the issuing pharmacist or physician for credit or destruction according to state law. Other unused prescription drugs shall be destroyed by facility staff in the presence of a witness and this destruction shall be documented.

105.9(11) *Refills.* Prescriptions shall be refilled only with the permission of the attending physician.

105.9(12) *Use of medications.* No prescription medications prescribed for one resident may be administered to or allowed in the possession of another resident.

105.9(13) *Order of physician.* No prescription medication may be administered to a resident without the order of a licensed physician.

105.9(14) *Patient reaction.* Any unusual patient reaction to a drug shall be reported to the attending physician immediately.

105.9(15) *Dilution or reconstitution of drugs.* Dilution or reconstitution of drugs and their labeling shall be done only by a licensed pharmacist.

105.9(16) *Administration of drugs.* Medications shall be administered only in accordance with the instructions of the attending physician. Controlled substances shall be administered only by qualified personnel. The type and amount of the medication, the time and date and the staff member administering the medication shall be documented in the child's record. (See IAC 620—8.16(1)).

105.9(17) *Self-administration of drugs.* There shall be written policy and procedures relative to self-administration of prescription medications by residents and only under these circumstances:

a. Medications shall be prescribed by a physician.

b. The physician, the referring worker, and the facility staff agree that the patient can self-administer the drug.

c. What is being taken and when shall be documented in the record of the child.

441—105.10(232) Control room—juvenile detention home only.

105.10(1) *Written policies.* When a juvenile detention facility uses a control room as part of its service, the facility shall have written policies regarding its use and the facility director shall complete Form SS-2209-3, Evaluation and Recommendation to Operate a Control Room. The policy shall:

a. Specify the behaviors resulting in control room placement.

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

c. Document in writing behaviors leading to control room placement and the nature of the agreement reached with the child that will allow the child to return to the living unit.

105.10(2) *Physical requirements.* The control room shall be designed to ensure physically safe environment that:

a. Has all switches controlling lights and ventilation outside of the room.

b. Allows for total observation of the child at all times.

c. Has protected recessed ceiling light.

d. Has no electrical outlets in the room.

e. Is properly heated, cooled and ventilated.

f. Has all doors, ceilings and walls constructed of strength and materials as to prevent damage to the extent that no harm could come to the child.

g. When a window is present, it is secured and protected in such a manner as to prevent harm to the child.

h. Is a minimum of six (6) feet by nine (9) feet in size with at least a seven and one-half (7½) foot ceiling.

105.10(3) *Use.* A control room shall be used only when a less restrictive alternative to quiet or allow the child to gain control has failed. Utilization of the control room shall be in accordance with the following policies:

a. No more than one child shall be in the control room at any time.

b. There shall be provision for visual observation of the child at all times, regardless of the child's position in the room.

c. The control room should be checked thoroughly for safety and the absence of contraband prior to placing a child in the room.

d. The child shall be thoroughly checked before placement in the control room and all potentially injurious objects removed from such child including shoes, belts, pocket items, and similar items. The staff member placing the child in the control room shall document such check.

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

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

g. The child shall not remain in the control room longer than one (1) hour except in consultation with and approval from the supervisor. Documentation in the child's case record shall include the time in the control room, the reasons for the control, and the reasons for the extension of time. Use of the control room for a total of more than twelve (12) hours in any twenty-four (24)-hour period shall occur only in consultation with the referring agency or court. In no case shall a child be in a control room for a period longer than twenty-four (24) hours.

h. The child's parents, referring worker, and the child's attorney shall be notified when the control room is used for more than a total of thirty (30) minutes in any twenty-four (24)-hour period.

441—105.11(232) Clothing. All children shall have clothing that is suited to existing climate and seasonal conditions and is clean, dry and in good repair.

441—105.12(232) Staffings. The staff shall be available to participate in staffings or upon request to provide a written summary of the child's progress and behavior while in the facility program. Written recommendations regarding future planning and placement shall be provided to the referring agency or court upon request. Staff shall be available to discuss recommendations with the child's parent or guardian.

441—105.13(232) Child abuse. Written policies shall prohibit mistreatment, neglect or abuse of children and specify reporting and enforcement procedures for the facility. Alleged violations shall be reported immediately to the director of the facility and appropriate department of human services personnel. Any employee for whom there is a substantiated instance of child abuse or failure to report child abuse shall be subject to the agency's policies concerning dismissal.

441—105.14(232) Daily log. The facility shall maintain a daily log. The log shall be used to note general progress in regard to the care plan and any problem areas or unusual behavior for each child.

441—105.15(232) Children's rights.

105.15(1) *Policies in writing.* All policies and procedures covered in this rule shall be in writing and provided to the child upon admission and made available to the child's parent or guardian upon request. If the child remains in care over four (4) days, the policies and procedures shall be provided to the parent or guardian. The rationale and circumstances of any deviation from these policies shall be discussed with the child's parents or guardian and the referring worker, documented, and placed in the child's case record.

105.15(2) *Confidentiality.* Information regarding children and their families shall be kept confidential and released only with proper written authorization.

105.15(3) *Communication.*

a. Unless specifically regulated by the court, visitation shall be allowed with members of the child's immediate family.

b. Family visits shall be monitored only to the extent necessary to assure the child's safety and facility security. Rationale for monitoring shall be documented in the child's record.

c. The child shall be permitted to communicate privately with legal counsel and the referring worker.

d. The child shall be allowed to conduct telephone conversations with family members. Phone calls shall be monitored only to the extent necessary to assure the child's well-being and facility security. Rationale for monitoring a child's conversation shall be documented in the child's record. Incoming calls may be screened by staff to verify the identity of the caller before approval is given.

e. The staff shall not open or read residents' mail. The child shall be allowed to send and receive mail. The facility may require the child to open incoming mail in the presence of a staff member when the mail is suspected to contain contraband articles, or to contain money that should be receipted and deposited.

f. When limitations on visitation or other communications are indicated, they shall be determined with the participation or knowledge of the child, family or guardian, and the referring worker. All restrictions shall have specific bases which shall be made explicit to the child and family and documented in the child's case record.

105.15(4) *Privacy.* Reasonable provisions shall be made for the privacy of residents.

441—105.16(232) Discipline.

105.16(1) *Generally.* A facility shall have written policies regarding methods used for control and discipline of children which shall be available to all staff and to the child's family. Discipline shall not include withholding of basic necessities such as food, clothing, or sleep. Agency staff shall be in control of and responsible for discipline at all times.

105.16(2) *Corporal punishment prohibited.* The facility shall have a policy that clearly prohibits staff or the children from utilizing corporal punishment as a method of disciplining or correcting children. This policy shall be communicated in writing to all staff of the facility.

105.16(3) *Physical restraint.* The use of physical restraint shall be employed only to prevent the child from injury to self, to others, or to property. The rationale and authorization for the use of physical restraint, and staff action and procedures carried out to protect the children's rights and to ensure their safety, shall be clearly set forth in the child's record by the responsible staff.

105.16(4) *Room confinement.* Facilities shall provide sufficient programming and staff coverage to enable children to be involved in group activities during the day and evening hours. A child shall only be confined to the child's room for illness, at the child's own request, or for disciplinary reasons. A juvenile detention home may confine a child to the child's room during normal sleeping hours if the facility has written policies and procedures which are approved by the department regarding this confinement.

105.16(5) *Written policies.* The facility shall provide to the child written policies specifying inappropriate behaviors, reasonable consequences for misconduct, and due process procedures available to the child. Upon request, the above information shall be provided to the child's parent or guardian and referring worker.

441—105.17(232) Case files.

105.17(1) *Generally.* For the purpose of promoting a uniformity of program for all facilities and as an aid to the department of human services in determining its approval of a facility all facilities shall establish and maintain for inspection case files on each child.

105.17(2) *Face sheet.* For all children, a face sheet containing the following information shall be completed.

a. Full name, current address, and date of birth.

b. Parent's(s') full name(s).

c. Parent's(s') address and telephone.

d. Religious preference of the child and also parent, if available.

e. Statement of who has legal custody and guardianship.

f. Name of referring worker and agency making the referral.

g. Telephone number and address of referring agency or court.

h. Name, address, and telephone number of the child's attorney.

105.17(3) *Written summary.* When a written summary has been requested under 441—105.12(232), a copy shall be placed in the child's record.

105.17(4) *Documentation.* The following information shall be documented in each child's record:

a. Appropriate notes on all significant contacts by staff with parents, referral person and other collateral contacts.

b. A summary related to discharge including name, address, and relationship of person to whom discharged.

105.17(5) *Other information.* The following information shall be requested when the child remains in the facility more than four (4) days and, when available, placed in the child's record.

a. Current family history or social history.

b. Case plans submitted by the referring agency or orders of the court.

c. Psychological and psychiatric records; copies of all available testing performed plus notes and records of contact with the child.

d. Medical.

(1) A record of all illnesses, immunizations, communicable diseases and follow-up treatment.

(2) Medical and surgical authorization signed by the parent, guardian, custodian or court.

(3) A record of all medical and dental examinations including findings.

(4) Date of last physical examination prior to placement.

e. School.

(1) Name and address of school attended.

(2) Grade placement.

(3) Current school in which child is enrolled.

(4) Specific educational problems.

(5) Remedial action.

f. Placement agreement, court order, releases.

(1) Agreement shall authorize the facility to accept the child.

(2) The agreement shall set forth the terms of payment for care.

(3) Medical release authorizing emergency medical and surgical treatment, including the administration of anesthesia.

(4) All releases and authorizations shall be signed by the parent or legal guardian.

(5) All court orders affecting the custody or guardianship of the child.

441—105.18(232) Discharge.

105.18(1) Children in shelter care shall be discharged to a permanent placement at the earliest possible time, and in any event within thirty (30) days from the date of admission. Extension requests shall be made, substantiated, and approved by both the referral agency and the shelter care agency by the twenty-fifth day of care. Maximum length of stay should not exceed forty-five (45) days. Maximum length of stay in detention should not exceed twenty-one (21) days.

105.18(2) A summary of any significant medical or dental services that were provided while the child was at the facility shall be supplied to the next placement.

441—105.19(232) Approval. The department will issue a Certificate of Approval, SS-1205-0 annually without cost to any juvenile detention homes or juvenile shelter care home which meets the standards. The department may offer consultation to assist homes in meeting the standards.

105.19(1) *Applications.* An application shall be submitted on forms provided by the department, SS-3105-0, Application for License or Certificate of Approval. It shall be signed by the operator of the home, chairman of the county board of supervisors, or chairman of the multicounty board of directors and shall indicate the type of home for which the application is made.

a. The withdrawal of an application shall be reported promptly to the department.

b. Each application will be evaluated by the department to ensure that all standards are met.

c. Reports and information shall be furnished to the department as requested.

105.19(2) *Rejection.*

a. Applications will be rejected when the minimum standards set forth in the rules in this chapter are not met.

b. Fraudulent applications will be rejected. A fraudulent application is one which contains false statements knowingly made by the applicant or one in which the applicant knowingly conceals information.

c. Applications will be rejected when the director of the facility has been convicted of a crime indicating an inability to operate a children's facility or care for children.

d. Applications will be rejected for just cause.

105.19(3) *Approval.* Approvals will be given for one (1) year.

105.19(4) *Notification.* Homes should be notified of approval or rejection within one hundred twenty (120) days of application unless the applicant requests and is granted an extension by the department. Form SS-3307, Notification of Action, will be used to inform applicants of approval and a restricted certified letter will be used to inform applicants of rejection.

105.19(5) *Renewals.*

a. Applications for renewal shall be made on forms provided by the department and shall be made at least thirty (30) days, but no more than ninety (90) days prior to expiration of the approval.

b. Each applicaion for renewal will be evaluated by the department to ensure that standards continue to be met.

c. The application for renewal will be rejected or approved in the same manner as an application.

d. Decisions on renewals should be made within sixty (60) days from the application for renewal. Notification of renewal decisions shall be the same as for new applications.

105.19(6) *Revocations.*

a. Approval shall be revoked by the state director for the following reasons:

(1) When the facility violates laws governing the provision of services or rules contained in this chapter.

(2) When the facility is misusing funds furnished by the department.

(3) When the facility is operating without due regard to the health, sanitation, hygiene, comfort, or well-being of the children in the facility.

(4) When the director has been convicted of a crime indicating an inability to operate a children's facility or care for children.

b. The following may be causes for revocation:

(1) Substantiated child abuse.

(2) When the facility staff has been convicted of a crime indicating an inability to operate a children's facility or care for children.

105.19(7) *Certificate of approval.* Upon approval, the home will be issued a certificate of approval containing the name of the home, address, capacity, and the date of expiration. Renewals will be shown by a seal bearing the new date of expiration, unless a change requires a new certificate to be issued.

441—105.20(232) Provisional approval.

105.20(1) *Required conditions.* A provisional approval may be issued at the time of application or reapplication for approval or as a result of a complaint investigation when all of the following conditions exist:

a. The shelter care or detention facility fails to meet the approval requirements.

b. A provisional approval has not previously been issued to the facility for the same deficiencies during the past year.

c. The deficiencies do no present an immediate danger to the child's physical or mental health.

d. The director of the facility, chairman of the county board of supervisors, or chairman of the multicounty board of directors provides the department with the following:

(1) A plan for correcting the deficiencies.

(2) The date by which the standards will be met.

If conditions *"b," "c,"* or *"d"* are not met, then the application for approval shall be rejected or the approval revoked.

105.20(2) *Time limited.* Provisional approvals shall not be issued for longer than one (1) year.

105.20(3) *Completed corrective action.* When the corrective action is completed on or before the date specified on the provisional approval, a full approval shall be issued for the remainder of the year.

105.20(4) *Uncompleted corrective action.* When the corrective action is not completed by the date specified on a provisional approval, the department shall not grant a full approval and has the option of rejecting or extending the provisional approval. An extension of a provisional approval shall not cause the effective period of a provisional approval to exceed eighteen (18) months. If the corrective action plan is not completed within eighteen (18) months, the approval shall be rejected.

441—105.21(232) Mechanical restraint—juvenile detention only. When a juvenile detention facility uses mechanical restraints as part of its program, the facility shall have written policies regarding their use. These policies shall be approved by the department prior to their use. The policies shall be available to clients, parents or guardians, and referral sources at the time of admission. Policies shall also be available to staff. The executive director of the detention home shall sign the commitment contained in Form SS-2212-3, "Evaluation and Recommendation for Approval to Use Mechanical Restraint", before the facility shall be approved to use mechanical restraint.

105.21(1) *Restrictions on mechanical restraints.*

a. Mechanical restraints shall not inflict physical injury.

b. Each use of mechanical restraint shall be authorized by the executive director of the facility, as discussed in 105.5(4), or other staff designated by the executive director if those staff meet one of the following requirements:

(1) Have a bachelor's degree in social work, psychology or a related behavioral science and one year of supervised experience in a juvenile shelter care, detention or foster group care facility.

(2) Have five (5) years of supervised experience in a juvenile shelter care, detention or foster group care facility.

(3) Have some combination of advanced education in related behavioral sciences and supervised experience in a juvenile shelter care, detention or foster group care facility equal to five (5) years. The facility shall have a written listing of all staff designated and qualified to authorize the use of mechanical restraint.

c. When immediate restraint is necessary to protect the safety of the child, other residents of the facility, staff or others, mechanical restraint may be utilized without prior authorization but in each case a person designated to provide authorization shall be contacted as soon as the child is restrained. The designated person shall visit the resident before determining if continued use of the mechanical restraint is necessary. If not viewed as necessary, the child shall be immediately released from restraint.

d. Each authorization of mechanical restraint shall not exceed one (1) hour in duration without a visit by and written authorization from a licensed psychologist, psychiatrist or physician or psychologist employed by a local mental health center.

e. No child shall be kept in mechanical restraint for more than one (1) hour in a twelve (12)-hour period without a visit by and written authorization from a licensed psychologist, psychiatrist or physician or psychologist employed by a local mental health center.

f. Any time that a child is placed in mechanical restraint a staff person shall be assigned to monitor the child with no duties other than to ensure that the child's physical needs are properly met. The staff person shall remain in continuous auditory and visual contact with the child.

g. Each child shall be released from mechanical restraint as soon as the restraints are no longer needed.

105.21(2) *Documentation.*

a. Each use of mechanical restraints shall be documented in the client's record and shall include at least the following:

(1) The date and time the child was placed in mechanical restraint.

(2) The type of mechanical restraint utilized.

(3) The reason for the restraint.

(4) The signature of the person authorizing the restraint and the time of authorization.

(5) The signature of the person placing the child in restraint.

(6) The signature of the person providing the continuous auditory and visual contact with the child.

(7) The signature of the person releasing the child and the time of release.

b. Each use of mechanical restraint shall be documented in a separate file which is used only for the recording of uses of mechanical restraints and shall contain the name of the child restrained and the information discussed in 105.21(2)*"a."*

c. Each facility authorized to use mechanical restraint shall submit a quarterly report to the bureau of adult, children and family services of the department which shall include all the information required in 105.21(2)*"b."*

105.21(3) *Continued use of mechanical restraints.* When a child requires mechanical restraint on more than four (4) occasions during any thirty (30)-day period, the facility shall hold an immediate emergency meeting within three (3) days of the fifth incident and shall have a licensed psychologist or psychiatrist or psychologist employed by a local mental health center present at the staffing to discuss the appropriateness of the child's continued placement at the facility.

105.21(4) *In transporting children.* Notwithstanding 105.21(1)*"d,"* mechanical restraint of a child by the staff of a juvenile detention facility while that child is being transported to a point outside the facility is permitted when there is a serious risk of the child exiting the vehicle while the vehicle is in motion. The facility shall place a written report on each use in the child's

case record and the mechanical restraint file. This report shall document the necessity for the use of restraint.

Seat belts are not considered mechanical restraints. Agency policies should encourage the use of seat belts while transporting children.

441—105.22(232) Chemical restraint. Chemical restraint shall not be utilized in juvenile shelter care or detention facilities. Each juvenile shelter care or detention facility shall have written policies which clearly prohibit the use of chemical restraints.

These rules are intended to implement Iowa Code section 232.142.

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CHAPTER 106
Reserved

CHAPTER 107
CERTIFICATION OF ADOPTION INVESTIGATORS
[Prior to 2/11/87, Human Services(498)]

441—107.1(600) Introduction. Persons with adoption work experience are certified by the department to provide adoption placement investigations and reports to the court.

441—107.2(600) Definitions.

"Adoption work experience" means employment in adoption services. For employment, of which only a portion of time was spent on adoptions, only the percent of time related to direct provision of adoption services shall be included as adoption work experience.

"Certified adoption investigator" means a person authorized by the department to provide adoption placement investigations and reports to the court.

"Department" means the department of human services.

"Independent placer" means a person, other than the prospective adoptive parent or an adoption worker acting on behalf of a private child placing agency or the department, who selects the family for placement of a minor for purposes of adoption.

441—107.3(600) Application.

107.3(1) *Application form.* Application for certification as an adoption investigator shall be made on Form SS-6105-0, Application for Certification of Adoption Investigator. This form may be obtained from the Licensing Section, Bureau of Adult, Children, and Family Services, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319.

107.3(2) *Employees of licensed child placing agencies and the department of human services.* Persons employed as social workers in licensed child placing agencies or the department of human services who meet the requirements for certification in rule 441—107.4(600) are eligible to apply for certification as adoption investigators for services provided outside of their current job duties. Employees of the department of human services will not be certified when their current job duties include any of the following:

a. Any of the activities described in rule 441—107.8(600).

b. Immediate supervision of employees engaged in activities described in rule 441—107.8(600).

c. Certification of adoption investigators.

d. Placement of children for adoption.

441—107.4(600) Requirements for certification.

107.4(1) *Residency.* The applicant shall be a resident of Iowa or the applicant's principal place of business shall be within twenty-five (25) miles of Iowa.

107.4(2) *Education and experience.* The applicant shall have one of the following combinations of education and experience:

a. Graduation from an accredited four (4)-year college or university and adoption work experience equivalent to a total of three (3) years, full-time experience.

b. A bachelor's degree in social work from an accredited four (4)-year college or university in a program accredited by the council on social work education and adoption work experience equivalent to a total of two (2) years, full-time experience.

c. A master's degree in social work from an accredited college or university in a program accredited by the council on social work education and adoption work experience equivalent to a total of one (1) year, full-time experience.

107.4(3) *Verification of qualifications.*

a. The applicant shall provide a transcript of college credits, and

b. The applicant shall provide a record of all adoption work experience including dates and location, and

c. The applicant shall provide the name(s) of employer(s) and supervisor(s) to enable the department to verify the applicant's adoption work experience, and

d. The applicant shall give names of at least two (2) additional persons as character references who shall be contacted by the certifier.

107.4(4) *Statement of activities and duties.* Prior to certification, the applicant shall prepare a written statement identifying the proposed activities, duties and fees of the applicant as a certified adoption investigator.

a. The statement shall indiciate that the services described in rule 441—107.8(600) are being provided by the individual investigator, not a child placing agency, and are not provided in the course of the individual investigator's employment with a child placing agency or the department of human services.

b. The activities and duties identified in the statement cannot exceed the scope of an investigator's services as defined in rule 441—107.8(600).

c. The statement shall include the fee schedule to be used in the determination of a charge for investigative services.

d. A copy of the statement shall be provided to the department to be maintained as a public record.

e. Upon request, this statement shall be provided by the investigator to persons requesting services from the investigator.

107.4(5) *Record checks.*

a. For all new applicants, there shall be a check to determine if a child abuse report exists.

b. Adoption investigators applying for renewal of certification may be subject to the same check as new applicants when there is reason to believe that verified abuse has occurred.

441—107.5(600) Granting, denial, or revocation of certification.

107.5(1) *Granting of certification.* When all of the requirements of this chapter are met, certification shall be granted.

107.5(2) *Denial or revocation of certification.*

a. Certification or recertification shall be denied or revoked when one or more of the following conditions exist:

(1) The applicant does not meet the requirements listed in subrules 107.4(1), 107.4(2) and 107.4(4).

(2) The applicant does not provide information required in subrule 107.4(3).

(3) The applicant has willfully or knowingly misrepresented information regarding qualifications for certification.

(4) When information about the certified investigator is received and verified by the department such as, but not limited to, failure to carry out the activities and duties as stated in this chapter, charging fees in excess of those specified in subrule 107.8(5) and breeches of confidentiality, and the effect of the investigator's actions would be unreasonably detrimental to any of the parties to the adoption. Complaints involving the reasonable exercise of professional judgment in the denial or approval of a preplacement investigation are not grounds for decertification.

(5) The investigator provided incomplete or inadequate information or misrepresented information in required reports as described in rule 441—107.8(600).

(6) The investigator fails to comply with the requirements of rules 441—107.9(600) and 441—107.10(600).

b. Certification or recertification may be denied or revoked based on information from the record checks required in subrule 107.4(5).

441—107.6(600) Certificate.

107.6(1) *Contents.* Form SS-1204-0, Certificate of Adoption Investigator, shall contain the name of the investigator and the expiration date of the certificate and be signed by a person designated by the commissioner.

107.6(2) *Time limit.* The investigator shall be certified for two (2) years. Certification shall expire at the end of two (2) years unless the investigator has made timely application for recertification. No provisional certificates shall be issued.

107.6(3) *Records of certifications.*

a. The department shall keep records of certifications including the application and verifications.

b. The department shall keep an alphabetical list of certified investigators, by department districts, which shall be updated at least semi-annually. Lists of certified investigators shall be furnished to all district offices of the department and to any person who requests a list.

441—107.7(600) Renewal of certification.

107.7(1) *Request for renewal.* A currently certified investigator who wishes to be recertified shall notify the department in writing at least thirty (30) days but no more than sixty (60) days prior to the expiration of the certificate. To be recertified, the person shall submit a new application on Form SS-6105-0, Application for Certification of Adoption Investigator. If no application is submitted, the certification shall expires.

107.7(2) *Evaluation of investigator.* Upon timely receipt of the request for recertification, the department shall evaluate the investigator to determine whether the requirements of these rules have been met. This evaluation shall include the review of at least ten percent (10%), but no fewer than three (3) (unless fewer than three (3) constitutes one hundred percent (100%)), of the adoption records opened since the last certification.

107.7(3) *Notification.* The department shall notify the investigator of the decision on the application. When the request for recertification is not received prior to the date of expiration, the department shall inform the investigator that the certification has expired.

441—107.8(600) Investigative services.

107.8(1) *Preplacement investigations.* When an adoption investigator provides a preplacement investigation of a proposed adoptive family, the investigation shall meet the requirements of Iowa Code section 600.8(1)*"a,"* and include an assessment of the family's ability to parent a child.

a. The preplacement investigation shall include at least one face-to-face interview with each member of the household and at least one (1) home visit.

b. The investigator shall have on file a written assessment of the adoptive home which shall include the following:

(1) Motivation for adoption;

(2) Family and extended family's attitude toward accepting an adoptive child, and plan for discussing adoption with the child;

(3) The attitude towards adoption of significant other people involved with the family;

(4) Emotional stability, physical health, and compatibility of adoptive parent(s);

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

(6) Medical or health conditions which would affect the applicant's ability to parent a child;

(7) Ability to provide for the child's physical and emotional needs;

(8) Adjustment of own children and previously adopted children, if any, including school reports;

(9) Feelings about parenting a child not their own;

(10) Capacity to give and receive affection;

(11) Types of children desired and kinds of handicaps acceptable;

(12) Statements from references;

(13) Attitudes of the adoptive applicants towards the birth parent(s) and the birth parent's(s') reason(s) for placing child for adoption; and

(14) Recommendations for number, age, sex, characteristics, and special needs of or for children best served by this family.

107.8(2) *Background information investigation.* When an adoption investigator completes a background information investigation on the child to be adopted, the investigation shall include a complete family medical history and developmental history of the child to be adopted. A personal interview with both parents of the child, or at least one (1) birth parent if the identity or whereabouts of the other is unknown, must be made to obtain information for this report.

107.8(3) *Postplacement investigation.* When an adoption investigator completes a postplacement investigation, at least two (2) visits to the adoptive parent's(s') home and personal observation of the child are required.

107.8(4) *Reports of investigations.* The adoption investigator is authorized to provide reports to the courts concerning the above investigations and reports to the independent placer about these investigations.

107.8(5) *Fees for services.* Certified investigators may charge a fee for the services described in subrules 107.8(1), 107.8(2), and 107.8(3). The department shall, by December 31 of each year, be informed by the investigator of the total amount of fees for services charged any family during the calendar year. The report of fees for services shall be accompanied by an itemized statement of charges. Information shall also be given for any fees charged to a family by another party and collected by the investigator. Information on fees shall be addressed to the Licensing Section, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319.

441—107.9(600) Adoption records.

107.9(1) *Retention of records.* The adoption investigator shall maintain a record of each family or child when one or more of the required reports have been completed. The record shall contain copies of all completed reports and a statement of fees charged by the investigator.

a. The provisions regarding sealing of and access to adoption records in Iowa Code section 600.16, shall be followed, except that access under subrule 107.9(2) for recertification is permitted.

b. Upon revocation, denial of renewal, or expiration of certification, all sealed records held by investigators shall be given to the department for permanent retention.

107.9(2) *Access for recertification.* Authorized representatives of the department shall have access to all records of reports completed within a two (2)-year period prior to recertification for purposes of recertification. Authorized representatives shall respect the confidential nature of these records.

441—107.10(600) Reporting of violations. All violations or suspected violations under Iowa Code chapter 600 or 600A which come to the attention of the investigator shall be reported in writing to the district court having jurisdiction of the matter and to the department of human services.

441—107.11(600) Appeals. Certified investigators or applicants may appeal decisions of the department according to rules in 441—chapter 7.

These rules are intended to implement Iowa Code chapter 600.

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CHAPTER 108
CHILD-PLACING AGENCIES

[Prior to 7/1/83, Social Services (770), Ch 108]
[Prior to 2/11/87, Human Services(498)]

441—108.1(238) Licensing.

108.1(1) *Issuance and renewal.* The department of human services will issue or renew a license on an annual basis, without cost, for any child-placing agency which meets the following minimum standards applicable to all child-placing agencies as defined by Iowa Code chapter 238.

a. Applications. An organization or corporation applying for a license must use forms provided by the department of human services. The application signed by the operator or the appropriate officer shall be submitted to the department of human services. It shall indicate the type of facility for which application is made.

(1) Withdrawal or cancellation of the application shall be reported to the department of human services within thirty (30) days.

(2) Each application shall be evaluated by the department of human services.

(3) Reports shall be submitted as requested by the department.

b. Provisional license. If all required standards are not fully met, but plans are underway to correct the defect, a provisional license for a period of one year may be issued at the discretion of the department of human services. This can be renewed only on special review of reasons for delay in removing the deficiency and its possible effect on the children in care.

108.1(2) Reserved.

441—108.2(238) Organization and administration.

108.2(1) *Incorporation.* The agency shall define its purpose and functions broadly in its articles of incorporation or if unincorporated, in written constitution and bylaws. The articles of incorporation or if unincorporated, written constitution and bylaws shall be submitted to the department of human services.

108.2(2) *Board.* The agency shall have a governing board which together with the executive shall be responsible for making agency policy and for financing and general management of the agency.

a. Membership. The agency shall provide for continuity of board membership.

b. Meetings. The board shall meet regularly for the purpose of ensuring the proper operation of the agency according to its defined purpose.

c. Minutes. The minutes of each meeting of the board shall be kept and made a part of the permanent records of the agency.

d. Annual report. The governing board shall require the executive to submit to them a written annual report, a copy of which shall also be sent to the department of human services.

108.2(3) *Financing and accounting—audit.* The agency shall have a sound plan of financing which gives assurance of sufficient funds to carry it through its first year of operation in order to carry out its defined purposes and provide proper care for children. Thereafter, it shall have sufficient resources, predictable income, or both, not totally dependent on fees, for a three (3)-month operating period.

A certified public accountant shall conduct an audit of all financial accounts at least once a year and the accountant's report made a part of agency records. A financial record of all receipts, disbursements, assets and liabilities shall be maintained.

441—108.3(238) Personnel and personnel practices.

108.3(1) *Staff.* Staff members shall be persons of sound character, emotional stability and of sufficient ability and education to carry out adequately the duties assigned to them by the agency.

a. Social work staff. Each agency shall have sufficient trained social work staff to provide satisfactory service.

b. Executive. The executive shall be a person of broad knowledge and competent to administer the agency according to its stated objectives and have the qualifications of a casework supervisor if none is employed. The executive shall have proven executive ability and an understanding of children and their needs as well as vision and leadership.

c. Casework supervisor. The casework supervisor, if employed, shall have had one year of experience in casework practice and shall have successfully completed two (2) years of training in an accredited school of social work or have been accepted as a member of Academy of Certified Social Workers.

d. Clerical. Every agency shall have clerical services to keep correspondence, records, bookkeeping and files current and in good order.

108.3(2) *Personnel practices.* The agency shall have a written statement of personnel practices adopted by the board. This statement shall be made available to an employee at the time of employment and shall cover the following areas: job classification for both professional and clerical positions, beginning salary, salary increases, vacation, sick leave, educational leave, retirement provisions, insurance covering workers' compensation, attendance at social work conferences and institutes, probationary period in accordance with agency policies, an evaluation plan and hours of work.

EXCEPTION: If the employing agency does not have any of the above-enumerated policies, the written statement made available to the employee shall so state.

108.3(3) *Personnel records.* A personnel record shall be maintained for each employee or staff member and shall contain the following information: application showing qualification and experience, statements from previous employers and personal references, reports of job performance including the annual evaluation, medical reports if any, dates of employment, separation and reason for separation.

The work and performance of each staff member shall be evaluated each year, made known to employee and made part of the staff member's record.

108.3(4) *Staff development.* Provision shall be made for improvement of staff competence through an in-service training program, attendance at professional conferences and workshops, and the use of current professional literature.

This rule is intended to implement Iowa Code section 238.4.

441—108.4(238) Social services.

108.4(1) *Program services.* An agency shall have an adequate social service program to meet the needs of the children under its care.

a. Social study. A complete social study shall be made prior to acceptance of a child for care, or in an emergency, within a reasonable period following acceptance.

b. Home studies. An adequate home study shall be made of all adoptive homes and foster family homes to determine their abilities to meet the needs of the individual children to be placed.

c. Preschool children. Children five (5) years of age or under shall be placed in foster family homes while awaiting adoption except with special approval of the department of human services.

d. Placement agreement. The agency shall obtain a signed placement agreement from the child's parents or guardian prior to accepting the child for placement.

(1) The agreement shall authorize the agency to place the child.

(2) The agreement shall authorize emergency medical treatment including the administering of anesthesia.

(3) The agreement shall set forth the terms of payment for care.

e. Limited case loads. The number of cases carried by each worker shall be limited to allow time for effective service to each child and the child's family accepted for service. A maximum of sixty (60) children or the equivalent shall be considered a case load for an individual caseworker.

f. Supervision. The agency shall provide its casework staff with adequate supervision to carry out the casework program.

108.4(2) *Continuing social services.* The agency shall make provision for continued social services while the child is in its care.

a. Parent-child contacts. Contacts between parents and children shall be encouraged except where visits are clearly detrimental to the child's welfare or where permanent separation is planned.

b. Casework with the child. The child shall have continued casework services which include evaluations of the child's progress, understanding of the child's changing needs, the use the child is making of placement and the ultimate long-range plan.

c. Supervision of foster home. Frequency of supervisory visits will vary dependent upon the needs of the individual child and foster parents, but shall be frequent enough to ensure adequate service to both.

d. Adoption studies. The agency shall prior to placement of a child for adoption secure and evaluate information regarding the adoptive family's emotional maturity, finances, health, relationships, and all factors which may affect their ability to accept the child, care for the child and provide the child an adequate home as the child matures.

e. Discharge and aftercare. Before a child is discharged to parents or the court who placed the child, the agency shall take responsibility for evaluating the future plan for the child. Follow-up service and supervision shall be provided for, either by the agency or referral to another appropriate agency in accordance with the individual's needs and desires of the child and the child's parents.

108.4(3) *Licensing of foster family homes.* All foster family homes shall be licensed prior to placing a child in the home.

A foster family home study shall be completed before a recommendation to license is submitted to the state department of human services.

This rule is intended to implement Iowa Code section 238.4.

441—108.5(238) Records.

108.5(1) *Case records.* The agency shall be responsible for maintaining case records of all children accepted for care, all adoptive homes and all foster family homes.

a. Access. Authorized representatives of the department of human services shall have access to all records and shall respect their confidential nature.

b. Contents. The child's case record shall contain the intake study, parent's placement agreement, full identifying information, and explanation of custody or legal responsibility, reports of the child's progress, psychiatric or psychological reports and plans for discharge.

108.5(2) *Medical records.* The agency shall maintain a medical record for each child in care.

The medical record shall contain a record of all illnesses, immunizations, communicable diseases and follow-up treatments.

This rule is intended to implement Iowa Code section 238.18.

441—108.6(238) Religion—preferences. The religious preference of the natural parents shall be given consideration in the placement of the child.

This rule is intended to implement Iowa Code section 238.4.

441—108.7(238) Health services.

108.7(1) *Medical care.* The agency shall see that each child under its care receives needed medical care.

a. Health examination. The agency shall require a thorough health examination of each child on admission to care.

The initial examination of the child shall include developmental history, previous illnesses, injuries and operations.

b. Rehabilitation. The agency shall take the necessary steps to assure physical rehabilitation, if indicated, of every child to fullest extent possible.

c. Written authorization. The agency shall obtain from parent or guardian written authorization for medical and surgical care including anesthesia and for necessary immunizations and vaccinations.

d. Treatment. Provision shall be made for prompt treatment in case of illness and for carrying out corrective measures and treatment of remedial defects or deformities, if possible.

108.7(2) *Dental care.* A thorough dental examination shall be made as soon as possible after acceptance for placement and at least once a year thereafter.

108.7(3) *Hospital care.* The agency shall provide hospitalization as needed for children under care.

108.7(4) *Clothing.* The agency shall assure adequate and individualized clothing for each child under care.

This rule is intended to implement Iowa Code section 238.4.

441—108.8(238) Education. The agency shall provide academic or vocational training in accordance with the abilities and needs of the individual children.

This rule is intended to implement Iowa Code section 238.4.

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CHAPTER 109
CHILD CARE CENTERS

[Filed as Chapter 108, February 14, 1975 and renumbered July 1, 1975]
[Prior to 7/1/83, Social Services (770), Ch 109]
[Prior to 2/11/87, Human Services(498)]

441—109.1(237A) Administration.

109.1(1) When a child care center is incorporated, a copy of the Certificate of Incorporation and bylaws relating to the child care center shall be submitted to the Iowa department of human services. In the event any amendments to the original bylaws are adopted, a copy of said amendment or amendments shall be transmitted to the department of human services. Incorporated centers shall submit a statement of purpose and objectives. The plan and practices of operation shall be consistent with this statement.

109.1(2) Unincorporated child care centers shall submit a written statement of purposes and objectives to the department of human services. The plan and practices of operation shall be consistent with this statement.

109.1(3) A nonprofit child care center shall have a governing board which meets at least quarterly. The board or operating body shall formulate administrative rules and policies within the objectives and purposes of the center.

109.1(4) The board or operating body of a nonprofit child care center shall provide for the operation of the center with staff which meets the minimum requirements established by the department of human services, shall provide for revenue for financing of the center, job descriptions, and shall develop personnel policies and benefits.

109.1(5) The child care center shall establish definite financial agreements and fee policies for the children served.

109.1(6) The child care center admission, intake, discharge and health policies shall be defined, formulated and commensurate with the needs of the children and with the purpose of the program.

109.1(7) The child care center's preschool age program shall be appropriate to the developmental level of the children and the defined purpose of the program shall not be a duplication of the elementary school curriculum.

109.1(8) The child care center operator, executive or board shall provide and carry out a plan for staff training and development.

109.1(9) The child care center operator or executive shall be responsible for the center's administration and programs, and be concerned for the child's development.

109.1(10) Requirements and procedures for mandatory reporting of suspected child abuse and neglect shall be posted where they can be read by staff. Methods of identifying and reporting suspected child abuse and neglect shall be discussed with all staff.

109.1(11) Centers licensed for twelve (12) or fewer children need not comply with 109.1(1), 109.1(3), 109.1(4), 109.1(5), and 109.1(8).

109.1(12) A notice shall be conspicuously posted stating that a copy of the Child Day Care Centers and Preschools Licensing Standards and Procedures, Form SS-0711, is available upon request from the center director. The name, office mailing address and telephone number of the day care consultant shall be on the front cover of the form.

441—109.2(237A) Records. The child care center shall keep records and reports on the staff, including all those persons counted in the child/staff ratio; the children; center finances; and attendance.

109.2(1) Personnel records shall contain information on:

a. Employment application, including age, education, and previous work history.

b. A statement signed by each individual that there has been no conviction by any law of any state involving lascivious acts with a child, child neglect, or child abuse.

c. The status of any current treatment of alcoholism, drug abuse, or child abuse.

d. Physical examination report or religious exemption waiver.

e. Professional growth and development showing a minimum attendance of six (6) hours of in-service training annually for each child care staff person, and minimum attendance of one (1) staff person annually at a workshop, conference, or college course for outside professional training.

f. Salary and benefit records.

g. A copy of Child Day Care Staff Criminal Records Check, Form SS-1207-3, and Department of Public Safety Check, Form SS-2203.

h. A copy of Request for Child Abuse Information, Form SS-1606-0.

109.2(2) An individual file for each child shall be maintained in the center and shall contain:

a. Enrollment information including an emergency telephone number, next of kin, and who has permission to pick up the child.

b. Name, address, and telephone number of the child's regular source of health care.

c. Physical examination report which shall include allergies and restrictive conditions.

d. Parent permission for center-sponsored field visits.

e. Permission to secure emergency care and written plan of procedure signed by the parent.

f. Accident and incident reports for the child.

g. Any professionally prescribed treatment.

109.2(3) Signed and dated immunization cards provided by the state department of public health shall be on file for each child enrolled.

109.2(4) A separate file or listing of emergency telephone numbers for each child shall be maintained near the telephone.

109.2(5) A bookkeeping system shall be maintained, including necessary fiscal files.

109.2(6) Centers licensed for twelve (12) or fewer children need not comply with 109.2(1)*"a,"* 109.2(1)*"e"* and 109.2(4).

441—109.3(237A) Health and safety policies. The child care center shall establish definite health policies, including, but not limited to:

109.3(1) The child care center shall require each preschool age child to have an admission physical examination report signed by a licensed physician or designee in a clinic supervised by a licensed physician. This report shall include an immunization record that is in compliance with the Iowa state public health department regulations. This written report shall include past health history, status of present health and recommendations for continued care when necessary. A statement of health condition signed by a physician or designee shall be submitted annually thereafter. For the school age child, a copy of the most recent school physical examination and immunization record shall be acceptable.

Nothing in this rule shall be construed to require medical treatment or immunization for staff or the minor child of any person who is a member of a church or religious organization which is against medical treatment for disease. In these instances, an official statement from the organization shall be incorporated in the record.

109.3(2) The child care center shall have a written plan for medical emergencies and written consent of the parent or guardian for emergency care of the children and shall administer no medication including nonprescription drugs to any child without the parent's or guardian's written authorization. Parent authorization shall be on file for each prescribed medication. Each prescription drug shall be accompanied by a physician's/pharmacist's direction.

a. The director or administrator shall designate one person at one time in each assigned group to administer all medications. When medications are administered, it shall be recorded and retained on file.

b. Medications shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security. All medication shall be kept under lock and key, or stored in a refrigerator in a separate compartment with proper security.

109.3(3) Each child shall have direct contact with a staff person upon the child's arrival for the early detection of apparent illness, communicable disease, or unusual condition or behavior which may adversely affect the child or the group.

109.3(4) A quiet area under supervision shall be provided for a child who appears to be ill or injured. The parents or a designated person shall be notified of the child's health status.

109.3(5) Individual towels, paper or cloth, and facilities for keeping them shall be provided. If individual toilet articles are provided, they shall be kept in a sanitary manner.

109.3(6) Emergency plans for fire, tornado, and flood (if area is susceptible to floods) shall be written and posted in a conspicuous place. Emergency plan procedures shall be practiced at least once a month for fire and at least quarterly for tornado.

109.3(7) Incidents or accidents resulting in injury to a child shall be reported on the day of the incident in writing to the parent or person authorized to pick up the child. The written report shall be prepared by the staff member who observed the incident or accident and shall include a general description of the incident and of the action taken, if any, by the staff at the center.

109.3(8) Smoking shall not be allowed in any program area, child occupied room, or in a facility operated vehicle.

441—109.4(237A) Personnel. In these rules qualified staff shall mean the director or administrator or person considered part of the staff ratio.

109.4(1) The on-site director or administrator for a facility licensed for twenty (20) or fewer children shall be an adult and shall:

a. Have two (2) years of administrative or program experience in a child care center, or be able to demonstrate an equivalent amount of other child development related experience, employment or educational experience.

b. Have completed high school or an equivalent program. Persons who do not meet this educational requirement, and who possess unusual qualifications or experience in the child age group with which they will be working, could be employed with the approval of the department of human services.

c. Be at least eighteen (18) years of age.

109.4(2) The on-site director or administrator employed after April 1, 1984, by a facility licensed for more than twenty (20) children shall be an adult and shall have a valid first aid certificate. The director or administrator shall also have three (3) semester hours of coursework in administration, or, one (1) year on the job business related experience in finance, personnel, supervision, recordkeeping or budgeting. The director or administrator shall also meet all of the requirements in one of the following paragraphs:

a. Three (3) years' experience working with children in a child care center; high school graduate or have passed a general education development test (GED), and ten (10) continuing educational units (CEU's) in a child care related field or one of the following:

(1) Education documentation equivalent to ten (10) CEU's in a child related field,

(2) Six (6) semester or equivalent quarter hours of coursework in child development, lower elementary or early childhood education,

(3) A combination of CEU's or the equivalent education and semester or quarter hours of college work in areas listed above.

b. Child care center employee with a child development associate (CDA) credential or a technical or community college one (1)-year training program; high school education or GED and three (3) years' experience working with children in a child care center (experience can be concurrent with obtaining a CDA).

c. Six (6) years' experience as a family day care home provider with a minimum of two (2) years as a licensed or registered family day care home; high school graduate or GED; and ten (10) CEU's in a child related field or one of the following:

(1) Education documentation equivalent to ten (10) CEU's in a child care related field.

(2) Six (6) semester or equivalent quarter hours of coursework in child development, lower elementary or childhood education.

(3) A combination of CEU's or equivalent education and semester or quarter hours of college work in areas listed above.

d. A two (2)-year associate college degree in early childhood education or child development and two (2) years of noncollege related experience working with children in a child care facility.

e. Two (2) years of a four (4)-year degree program in child development, early education or lower elementary education, minimum of twelve (12) semester hours of coursework in child development, early childhood education or lower elementary education and two (2) years of noncollege related experience working with children in a child care facility.

f. Four (4)-year degree in child development, lower elementary or early childhood education and one of the following:

(1) One (1) year of noncollege related experience working with children in a child care facility.

(2) Four (4) years' experience working with child care centers in a consulting or training capacity.

g. Four (4)-year degree in a nonchild related field; twelve (12) semester hours in child development, early childhood education or lower elementary education; and two (2) years' experience in a child care facility.

h. A master's degree in behavioral sciences, and three (3) years' experience working with child care centers in a consulting or training capacity.

109.4(3) Persons counted as part of the staff ratio, including the director or administrator, must be involved with children in programming activities and shall meet the following requirements:

a. Demonstrate competence in working independently with children.

b. Be at least sixteen (16) years of age, except the director who must be at least eighteen (18) years old.

c. At least one staff member on duty shall have a valid certificate in standard first aid or documentation of equivalent training.

109.4(4) Staff ratio shall be as follows:

Age of children	Minimum ratio of staff to children
Two weeks to two years	One to every four children
Two years	One to every six children
Three years	One to every eight children
Four years	One to every twelve children
Five years to ten years	One to every fifteen children
Ten years and over	One to every twenty children

a. Regardless of the staff ratio in subrule 109.4(4), when seven (7) or more children five (5) years of age or younger are present, basic minimum qualified child care staff shall consist of two (2) people on duty. Combinations of age grouping shall have staff determined on the age of the youngest child in a group.

b. Every child-occupied program and nap room shall have adult supervision present in the room. The minimum staff ratio shall be maintained in the center during nap time.

c. In transporting seven (7) or more preschool children, any child care vehicle shall have a minimum of two (2) staff members or other adults present.

d. Any child care center sponsored preschool aged program activity conducted away from the licensed facility shall provide a minimum of one additional responsible person over the required staff ratio for the protection of the children.

109.4(5) Centers licensed for twelve (12) or fewer children need not comply with 109.4(1)*"a"* and 109.4(4)*"b."*

109.4(6) When a volunteer is included in the staff ratio count for more than ten (10) hours in any calendar month, the volunteer shall meet all the personnel requirements in this chapter and Iowa Code chapter 237A.

441—109.5(237A) Physical facilities.

109.5(1) The minimum program room size shall be eighty (80) square feet.

109.5(2) The child care center shall have thirty-five (35) square feet per child of usable indoor floor space maintained in a clean and sanitary manner. When floor space occupied by cribs is counted as usable floor space, there shall be forty (40) square feet of floor space per child in those rooms. There shall be seventy-five (75) square feet in outdoor recreation area per child using the space at any given time. Kitchens, bathrooms, and halls may not be counted in the square footage per child or used as regular program space. Cooking stoves shall not be placed in the program area. For programs of two and one-half (2½) hours or less, outdoor space may be waived with the approval of the department providing there is suitable substitute space and equipment.

109.5(3) All stairways used by children shall be provided with hand rails within reach of the children and maintained free of all obstacles.

109.5(4) In all centers, the following minimum requirements shall be met:

a. Ceiling height for all program rooms shall be a minimum of seven (7) feet.

b. Rooms not having air conditioners or mechanical ventilation shall have a ratio of window area of eight percent (8%) of floor space or more.

c. All rooms shall be ventilated, without drafts, by means of windows which can be opened or by an air-conditioning or mechanical ventilating system.

d. All windows used for ventilation shall be screened with sixteen (16) or smaller mesh wire.

e. Areas used by the children shall be heated when the temperature falls below 68 degrees so room temperature of 68 degrees to 72 degrees is maintained at the floor level. Radiators and hot water pipes shall be screened or insulated to prevent burns.

f. Lighting capacity to produce a light intensity of twenty (20) foot candles in the program area shall be provided.

109.5(5) Premises used for outdoor play by the center shall be maintained in good condition throughout the year; shall be fenced off when located on a busy thoroughfare or near a hazard which may be injurious to a child; and shall provide both sunshine and shade areas. The premises shall be kept free from litter, rubbish and flammable materials at all times; and shall be free from contamination by drainage or ponding of sewage, household waste, or storm water.

109.5(6) The facility and premises shall be maintained in a clean, sanitary, and safe manner.

109.5(7) An area shall be provided properly and safely equipped for the use of infants and free from the intrusion of children over two (2) years of age. Children over eighteen (18) months may be grouped outside this area.

109.5(8) One functioning toilet and one lavatory for each fifteen (15) children or fraction thereof, shall be provided in a room with natural or artificial ventilation. Training seats or chairs shall be allowed for children under two (2) years of age. There shall be handwashing facilities with hot and cold running water for child care personnel in rooms where infants are housed or in an adjacent area other than in the kitchen.

109.5(9) A telephone in working order shall be available in the center with emergency phone numbers posted adjacent to the phone.

441—109.6(237A) Food services.

109.6(1) *Nutritionally balanced meals.* During regular meal times the center shall serve each child a full nutritionally balanced meal which provides at least one-third (⅓) of the child's daily nutritive allowances, except breakfast which provides at least one-fourth (¼).

109.6(2) *Snack and meal time supervision.* A staff member shall sit with the children at meal time and when snacks are served.

109.6(3) *Menu planning.* Menus shall be planned at least one week in advance. The menus shall be dated, posted, and kept on file at the center. Notations shall be made for special dietary needs of the children.

a. Menu planning shall include a variety of foods and varying textures, flavors, and colors that will provide children with many different food experiences, and help stimulate their interests in foods.

b. Each noon or evening meal menu shall include a bread or cereal type food, a meat or protein food, a vegetable, a fruit and milk. Milk shall be homogenized, pasteurized, and fortified with vitamins A and D and shall contain a minimum of two percent (2%) milk fat.

Meals shall consist of a variety of foods each day based on the following minimums established for preschoolers:

Breakfast - ½ cup of milk; ¼ cup of juice or fruit; ½ slice of bread or ¼ cup of cereal or equivalent.

Lunch or supper - ½ cup of milk; 1 ounce (edible portion as served) of lean meat or an equivalent quantity of a protein food; ¼ cup each of two vegetables or ¼ cup each of two fruits, or a combination of each; ½ slice of bread or equivalent; ½ teaspoon of butter or fortified margarine.

c. Children remaining at the center two (2) hours or longer shall receive midmorning and midafternoon nourishment.

d. Drop-in center means a center which provides no more than fifty (50) hours of child care per month for every child in care. Drop-in centers need not comply with 109.6(1) and 109.6(3)*"a"* and *"b,"* provided that sack lunches are supplemented as needed to ensure that full nutritionally balanced meals are served.

109.6(4) *Feeding of children under two (2) years of age.*

a. All children under six (6) months of age are to be held during feeding. No bottles are to be propped for children of any age.

b. Single service ready-to-feed formulas shall be used for children three (3) months and younger unless otherwise ordered by a parent or physician.

c. Grade A pasteurized milk shall be used for children not on formula unless otherwise directed by a physician.

d. Special formulas prescribed by a physician shall be made available for the child who has a feeding problem.

e. Spoon feeding shall be adapted to the developmental need of the child.

109.6(5) *Food preparation and storage.*

a. Sufficient refrigeration space shall be provided for holding perishable foods at a maximum of forty (40) degrees F., and thermometers shall be maintained in the refrigerator.

b. Kitchens shall be clean, well lighted and ventilated, and free of rodents and insects.

c. Aseptic techniques shall be used in the preparation of all milk mixtures and other foods prepared in the center.

d. The person preparing meals must maintain good personal hygiene and appropriately covered hair while preparing food. Food shall not be handled by cooks with open sores or bandages on their hands unless wearing protective gloves.

e. A sufficient number of flytight, watertight garbage and rubbish containers shall be provided to properly store all material between collections. Containers must be maintained in a sanitary condition outside the building and away from the play area.

f. No chipped or cracked dishes shall be used.

g. Nondisposable dishes and silverware shall be properly cleaned by prerinsing or scraping, washing, sterilizing and airdrying. A dishwashing machine must provide a minimum wash temperature of one hundred forty (140) degress F. For hand dishwashing at least a two (2) compartment sink or comparable facility must be available. Tableware shall be either rinsed in water of a minimum of one hundred eighty (180) degrees F. or rinsed in a chemical sanitizing agent and air dried. No tableware shall be towel dried.

109.6(6) *Water supply.*

a. Water for drinking and culinary purposes shall be from a public water system when available.

b. Private water supplies for drinking and culinary purposes shall be located and constructed in accordance with recommendations outlined in the Iowa state department of

public health bulletin, "Sanitary Standards for Water Wells." Water shall be of satisfactory bacteriological quality as shown by annual laboratory analysis. When the facility provides care for children under two (2) years of age, a nitrate analysis shall also be obtained.

c. Drinking fountains shall be maintained in a clean and sanitary manner and shall be so constructed and located as to be accessible for use by the children at all times.

d. If drinking fountains are not available, individual single service cups shall be provided in a sanitary dispenser and used only once. When individual drinking cups are used they shall be kept in a sanitary manner.

441—109.7(237A) Activity program requirements.

109.7(1) The program conducted daily in a child care center shall provide:

a. Experiences which promote the individual child's physical, emotional, social and intellectual growth and well-being and shall provide for both gross and fine motor development.

b. A schedule of activities with sufficient flexibility to respond to the needs of the individual children.

c. Both active and quiet learning experiences which promote the development of skills, social competence, self-esteem, positive self-identity, and creative expression.

d. Experiences in harmony with the ethnic and cultural backgrounds of the children.

109.7(2) *Discipline.*

a. Corporal punishment including spanking, shaking and slapping shall not be used.

b. Punishment which is humiliating or frightening shall not be used.

c. Punishment shall not be administered because of a child's illness, or progress or lack of progress in toilet training, nor shall punishment or threat of punishment be associated with food or rest.

d. No child shall be subjected to verbal abuse, threats, or derogatory remarks about the child or the child's family.

e. Nothing in this rule shall preclude the use of professionally prescribed treatment for the severely retarded or handicapped. The treatment plan shall be recorded in the child's record.

109.7(3) Play material and equipment for both indoor and outdoor play shall be in sufficient variety and quantity to meet the interests and needs of the children. Equipment and materials shall be suitable for the age range served and shall be selected according to the type of supervision required. All equipment shall be kept in good condition, free of sharp, loose, or pointed parts, and, if painted, only lead free paint shall be used. Permanent outdoor play equipment must be firmly anchored.

a. Materials and equipment shall be provided to encourage muscular activity, social and dramatic play, intellectual growth, creative expression and shall be of safe construction and materials that are easily cleaned. When a child is eating or participating in programming activities at the table there shall be eighteen (18) or more inches of table space per child.

b. The program shall provide for a nap or quiet time for all preschool age children present at the center for five (5) or more hours.

c. A clean washable individual cot, bed, or crib and bedding to cover both cot, bed, or crib and child shall be provided for each child who naps. Mats may be substituted for physically handicapped children.

d. There shall be at least two (2) feet of space on all sides of the cot, bed, or crib except where the cot, bed, or crib is adjacent to the wall. Cribs shall not be stacked one on top of the other, nor attached one to the other except those cribs in use by a licensed center prior to the adoption of this rule.

109.7(4) A child care center serving children two (2) weeks to two (2) years old must provide an environment which protects the children from physical harm, but is not so restrictive as to inhibit physical, intellectual, emotional and social development.

a. Stimulation shall be provided through being held, rocked, played with and talked with individually several times each day. Insofar as possible, the same adult should care for the same child. This includes care during feeding and toileting.

b. Each infant's diaper shall be changed as frequently as needed in the infant's crib or on a surface which is cleaned and sanitized between each infant change. When changing diapers, the care provider shall wash and dry the infant, using the infant's toilet accessories. There shall be a covered, waterproof container for the storage of soiled diapers and clothing.

c. Highchairs shall be equipped with a safety strap and shall be constructed so the chair will not topple.

d. Washable toys, large enough so they cannot be swallowed, shall be provided. Toys shall have no sharp edges or removable parts.

e. A crib shall be provided for each infant up to eighteen (18) months of age. Each crib shall be of sturdy construction with bars closely spaced so a child's head cannot be caught, and have clean, individual bedding, including sheets and blankets. Crib railings shall be fully raised and secured when the child is in the crib. Each mattress shall be completely and securely covered with waterproof material. When plastic materials are used, they shall be heavy, durable and not dangerous to children. A child shall not be placed directly on the waterproof cover. A crib shall be provided for the number of children present at any one time and shall be kept in a clean and sanitary manner and always cleaned and changed upon the change of an occupant. There shall be no restraining devices of any type used in cribs. The minimum spacing between cribs shall be two (2) feet on any side except that which is next to the wall.

f. When play pens are provided, no more than one (1) child shall be placed in one at any time.

g. Centers licensed for twelve (12) or fewer children may substitute a playpen for a crib in 109.7(4)"*e*" providing all other requirements within that paragraph are met.

109.7(5) A child care center offering night care shall provide for the special needs of children during the night.

a. A selection of toys for quiet activities shall be available.

b. Bathing facilities shall be provided. Comfortable individual cots, cribs, or beds, complete bedding, and night clothes shall be available.

441—109.8(237A) Parental participation.

109.8(1) Opportunity shall be provided for parents at times convenient to them to observe their children in the child care center and whenever possible to work with the program.

109.8(2) Whenever a nonprofit child care center provides day care for forty (40) or more children, there shall be a policy advisory committee or its equivalent at the policy making level. Committee membership shall include not less than fifty percent (50%) parents or parent representatives, selected by the parents themselves in a democratic fashion. The committee shall perform productive functions which may include, but are not limited to:

a. Initiating suggestions and ideas for program improvements.

b. Assisting in organizing activities for parents.

c. Encouraging parental participation in the program.

441—109.9(237A) Licensure procedures.

109.9(1) *Application for license.*

a. Any adult individual or agency has the right to make application for a license.

b. Requested reports including the fire marshal's report and other information relevant to the licensing determination shall be furnished to the department by the applicant within ninety (90) days of application.

c. Applicants shall be notified of approval or denial within one hundred twenty (120) days of application.

109.9(2) *License.*

a. An applicant showing full compliance with center licensing laws and these rules shall be issued a license for one (1) year.

b. A new license shall be obtained when the center moves, expands, or the facility is remodeled to change licensed capacity.

c. A new license shall be obtained when another adult or agency assumes ownership or legal responsibility for the facility.

109.9(3) *Provisional license.*

a. A provisional license may be issued for a period up to one (1) year when the center does not meet all standards imposed by law or these rules.

b. A provisional license shall be renewable when written plans to bring the center up to standards, giving specific dates for completion of work, are submitted to and approved by the department.

109.9(4) *Denial.* Initial applications or renewals shall be denied when:

a. The applicant does not comply with center licensing laws and these rules in order to qualify for a full or provisional license.

b. The facility is operating in a manner which the department determines impairs the safety, health, sanitation, hygiene, comfort, or well-being of children in care.

c. The director or an employee has been convicted of a crime indicating an inability to operate a children's facility or care for children.

d. The director or an employee has a history of substantiated child abuse or neglect records.

e. There is a substantiated sexual abuse report on the director or a staff member of the facility.

109.9(5) *Revocation and suspension.* A license shall be revoked or suspended if corrective action has not been taken when:

a. The facility does not comply with the licensing requirements imposed by law or these rules.

b. The facility is operating in a manner which the department determines impairs the safety, health, sanitation, hygiene, comfort, or well-being of the children in care.

c. The director or an employee has been convicted of a crime indicating an inability to operate a children's facility or care for children.

d. The director or an employee has a history of substantiated child abuse or neglect reports.

e. There is a substantiated child sexual abuse report on the director or a staff member of the facility.

109.9(6) *Adverse action.*

a. Notice of adverse actions (denial, revocation, or suspension) and the right to appeal the licensing decision shall be given to applicants and licensees in accordance with 441—chapter 7.

b. An applicant or licensee affected by an adverse action may request a hearing by means of a written request directed to the local office, district office, or central office of the department of human services within thirty (30) days after the date the official notice was mailed containing the nature of the denial, revocation, or suspension.

These rules are intended to implement Iowa Code section 237A.12.

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CHAPTER 110
FAMILY AND GROUP DAY CARE HOMES

[Prior to 7/1/83, Social Services(770), Ch 110]
[Prior to 2/11/87, Human Services(498)]

441—110.1(237A) Definitions.

"Family day care home provider" or "provider" means the adult responsible for care and supervision of a child in a family day care home.

"Registration certificate" means the written document issued by the department of human services to publicly state that the provider has certified in writing compliance with the minimum requirements for registration of a family day care home.

441—110.2(237A) Application. The application for registration shall be made to the department of human services on Application for Family Day Care Home Registration, SS-1105-3 provided by the department. The forms shall be available in each local office of the department.

The family day care home shall inform the department of human services of any changes in circumstances that would affect their registration on the same form.

441—110.3(237A) Renewal. Renewal of registration shall be completed yearly.

441—110.4(237A) Issuance of certificate. The department shall issue a registration certificate upon receipt from the provider of a signed statement of compliance with the requirements for registration of a family day care home.

441—110.5(237A) Standards. The provider shall certify that the family day care home meets the following conditions:

110.5(1) Conditions in the home are safe, sanitary, and free of hazards. This shall include as a minimum:

a. A telephone with emergency numbers posted.

b. All medicines and cleaners secured from access by a child.

c. First-aid supplies.

d. Medications given only with parent's or doctor's direct authority.

e. Electrical wiring maintained with all accessible electrical outlets safely capped and electrical cords properly used. Improper use would include running cords under rugs, over hooks, through door openings, or other use that has been known to be hazardous.

f. Combustible materials are kept away from furnaces, stoves, or water heaters.

g. Safety barriers at stairways for preschool age children.

h. Safe outdoor play area.

i. Annual laboratory analysis of a private water supply to show satisfactory bacteriological quality. When children under the age of two (2) are to be cared for, the analysis shall include a nitrate analysis.

j. Emergency plans in case of fire or tornado written and posted.

k. Fire drills practiced once a month and recorded and tornado drills practiced and recorded quarterly.

l. In order to prevent burns, a safety barrier shall surround any heating stove or heating element.

110.5(2) The provider shall meet the following requirements:

a. Is eighteen (18) years of age or older and likes and understands children.

b. Gives careful supervision at all times.

c. Frequently exchanges information with the parent or parents of each child.

d. Gives consistent, dependable care, and is capable of handling emergencies.

e. Is present at all times except if emergencies occur, at which time good substitute care is provided. When an absence is planned, the parents are given prior notice.

110.5(3) There shall be an activity program which includes:

a. Active play.

b. Quiet play.

c. Activities for large muscle development.

d. Activities for small muscle development.

e. Play equipment and materials in a safe condition, for both indoor and outdoor activities appropriate for the ages and number of children present.

110.5(4) The certificate of registration shall be displayed in a conspicuous place.

110.5(5) The number of children present shall conform to the following standards.

a. No greater number of children shall be received for care at any one time than the number authorized on the registration certificate.

b. The total number of children in the home at any one time shall not exceed six (6). The provider's children not regularly in school full days shall be included in the total. During times when school is not in session, the provider's school-age children shall not be included in the total.

c. There shall never be more than four (4) children under two (2) years of age present at any one time.

110.5(6) No discipline shall be used which is physically or emotionally harmful to a child.

110.5(7) Regular meals shall be provided which are well-balanced, nourishing, and in appropriate amounts. Mid-morning and mid-afternoon snacks shall be served which are nutritious and appealing.

110.5(8) An individual file shall be maintained for each child and shall contain:

a. Identifying information including, as a minimum, the child's name, birth date, parent's or guardian's name, names of brothers and sisters, address, telephone numbers, special needs of the child, and the parent's or guardian's work address and telephone number.

b. Emergency information including , as a minimum, where the parent(s) or guardian can be reached, the doctor's name and telephone number, and the name and telephone number of another adult available in case of emergency.

c. A signed medical consent from the parent or guardian authorizing emergency treatment.

d. A physical examination report including immunization information signed by a physician or designee at enrollment.

e. A statement of health condition signed by a physician or designee annually after the physical examination report.

f. A list signed by a parent or guardian which names persons authorized to pick up the child.

110.5(9) A provider file shall be maintained and shall contain the physician's signed statement obtained at the time of the first registration, and at least every three (3) years thereafter, on all members of the provider's household that may be present when children are in the home, that the provider and members of the provider's household are free of diseases or disabilities which would prevent good child care.

110.5(10) A Department of Public Safety Check, Form SS-2203, shall be completed on the provider and all persons living or working in the same home.

110.5(11) A Request for Child Abuse Information, Form SS-1606-0, shall be completed concerning the provider and all persons living or working in the same home.

441—110.6(237A) List of registered homes. The local offices of the department of human services shall maintain a current list of registered family day care homes as a referral service to the community.

441—110.7(237A) Denials and revocations.

110.7(1) Registration shall be denied or revoked if a hazard to the safety and well-being of a child is found by the department of human services, and the provider cannot or refuses to correct the hazards, even though the hazard may not have been specifically listed under the health and safety rules.

110.7(2) Record shall be kept in an open file of all denials or revocations of registration and the documentation of reasons for denying or revoking the registration.

441—110.8(237A) Complaints. Record shall be kept in a closed file of all complaints received and there shall be documented resolution of all complaints. Disclosure of information shall require waivers from all parties involved.

441—110.9(237A) Additional requirements for group day care homes.

110.9(1) The group day care home shall provide a separate quiet area for sick children.

110.9(2) Group day care home fire safety requirements.

a. Fire extinguisher. The group day care home shall have not less than one 2A 10BC rated fire extinguisher located in a visible and readily accessible place on each child occupied floor.

b. Smoke detectors. The group day care home shall have a minimum of one single station battery operated UL approved smoke detector in each child occupied room and at the top of every stairway. Each smoke detector shall be installed according to manufacturer's recommendations. Each smoke detector shall be tested monthly by the provider and a record kept for inspection purposes.

c. Two exits. The group day care home shall have a minimum of two (2) direct exits to the outside from the main floor. Both a second story child occupied floor and a basement child occupied floor shall have in addition to one inside stairway at least one direct exit to the outside. All exits shall terminate at grade level with permanent steps. Occupancy above the second floor shall not be permitted for child care. A basement window may be used as an exit if the dimensions of the window are a minimum thirty inches by thirty inches (30″×30″) with permanent steps inside leading up to the window.

110.9(3) An individual file shall be maintained for each staff assistant and shall contain:

a. A completed Group Day Care Home Staff Criminal Records Check, Form SS-1211-3.

b. A completed Department of Public Safety Check, Form SS-2203.

c. A completed Request for Child Abuse Information, Form SS-1606-0.

d. A physician's signed statement at the time of employment and at least every three (3) years thereafter that the person is free of diseases or disabilities which would prevent good child care.

These rules are intended to implement Iowa Code sections 237A.2, 237A.3, 237A.5, 237A.12, and 237A.15.

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CHAPTER 111
FAMILY-LIFE HOMES

[Prior to 7/1/83, Social Services(770), Ch 111]
[Prior to 2/11/87, Human Services(498)]

441—111.1(249) Definitions.

111.1(1) *Family-life home.* A family-life home is a private household offering a protective social living arrangement for one or two (2) eligible adults who are not able or willing to adequately maintain themselves in an independent living arrangement, but who are essentially capable of physical self care. In this living arrangement, the family provides the client room, board, laundry, encouragement to share in the interests and activities of the household, and opportunities for participation in the social, cultural, educational, religious, and other activities of the community.

111.1(2) *Private household.* A private household is a dwelling unit occupied exclusively by a family and furnished by and belonging to them by reason of ownership, rental, or by a contract for purchase of life estate.

111.1(3) *Eligible adult.* An eligible adult is a person eighteen (18) years of age or older who meets the eligibility requirements for services or is a recipient of protective services, and who is considering or needs a living arrangement in a family-life home.

111.1(4) *Family.* A family is a person or persons, either related or unrelated to the client, who constitute the members of the household and are related to one another by kinship of blood, marriage, or adoption.

111.1(5) *Not able or willing to adequately maintain themselves in an independent living arrangement.* Not able or willing to adequately maintain themselves in an independent living arrangement means that the person requires some assistance, encouragement, or social stimulation for adequate self-care or to maintain physical or mental health or personal safety.

111.1(6) *Essentially capable of self-care.* Essentially capable of self care means the person is ambulatory or can move from place to place; can manage the activities of daily living including personal hygiene and grooming, toileting, dressing and undressing, feeding, and medicating; and can attend to the care of personal property adequately with minimal support or occasional assistance.

111.1(7) *Encouragement to share in the interests and activities of the household.* Encouragement to share in the interests and activities of the household means that the family members welcome and encourage the person to participate with them in their general family conversations and in their social, recreational, educational, and religious activities; that they invite and encourage use of the general facilities of their home; and they expect the person to care for assigned living quarters and participate within reason in the chores of the household.

441—111.2(249) Application for certification.

111.2(1) The Iowa department of human services shall issue a certificate of approval for the operation of a family-life home upon the recommendation of a local office of the department of human services.

111.2(2) Any person has the right to make application for a family-life home certificate.

111.2(3) Persons wishing to care for adults shall make application to the local office of the department of human services.

111.2(4) When an applicant has reached a decision to operate a family-life home, such applicant shall complete Form SS-1108-0, Application for Certification.

111.2(5) Each applicant shall supply two (2) references which may be contacted by the local office.

441—111.3(249) Provisions pertaining to the certificate.

111.3(1) No family-life home shall be certified to provide a living arrangement for more than two (2) eligible adults.

111.3(2) At least one responsible adult member of the family shall be at the family dwelling or be reasonably available to the client, most of the daytime and nighttime hours, based on the service worker's assessment of the individual's need for supervision.

111.3(3) The certificate shall be effective for one year from date issued subject to continued compliance with rules governing the program.

111.3(4) The certificate shall not be transferred to another person nor be valid for an address other than that shown on the certificate issued.

111.3(5) A current certificate shall be in the possession of the certified family-life home, and be available for inspection.

111.3(6) There shall be no fee nor charge for certificate issued.

111.3(7) A certified family-life home shall not be concurrently licensed as a residential care facility, intermediate care facility, child care center or a foster family home. An exception may be made for a home to be concurrently licensed as a foster family home and certified as a family-life home in order to provide continued care for a person who was placed in the home as a foster child.

441—111.4(249) Physical standards.

111.4(1) The family-life home shall be safe, clean, well ventilated, properly lighted and heated. The family's dwelling shall comply with all local health ordinances.

111.4(2) The family's dwelling shall not be a dwelling unit furnished by or belonging to a client.

111.4(3) Sleeping rooms shall be suitably and comfortably furnished.

111.4(4) Each resident shall have a single bedroom unless there is agreement among the family and the residents that a room may be shared.

111.4(5) The family shall provide nutritional food, in sufficient quantity to meet the needs of the client.

441—111.5(249) Personal characteristics of family-life home family.

111.5(1) The adult head of the household shall be a mature, responsible individual who is physically able to maintain a household, and who shall exercise good judgment in caring for adults.

111.5(2) The family shall have an appreciation of and respect for the client's relationship with the client's own relatives, neighbors and friends.

111.5(3) The family shall respect the client's religious background and affiliation.

111.5(4) The family shall have sufficient income and resources to provide adequately for the family's own needs.

441—111.6(249) Health of family.

111.6(1) Prior to certification the family shall furnish the local department of human services with a medical report on each member of the household. The report shall be on Form SS-1718-0, Physician's Report for Family-Life Home Provider.

111.6(2) The medical report shall provide significant findings of a physician, such as the presence or absence of any communicable disease.

111.6(3) Medical re-examinations may be required at the discretion of a physician or the local department of human services.

441—111.7(249) Planned activities and personal effects.

111.7(1) The daily routine shall be to promote and provide an opportunity for normal activity with time for rest and recreation compatible with the needs of the client.

111.7(2) Every client shall be encouraged to develop social relationships through participation in neighborhood and other community and group activities.

111.7(3) The family shall not require a client to do general housecleaning, cooking, or child care for the family. A client may voluntarily share in these responsibilities.

111.7(4) Space shall be provided where a client may keep personal belongings.

441—111.8(249) Client eligibility.

111.8(1) The client shall be eighteen (18) years of age or older, as proven by birth or school records, personal records, or by records of the department or another agency.

111.8(2) The client shall be willing to live in a certified family-life home by the client's own declaration or the declaration of a person legally responsible for such client.

111.8(3) The client shall be willing to accept the terms and requirements of the family-life home program.

111.8(4) The client shall be capable of personal physical self-care.

441—111.9(249) Medical examinations, records, and care of a client.

111.9(1) A physician shall certify that the client is free from any communicable disease, and does not require a higher level of care than that provided by a family-life home. The certification shall be given prior to placement and an annual medical review thereafter. The certification shall be given on Form SS-1719-0, Physician's Certification for Family-Life Home Resident.

111.9(2) The family shall have available at all times, the name, address and telephone number of the client's physician.

111.9(3) The family shall keep the department informed of any health problems. The family shall immediately notify the department in case of an accident, illness, or emergency that may affect the placement.

441—111.10(249) Placement agreement. The head of the family-life home and the resident shall enter into a placement agreement by signing Form SS-1508-0, Placement Agreement Family-Life Home, provided by the department.

441—111.11(249) Legal liabilities. The worker shall advise the family to seek counsel regarding the family's needs for insurance to cover personal injury, property damage, and other legal contingencies.

441—111.12(249) Emergency care and release of client.

111.12(1) In case of an emergency, vacation, or overnight trip, requiring the family's temporary absence from the home, the local department shall be notified and arrangements shall be made with a designated, responsible person, for the care of a client during the period of absence.

111.12(2) The department shall be notified when the client leaves or the client or family expresses a desire for the client to leave the family-life home.

441—111.13(249) Information about client to be confidential. Information concerning a client, the client's family, and the client's background shall be regarded and handled as confidential by all persons involved in the client's care.

These rules are intended to implement Iowa Code sections 234.6(6)*"e"* and 249.3(2)*"a"*(1).

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CHAPTER 112
LICENSING AND REGULATION OF CHILD FOSTER CARE FACILITIES

[Prior to 7/1/83, Social Services(770), Ch 112]
[Prior to 2/11/87, Human Services(498)]

441—112.1(237) Applicability. This chapter relates to licensing procedures for all child foster care facilities authorized by Iowa Code chapter 237. Rules relating to specific types of facilities are located in 441—chapter 113, "Licensing and Regulation of Foster Family Care Homes," 441—chapter 114, "Licensing and Regulation of All Group Living Foster Care Facilities for Children," 441—chapter 115, "Licensing and Regulation of Comprehensive Residential Facilities for Children," and 441—chapter 116, "Licensing and Regulation of Residential Facilities for Mentally Retarded Children."

This rule is intended to implement Iowa Code chapter 237.

441—112.2(237) Definitions.

"Applicant":

1. The applicant for a foster family home license is the foster parent or parents.
2. For a proprietary child caring facility, the applicant is the owner of the facility.
3. For facilities having a board of directors, the applicant may be the president of the board or the board's designee.

"Community residential facility" means a facility which provides care for children who are considered unable to live in a family situation due to social, emotional or physical disabilities but are capable of interacting in a community environment with a minimum amount of supervision. The facility provides twenty-four (24)-hour care including board and room. Community resources are used for education, recreation, medical, social and rehabilitation services. The facility is responsible for planning the daily activities of the children, discipline, guidance, peer relationships, and recreational programs.

"Comprehensive residential facility" means a facility which provides care and treatment for children who are unable to live in a family situation due to social, emotional, or physical disabilities and who require varying degrees of supervision as indicated in the individual treatment plan. Care includes room and board. Services include the internal capacity for individual, family, and group treatment. These services and others provided to the child shall be under the administrative control of the facility. Community resources may be used for medical, recreational, and educational needs. Comprehensive residential facilities have higher staff to client ratios than community residential facilities and may use control rooms, locked cottages, mechanical restraints, and chemical restraints when these controls meet licensing requirements.

"Director's designee":

1. For comprehensive residential facilities and community residential facilities, the director's designee is the chief of the bureau of adult, children and family services.
2. For foster family homes, the designee is the district administrator.

"Foster family home" means a home in which an individual person or married couple who wishes to provide or is providing, for a period exceeding twenty-four (24) consecutive hours, board, room, and care for a child in a single family living unit.

"Residential facility for mentally retarded children" means any residential facility which serves children who meet the definition of mentally retarded as defined in Iowa Code chapter 222.

This rule is intended to implement Iowa Code sections 237.3 and 237.5.

441—112.3(237) Application for license.

112.3(1) *Right to apply.* Any adult individual or agency has the right to make application for a license.

a. Persons wishing to care for children through a public or private agency shall make application through that agency.

b. Persons wishing to care for children directly placed by parents, guardians, or other relatives shall make application to the department of human services.

112.3(2) *Decision to operate a facility.* When an applicant has reached a decision to operate a facility for child foster care, the applicant shall complete the Application for License to Operate Foster Family Home or Family Day Care Home, SS-2101, or Application for License or Certificate of Approval, SS-3105-0. Requests for renewal shall be made on the same form.

112.3(3) *Withdrawal of an application.* The applicant shall report the withdrawal of an application promptly to the department.

112.3(4) *Evaluation of the application.* Each application will be evaluated by the department to ensure that all standards are met.

112.3(5) *Reports and information.* Requested reports and information relevant to the licensing determination shall be furnished to the department by the applicant.

112.3(6) *Applications for renewal.* Applications for renewal shall be made to the department at least thirty (30) but no more than ninety (90) days prior to expiration of the license.

112.3(7) *Notification.* Facilities shall be notified of approval or denial within ninety (90) days of application or reapplication.

This rule is intended to implement Iowa Code section 237.5.

441—112.4(237) License.

112.4(1) A new license shall be obtained when the licensee moves or the facility is remodeled.

112.4(2) A new license shall be requested when the facility wishes to be licensed for a different number of children.

112.4(3) When corrective action is completed on or before the date specified on a provisional license, a full license shall be issued for the remainder of the year.

112.4(4) When the corrective action is not completed by the date specified on a provisional license, a full license shall be denied.

112.4(5) There shall be no fee nor charge for issuing a license.

This rule is intended to implement Iowa Code sections 237.3 and 237.5.

441—112.5(237) Denial.

112.5(1) *Applications shall be denied when:*

a. The minimum standards set forth in these rules are not met and a provisional license is inappropriate or disapproved by the director's designee.

b. For just cause.

c. The applicant, as a sole proprietor or a foster family home parent, has been convicted of a crime indicating an inability to operate a children's facility or care for children.

d. The applicant, as a sole proprietor or foster family home parent, has a history of verified child abuse or neglect reports, or one incident of child abuse or neglect causing a serious injury to a child which prevents normal functioning of the child.

e. There is a verified sexual abuse report on the foster family applicants or the sole proprietor of an agency who is involved in the operation of the agency.

f. Rescinded, effective March 1, 1986.

112.5(2) *Reapplications will be denied:*

a. For the same reasons as original applications.

b. For the same reasons as listed in the grounds for revocation.

This rule is intended to implement Iowa Code section 237.5.

441—112.6(237) Revocation.

112.6(1) *Mandatory.* The license shall be revoked by the division director for the following reasons unless subrule 112.6(3) applies:

a. When the facility is misusing funds furnished by the department.

b. When the facility is operating without due regard to the health, sanitation, hygiene, comfort, or well-being of the children in the facility.

c. When the director or sole proprietor involved in the operation of the facility or foster parent has been convicted of a crime indicating an inability to operate a children's facility or care for children.

d. When there is a verified sexual abuse report on the foster family home parents or sole proprietor of an agency who is involved in the operation of the agency.

112.6(2) *Optional.* Licenses may be revoked for any of the following reasons unless subrule 112.6(3) applies:

a. The foster family fails to notify the licensing worker when moving to a new home within thirty (30) days after the date of moving.

b. The facility staff has been convicted of a crime indicating an inability to care for children.

c. The foster family or facility fails to meet any or all requirements of the placement agreement.

d. There is a verified child sexual abuse report on members of the household other than the foster parents.

e. There is a verified child abuse report on staff of a licensed group facility or member of the foster family household.

f. The child foster care facility fails to continue to comply with all of the licensing requirements in both law and regulation.

g. The foster family or the staff of a licensed group facility refuses to cooperate with an unannounced visit.

112.6(3) *Exceptions.* The license for a foster family home shall not be revoked when there are thirty (30) or fewer days until the date the license expires.

The foster family home shall be advised in writing that a reapplication may be denied and the reasons for the possible denial. The foster family home license may be suspended immediately pursuant to rule 441—112.9(237).

This rule is intended to implement Iowa Code sections 237.3 and 237.5.

441—112.7(237) Provisional license.

112.7(1) *Statement of reasons for provisional licenses.* Provisional licenses shall be accompanied by a statement of the reasons for the provisional license, the standards that have not been met, the date that the facility must make required changes to meet standards.

112.7(2) *Corrective action.* The facility shall furnish the licensing agency with a plan of action to correct deficiencies listed that resulted in the provisional license. The plan shall give specific dates upon which the corrective action will be completed.

This rule is intended to implement Iowa Code section 237.5.

441—112.8(237) Adverse actions. Notice of adverse actions and the right to appeal the licensing decision shall be given to applicants and licensees in accordance with 441—chapter 7. Any issues of placement or payment are independent of the licensing decision and right of appeal.

This rule is intended to implement Iowa Code section 237.5.

441—112.9(237) Suspension.

112.9(1) *Types of suspension.* There are two (2) types of suspension of a license.

a. Emergency suspensions are to prevent persons from providing foster care by suspending their license until it is revoked or denied.

b. Time limited suspensions are to prevent persons from providing foster care by suspending their license until a deficiency in the home or facility is corrected.

112.9(2) *Requirements for emergency suspension.* The emergency suspension of a license by the commissioner or designee shall occur only when all of the following conditions exist:

a. The licensee fails to meet licensing requirements.

b. There are sufficient grounds for revocation on denial of the license.

c. The health, safety, and welfare of any child placed in the home or facility requires immediate action.

d. The existence of the condition requiring suspension is documented in the licensee's record.

112.9(3) *Requirements for time-limited suspensions.* The time-limited suspension of a license by the commissioner or designee shall occur only when all of the following conditions exist:

a. The licensee fails to meet licensing requirements.

b. The health, safety, and welfare of any child placed in the home or facility requires immediate action.

c. The existence of the condition requiring suspension is documented in the licensee's record.

d. The condition requiring the suspension can be corrected by the licensee to meet licensing requirements.

e. If the condition were corrected, a full license would be issued.

f. The licensee signs a written statement acknowledging the existence of the condition, citing the law or rule violated, and making a commitment to correct the condition within a specific time period, not to exceed the period of the license.

112.9(4) *Effective period of suspensions.* A suspension shall be effective on the date the notice is received by the licensee and shall remain in effect until one of the following occurs:

a. The department withdraws the suspension due to a change in conditions in the home or facility.

b. The court orders the license reinstated.

c. The action is reversed by a final decision in accordance with 441—chapter 7.

d. For emergency suspensions, a revocation or denial becomes effective and the license is rescinded.

e. The licensing period expires.

f. For time-limited suspensions, the period of suspension ends.

112.9(5) *Method and content of notice.* The notice of suspension shall be sent by restricted certified mail or personal service and shall include the following:

a. The condition requiring the suspension.

b. The specific law or rule violated.

c. The type of suspension.

d. For an emergency suspension, the adverse action being sought by the department.

e. For a time-limited suspension, the duration of the suspension.

112.9(6) *Right to appeal suspension.* The licensee has the right to appeal the suspension of the license, but initiation of an appeal does not alter the suspension.

This rule is intended to implement Iowa Code sections 237.3 and 237.5.

441—112.10(232) Mandatory reporting of child abuse.

112.10(1) *Mandatory reports.* The following foster care providers shall make a report, in accordance with Iowa Code section 232.69, whenever they reasonably believe a child for whom they are providing foster care has suffered abuse:

a. Any social worker who is employed by a licensed child foster care facility and who works with foster children.

b. Any licensed foster parent providing child foster care.

112.10(2) *Required training.* Within one year of becoming a mandatory reporter, and every five (5) years thereafter, any person required to make a report under subrule 112.10(1) shall complete two (2) hours of training relating to the identification and reporting of child abuse.

112.10(3) *Training provider.*

a. If the foster care provider is a social worker employed by a licensed child foster care facility, the employer shall be responsible for providing the required training in child abuse identification and reporting.

b. If the foster care provider is a licensed foster parent, the foster parent shall be responsible for obtaining the required training in child abuse identification and reporting as part of

a continuing education program required under Iowa Code chapter 258A, or from any of the following: the department of human services, the department of education, an area education agency, a school district, the Iowa law enforcement academy, or a similar public agency.

112.10(4) *Training content.*

a. Training in child abuse identification shall include physical and behavioral signs of physical abuse, denial of critical care and sexual abuse.

b. Training in child abuse reporting shall include reporting requirements and procedures.

112.10(5) *Training documentation.*

a. If the foster care provider is a social worker employed by a licensed child foster care facility, the employer shall document in the employee's personnel record the content and amount of training.

b. If the foster care provider is a licensed foster parent, the foster parent shall be responsible for securing documentation of the training content, amount, and provider, and shall forward the documentation to the department's district office for inclusion in the licensing file.

This rule is intended to implement Iowa Code section 232.69 as amended by 1985 Iowa Acts, chapter 173, sections 3 and 5.

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CHAPTER 113
LICENSING AND REGULATION OF FOSTER FAMILY HOMES

[Prior to 7/1/83, Social Services (770), Ch 113]
[Prior to 2/11/87, Human Services(498)]

441—113.1(237) Applicability. This chapter specifically relates to the licensing and regulation of foster family homes. Refer to 441—chapter 112 for general licensing rules and regulations which apply to all foster care facilities, including foster family homes.

This rule is intended to implement Iowa Code chapter 237.

441—113.2(237) Definitions.

"Foster family home" means an individual person or married couple who wishes to provide or is providing, for a period exceeding twenty-four (24) consecutive hours, board, room, and care for a child in a single family living unit.

"Relative" means brothers, sisters, aunts, uncles, grandparents, half brothers, half sisters, and first cousins of the child.

This rule is intended to implement Iowa Code chapter 237.

441—113.3(237) Application for license.

113.3(1) *Where to apply.* Persons wishing to care for children through a public or private agency shall make application through that agency.

113.3(2) *Relative applications.* A relative, as defined in this chapter, may apply for a license as a foster parent to qualify for aid to dependent children-foster care or to continue foster care payments.

113.3(3) *Children placed by parents, relatives or guardian.* Persons wishing to care for children being placed directly by parents, guardian or another relative shall make application to the department of human services prior to placement.

113.3(4) *Application form.* When a person has reached a decision to operate a foster family home, the application shall be made on form SS-2101, Application for License to Operate a Family Foster Home. A request for renewal of the license shall be made on the same form.

This rule is intended to implement Iowa Code section 237.5.

441—113.4(237) Provisions pertaining to the license.

113.4(1) *Number of children.* A foster family home shall be licensed for the care of only five (5) children including the foster family's biological and adoptive children. Any exceptions to this rule must:

a. Be documented in the case record with reasons given for granting the exception, and

b. Be approved by the district administrator, and

c. Meet one of the following criteria:

(1) An exception is necessary to keep a sibling group together.

(2) When the foster parents have three (3) or more biological and adoptive children in the home and the parents have shown the ability to parent a large number of children, an exception may be made to allow the placement of up to three (3) foster children.

113.4(2) *Employees of the department as foster parents.* Employees of the department may be licensed as foster family home parents unless they are engaged in the administration or provision of foster care services. Employees engaged in the administration or provision of foster care services include:

a. Child care staff, social workers, youth service workers or their supervisors involved in programs for children in state institutions.

b. Foster care service workers, foster care licensing staff, and their supervisors employed in county, district or central offices of the department.

c. Other staff in county and district offices engaged in foster care placements such as child protective staff or adoption workers.

d. Department staff responsible for the development of policies and procedures relating to foster care licensing and placement.

113.4(3) *Limits on foster family home licensure.* A licensed foster family home shall not be permitted to be a licensed comprehensive residential facility, community residential facility, or licensed child care center.

This rule is intended to implement Iowa Code sections 237.3 and 237.5.

441—113.5(237) Physical standards.

113.5(1) *General standards.* The foster home shall be safe, clean, well ventilated, properly lighted, properly heated, and free from vermin and rodents to assure the well-being of the foster children residing in the home.

113.5(2) *Grounds.*

a. There shall be safe outdoor space provided according to the age and developmental needs of the foster child for active play. The area available shall be documented in the case record.

b. The foster child shall be protected against such hazards as traffic, pools, railroads, waste material, and contaminated water.

113.5(3) *Sleeping rooms for foster children.*

a. Sleeping rooms shall either have been constructed for the purpose of providing sleeping accommodation or remodeled for sleeping to provide proper heat and ventilation.

b. For multiple occupancy the minimum area per child shall be forty (40) square feet.

c. When sleeping rooms meet only minimum requirements, the home shall provide additional room in other parts of the home for study and play.

113.5(4) *All rooms above ground.*

a. All rooms above ground shall have adequate window area or mechanical artificial ventilation.

b. The ceiling height for rooms above ground shall be seven (7) feet or more.

113.5(5) *Rooms below ground.*

a. Rooms below ground shall be free from excessive dampness, noxious gases, and objectionable odors.

b. Sleeping rooms for foster children located below ground shall conform to standards listed in 113.5(3) and 113.7(1)*"a."*

113.5(6) *Physical care standards for foster children.*

a. Grouping children in sleeping rooms shall take into consideration the age and sex of children. Children over six (6) years of age shall not share a room with a child of the opposite sex.

b. Children two (2) years or older shall be provided bedroom space other than in the foster parents' bedroom.

c. There shall be provisions for isolating from other children, a child who is ill or suspected of having a contagious disease.

d. The foster home shall provide food with good nutritional content and in sufficient quantity to meet the individual needs of the children.

e. Linens shall be changed at least weekly and more frequently for children with bladder or bowel control problems.

f. Waterproof mattress covers shall be provided for children under three (3) years of age and for any child who lacks bowel or bladder control.

g. Individual space shall be provided for the child's clothes and personal possessions.

113.5(7) *Household pets.* Household pets which have access to the outdoors shall be inoculated for rabies.

113.5(8) *Artificial lighting.* Adequate artificial lighting fixtures shall be provided for study in areas where children will be studying.

113.5(9) *Toilet facilities.*

a. Toilet facilities shall have natural or artificial ventilation.

b. All toilet facilities, including privies, shall be maintained in a clean condition.

113.5(10) *Heating plant.* The heating plant shall have a capacity to maintain a temperature of approximately sixty-five (65) degrees Fahrenheit at a point twenty-four (24) inches from the floor during the day in severe weather. Gas fired space heaters, other stoves, fireplaces and water heaters shall be vented to the outside atmosphere.

113.5(11) *Ventilation.* Ventilation shall be provided in all rooms where foster children eat, sleep, and play either by windows which can be opened or by mechanical venting systems. Windows and doors used for ventilation shall be screened.

This rule is intended to implement Iowa Code section 237.3.

441—113.6(237) Sanitation, water, and waste disposal.

113.6(1) *Food preparation and storage.* Food preparation areas shall be clean and there shall be facilities to store perishable food at cold temperatures and storage areas for other food supplies.

113.6(2) *Milk supply.* Fluid or powdered milk sufficient to meet the needs of the foster child shall be provided.

113.6(3) *Public water supply.* The water supply is approved when the water is obtained from a public water supply system.

113.6(4) *Private water supply.*

a. Each privately operated water supply shall be annually checked and evaluated for obvious deficiencies such as open or loose well tops or platforms and poor drainage around the wells.

b. As part of the evaluation, water samples must be collected and submitted by the licensing worker or health sanitarian to the university hygienic laboratory or other laboratory certified by the hygienic laboratory and analyzed for coliform bacteria. In order to be licensed for the care of children under two (2) years of age the nitrate (NO^3) content must be analyzed.

c. When the water supply is obtained from more than one well, proof of the quality of the water from each well is required.

d. When the water sample result shows the water is potable, the license can be granted.

e. When the water sample is not approved, no license shall be issued until the foster parents provide a written statement that foster children will be provided potable water, where it will be obtained, and how it will be transported and stored.

113.6(5) *Sewage treatment.*

a. Foster homes, wherever possible, shall be connected to public sewer systems.

b. Private disposal systems shall be designed, constructed and maintained so that no unsanitary or nuisance conditions exist, such as surface discharge of raw or partially treated sewage or failure of the sewer lines to convey sewage properly.

113.6(6) *Garbage storage and disposal.*

a. A sufficient number of covered garbage and rubbish containers shall be provided to properly store all material between collections.

b. Containers shall be fly tight, water tight, and rodent proof and shall be maintained in a sanitary condition.

This rule is intended to implement Iowa Code section 237.3.

441—113.7(237) Fire safety.

113.7(1) *Fire protection.* Any floor of a house, including the basement, used for the sleeping of foster children shall be equipped with at least one of the following:

a. A smoke detector.

b. A window exit providing the window exit meets all of the following criteria:

(1) The window is large enough to allow the foster child to pass easily through it.

(2) Provisions are made to ensure that the foster child can easily reach and climb through the window.

(3) Provisions are made to ensure that the foster child can safely reach the ground from the window. This may include the need for secure steps or stairs.

(4) The foster child is aware of the window exit and how to utilize it.

c. A path of exit to the outside from the sleeping room which does not require the passage through more than one additional room, excluding hallways, stairs, and entryways.

113.7(2) *Combustible materials.* Combustible materials shall be kept away from furnaces, stoves, or water heaters.

113.7(3) *Safety plan.* The family shall have a safety plan to be used in case of fire, tornado, or blizzard.

This rule is intended to implement Iowa Code section 237.3.

441—113.8(237) Foster parent training.

113.8(1) *Required preservice training.* Each individual foster parent shall complete an entire twelve (12) hours of an approved preservice training program pursuant to subrules 117.1(1) and 117.1(2)*"a," "b," "c"* and *"d."* This training shall be completed prior to receiving a license for the first time, unless an exception is made under rule 441—112.7(237) to allow for later completion of the course.

113.8(2) *Required preplacement orientation.* All foster parents shall have orientation pursuant to rule 441—117.2(237) prior to the placement of a child in foster care in their home. Orientation may be provided prior to licensure, but it shall not count towards the required twelve (12) hours of preservice training.

This rule is intended to implement Iowa Code section 237.5A.

441—113.9(237) Policy for involvement of biological or adoptive parents.

113.9(1) *Acceptance by foster parents.* Foster parents shall accept the involvement of biological or adoptive parents and other relatives of the child unless this involvement is evaluated and documented by the department or supervising agency to be detrimental to the child's well-being.

113.9(2) *Nature of involvement.* The extent and nature of the involvement of the biological or adoptive parents and other relatives shall be determined by the caseworker in consultation with the foster parents, biological or adoptive parents, and others involved with the child and family.

This rule is intended to implement Iowa Code section 237.3.

441—113.10(237) Information on the foster child.

113.10(1) *Initial information.* The following information shall be provided to the foster family at the time of a child's placement.

a. The child's full name, birthdate, and date of acceptance for care.

b. Name and addresses of significant relatives of the child, including parents, grandparents, brothers and sisters, aunts and uncles, and any other significant persons. In case of adoption, these shall be adoptive parents and adoptive relatives.

c. The name, address, and telephone number of the child's physician, parents or guardian, and the supervising agency.

d. Information about immunizations received by children under their care, physical limitations, medical recommendations, and any allergies.

e. A medical authorization.

f. A placement agreement signed by the child's parent(s) or guardian and the foster parent(s) when the child's parent(s) or guardian have placed the child privately; or a placement agreement for the specific child in placement signed by the foster parent(s) and the agency when placement is made by an agency.

113.10(2) *Additional information.* The following information shall be maintained on foster children placed in the foster home:

a. Names and addresses of doctors who have treated the child and the type of treatment received while in the foster home.

b. School reports including report cards and pictures.

c. Date of discharge.

d. Name and address of the person to whom the child is discharged.

113.10(3) *Maintenance of records.* All of the information listed in 113.10(1) and 113.10(2) shall be kept in a notebook or folder and be provided to the supervising agency when the child leaves the foster care placement.

This rule is intended to implement Iowa Code section 237.7.

441—113.11(237) Health of foster family.

113.11(1) *Prior to initial licensure.* The foster parents shall furnish the licensing agency with a health report on the family completed no more than six (6) months prior to the application for licensure. The report shall include information on all family members.

113.11(2) *Contents of report.* This report shall include a statement from the health practitioner that there are no health problems which would be a hazard to foster children placed in the home, and a statement that the foster parents' health would not prevent needed care from being furnished to the foster child.

113.11(3) *Capability for caring for the child.* If there is evidence that the foster parent is unable to provide necessary care for the child, the worker or the physician may require additional medical reports.

This rule is intended to implement Iowa Code section 237.7.

441—113.12(237) Characteristics of foster parents.

113.12(1) *Age.*

a. Foster parents shall be at least eighteen (18) years of age.

b. The age of foster parents shall be considered as it affects their ability to care for a specific child and function in a parental role.

113.12(2) *Income and resources.* The foster family shall have sufficient income and resources to provide adequately for the family's own needs.

113.12(3) *Religious considerations.* The foster parent shall respect the foster child's religious background and affiliation.

113.12(4) *Requirements of foster parents.* Foster parents shall be stable, responsible, physically able to care for the type of child placed, mature individuals who are not unsuited by reason of substance abuse, lewd or lascivious behavior or other conduct likely to be detrimental to the physical or mental health or morals of the child. They shall exercise good judgment in caring for children and have a capacity to accept agency supervision.

113.12(5) *Personal characteristics.* The foster parents shall:

a. Provide evidence of marital adjustment and stability.

b. Have realistic expectations of foster children.

c. Have time available to parent foster children.

d. Be able to accept and deal with acting out behavior.

e. Treat foster children in a manner similar to natural or adoptive children in the home as far as participation in normal family life is concerned.

f. Have the ability to be accepting and loving toward a foster child entering the home.

g. Be able to separate from the foster child and not hamper return to the natural home.

h. Ensure that all family members are aware of and in agreement with having foster children in the home.

113.12(6) *Determination of characteristics.* The areas discussed in 113.12(4) and 113.12(5) shall be explored through observation of the family and interviews with family members and documented in the foster family record. Any additional areas that the family or worker identifies as a possibility for creating problems shall also be documented in the foster family record.

This rule is intended to implement Iowa Code section 237.3.

441—113.13(237) Record checks.

113.13(1) For all new applicants, there shall be a check to determine if a child abuse report exists on any individual living in the home.

113.13(2) A name and date of birth check with the Iowa department of public safety shall be made on all new applicants to ensure that they have not been convicted of a crime involving mistreatment or exploitation of a child.

113.13(3) Foster parents applying for renewal of a license may be subject to the same checks as new applicants when there is reason to believe that some verified abuse or conviction of crime has occurred.

This rule is intended to implement Iowa Code sections 237.3 and 237.8 and 1985 Iowa Acts, House File 549, section 4.

441—113.14(237) Reference checks.

113.14(1) At least three (3) additional references shall be checked for all foster family home applicants in addition to the three (3) references provided by the applicant.

113.14(2) Responses of references shall be documented in the applicant's record.

113.14(3) Information received from references may be discussed with the applicant at the discretion of the worker. The reference shall be so informed.

113.14(4) Reference checks shall include only those areas related to the applicant's ability to care for children and should include discussion of the following areas:

a. How long and in what capacity the reference has known the applicant.

b. Personal qualities of the applicant including the general character, ability to get along with others, ability to deal with children's problem behavior, ability to give affection and care, discussion of use of drugs and alcohol, questions regarding personal difficulties that could be detrimental to a foster child.

c. Marital adjustment and stability.

d. How the applicant handles anger, problems, crisis situations, discipline, and disappointments.

e. Any areas of general concern not previously mentioned.

f. Would the reference feel comfortable leaving a child in this home for a period of time?

g. Recommendations regarding licensing.

This rule is intended to implement Iowa Code section 237.3.

441—113.15(237) Unannounced visits.

113.15(1) The unannounced visit shall occur during periods of the day when the child and foster parents would normally be at home and awake, unless there has been a specific complaint about the family and care of the child.

113.15(2) The unannounced visit may include, but is not limited to, assessment of the following areas:

a. Cleanliness of the home.

b. Cleanliness and appropriateness of the child's clothing.

c. Interaction between the foster child and foster family.

d. The foster child's perception of the foster parents, other children and adults in the home, behavioral expectations of foster parents, discipline used by foster parents, religious training, school, contact with natural parents, and purpose of placement in foster care.

e. The foster parents' view of the child, the child's problem, placement worker's involvement, plan for the child, involvement of natural parents, and additional services that either the foster child or foster parents need.

f. Any previously cited deficiencies.

g. Recommended action.

113.15(3) Impressions of the unannounced visit shall be shared with foster parents.

113.15(4) A written report summarizing the visit shall be sent to the appropriate district administrator or designee of the department of human services within two (2) weeks after the visit. A copy of the report shall be retained in the foster parents' record.

113.15(5) Actions after the unannounced visit.

a. When deficiencies are cited that do not appear likely to cause immediate physical or

mental harm to the child, the information shall be made available to the licensor and an additional visit may be scheduled.

b. When the reported deficiencies raise questions of concern as to the quality of care provided, the district administrator shall report to the licensing worker and to the placement worker, suggesting a meeting with foster parents to discuss deficiencies, suggestions for improving the deficiencies, and following the discussion obtaining written commitments from the foster parents as to how the foster parents intend to correct the deficiencies.

c. When the reported deficiencies appear likely to cause immediate physical or mental harm to the child, the district administrator immediately shall:

(1) Direct the placement worker to determine if the child should be removed and,

(2) Direct the licensing worker to complete a review of the foster home to determine if the family should continue to be licensed, should receive a provisional license, or should have the license revoked according to 441—112.6(237).

113.15(6) When the foster parents refuse to make a written commitment to improve the deficiencies, the district administrator shall direct the licensing worker to do a complete study.

This rule is intended to implement Iowa Code section 237.7.

441—113.16(237) Planned activities and personal effects.

113.16(1) *Daily routine.* The daily routine shall promote good health and provide an opportunity for activity suitable for the foster child with time for rest and play.

113.16(2) *Clothing.*

a. All children should have their own clothing.

b. Children shall have training and help in selection and proper care of clothing.

c. Clothing shall be suited to the existing climate and seasonal conditions.

d. Clothing shall be becoming, of proper size, and of the character usually worn by children in the community.

e. There shall be an adequate supply of clothing to permit laundering, cleaning and repair.

f. There shall be adequate closet and drawer space for children to permit access to their clothing.

113.16(3) *Educational opportunity.* Every child shall be given the opportunity to complete high school or vocational training in accordance with the child's aptitude.

113.16(4) *Religious training.* Each child shall be given an opportunity for religious training. Whenever practicable, the child shall be placed with foster parents of the child's own religious faith, or in accordance with the wishes of the biological or adoptive parents. Children shall not be required to participate in religious training or observances contrary to the wishes of the biological, adoptive family, or religious beliefs of the child.

113.16(5) *Community participation.* Every child shall be given the opportunity to develop healthy social relationships through participation in neighborhood, school and other community and group activities. The child shall have the opportunity to invite friends to the foster home and to visit the home of friends.

113.16(6) *Work assignments.* Work assignments shall be in keeping with the total healthy development of the child. Exploitation of the child is prohibited. No child shall be permitted to do any hazardous tasks or to engage in any work which is in violation of the child labor laws of the state. Each child shall have the opportunity to learn to assume some responsibility for self and for household duties in accordance with the child's age, health and ability. However, assigned tasks shall not deprive the child of school, sleep, play or study periods.

This rule is intended to implement Iowa Code section 237.3.

441—113.17(237) Medical examinations and health care of the child.

113.17(1) *Physical examinations.* Each child should have a physical examination by a physician prior to placement in the foster home to determine the child is free from contagious or infectious diseases. When this physical examination cannot be given prior to admission, an examination shall be scheduled within seven (7) days after placement. An annual medical review of treatment received during the year shall be obtained from the health practitioner or practi-

tioners. When a child is in continuous foster care, a new physical examination shall not be required when the child transfers from one foster family home to another unless there is some indication that an examination is necessary.

113.17(2) *Medical and dental supervision.* Each child shall be under regular medical and dental supervision. Foster parents shall keep the supervising agency informed of any health problems. In case of sickness or accident, immediate medical care shall be secured for the child in accordance with the supervising agency's directions given at the time of placement.

113.17(3) *Exemption from medical care.* Nothing in this rule shall be construed to require medical treatment or immunization for a minor child of any person who is a member of a church or religious organization which is against medical treatment for disease. In such instance, an official statement from the organization and a notarized statement from the parents shall be incorporated in the record. In potentially life-threatening situations, the child's care shall be referred to appropriate medical and legal authorities.

This rule is intended to implement Iowa Code section 237.3.

441—113.18(237) Training and discipline of foster children.

113.18(1) *Foster parents' methods of training and discipline.* The evaluation of the foster parent shall include a discussion and written report of the foster parents' methods of training and discipline.

113.18(2) *Restrictions on training and discipline.* Child training and discipline shall be handled with kindness and understanding. No child shall be deprived of food as punishment. No child shall be subjected to unusual, unnecessary, severe corporal punishment inflicted in any manner upon the body. No child shall be subjected to verbal abuse, threats or derogatory remarks about the child or the child's family.

113.18(3) *Reports of mistreatment.* Reports of mistreatment coming to the attention of the supervising agency shall be investigated promptly and referred to the proper authorities when necessary.

This rule is intended to implement Iowa Code section 237.3.

441—113.19(237) Emergency care and release of children.

113.19(1) *Supervision and arrangements for emergency care.* Foster parents shall provide supervision of foster children as dictated by the individual child's specific needs and in agreement with the supervising agency. In case of emergency requiring the foster parents' temporary absence from the home, arrangements shall be made with designated, responsible persons for the care of the children during the period of absence.

113.19(2) *Release of foster child.* The foster parents shall release the foster child only to the agency, parent or guardian from whom the child was received for care, or the person specifically designated by the agency, parent or guardian.

This rule is intended to implement Iowa Code section 237.3.

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CHAPTER 114
LICENSING AND REGULATION OF ALL GROUP LIVING FOSTER CARE FACILITIES FOR CHILDREN

[Prior to 7/1/83, Social Services(770), ch 114]
[Prior to 2/11/87, Human Services(498)]

441—114.1(237) Applicability. This chapter outlines the basic standards for all group living foster care facilities and contains the basic standards applicable to community residential facilities for children. Additional standards applicable to specific levels of group living are discussed in chapter 115, "Licensing and Regulation of Comprehensive Residential Facilities for Children" and chapter 116, "Licensing and Regulation of Residential Facilities for Mentally Retarded Children."

This rule is intended to implement Iowa Code chapter 237.

441—114.2(237) Definitions.

"Adequate lighting" means a light intensity of twenty (20) foot candles (approximately equivalent to a sixty (60) watt bulb at a clear distance of five (5) feet).

"Casework supervisor" means any employee of the facility who provides supervision of the caseworker(s) by regularly scheduled face-to-face case specific discussions with the caseworker.

"Caseworker" means any employee of the facility who is primarily responsible for planning for individual children, a family, or groups, as well as coordination with referral sources and coordination of services to the individual.

"Chemical restraint" means the use of chemical agents including psychotropic drugs as a form of restraint. The therapeutic use of psychotropic medications as a component of a service plan for a particular child is not considered chemical restraint.

"Child care worker" means an individual employed by a facility whose primary responsibility is the direct care of children in the facility.

"Community residential facility" means a facility which provides care for children who are considered unable to live in a family situation due to social, emotional or physical disabilities but are capable of interacting in a community environment with a minimum amount of supervision. The facility provides twenty-four (24)-hour care including board and room. Community resources are used for education, recreation, medical, social and rehabilitation services. The facility is responsible for planning the daily activities of the children, discipline, guidance, peer relationships, and recreational programs.

"Control room" means a locked room used for treatment purposes in a comprehensive residential facility.

"Educational degrees" means formally approved certificates from accredited schools.

"Locked cottage" means an occupied comprehensive residential facility or an occupied unit of a comprehensive residential facility which is physically restrictive because of the continual locking of doors to prevent the children in care from leaving the facility.

"Mechanical restraint" means restriction by the use of a mechanical device of a child's mobility or ability to use the hands, arms, or legs.

"Physical restraint" means direct physical contact required on the part of a staff member to prevent a child from hurting self, others, or property.

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

"Private juvenile detention home" means a juvenile detention home as defined in Iowa Code section 232.2, which does not meet the requirements of being "county or multicounty" as defined in the department's subrule 105.1(2).

"Private juvenile shelter care home" means a juvenile shelter care home as defined in Iowa Code section 232.2, which does not meet the requirements of being "county or multicounty" as defined in the department's subrule 105.1(2).

441—114.3(237) Physical standards. Local building and zoning ordinances shall be met.

114.3(1) *Grounds.*

a. An outdoor play area of seventy-five (75) square feet per child shall be provided.

b. The play area shall be identified and kept free from hazards that could cause injury to a child.

c. Rubbish and trash shall be kept separated from the play area.

d. The grounds shall be adequately drained.

114.3(2) *Buildings.*

a. All living areas shall:

(1) Have screens on windows used for ventilation.

(2) Be maintained in clean, sanitary conditions, free from vermin, rodents, dampness, noxious gases and objectionable odors.

(3) Be in safe repair.

(4) Provide for adequate lighting when natural sunlight is inadequate.

(5) Have heating and storage areas separated from sleeping or play areas.

(6) Have walls and ceiling surfaced with materials that are asbestos free.

b. All sleeping rooms shall:

(1) Provide a minimum of sixty (60) square feet per child for multiple occupancy.

(2) Provide a minimum of eighty (80) square feet per child for single occupancy.

(3) Not sleep more than four (4) children per room. Facilities licensed prior to July 1, 1981, meeting current square footage requirements shall be allowed to house five (5) children per room.

(4) Be of finished construction.

Facilities licensed prior to July 1, 1981, having a square foot area less than that required in subparagraphs (1) and (2) shall be considered to meet those standards.

c. All rooms above ground shall:

(1) Have a ceiling height of at least seven (7) feet, six (6) inches.

(2) Have a window area of at least eight percent (8%) of the floor area unless mechanical ventilation is provided that is capable of removing dampness and odors.

d. All rooms below ground shall:

(1) Have a ceiling height of at least six (6) feet, eight (8) inches.

(2) Have a window area of at least two percent (2%) of the floor area unless mechanical ventilation is provided that is capable of removing dampness and odors.

(3) Have floor and walls constructed of concrete or other materials with an impervious finish and free from groundwater leakage.

114.3(3) *Bedrooms.*

a. Each child in care shall have a solidly constructed bed.

b. Sheets, pillowcases, and blankets shall be provided for each child and shall be kept clean and in good repair.

c. Each child in care shall have adequate storage space for private use, and a designated space for hanging clothing in proximity to the bedroom occupied by the child.

d. No child over the age of five (5) years shall occupy a bedroom with a member of the opposite sex.

114.3(4) *Heating.*

a. The heating unit shall be located and operated to maintain the temperature in the living quarters at a minimum of sixty-five (65) degrees Fahrenheit during the day and fifty-five (55) degrees Fahrenheit during the night. Variances may be made in case of health problems. Temperature is measured at twenty-four (24) inches above the floor in the middle of the room.

b. All space heaters and water heaters involving the combustion of fuel, such as gas, oil or similar fuel, shall be vented to the outside atmosphere.

c. Neither rubber nor plastic tubing shall be used as supply lines for gas heaters.

d. The heating or cooling plant shall be checked at least annually and kept in safe working condition at all times.

This rule is intended to implement Iowa Code section 237.3.

441—114.4(237) Sanitation, water, and waste disposal.

114.4(1) *Bathroom facilities.*

a. Bathrooms shall have an adequate supply of hot and cold running water.

b. Each bathroom shall be properly equipped with toilet tissue, towels, soap, and other items required for personal hygiene unless children are individually given these items. Paper towels, when used, and toilet tissue shall be in dispensers.

c. Toilets and baths or showers shall provide for individual privacy.

d. There shall be a shower or tub for each ten (10) children or portion thereof.

e. Tubs and showers shall have slip-proof surfaces.

f. At least one toilet and one lavatory shall be provided for each six (6) children or portion thereof.

g. Toilet facilities shall be provided with natural or artificial ventilation capable of removing odors and moisture.

h. Toilet facilities adjacent to a food preparation area shall be separated completely by an enclosed solid door.

i. All toilet facilities shall be kept clean.

j. When more than one stool is used in one bathroom, partitions providing privacy shall be used.

k. Toilets, wash basins, and other plumbing or sanitary facilities shall be maintained in good operating condition.

114.4(2) *Food preparation and storage.*

a. Cracked dishes and utensils shall not be used in the preparation, serving, or storage of food.

b. Storage areas for perishable foods shall be kept at forty-five (45) degrees Fahrenheit or below.

c. Storage areas for frozen foods shall be kept at zero degrees Fahrenheit or below.

d. Food that is to be served hot shall be maintained at one hundred forty (140) degrees Fahrenheit or above.

e. Food that is to be served cold shall be maintained at forty-five (45) degrees Fahrenheit or below.

f. The kitchen and food storage areas shall be kept clean and neat. Foods shall not be stored on the floor.

g. The floor and walls shall be of smooth construction and in good repair.

114.4(3) *Personnel handling food.* Personnel who handle food shall:

a. Be free of infection.

b. Be clean and neatly groomed.

c. Wear clean clothes.

d. Not use tobacco in any form while preparing or serving food.

114.4(4) *Dishwashing facilities.*

a. Manual dishwashing will be allowed in facilities that normally serve fifteen (15) or less people at one meal.

b. Commercial dishwashers shall be used in facilities serving more than fifteen (15) people at one meal, and shall meet the following criteria:

(1) When chemicals are added for sanitation purposes, they shall be automatically dispensed.

(2) Machines using hot water for sanitizing must maintain wash water at least one hundred fifty (150) degrees Fahrenheit and rinse water at a temperature of at least one hundred eighty (180) degrees Fahrenheit or a single temperature machine at one hundred sixty-five (165) degrees Fahrenheit for both wash and rinse.

(3) All machines shall be thoroughly cleaned and sanitized at least once each day or more often if necessary to maintain satisfactory operating condition.

c. Soiled and clean dish table areas shall be of adequate size to accommodate the dishes for one meal.

d. All hand held food preparation and serving equipment shall be cleaned and sanitized following each meal. Dispensers, urns, and similar equipment shall be cleaned and sanitized daily.

114.4(5) *Foods not prepared at site of serving.*

a. The place where food is prepared for off-site serving shall conform with all requirements for on-site food preparation.

b. Food shall be transported in covered containers or completely wrapped or packaged so as to be protected from contamination.

c. During transportation, and until served, hot foods shall be maintained at one hundred forty (140) degrees Fahrenheit or above and cold food maintained at forty-five (45) degrees Fahrenheit or below.

114.4(6) *Milk supply.* When fluid milk is used, it shall be pasteurized Grade 'A'.

114.4(7) *Public water supply.* The water supply is approved when the water is obtained from a public water supply system.

114.4(8) *Private water supplies.*

a. Each privately operated water supply shall be annually checked and evaluated for obvious deficiencies such as open or loose well tops or platforms and poor drainage around the wells.

b. As part of the evaluation, water samples shall be collected and submitted by the department of human service worker or local health sanitarian to the state hygienic laboratory or other laboratory certified by the hygienic laboratory and analyzed for coliform bacteria and nitrate (NO^3) content.

c. When the water supply is obtained from more than one well, proof of the quality of the water from each well is required.

d. When no apparent deficiencies exist in the well and the water sample is approved, water safety requirements have been met.

e. When the water sample is not approved, the facility shall provide a written statement as to how the water supply will be upgraded.

f. A facility can obtain potable water from another source when a written statement is provided on where the water will be obtained and the manner of transportation and storage until the water supply is tested as safe. This shall be considered as meeting the water safety requirements.

114.4(9) *Heating or storage of hot water.* Each tank used for the heating or storage of hot water shall be provided with a pressure and temperature relief valve.

114.4(10) *Sewage treatment.*

a. Facilities shall be connected to public sewer systems where available.

b. Private disposal systems shall be designed, constructed, and maintained so that no unsanitary or nuisance conditions exist, such as surface discharge of raw or partially treated sewage or failure of the sewer lines to convey sewage properly.

114.4(11) *Garbage storage and disposal.*

a. A sufficient number of garbage and rubbish containers shall be provided to properly store all material between collections.

b. Containers shall be fly tight, leak proof, and rodent proof and shall be maintained in a sanitary condition.

This rule is intended to implement Iowa Code section 237.3.

441—114.5(237) Safety.

114.5(1) *General.*

a. Facilities shall take sufficient measures to ensure the safety of the children in care.

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

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

d. Fuse boxes shall be inaccessible to children.

e. Facilities shall have written procedures for the handling and storage of hazardous materials.

f. Firearms and ammunition shall be kept under lock and key and inaccessible to children. When firearms are used, the facility shall have written policies regarding their purpose, use, and storage.

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

h. The facility shall have policies regarding fishing ponds, lakes, or any bodies of water located on or near the institution grounds and accessible to the children.

114.5(2) *Emergency evacuation.* All living units utilized by children shall have a posted plan for evacuation in case of fire or disaster with practice drills held at least every six (6) months.

This rule is intended to implement Iowa Code section 237.3.

441—114.6(237) Organization and administration. Any change in the name of the facility, the address of the facility, the executive, or the capacity shall be reported to the licensing manager.

114.6(1) *Table of organization.* A table of organization including the identification of lines of responsibility and authority from policymaking to service to clients shall be available to the licensing staff.

114.6(2) *Purpose of agency.* The purpose or function of the organization shall be clearly defined in writing and shall include a description of the children to be accepted for care and the services offered.

114.6(3) *Governing bodies or individuals.* All group living foster care facilities shall:

a. Have a governing board or individuals who are accountable for and have authority over the policies and activities of the organization. In the case of an organization owned by a proprietor or partnership, the proprietor or partner shall be regarded as the governing body.

b. Provide the department with a list of names, addresses, telephone numbers and titles of the members of the governing body.

c. Have adequate insurance covering fire and liability as a protection to children in care.

d. For organizations with the home base located outside Iowa, have duly authorized representatives with decision making abilities designated within the state of Iowa.

114.6(4) *Executive director.* The governing body shall select and appoint an executive director with full administrative responsibility for carrying out the policies, procedures and programs established by the governing body.

114.6(5) *Financial solvency of facilities.* Profit and nonprofit institutions shall maintain financial solvency to ensure adequate care of children and youth for whom responsibility is assumed. It shall have sufficient financial resources, predictable income, or both, and not be totally dependent upon current fees, for a three (3) months' operating period. The facility shall have written policies and procedures describing the program of the facility and specifying how it will be carried out.

This rule is intended to implement Iowa Code section 237.2.

441—114.7(237) Personnel policies.

114.7(1) *Policies in writing.* The following current personnel policies and practices of the agency and relating to the specific facility shall be described in writing and accessible to staff upon request:

a. Affirmative action and equal employment opportunity policies and procedures covering the hiring, assignment, and promotion of employees.

b. Job descriptions for all positions.

c. Provisions for vacations, holidays, and sick leave.

d. Effective, time-limited grievance procedures allowing the aggrieved party to bring the grievance to at least one level above that party's supervisor.

e. Authorized procedures, consistent with due process, for the suspension and dismissal of an employee for just cause.

f. Written procedures for annual employee evaluations.

114.7(2) *Health of employees.* Staff who have direct client contact or are involved in food preparation shall be medically determined to be free of serious infectious communicable diseases and able to perform their duties. A statement by a physician (as defined in Iowa Code section 135.1(5)) attesting to these facts shall be secured at the time of employment and whenever necessary thereafter and filed in the personnel record of the staff person. A new statement shall be secured at least every three (3) years.

114.7(3) *Personnel records.* A personnel record shall be maintained for each employee by the facility which contains at least the following:

a. Name, address, and social security number of the employee.

b. A job application containing sufficient information to justify the initial and current employment.

c. A certified copy of a school transcript, diploma, or written statement from the school or supervising agency before permanent employment of applicants for positions having educational requirements.

d. Written verification of licensure before permanent employment of applicants for positions requiring licenses. Evidence of renewal of licenses as required by the licensing agency.

e. At least two (2) written references or documentation of oral references. In case of unfavorable references, there shall be documentation of further checking to ensure that the person will be a reliable employee.

f. Documentation of a criminal records check with the Iowa division of criminal investigation on all new applicants for employment asking only whether the applicant has been convicted of a crime involving the mistreatment or exploitation of a child.

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

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

i. Current information relative to work performance evaluation.

j. Records of preemployment health examination or a record of a health report, as required in 114.7(2), plus a written record of subsequent health services rendered to an employee necessary to ensure that the employee is physically able to perform the job duties.

k. Information on written reprimands or commendations.

l. Information on position in the agency and date of employment.

This rule is intended to implement Iowa Code section 237.8.

441—114.8(237) Staff.

114.8(1) *Qualifications of staff.*

a. A caseworker shall have a bachelor of arts or bachelor of science degree in social work, psychology or a related behavioral science, plus two (2) years of supervised experience; or a bachelor's degree in social work with one (1) year of supervised experience; or six (6) years of supervised child welfare experience in residential care or a combination of advanced education in the behavioral sciences and experience equal to six (6) years.

b. A casework supervisor shall have either a master's degree in social work with one (1) year of supervised experience after the master's degree or a master's degree in psychology or counseling with two (2) years of experience beyond the master's degree, one of which was under supervision. The experience shall be in the area of child welfare services.

c. Child care workers shall be at least eighteen (18) years of age.

d. Any licensed facility having persons in employment in positions for which present rules require higher qualifications will be considered to meet rules with the present staff. New staff will need to meet the requirements of these rules.

114.8(2) *Number of staff.*

a. There shall be at least one readily accessible staff person on duty for each currently occupied living unit.

b. Each facility shall have the services of a casework supervisor and a caseworker adequate to fulfill the staff duties.

c. There shall be an on-call system operational twenty-four (24) hours a day to provide supervisory consultation. There shall be a written plan documenting this system.

d. The number and qualifications of the staff will vary depending on the needs of the children. There shall be at least a one to eight staff to client ratio during prime programming time.

114.8(3) *Staff duties.*

a. The casework supervisor shall provide in-person case specific supervision at the site of the facility for one (1) hour per month per caseworker and be available for consultation in case of emergency.

b. Caseworkers shall:

(1) Develop a care plan for each child containing goals and objectives with projected dates of accomplishment and shall involve the client, referral agency,and family whenever possible.

(2) Develop a specific plan relating to the involvement of the child's parents unless documented by the caseworker that their involvement would be counterproductive.

c. The facility shall define in writing who shall be responsible for the following staff duties:

(1) Documenting case reassessments quarterly, involving the same personnel as previously involved in care plan development.

(2) Documenting the implementation of the care plan.

(3) Providing for scheduled in-person conferences with each resident.

(4) Providing a supportive atmosphere for the child.

(5) Providing for coordination of internal and external activities of the child.

(6) Providing for liaison with the referring agency.

(7) Providing leadership and guidance to the children.

(8) Providing a mechanism for dealing with day-to-day program operations.

(9) Being responsible for overseeing and maintaining general health and well-being of children.

(10) Supervising the living activities of the children.

(11) Monitoring and recording behavior on a daily basis.

(12) At all times, knowing where the children are supposed to be.

114.8(4) *Staff development.* Staff development shall be appropriate to the size and nature of the facility. There shall be a written format for staff training that includes:

a. Orientation for all new employees to acquaint them with the philosophy, organization, program practices, and goals of the facility.

b. Training of new employees in areas related to their job assignments.

c. Provisions for all staff members to improve their competency. This may be accomplished through such means as:

(1) Attending staff meetings.

(2) Attending seminars, conferences, workshops and institutes.

(3) Visiting other facilities.

(4) Access to consultants.

(5) Access to current literature, including books, monographs, and journals relevant to the facility's services.

d. An individual designated responsible for staff development and training, who will complete a written staff development plan which shall be updated annually.

This rule is intended to implement Iowa Code section 237.3.

441—114.9(237) Intake procedures.

114.9(1) *Intake policies.* The agency shall have written intake policies specific to the licensed facility.

114.9(2) *Basis of acceptance.* Children shall be accepted for care only after the following criteria have been met:

a. An assessment of the child's need for service and supervision has been agreed upon by the staff of the facility and the referring agency worker. The child, the child's family, and any other significant people shall be invited to participate in this process to the fullest extent possible.

b. The assessment indicates that the child requires the care offered by this type of facility and is likely to benefit from the program the facility offers.

114.9(3) *Referral requirements.* The following information shall be available prior to any decision being made regarding the acceptance of a child:

a. A current social history.

b. A copy of the child's physical assessment including immunization history completed within one year prior to application, when available.

c. Where indicated, or when available, psychological testing completed no more than one year prior to referral.

d. Current educational data.

e. When indicated or available, psychiatric report completed no more than one year prior to referral.

f. Referring agency's case plan which includes goals and objectives to be achieved during placement with a time frame for the achievement of these goals and objectives.

g. Documentation of the legal status of the child which includes any court orders or statements of custody and guardianship.

114.9(4) *Admission requirements.*

a. The following items shall be secured upon admission of the child to the facility:

(1) A placement agreement for the child signed by the person having legal responsibility for the child and the agency where the child is being placed. When this is not available at the time of placement, it shall be furnished within forty-eight (48) hours of placement in the facility.

(2) Emergency medical authorization from the court, the parents, the guardian, or custodian.

b. The following items shall be provided to the child, the child's family or guardian, and the referring worker at the time of placement:

(1) A description of the services provided.

(2) Written policies regarding children's rights as in 114.13(2).

(3) Written policies regarding religion, work or vocational experiences, family involvement, grievance procedures and discipline as in 441—114.13(237) to 114.18(237) and 114.20(237).

114.9(5) *Personal assessment.* At the time of intake, individual needs will be identified by staff based on written and verbal information from referral sources, observable behavior at intake and the initial interview with youth or family, school contacts, physical examinations, and other relevant material. The individual assessment shall provide the basis for development of a care plan for each child.

114.9(6) *Educational assessment.* An educational assessment shall be developed by the staff and the referring worker. Involvement of the parents or guardian, area education agency, and public schools may be appropriate.

114.9(7) *Person responsible.* Each agency shall designate a person or persons who have the authority to do intake.

114.9(8) *Intake sheet.* An intake sheet shall be completed on each child containing at least the information specified in 114.11(2).

This rule is intended to implement Iowa Code section 237.3.

441—114.10(237) Program services.

114.10(1) *Evaluation services.*

a. When evaluation services are provided by staff of the facility, the services shall be clearly defined so that referral sources are clear about the components of the service.

b. Evaluations shall be based on behavioral observations, social history, educational assessments and shall include an assessment of vocational needs, recreational skills, and physical therapy, speech, language, vision and hearing needs to assist in planning and placement for the child. The need for providing all of these evaluative services will be determined on the basis of the specific child being referred.

114.10(2) *Care plan.* There shall be a written care plan for each child. The care plan shall be based on the individual needs determined through the assessment of each resident, provide for consultation with the family, and shall include the following:

a. Identification of special needs.

b. Description of planned services which indicate which staff person will be responsible for the specific services in the plan.

c. Indication of where the services are to occur and note the frequency of activities or services.

114.10(3) *Daily routine.* Each facility shall provide a daily routine for the children in residence which is directed toward developing healthful habits in eating, sleeping, exercising, personal care, hygiene, and grooming according to the needs of the individual child and the living group.

114.10(4) *Daily log.* The facility shall maintain a daily log. The log shall be used to note general progress in regard to the care plan and any problem areas or unusual behavior for each child.

114.10(5) *Educational services.* An educational program shall be available for each child in accordance with abilities and needs. The educational and teaching standards established by the state department of education shall be met when an educational program is provided within an institution.

114.10(6) *Health care.*

a. There shall be twenty-four (24) hour emergency and routine medical and dental services available and provided when prescribed. Provisions for these services shall be documented.

b. The facility shall arrange a physical assessment including vision and hearing tests for each child in care within one week of admission unless the child has received an examination within the past year and the results of this examination are available to the facility.

c. A facility shall not require medical treatment when the parent(s) or guardian of the child or the child objects to treatment on the grounds that it conflicts with the tenets and practices of a recognized church or religious denomination of which the parent(s), guardian or child is an adherent. In potentially life-threatening situations, the facility shall refer the child's care to appropriate medical and legal authorities.

d. A facility shall have written procedures for staff members to follow in case of medical emergency.

e. A facility shall schedule a dental examination for each child within fourteen (14) days of admission unless the child has been examined within six (6) months prior to admission and the facility has the results of that examination.

114.10(7) *Dietary program.* The facility shall provide properly planned, nutritious and inviting food and take into consideration the special food needs and tastes of children.

114.10(8) *Recreation and leisure activities.*

a. A facility shall provide the opportunity for recreation and leisure activities for children in care.

b. Opportunities shall be based on both the individual interests and needs of the children in care and the composition of the living group.

c. A facility shall utilize the recreational resources of the community whenever appropriate.

114.10(9) *Casework services.* A facility shall provide or obtain casework services in the form of counseling in accordance with the needs of each child's individual care plan. Casework services include crisis intervention, daily living skills, interpersonal relationships, future planning and preparation for placement as required by the child.

114.10(10) *Psychiatric and psychological services—(Optional service).*

a. When the diagnostic evaluation of a child indicates need for care by a psychiatrist and

under psychiatric guidance, the specialized treatment or consultation shall be provided or arranged by the facility.

b. Psychologists, whose services are used in behalf of children, shall be licensed as a psychologist in the state of Iowa, or be certified by the department of education.

114.10(11) *Volunteers—(Optional service).* A facility which utilizes volunteers to work directly with a particular child or group of children, shall have a written plan for using volunteers. This plan shall be given to all volunteers. The plan shall indicate that all volunteers shall:

a. Be directly supervised by a paid staff member.

b. Be oriented and trained in the philosophy of the facility and the needs of children in care, and methods of meeting those needs.

c. Be subject to character and reference checks required of employment applicants.

This rule is intended to implement Iowa Code section 237.3.

441—114.11(237) Case files.

114.11(1) *Generally.* All facilities shall establish and maintain case files on each child. The case files shall include the following:

114.11(2) *Face sheet.* The face sheet shall contain the following information:

a. Full name, birth place and date of birth.

b. Parents' full name.

c. Parents' address and telephone number.

d. Religious preference of parents and child.

e. Statement of who has legal custody and guardianship.

f. Name of the referring worker and agency making the referral.

g. Telephone number and address of the agency or court making the referral.

114.11(3) *Referral packet.* All of the information required in the referral packet shall be contained in the case record including a social history on the child, a copy of the child's physical assessment and immunization history, psychological testing, when available, current educational information, psychiatric report, when available, and the referring agency's case plan.

114.11(4) *Legal documents.*

a. Placement agreement signed by parent(s) or custodian of the child.

b. Petitions and orders of the court regarding adjudication, custody, or guardianship.

114.11(5) *Psychiatric and psychological.* Psychiatric and psychological reports, when available.

114.11(6) *Correspondence.* Correspondence regarding the child.

114.11(7) *Medical.*

a. Medical and surgical authorizations signed by the parent(s), guardian, or contained in the court order.

b. Record of medical care received while in the facility.

c. Information on past medical history.

114.11(8) *School.*

a. Name of school currently attended.

b. Grade placement.

c. Any specific educational problem.

d. Remedial action recommended.

114.11(9) *Care plan.* Individual child care plan and semiannual review and revision of care plan.

114.11(10) *Dictation.*

a. Appropriate notes, all significant contacts with parents, referring worker and other collateral contracts, as well as staff counseling with child and notations on behavior.

b. Information on release of the child from the facility including the name, address and relationship of the person or agency to whom the child was released.

This rule is intended to implement Iowa Code section 237.3.

441—114.12(237) Drug utilization and control. The agency shall have written policies and procedures governing the methods of handling prescription drugs and over the counter drugs within the facility. No prescription or narcotic drugs are to be allowed in the facility without the authorization of a licensed physician.

114.12(1) *Approved drugs.* Only drugs which have been approved by the federal Food and Drug Administration for use in the United States may be used. No experimental drugs may be used.

114.12(2) *Prescribed by physician.* Drugs shall be prescribed by a physician licensed to practice in the state of Iowa or the state in which the physician is currently practicing and may be prescribed only for use in accordance with dosage ranges and indications approved by the federal Food and Drug Administration.

114.12(3) *Dispensed from a licensed pharmacy.* Drugs provided to residents shall be dispensed only from a licensed pharmacy in the state of Iowa in accordance with the pharmacy laws in the Code of Iowa, or from a licensed pharmacy in another state according to the laws of that state, or by a licensed physician.

114.12(4) *Locked cabinet.* All drugs shall be maintained in a locked cabinet. Controlled substances shall be maintained in a locked box within the locked cabinet. The cabinet key shall be in the possession of a staff person. A bathroom shall not be used for drug storage. A documented exception can be made by a physician for self-administered drugs as discussed in 114.12(17).

114.12(5) *Medications requiring refrigeration.* Medications requiring refrigeration shall be kept in a locked box in the refrigerator and separated from food and other items.

114.12(6) *Poisonous or caustic drugs.* All potent poisonous or caustic drugs shall be plainly labeled, stored separately from other drugs in a specific well-illuminated cabinet, closet, or storeroom, and made accessible only to authorized persons.

114.12(7) *Prescribed medications.* All prescribed medications shall be clearly labeled indicating the resident's full name, physician's name, prescription number, name and strength of the drug, dosage, directions for use, date of issuing the drug. Medications shall be packaged and labeled according to state and federal guidelines.

114.12(8) *Medication containers.* Medication containers having soiled, damaged, illegible or makeshift labels shall be returned to the issuing pharmacist.

114.12(9) *Medication for discharged residents.* When a resident is discharged or leaves the facility, medications currently being administered shall be sent, in the original container, with the resident or with a responsible agent, and with the approval of the physician.

114.12(10) *Unused prescription drugs.* Unused controlled prescription drugs prescribed for residents shall be returned to the issuing pharmacist or physician for credit or destruction according to state law. Other unused prescription drugs shall be destroyed by facility staff in the presence of a witness and this destruction shall be documented.

114.12(11) *Refills.* Prescriptions shall be refilled only with the permission of the attending physician.

114.12(12) *Use of medications.* No prescription medications prescribed for one resident may be administered to or allowed in the possession of another resident.

114.12(13) *Order of physician.* No prescription medication may be administered to a resident without the order of a licensed physician.

114.12(14) *Patient reaction.* Any unusual patient reaction to a drug shall be reported to the attending physician immediately.

114.12(15) *Dilution or reconstitution of drugs.* Dilution or reconstitution of drugs and their labeling shall be done only by a licensed pharmacist.

114.12(16) *Administration of drugs.* Medications shall be administered only in accordance with the instructions of the attending physician. Controlled substances shall be administered only by qualified personnel. The type and amount of the medication, the time and date, and the staff member administering the medication shall be documented in the child's record. (See IAC 620—8.16(204).)

114.12(17) *Self-administration of drugs.* There shall be written policy and procedures rela-

tive to self-administration of prescription medications by residents and only when:

a. Medications are prescribed by a physician.

b. The physician agrees that the patient can self-administer the drug.

c. What is taken and when is documented in the record of the child.

This rule is intended to implement Iowa Code section 237.3.

441—114.13(237) Children's rights.

114.13(1) *Policies in writing.* All policies and procedures covered in this rule shall be in writing and provided to the child and parents or guardian upon the child's admission to the facility. The rationale and circumstances of any deviation from these policies shall be discussed with the child's parents or guardian and the referring worker, documented, and placed in the child's case record.

114.13(2) *Confidentiality.* Information regarding children and their families shall be kept confidential and released only with proper written authority.

114.13(3) *Communication.*

a. Visitation shall be allowed with members of the child's immediate family unless otherwise regulated by the court.

b. Visits shall be allowed with other significant persons.

c. Consideration shall be given to privacy for family visits.

d. The child shall be permitted to communicate with legal counsel and the referring worker.

e. The child shall be allowed to conduct private telephone conversations with family members. In-coming calls may be screened by staff to verify the identity of the caller before approval is given.

f. The child shall be allowed to send and receive mail. The facility may require the child to open in-coming mail in the presence of a staff member when it is suspected to contain contraband articles, or when there is money that should be receipted and deposited.

g. When limitations on visitation, calls or other communications are indicated, they shall be determined with the participation or knowledge of the child, family or guardian, and the referring worker. All restrictions shall have specific bases which shall be made explicit to the child and family and documented in the child's case record.

114.13(4) *Privacy.* Reasonable provisions shall be made for the privacy of residents.

This rule is intended to implement Iowa Code section 237.2.

441—114.14(237) Personal possessions.

114.14(1) *Belongings.* A facility shall allow a child in care to bring personal belongings and to acquire belongings in accordance with the child's service plan. However, the facility shall, as necessary, limit or supervise the use of these items while the child is in care.

114.14(2) *Clothing.* A facility shall ensure that each child in care has adequate, clean, well-fitting, attractive, and seasonable clothing as required for health, comfort, and physical well-being. The clothes should be appropriate to age, sex and individual needs.

This rule is intended to implement Iowa Code section 237.2.

441—114.15(237) Religion—culture.

114.15(1) *Facility orientation.* A facility shall have a written description of its religious orientation, particular religious practices that are observed, and any religious restrictions. This description shall be provided to the child, the parent(s) or guardian, and the placing agency at the time of admission.

114.15(2) *Child participation.* When a facility accepts a child, the child shall have the opportunity to participate in religious activities and services in accordance with the child's own faith or that of the child's parent(s) or guardian. The facility shall, when necessary and reasonable, arrange transportation for religious activities. Wherever feasible, the child shall be permitted to attend religious activities and services in the community.

This rule is intended to implement Iowa Code section 237.2.

441—114.16(237) Work or vocational experiences.

114.16(1) *Written description.* The facility shall have a written statement of any work and vocational experiences available to children.

114.16(2) *Program component.* Work as part of the program shall be identified in the child's case plan.

114.16(3) *Self-care.* Ordinary self-care and self-sufficiency tasks are not considered work.

114.16(4) *Purpose.* Work shall be in the child's interest, within the child's ability, with payment where appropriate, and never solely in the interest of the facility's goals or needs.

This rule is intended to implement Iowa Code section 237.2.

441—114.17(237) Family involvement. There shall be written policies and procedures for family involvement that shall encourage continued involvement of the family with the child.

This rule is intended to implement Iowa Code section 237.2.

441—114.18(237) Children's money.

114.18(1) *Treatment of funds.* Money earned, received as a gift, or as an allowance by a child in care shall be deemed to be that child's personal property.

114.18(2) *Limitations.* The facility shall have a written policy on limitations on the child's use of funds.

114.18(3) *Records.* The facility shall maintain a separate accounting system for children's money.

This rule is intended to implement Iowa Code section 237.2.

441—114.19(237) Child abuse. Written policies shall prohibit mistreatment, neglect, or abuse of children and specify reporting and enforcement procedures for the facility. Alleged violations shall be reported immediately to the director of the facility and appropriate department of human services personnel. Any employee found to be in violation of Iowa Code chapter 232, division III, part 2, as substantiated by the department of human services' investigation shall be subject to the agency's policies concerning dismissal.

This rule is intended to implement Iowa Code section 237.2.

441—114.20(237) Discipline.

114.20(1) *Generally.* The facility shall have written policies regarding methods used for control and discipline of children which shall be available to all staff and to the child's family. Agency staff shall be in control of and responsible for discipline at all times. Discipline shall not include the withholding of basic necessities such as food, clothing, or sleep.

114.20(2) *Corporal punishment prohibited.* The facility shall have a policy that clearly prohibits staff or the children from utilizing corporal punishment as a method of disciplining or correcting children. This policy is to be communicated, in writing, to all staff of the facility.

114.20(3) *Physical restraint.* The use of physical restraint shall be employed only to prevent behavior extremely disruptive to others or to prevent the child from injury to self, to others, or to property. The rationale and authorization for the use of restraint and staff action and procedures carried out to protect the child's rights and to ensure safety shall be set forth clearly in the child's record by responsible professional staff.

114.20(4) *Other restraints.* Only comprehensive residential facilities may use a control room, locked cottages, mechanical restraints or chemical restraint.

114.20(5) *Behavior expectations.* The facility shall make available to the child and the child's parents or guardian written policies regarding the following areas:

a. The general expectation of behavior including the facility's rules and practices.

b. The range of reasonable consequences that may be used to deal with inappropriate behavior.

This rule is intended to implement Iowa Code section 237.3.

441—114.21(237) Illness, accident, death, or absence from the facility.

114.21(1) *Notification of illness.* A facility shall notify the child's parent(s), guardian and responsible agency of any serious illness, incident involving serious bodily injury, or circumstances causing removal of the child from the facility.

114.21(2) *Notification of death.* In the event of the death of a child, a facility shall notify immediately the physician, the child's parent(s) or guardian, the placing agency, and the appropriate state authority. The agency shall cooperate in arrangements made for examination, autopsy, and burial.

This rule is intended to implement Iowa Code section 237.2.

441—114.22(237) Records. In the event of closure of a facility, children's records shall be sent to the department of human services for retention according to the records retention policy.

This rule is intended to implement Iowa Code section 237.2.

441—114.23(237) Unannounced visits.

114.23(1) *Time.* The unannounced visit shall occur during periods of the day when the child would normally be in the facility and awake. Visits at other times may occur only as a result of a specific complaint.

114.23(2) *Observations.* The visit shall include an assessment of the following areas:

a. Interaction between the staff and child.

b. Interaction between the children.

c. Discussion with the child about experiences in the facility.

d. A check on any previously sighted deficiencies.

e. Overall impression of the facility.

114.23(3) *Recommendation.* The licensing staff shall recommend follow-up, when needed.

This rule is intended to implement Iowa Code section 237.7.

441—114.24(237) Standards for private juvenile shelter care and detention homes. The standards of 441—chapter 105 shall be used as the basis for licensing private juvenile shelter care and detention homes. These homes are not required to meet other standards of 441—chapter 114.

This rule is intended to implement Iowa Code section 237.3.

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CHAPTER 115
LICENSING AND REGULATION OF COMPREHENSIVE RESIDENTIAL FACILITIES FOR CHILDREN

[Prior to 7/1/83, Social Services(770), Ch 115]
[Prior to 2/11/87, Human Services(498)]

441—115.1(237) Applicability. This chapter relates specifically to the licensing and regulation of comprehensive residential care facilities. Refer to 441—chapter 112 for the basic licensing and regulation of all foster care facilities and 441—chapter 114 for definitions and minimum standards for all group living foster care facilities.

This rule is intended to implement Iowa Code chapter 237.

441—115.2(237) Definitions.

"Comprehensive residential facility" means a facility which provides care and treatment for children who are unable to live in a family situation due to social, emotional, or physical disabilities and who require varying degrees of supervision as indicated in the individual treatment plan. Care includes room and board. Services include the internal capacity for individual, family, and group treatment. These services and others provided to the child shall be under the administrative control of the facility. Community resources may be used for medical, recreational, and educational needs. Comprehensive residential facilities have higher staff to client ratios than community residential facilities and may use control rooms, locked cottages, mechanical restraints, and chemical restraints when these controls meet licensing requirements.

"Nonsecure facility" means any facility which does not meet the definition of a secure facility.

"Secure facility" means any comprehensive residential facility which employs, on a regular basis, locked doors or other physical means to prevent children in care from leaving the facility. Secure facilities may only be used for children who have been adjudicated delinquent or placed pursuant to provisions of Iowa Code chapter 229.

This rule is intended to implement Iowa Code chapter 237.

441—115.3(237) Information upon admission. In addition to the requirements in 114.9(4)*"b,"* parents or guardians shall be provided with information on conditions for the use of restraints.

This rule is intended to implement Iowa Code section 237.3.

441—115.4(237) Staff.

115.4(1) *Number of staff.*

a. The number and qualifications of the staff will vary depending on the needs of the children. There shall be at least a one (1) to five (5) staff to child ratio during prime programming time.

b. A staff person shall be in each living unit at all times when children are in residence and there shall be a minimum of three (3) nighttime checks between the hours of 12 midnight and 6 a.m. These checks shall be logged. Policies for nighttime checks shall be in writing.

115.4(2) *Staff duties.*

a. A casework supervisor shall provide:

(1) One hour per week per caseworker of in-person case specific supervision.

(2) On-site supervision at least monthly.

(3) At least one additional hour per week per caseworker in other related duties including case intake discussions, staffings of cases, evaluations of caseworker, teaching, and administrative duties.

b. Casework staff shall:

(1) Provide at least weekly group or individually scheduled in-person conferences with each resident for whom the caseworker is responsible. More frequent in-person contact shall be provided if required in the care plan.

(2) Provide a supportive and therapeutic atmosphere for the child.

(3) Select and employ appropriate treatment approaches to different types of children.

This rule is intended to implement Iowa Code section 237.3.

441—115.5(237) Program services.

115.5(1) *Recreation program.*

a. The facility shall provide adequately designed and maintained indoor and outdoor activity areas, equipment, and equipment storage facilities appropriate for the age group it serves. There shall be a variety of activity areas and equipment so that all children can be active participants in different types of individual and group sports and other motor activities.

b. Games, toys, equipment, and arts and crafts material shall be selected according to the age and number of children with consideration to the needs of the children to engage in active and quiet play.

c. The facility shall plan and carry out efforts to establish and maintain workable relationships with community recreational resources so these resources may provide opportunities for children to participate in community recreational activities.

115.5(2) *Casework services.* The facility shall have the internal capacity to provide individual, family and group counseling and shall include, but not be limited to, casework dealing with crisis intervention, daily living skills, peer relationships, future planning and preparation for discharge.

This rule is intended to implement Iowa Code section 237.3.

441—115.6(237) Restraints.

115.6(1) *Nonsecure facilities.* Physical restraints and a control room are permitted in nonsecure facilities.

115.6(2) *Secure facilities.* Secure facilities may use physical restraints, a control room, locked cottages, mechanical restraints, and chemical restraints.

115.6(3) *Written policies.* A facility which uses restraints shall have a written policy on their use. This policy shall include:

a. A statement specifically identifying each form of restraint in use at the facility.

b. Criteria for use of each form of restraint.

c. Identification of staff authorized to approve and use each form of restraint.

d. Requirement for documentation in the child's individual case file.

e. Procedures for application or administration of each form of restraint.

f. Maximum time limit for use of restraints.

115.6(4) *Use of restraint.*

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

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

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

(1) The appropriate use and application or administration of each approved form of restraint.

(2) The facility's policies and procedures related to restraint.

(3) Crisis management techniques.

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

This rule is intended to implement Iowa Code section 237.4.

441—115.7(237) Control room.

115.7(1) *Purpose.* The control room shall be used for treatment purposes only. A facility shall be approved by the licensing authority as meeting the requirements of this chapter regarding control rooms before control rooms can be utilized.

115.7(2) *Written policies.* When a residential treatment facility uses a control room as part of its treatment program, the facility shall have written policies regarding its use. The policy shall:

a. Specify the types of behavior which may result in control room placement.

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

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

d. Limit the utilization of the control room to one of the following two (2) circumstances:

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

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

115.7(3) *Physical requirements.* The control room shall be designed to ensure a physically safe environment with:

a. All switches controlling lights and ventilation outside the room.

b. Allowance for observation of the child at all times.

c. Protected recessed ceiling light.

d. No electrical outlets in the room.

e. Proper heating, cooling, and ventilation.

f. Any window secured and protected in a manner to prevent harm to the child.

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

115.7(4) *Use of control room.* The control room shall be used only when a less restrictive alternative to quiet or allow the child to gain control has failed and when it is in the care plan. The following policies shall apply to the use of the control room:

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

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

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

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

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

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

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

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

This rule is intended to implement Iowa Code section 237.4.

441—115.8(237) Locked cottages.

115.8(1) *Approval.* A facility shall be approved by the licensing authority as meeting the requirements of this chapter regarding locked cottages before locked cottages can be operated.

115.8(2) *Night time staff.* Awake night time staff is required in each locked cottage.

115.8(3) *As one unit of treatment program.* When a facility utilizes a locked cottage as one unit of its treatment program, it shall have written policies. The policies shall be provided to

the child, the child's parents or guardian and, when the child has an attorney, the child's attorney at the time of admission. The policies shall include:

a. The type of behavior which may result in locked cottage placement.

b. The staff members who may authorize placement in the locked cottage as well as procedures for notification of supervisory personnel.

c. Requirement for documentation in writing of particular behaviors of a particular child that led to the locked cottage placement.

d. Requirement for documentation of the conditions that will allow the child to return to an unlocked cottage. These conditions shall be shared with the child.

e. Requirement for documentation of the use of the locked cottage as a part of the treatment plan for a specific child.

f. Specific policies as to the length of stay in the locked cottage.

g. Requirements for notification of the child's parents or guardian, the court, and the referring agency of a child's placement in the locked cottage.

h. Requirement for written documentation of placements in the locked cottage in the child's case record.

This rule is intended to implement Iowa Code section 237.4.

441—115.9(237) Mechanical restraint. When a facility uses mechanical restraints as a part of its treatment program, the facility shall have written policies regarding their use. These policies shall be approved by the licensor prior to their use. The policies shall be available to clients, parents or guardians, and referral sources at the time of admission. Policies shall also be available to staff.

115.9(1) *Restrictions on mechanical restraints.*

a. Mechanical restraints shall not inflict physical injury.

b. Each use of mechanical restraint shall be authorized by the administrator or case supervisor.

c. Each authorization of mechanical restraint shall not exceed one hour in duration.

d. No child shall be kept in mechanical restraint for more than two (2) hours in a twelve (12)-hour period.

e. Any time that a child is placed in mechanical restraint a staff person shall be assigned to monitor the placement with no duties other than to ensure that the child's physical needs are properly met. The staff person shall remain in continuous auditory and visual contact with child.

f. Each child shall be released from mechanical restraint as soon as the restraints are no longer needed.

115.9(2) *Continued use of mechanical restraints.* When a child requires mechanical restraint on more than four (4) occasions during any thirty (30)-day period, the facility shall hold an immediate emergency meeting to discuss the appropriateness of the child's continued placement at the facility.

115.9(3) *In transporting children.* Not withstanding 115.9(1)*"d"*, mechanical restraint of a child in case of a secure facility while that child is being transported to a point outside the facility is permitted when there is a serious risk of the child exiting the vehicle while the vehicle is in motion. The facility shall place a written report on each use in the child's case record. This report shall document the necessity for the use of restraint.

This rule is intended to implement Iowa Code section 237.4.

441—115.10(237) Chemical restraint. When a secure facility uses chemical restraints, the facility shall have written policies regarding their use. These policies shall be approved by the licensor prior to the use of this type of restraint. These policies shall be posted in the facility, understood by all staff, explained to all parents or guardians, children, and referring agencies at the time of admission.

115.10(1) *Physicians orders.* Each administration of chemical restraint shall be specifically ordered by a physician who has personally examined the child. There shall not be standing orders for the use of chemical restraint.

115.10(2) *Monitoring.* The child shall be monitored continuously by a person trained and qualified to observe potentially adverse side effects.

115.10(3) *Authorization.* The administrator of a residential facility or a person designated by that officer shall authorize the request for the use of chemical restraint.

115.10(4) *Continual use of chemical restraint.* When a child in care requires chemical restraint on more than four (4) occasions during any thirty (30)-day period, a secure facility shall hold an immediate meeting to discuss the appropriateness of the child's continued placement at the facility.

This rule is intended to implement Iowa Code section 237.4.

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CHAPTER 116
LICENSING AND REGULATION OF RESIDENTIAL FACILITIES FOR MENTALLY RETARDED CHILDREN

[Prior to 7/1/83, Social Services(770), Ch 116]
[Prior to 2/11/87, Human Services(498)]

441—116.1(237) Applicability. This chapter relates specifically to the licensing and regulation of residential facilities serving mentally retarded children. Refer to 441—chapter 112 for basic licensing and regulation of all foster care facilities, 441—chapter 114 for definitions and minimum standards for all group living foster care facilities, including community care facilities, and 441—chapter 115 for definitions and standards for comprehensive residential facilities for children. Chapters 112 and 114 apply to community residential facilities for mentally retarded children and chapters 112, 114 and 115 apply to comprehensive residential facilities for mentally retarded children with the exception of the areas discussed specifically in this chapter.

This rule is intended to implement Iowa Code chapter 237.

441—116.2(237) Definitions.

"Community residential facility for mentally retarded children" means a community residential facility as defined in rule 441—114.2(237) which serves children who meet the definition of mentally retarded as defined in Iowa Code chapter 222.

"Comprehensive residential facility for mentally retarded children" means a comprehensive residential facility as defined in rule 441—115.2(237) which serves children who meet the definition of mentally retarded as defined in Iowa Code chapter 222.

"Direct-service provider" means any employee of an agency whose primary responsibility is the care and programming of the children through direct interactions. The definition of "child care worker" in rule 441—114.2(237) and all other references to child care workers shall be replaced by this definition and the term "direct-service providers" when reading the other applicable rule chapters.

"Indirect-service provider" means an employee of an agency who supervises, coordinates and administers employees and program components. The definitions of "caseworker" and "casework supervisor" in rule 441—114.2(237), and all other references to caseworkers or casework supervisors shall be replaced by this definition and the term "indirect-service providers" when reading the other applicable rule chapters.

This rule is intended to implement Iowa Code section 237.1.

441—116.3(237) Qualifications of staff.

116.3(1) *Direct-service providers.* Direct-service providers shall be paraprofessionals or professionals meeting all of the following criteria:

a. Paraprofessionals shall:

(1) Be at least eighteen (18) years of age.

(2) Have graduated from high school or earned a high school equivalency degree.

(3) Have completed the prescribed agency training program.

(4) Be appropriate to the specific job description of the employing agency.

b. Professionals in the direct-service provider category shall:

(1) Be at least eighteen (18) years of age.

(2) Have a bachelor of arts degree in a related field; or an associate of arts degree in a related field and two (2) years experience specific to the job responsibilities; or two (2) years of higher education in a related field and two (2) years experience specific to job responsibilities; or four (4) years experience in programming specific to job responsibilities.

(3) Have completed the prescribed agency training program.

(4) Be appropriate to the specific job description of the employing agency.

116.3(2) *Indirect-service providers.* Indirect-service providers shall meet one of the following education and experience criteria:

a. Have a masters in social work or a master of arts degree in a related field and one year experience specific to job responsibilities.

b. Have a bachelor of arts degree in a related field and two (2) years experience specific to job responsibilities.

c. Have an associate of arts degree in a related field and four (4) years experience specific to job responsibilities.

d. Have five (5) years specific treatment program experience relating to the job responsibilities.

This rule is intended to implement Iowa Code section 237.3.

441—116.4(237) Staff to client ratio. The number and qualifications of the staff will vary depending on the needs of the children. There shall be at least a one (1) to four (4) staff to client ratio during prime programming time.

This rule is intended to implement Iowa Code section 237.3.

441—116.5(237) Program components. In addition to the requirements of 114.8(3), the facility shall define in writing who is responsible for overseeing personal hygiene of children and maintaining general orderliness of the facility.

This rule is intended to implement Iowa Code section 237.3.

441—116.6(237) Restraint. In addition to the provisions of 441—chapters 114 and 115, a restraint may be used as stated in the child's individual care plan as approved by the parent or guardian, caseworker, and facility as long as that facility meets the standards for utilizing that particular type of restraint.

This rule is intended to implement Iowa Code section 237.4.

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CHAPTER 117
FOSTER PARENT TRAINING
[Prior to 2/11/87, Human Services(498)]

PREAMBLE

These rules describe required foster parent preservice training and preplacement orientation. Their purpose is to ensure that the training and orientation is effective in preparing foster parents for their role.

These rules also describe the standards for training and orientation and the procedure to be approved as a training provider.

441—117.1(237) Required preservice training.

117.1(1) *Providers of preservice training.* The required foster parent preservice training program shall be offered by the department or by a licensed child-placing agency with a training program that has been approved by the department.

117.1(2) *Preservice training program approval requirements:*

a. Content. The program shall be designed to assist prospective foster parents in understanding the philosophy and goals of foster care and the skills required of a foster parent. The program shall address the following topics:

(1) Children in foster care, their needs and rights.
(2) Families of children in foster care, their rights and responsibilities.
(3) Case workers and their role.
(4) Foster parents, their motivation and role.
(5) Self-assessment of foster parent's strengths.
(6) The team effort of foster parents and case workers.
(7) The impact of foster care placement on the child, the child's family and the foster family.
(8) The purpose and importance of the child's contact with the child's family.
(9) Training in communication and behavior management.
(10) Permanency planning.
(11) The reasons for placement termination and feelings involved.

The curriculum developed by the Nova University Foster Parent Project "Preparation for Fostering: Preservice Education for Foster Families" shall be considered as meeting this requirement.

b. Length. The entire preservice training program shall total at least twelve (12) hours of contact between trainers and participants.

The department and each licensed child-placing agency offering the mandatory twelve (12) hours preservice training shall devise a procedure for parents to make up any portions of training which are missed.

c. Instructors. The program shall be team taught by at least one foster parent and one casework staff person. Both foster parent instructors and casework staff instructors shall have previous education or experience in training and in the particular curriculum to be taught.

d. Group method. The program shall be provided in groups. The training shall be offered to a foster family individually only when the foster family has been issued a provisional license to give the family a year to meet the preservice requirement, the provisional license is due to expire and there is no other prospective or provisionally licensed foster family needing training within seventy-five (75) miles of the foster family's home.

e. Training certificate. A certificate of completion shall be provided to each foster parent who completes the training.

f. Training evaluation. A means for participants in the training to evaluate the instructors and the content shall be provided.

g. Training records. A record of the foster parents who begin and complete the training, and of the training program evaluations shall be submitted to the Office of Personnel and Training, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319 at the end of each twelve (12)-hour training session.

441—117.2(237) Required preplacement orientation.

117.2(1) *Method of provision.* The orientation may be provided in an individual meeting of the worker with one set of foster parents or in a group setting.

117.2(2) *Provider.* Orientation shall be provided by the department or licensed child-placing agency completing the licensing study. The agency intending to place children in foster care in the home shall review the orientation with the foster parent prior to placement.

117.2(3) *Content.* Orientation shall be designed to acquaint the foster parent with the policies and procedures of the foster care program, and shall include the following:

a. Process and procedures for placement and termination of placement.

b. Medical assistance program information.

c. Reimbursement information.

d. Child abuse law and child abuse investigation procedures.

e. Confidentiality.

441—117.3(237) Application materials. The following materials shall be submitted with a cover letter requesting approval to provide mandatory foster parent training:

117.3(1) A detailed program description, including objectives, agenda, content, participant materials and time frames or a statement that the Nova program "Preparation for Fostering: Preservice Education for Foster Families," as described in subrule 117.1(2)*"a,"* will be the preservice program taught.

117.3(2) A statement listing program instructors and their qualifications.

117.3(3) A statement regarding whether the training program will be offered in groups or individually. If to be offered individually, there shall also be justification for this plan.

117.3(4) A description of the procedures for parents to make up any part of the twelve (12) hours of training that might be missed.

117.3(5) A sample of the evaluation tool to be used.

441—117.4(237) Application process.

117.4(1) *Initial application.* Applications to povide mandatory foster parent training shall be submitted to the Office of Personnel and Training, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, for approval. Applications shall be submitted at least ninety (90) days prior to the first anticipated offering.

117.4(2) *Program changes.* Any changes in program content or instructors shall be submitted to the office of personnel and training sixty (60) days before the change is to be implemented.

441—117.5(237) Application decisions. The department shall notify the licensed child-placing agency of its decision regarding the application within forty-five (45) days of receipt of the training materials described in rule 441—117.3(237) or subrule 117.4(2). This notification shall include the reason(s) for not giving full approval if full approval is not given.

117.5(1) *Full approval.* Mandatory foster parent training programs which meet the criteria in rule 441—117.1(237) regarding content, length, instructors, method, certificate, evaluation and records, and which are submitted pursuant to rules 441—117.3(237) and 441—117.4(237) shall be approved by the department.

117.5(2) *Provisional approval.* Provisional approval may be granted if the agency's program is deficient in only one area described in rule 441—117.1(237) and if the licensed child-placing agency agrees to correct the deficiency within three (3) months. The provisional approval shall expire three (3) months after issuance. Full approval will be given once the department receives evidence that deficiencies are corrected. If deficiencies are not corrected by the end of three (3) months, program approval will be denied. The licensed child-placing agency may submit a revised program for approval at a later date.

117.5(3) *Denial.* Preservice training programs which are deficient in two (2) or more areas described in rule 441—117.1(237) shall be denied approval. The licensed child-placing agency may submit a revised program for approval at a later date.

117.5(4) *Revocation.* Approval shall be revoked when any of the following exist and corrective action is not taken to correct the deficiences within forty-five (45) days.

a. The licensed child-placing agency fails to provide the training as described in the approved application materials.

b. Over twenty-five percent (25%) of the participant evaluations of the training program rate the training program as not helpful.

If approval is revoked, the licensed child-placing agency may submit a revised program at a later date.

441—117.6(237) Application conference available. If a licensed child-placing agency objects in writing within seven (7) days after the notification of the department's decision to give provisional approval or to deny or revoke approval, the director of training and the bureau chief of the bureau of adult, children and family services shall grant a conference to the licensed child-placing agency to determine if the original decision shall stand.

The decision of the training director and bureau chief is final and is not subject to an appeal.

These rules are intended to implement Iowa Code section 237.5A.

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CHAPTERS 118 to 129
Reserved

TITLE XIII
SERVICE ADMINISTRATION

CHAPTER 130
GENERAL PROVISIONS
[Prior to 7/1/83, Social Services(770), Ch 130]
[Prior to 2/11/87, Human Services(498)]

441—130.1(234) Definition.

"Family" includes the following members:

1. Legal spouses (including common law) who reside in the same household.
2. Natural, adoptive, or step mother or father, and children who reside in the same household.
3. An individual who lives alone or who resides with a person, or persons, other than a spouse or minor child.
4. A child or minor siblings who reside with a person, or persons, not legally responsible for their support.

This rule is intended to implement Iowa Code section 234.6.

441—130.2(234) Application.

130.2(1) Application for social services shall be made at the local office of the department of human services on the Form SS-1120-0, Application for Social Services, available at the local office.

130.2(2) The application may be filed by the applicant, the applicant's authorized representative, or where the applicant is incompetent or incapacited, someone acting responsibly for the applicant.

130.2(3) The date of application is the date the application form is signed and dated.

130.2(4) The application shall be approved or denied within thirty (30) days from the date of application and the applicant notified of the decision. The decision shall be mailed or given to the applicant on the date the determination is made.

130.2(5) Eligibility shall be redetermined in the same manner as an application at least every (6) months except that for individuals whose family's gross monthly income is derived exclusively from social security benefits, supplemental security income, state supplementary assistance, or a combination thereof, redetermination shall be made at least every twelve (12) months.

130.2(6) Application for Title XIX waiver service. A client applying for Title XIX waiver service must be offered a choice between home and community based service and institutional care. The service worker will prepare Title XIX Waiver Consent Form, Form SS-1646 and the client or guardian will sign the form to indicate client's preference.

This rule is intended to implement Iowa Code sections 234.4 and 234.6 and 1984 Iowa Acts, Senate File 2351, section 3.

441—130.3(234) Eligibility.

130.3(1) Eligibility factors for services available through the department are individual need for a service and family income except when services are provided without regard to income or when services are directed in a court order.

a. Individual need is established when the service to be provided is directed at and will facilitate an individual in reaching or maintaining one of the goals and objectives in 130.7(1). Except when the court establishes need, the department shall do so in accordance with individual service chapters. The department shall determine the number of units to be provided.

b. The block grant service to be provided shall be contained in the pre-expenditure report and listed for the specific district and county. Service available through the department and funded by resources other than the social service block grant is identified in rules for that specific service.

c. Service shall be provided only when funds are available for service delivery.

d. Persons are financially eligible for services when they are in one of the following categories:

(1) Income maintenance status. They are recipients of aid to dependent children, or those whose needs were taken into account in determining the needs of aid to dependent children recipients, or recipients of supplemental security income or state supplementary assistance, or those in the 300 percent group as defined in IAC 441—subrule 75.1(7).

(2) Income eligible status. The monthly gross income according to family size is no more than the following amounts:

Family Size	For Child Day Care: Monthly Gross Income	All Other Services: Monthly Gross Income Below
1 Member	$ 574	$ 457
2 Members	748	597
3 Members	923	737
4 Members	1,100	876
5 Members	1,275	1,017
6 Members	1,452	1,157
7 Members	1,485	1,183
8 Members	1,518	1,210
9 Members	1,551	1,237
10 Members	1,583	1,262

When a family has more than ten (10) members, for each additional person add three percent (3%) of the amount for a family of four (4) to the ten (10)-member amount.

e. Certain services are provided without regard to income which means family income is not considered in determining eligibility. The services provided without regard to income are information and referral, child abuse investigation, child abuse treatment, child abuse prevention services, family-centered services, and dependent adult abuse investigation.

f. In certain cases the department will provide services directed in a court order. In these cases the court may determine the need for service and may direct that services are provided without regard to income.

130.3(2) To be eligible for services the person must be living in the state of Iowa. Living in the state shall include those persons living in Iowa for a temporary period, other than for the purpose of vacation.

130.3(3) In determining gross income, all income received by an individual from sources identified by the U.S. Census Bureau in computing median income is considered and includes money wages or salary, net income from nonfarm self-employment, net income from farm self-employment, social security, dividends, interest, income from estates or trusts, net rental income and royalties, public assistance or welfare payments, pensions and annuities, unemployment compensation, worker's compensation, alimony, child support; and veterans pensions. Excluded from the computation of monthly gross income are the following:

a. Per capita payments to or funds held in trust for any individual in satisfaction of a judgment of the Indian claims commission or the court of claims.

b. Payments made pursuant to the Alaska Claims Settlement Act to the extent such payments are exempt from taxation under section 21(a) of the Act.

c. Money received from the sale of property, unless the person was engaged in the business of selling such property.

d. Withdrawals of bank deposits.

e. Money borrowed.

f. Tax refunds.

g. Gifts.

h. Lump sum inheritances or insurance payments or settlements.

i. Capital gains.

j. The value of the coupon allotment under the Food Stamp Act of 1964, as amended, in excess of the amount paid for the coupons.

k. The value of USDA donated foods.

l. The value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food program for children under the National School Lunch Act, as amended.

m. Earnings of a child fourteen (14) years of age or under.

n. Loans and grants obtained and used under conditions that preclude their use for current living expenses.

o. Any grant or loan to any undergraduate student for educational purposes made or insured under the Higher Education Act.

p. Home produce utilized for household consumption.

q. Earnings received by any youth under Title III, Part C—Youth Employment Demonstration Program of the Comprehensive Employment and Training Act of 1973.

r. Stipends received by persons for participating in the foster grandparent program.

s. The first sixty-five dollars ($65) plus fifty percent (50%) of the remainder of income earned in a sheltered workshop or work activity setting.

t. Payments from the low-income home energy assistance program.

u. In determining eligibility for purchase of local services, one third of the income of a disabled survivor who is a recipient of child's insurance benefits under the federal old-age, survivors, and disability insurance program established under Title II of the Federal Social Security Act.

130.3(4) Eligibility for Title XIX waiver services.

a. Financial eligibility. Financial eligibility and client participation for Title XIX waiver service shall be in accordance with rules 441—83.5(249A) and 441—83.7(249A).

b. Service eligibility. An individual must demonstrate a need for a waiver service(s) to be eligible for the Title XIX waiver program. The department service worker shall be responsible for determining whether Title XIX waiver services are available and appropriate.

c. Maximum Title XIX waiver service costs. The total monthly cost of Title XIX waiver services shall not exceed the maximum monthly cost of the client's required level of institutional care, i.e., hospital, intermediate care facility, skilled nursing facility or intermediate care facility for the mentally retarded as follows:

HOSPITAL	ICF	ICF/MR	SNF
$8,896.07	$852.50	$3,019	$2,480

d. Temporary absence. The client will remain eligible for Title XIX service while a patient in a hospital for a period not to exceed fifteen (15) days in any calendar month.

130.3(5) Temporary absence. The composition of the family group does not change when one, or more, of the group members is temporarily absent from the household.

"*Temporary absence*" means:

a. A medical absence anticipated to be less than three (3) months.

b. An absence for the purpose of education or employment.

c. When a family member is absent and intends to return home within three (3) months.

This rule is intended to implement Iowa Code section 234.6 and 1985 Iowa Acts, chapter 259, sections 9 and 15.

441—130.4(234) Fees. The department may set fees to be charged to clients for services received. The fees will be charged to those clients eligible under rule 130.3(234), but not those receiving services without regard to income due to a protective service situation. Nothing in these rules shall preclude a client from voluntarily contributing toward the costs of service.

130.4(1) *Collection.* The provider shall collect fees from clients. The provider shall maintain records of fees collected, and such records shall be available for audit by the department or its representative. When a client does not pay the fee, the provider shall demonstrate that a reasonable effort has been made to collect the fee. Reasonable effort to collect means an original billing and two (2) follow-up notices of nonpayment.

130.4(2) *Monthly income.* The amount of the fee shall be determined by monthly income according to family size. When an otherwise eligible client has monthly income above that shown on the table, no Title XX funds are available for the service, and the client or another resource shall pay the full cost of the service. Monthly income is shown in the following table.

MAXIMUM MONTHLY INCOME ACCORDING TO FAMILY SIZE

	1	2	3	4	5	6	7	8	9	10
A	$ 288.00	$ 375.00	$ 464.00	$ 551.00	$ 640.00	$ 727.00	$ 744.00	$ 761.00	$ 776.00	$ 793.00
B	344.00	449.00	555.00	660.00	766.00	871.00	891.00	911.00	930.00	950.00
C	400.00	523.00	646.00	769.00	892.00	1015.00	1038.00	1061.00	1084.00	1107.00
D	457.00	598.00	738.00	879.00	1019.00	1161.00	1186.00	1213.00	1239.00	1265.00
E	514.00	672.00	831.00	989.00	1147.00	1305.00	1335.00	1364.00	1394.00	1423.00
F	571.00	747.00	923.00	1099.00	1274.00	1450.00	1483.00	1516.00	1549.00	1581.00
G	629.00	822.00	1015.00	1208.00	1402.00	1595.00	1631.00	1667.00	1703.00	1739.00
H	686.00	897.00	1107.00	1318.00	1529.00	1740.00	1779.00	1819.00	1858.00	1897.00
I	743.00	971.00	1200.00	1428.00	1657.00	1885.00	1928.00	1971.00	2013.00	2055.00
J	800.00	1046.00	1292.00	1538.00	1784.00	2030.00	2076.00	2122.00	2168.00	2213.00

When a family has more than ten (10) members, monthly income is determined by:

a. Multiplying each income figure in the four (4)-member eligibility column by three percent (3%) and rounding to the nearest dollar.

b. Multiplying the result in paragraph *"a"* by the number in the family in excess of ten (10).

c. Adding the results from paragraph *"b"* to the amounts shown in the column for a ten (10)-member family.

130.4(3) *Day care.* The fees for child day care in a licensed center or registered family or group day care home are shown in the following table.

Child Day Care

	Per Day	Per ½ Day	Per Hour
A	.00	.00	.00
B	.60	.30	.06
C	.75	.37	.08
D	1.00	.50	.10
E	1.50	.75	.15
F	2.00	1.00	.20
G	2.50	1.25	.25
H	3.00	1.50	.30
I	3.50	1.75	.35
J	4.00	2.00	.40

a. The units of service are defined as follows:

(1) Full day is service provided for five (5) or more hours per twenty-four (24)-hour day.

(2) Half day is service provided for from three (3) to five (5) hours per twenty-four (24)-hour day.

(3) Hour is service provided for less than three (3) hours in any one twenty-four (24)-hour period. Any part of an hour in excess of twenty (20) minutes is considered a full hour; any time over two (2) hours and twenty (20) minutes to five (5) hours is considered half day.

b. When more than one child is attending a day care program, the fee for the second child is one half (½) of the indicated fee. Each successive child is one sixth (1/6) of the indicated fee. In determining fees, full-day children shall be considered first, half-day children second, and hourly children last.

130.4(4) Rescinded, effective 7/1/81.

This rule is intended to implement Iowa Code section 234.6.

441—130.5(234) Adverse service actions.

130.5(1) *Denial.* Services shall be denied when it is determined by the department that:

a. The client is not in need of service, or

b. The client is not financially eligible, or

c. The service to be provided is not in the annual Title XX plan, or

d. There is another community resource available to provide the service or a similar service free of charge to the client that will meet the client's needs, or

e. In cases other than protective service investigation, the client, parent, or representative refuses to sign the application form, or

f. The service for which the client is eligible is currently not available; a list of these services will be posted in each local office, or

g. Funding is not available to provide the service. A list of services not available due to lack of funding shall be posted in each local office.

h. The department cost of Title XIX waiver services exceeds the monthly service cost as specified in subrule 130.3(4)*"c."*

130.5(2) *Termination.* A particular service may be terminated when the department determines that:

a. The specific need to attain the Title XX goals and objectives to which the service was directed has been achieved, or

b. After repeated assessment, it is evident that the family or individual is unable to achieve or maintain the goals set forth in the individual client service plan, or

c. After repeated efforts, it is evident that the family or individual is unwilling to accept further service, or

d. The client's income or resources exceed the financial guidelines, or

e. The service is no longer available in the annual Title XX plan, or

f. No payment or partial payment of client fees has been received within thirty (30) days following the issuance of the last billing, or

g. Another community resource is available to provide the service or a similar service free of charge to the client that will meet the client's needs, or

h. The client refuses to allow documentation of eligibility as to need, income, and resources, or

i. Funding is not available to provide the service. A list of services not available due to lack of funding shall be posted in each local office.

j. The specific need to attain the Title XIX waiver services goals and objectives to which the service was directed has been achieved.

k. The department cost of Title XIX waiver services for the individual exceeds the monthly institutional cost as specified in subrule 130.3(4)*"c."*

l. The client receives Title XIX waiver services and is an inpatient in a hospital, skilled nursing facility, intermediate care facility or intermediate care facility for mentally retarded in excess of fifteen (15) days in a calendar month for purposes other than respite care.

m. The client receives Title XIX waiver services and the physical or mental condition of the client requires more care than can be provided in the client's own home as determined by the service worker.

130.5(3) *Reduction.* A particular service may be reduced when the department determines that:

a. Continued provision of service at its current level is not necessary. The department shall determine the level to which the service may be reduced without jeopardizing the client's continued progress toward achieving or maintaining the goal. The client shall be notified of the decision.

b. Another community resource is available to provide the same or similar service to the client at no financial cost to the client, that will meet the client's needs.

c. Funding is not available to continue the service at the current level. The client shall be reassessed to determine the level of service to be provided.

130.5(4) Rescinded, effective 6/1/84.

130.5(5) *Pending changes.* Workers shall endeavor to make clients aware of pending changes in services to be provided by social services block grant from one program year to the next, particularly for those services that will no longer be available. This requirement also applies to time-limited services.

130.5(6) *Inability of eligible cases to pay fees.* After billing or notification of termination and when the client reports in writing the inability to pay the fee due to the existence of one or more of the conditions set forth in the paragraphs below, and the worker assesses and verifies the condition, service shall be continued without fee until the condition no longer exists and the client is able to participate in the current fee for service. The worker shall assess all inability to pay cases to determine whether any case can be charged a reduced fee. The reduced fee shall then be charged until full participation in fees is possible.

a. Extensive medical bills for which there is neither payment through the medical assistance program, Title XVIII of the Social Security Act, nor other insurance coverage.

b. Shelter costs in excess of thirty percent (30%) of the household income.

c. Utility costs not including the cost of a telephone, in excess of fifteen percent (15%) of the household income.

d. The family is receiving day care services for more than one child.

e. Additional expenses for food resulting from diets prescribed by a physician.

This rule is intended to implement Iowa Code section 234.6 and 1984 Iowa Acts, chapter 1310, section 3.

441—130.6(234) Case management. For each active service case, when service is provided directly, purchased, or by a combination of methods, a department social worker shall,

130.6(1) Determine eligibility.

130.6(2) Ensure that there is a department service plan for each individual based on assessment of needs. Furnish a copy of the initial plan and of all updated department service plans to the provider agency when services are purchased for an individual.

130.6(3) Refer the client to other workers or agencies through proper channels, and coordinate all workers involved in the case.

130.6(4) Enter information to the service reporting system.

130.6(5) Monitor the case to ensure that eligibility continues, services are received, plans are adjusted as needed, services reporting system reporting is correct, and the case is canceled when appropriate, according to these rules.

130.6(6) Ensure that services are unavailable elsewhere without cost to the client.

This rule is intended to implement Iowa Code section 234.6.

441—130.7(234) Service plan. The department worker shall develop a service plan with the client for every individual reported in the service reporting system, and record it in the department's case record with all specific service or program plans. Any specific service or program

plan shall be consistent with the service plan. A copy of the service plan shall be provided to the client, parent or representative.

130.7(1) Services shall be directed toward the Title XX goals of:

a. Achieving or maintaining self-support to prevent, reduce or eliminate dependency.

b. Achieving or maintaining self-sufficiency, including reduction or prevention of dependency.

c. Preventing or remedying neglect, abuse or exploitation of children or adults unable to protect their own interest, or preserving, rehabilitating or reuniting families.

d. Preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care.

e. Securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.

130.7(2) The recorded service plan shall contain, but not be limited to, the following:

a. The goal and objective to which the plan is directed, stated in a clear manner indicating the specific services required to achieve or maintain the Title XX goal to meet the needs of the particular client.

b. Objectives for specific services which are measurable and have time frames for completion.

c. A summary of all pertinent information relating to the client and the client's situation relative to need, and containing, but not limited to, the following:

(1) Emotional behavior.

(2) Social aspects.

(3) Historical perspective.

(4) Reasons for success or lack of success.

d. Information on case entries that will substantiate the client's eligibility for service.

e. A target date for re-evaluation of the case plan based on assessment of need, which shall not exceed six (6) months.

f. A review of financial eligibility in accordance with 130.2(5).

g. The reason for termination or reduction of any or all services.

h. For Title XIX waiver services, a certification by the physician that Title XIX waiver services are appropriate and adequate to meet the needs of a client in a home environment.

130.7(3) The re-evaluation of the service plan shall include all components listed under 130.7(2).

This rule is intended to implement Iowa Code section 234.6 and 1984 Iowa Acts, chapter 1310, section 3.

441—130.8(234) Monitoring and evaluation. The department of human services shall evaluate and monitor client eligibility, on a sample basis, by verifying all eligibility factors, including income, and evaluating the services actually received.

This rule is intended to implement Iowa Code section 234.6.

441—130.9(234) Entitlement. There is no automatic right to ongoing service in any service category from one fiscal year to the next.

This rule is intended to implement Iowa Code section 234.6.

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CHAPTER 131
CLIENT ASSESSMENT/CASE MANAGEMENT SERVICES

[Prior to 7/1/83, Social Services(770), Ch 159]
[Previously appeared as Ch 159—renumbered IAB 2/29/84]
[Prior to 2/11/87, Human Services(498)]

441—131.1(234) Definition. *"Client assessment/case management services"* means casework services, including, but not limited to, assessing of individual needs, defining and determining with the client, or for the client, in some instances, the need for specific services in an attempt to alleviate a problem, referring to and arranging for a community resource for service and the ongoing oversight and case management that should include responsibility for case planning, implementation, and ongoing review and reassessment to determine client progress and eligibility to assure that services are directed at a goal.

441—131.2(234) Eligibility. Client assessment/case management services are provided to persons who meet the eligibility requirements for services as specified in rule 441—130.3(234).

441—131.3(234) Service provision. Client assessment/case management services are provided directly by departmental staff.

441—131.4(234) Situations served. Client assessment/case management services shall be provided to assess individual needs, determine eligibility, formulate an individual case plan, refer to and arrange for service with another community resource, reassess the need for service and redetermine eligibility.

441—131.5(234) Adverse actions. Services shall be denied or terminated and appropriate notice given to clients as specified in rule 441—130.5(234).

These rules are intended to implement Iowa Code section 234.6.

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CHAPTERS 132 to 141
Reserved

CHAPTER 142
INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

[Prior to 7/1/83, Social Services(770), Ch 142]
[Prior to 2/11/87, Human Services(498)]

441—142.1(238) Compact agreement. As a member of the interstate compact on placement of children, the department of human services shall cooperate on interstate aspects of placements preliminary to possible adoptions, placements in foster care where no adoption is contemplated, placements with any parent or relative, and institutional placements of adjudicated children in need of assistance needing special services or programs not available within the state. Any public or private agency instrumental in placement of a child in Iowa or from Iowa and in such public or private agency's custody shall go through the interstate compact on placement of children.

441—142.2(238) Compact administrator.

142.2(1) The compact administrator may appoint up to three (3) deputy compact administrators to serve as active members of the association of the interstate compact on the placement of children and who shall be responsible for day to day operation of the interstate compact.

142.2(2) The compact administrator shall be responsible for the administration of the compact between the compact administrator's state and other contracting states.

Rules 142.1(238) and 142.2(238) are intended to implement Iowa Code section 238.33.

441—142.3(238) Article II(d). For the purposes of article II(d), a child caring agency or institution shall not include any institution caring for the mentally ill, mentally defective or epileptic; or any institution primarily educational in character; or any hospital or other medical facility.

441—142.4(238) Article III(a). For the purposes of article III(a), "sending state" shall mean "sending agency".

441—142.5(238) Article III(a) procedures.

142.5(1) All intended placements in Iowa or from Iowa coming under the purview of this compact shall be referred to the interstate compact unit, bureau of adult, children and family services, department of human services.

142.5(2) All persons involved in the placement of a child into Iowa or from Iowa into another state shall meet all the placement requirements of the receiving state prior to the actual placement.

142.5(3) Supervision of placements made by persons or agencies outside of Iowa shall be provided by a licensed Iowa agency, the department of human services, or an Iowa certified adoption investigator. Exempted from this provision are:

a. Any agency licensed as a child-placing agency in another state which has its principal place of business in a county directly adjacent to an Iowa border may practice in the Iowa counties contiguous to the out-of-state county.

b. Placement in a facility for treatment that is licensed by the department unless the department specifies that the supervision must be provided by the department for all placements in any particular facility.

441—142.6(238) Article III(c). A child may be placed in Iowa preliminary to adoption only when:

142.6(1) Rescinded by Governor's Administrative Rules Executive Order No. 3, 11/6/79.

142.6(2) There has been a preplacement investigation by an authorized person or agency in Iowa, such investigation has been made available to the Iowa interstate compact unit, the investigation has been made within the past year, and the sending state intending to place the child has been notified that the home has been approved for an adoptive placement in Iowa.

441—142.7(238) Article VIII(a). For the purpose of article VIII(a), relative shall mean stepparent, grandparent, adult brother or sister, or adult uncle or aunt, and guardian shall mean any guardian other than that appointed as preliminary to adoption.

441—142.8(238) Applicability. The requirements of this compact shall be in effect for all placements into Iowa from any state or from Iowa to any state within the United States and the District of Columbia.

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CHAPTER 143
INTERSTATE COMPACT ON JUVENILES

[Prior to 7/1/83, Social Services(770), Ch 143]
[Prior to 2/11/87, Human Services(498)]

441—143.1(232) Compact agreement. As a member of the interstate compact on juveniles, Iowa is in a contractual agreement with the other forty-nine (49) states, the District of Columbia, Puerto Rico and Guam, in which the department of human services shall cooperate on interstate aspects of juvenile delinquency, and the return from one state to another of nondelinquent children who have run away from home.

This rule is intended to implement Iowa Code section 232.139.

441—143.2(232) Compact administrator.

143.2(1) The compact administrator may appoint a deputy compact administrator to serve as an active member of the association of juvenile compact administrators and who shall be responsible for day to day operation of the interstate compact.

143.2(2) The compact administrator shall be responsible for the administration of the compact between the compact administrator's state and other contracting states.

This rule is intended to implement Iowa Code section 232.139.

441—143.3(232) Sending a juvenile out of Iowa under the compact.

143.3(1) Local officials requesting to transfer a juvenile to another state shall work through the office of the interstate compact administrator. All persons using the compact shall comply with the official rule and regulations promulgated by the compact administrator under authority of the compact.

143.3(2) Interstate Compact Form IA, Application for Compact Services; and Interstate Compact Form VI, Memorandum of Understanding and Waiver shall be signed by the juvenile and parents or guardian, the Iowa juvenile court judge consenting to the placement in the receiving state, and the juvenile compact deputy.

143.3(3) The Memorandum of Understanding and Waiver shall have the conditions of the probation or parole as granted by the court of jurisdiction attached.

143.3(4) Whenever a juvenile is accepted in another state for supervision, the Iowa sending agency shall send medical release and financial statements signed by the parents or guardian.

*Effective date of subrule 770—142.6(1) delayed by the administrative rules review committee seventy days.

441—143.4(232) Receiving cases in Iowa under the interstate compact.

143.4(1) The department of human services shall accept supervision of out of state cases when a juvenile meets the requirements of the interstate compact.

143.4(2) The department of human services shall exercise the same care and treatment that is given to Iowa cases, to notify the sending state promptly of any violations or antisocial behavior that may occur.

143.4(3) No interstate juvenile shall be given permission to return to the sending state without obtaining permission from that state.

143.4(4) The receiving state shall promptly upon parole or probation violation notify the sending state. Prior to making a recommendation for revocation of parole or probation, a preliminary hearing shall be held to determine if there is probable cause for revocation of parole or probation.

143.4(5) A parolee or probationer from another state placed in Iowa under the provisions of article VII and who commits a felony while in Iowa, shall be processed according to the Iowa statutes and not returned to the sending state for violation.

441—143.5(232) Runaways.

143.5(1) A runaway from Iowa or to Iowa shall be returned to the state of residence only after article VI setting forth the voluntary procedures or article IV setting forth the involuntary procedures has been completed by the asylum court of jurisdiction. Denial of these procedures by the asylum court as set forth in articles IV and VI abdicates the demanding jurisdiction of any responsibility for the return under the provisions of the compact.

143.5(2) Any nondelinquent runaway from another state found in Iowa shall be held only in a nonrestrictive shelter facility until returned to the state of legal residence.

143.5(3) Any nondelinquent runaway from another state found in Iowa may be held in a nonrestrictive shelter facility beyond forty-eight (48) hours on issuance of a court order to permit arrangements for return to the home state or to permit the demanding state opportunity for issuance of a requisition under article IV.

143.5(4) Any runaway from another state who is charged with a felony under Iowa Code chapter 232 may either be held in a secure setting until return to the state of legal residence or be adjudicated delinquent under Iowa Code chapter 232, placed on probation, and returned to the state of legal residence under article VII of the compact.

143.5(5) Any adjudicated delinquent who has escaped or absconded from another state and has been apprehended as a nondelinquent runaway in Iowa may be held in a secure setting awaiting return to the demanding state under article V.

143.5(6) The interstate unit shall pay for the return to Iowa of any runaway, escapee, or absconder for whom the department has, at the time the juvenile left the state, legal custody or guardianship responsibility. The interstate unit shall also pay upon request for the return of any runaway who is an Iowa resident and whose parent is unable or unwilling to pay for the juvenile's return. The responsibility for the payment for the return of a runaway, escapee, or absconder not under custody or guardianship of the department shall be that of the juvenile court having legal jurisdiction of the juvenile.

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CHAPTERS 144 to 149
Reserved

TITLE XIV
GRANT/CONTRACT/PAYMENT ADMINISTRATION

CHAPTER 150
PURCHASE OF SERVICE

[Prior to 7/1/83, Social Services(770), Ch 145]
[Previously appeared as Ch 145—renumbered IAB 2/29/84]
[Prior to 2/11/87, Human Services(498)]

441—150.1(234) Definitions.

"Accounting year" means a twelve (12) consecutive month period for which accounting records are maintained, either a calendar year or other designated fiscal year.

"Accrual basis accounting" means the accounting basis which shows all expenses incurred and income earned for a given time even though the expenses and income may not have been paid or received in cash during the period.

"Administrative support" means technical assistance, studies, surveys, or securing volunteers to assist the department in fulfilling its administrative responsibilities.

"Agency" means an organization or organizational unit that provides social services.

1. Public agency means a general or special purpose unit of government and organization(s) administered by that unit to deliver social services, for example, county boards of supervisors, community colleges, and state agencies.

2. Private/nonprofit agency means a voluntary agency operated under the authority of a board of directors for purposes other than generating profit and is incorporated under Iowa Code chapter 504A, or, for an out-of-state agency, meets requirements of similar laws governing nonprofit organizations in its state.

3. Private/proprietary agency means a for-profit agency operated by an owner of board for the operator's financial benefit.

"Cash basis accounting" means the accounting basis which records expenses when bills are paid and income when money is received.

"Ceiling" means the maximum limit for payment for a service which has been established by an administrative rule or by Code specifically for that service.

"Client" means an individual or family group who has applied for and been found to be eligible for social services from the Iowa department of human services.

"Common ownership" means that relationship existing when an individual or individuals possess significant ownership or equity in the provider and the institution or organization serving the provider.

"Components of service" means the elements/activities that make up a specific service.

"Contract" means formal written agreement between the Iowa department of human services and another legal entity, except for those government agencies whose services are covered under provision of Iowa Code chapter 28E.

"Contractor" means an institution, organization, facility or individual who is a legal entity and has entered into a contract with the department of human services.

"Control" means that relationship existing where an individual or an organization has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution.

"Department" means the Iowa department of human services.

"Direct cost" means those expenses which can be identified specifically and solely to a particular program.

"Donor" means local sources (public or private) of funding who enter into an Iowa donation of funds contract.

Effective date.

1. Contract effective date for agency contracts means the first day of a month on which the contract shall become in force.

2. Effective date of rate means the date specified in a purchase of service contract on which the specified rate of payment for service provided begins.

"Field staff" means department employees outside of central office reporting to the division of field operations.

"Grant" means an award of funds to develop specific programs or achieve specific outcomes.

"Indirect cost" means those expenses which cannot be related directly to a specific program and are, therefore, allocated to more than one program.

"Local purchase services" means services purchased by the department with twenty-five percent (25%) of the funding provided by a county or donor.

"Project manager" means a department employee who is assigned to assist in developing, monitoring and evaluating a contract and to provide related technical assistance.

"Provider" means an institution, organization, facility, or individual who is a legal entity and has entered into a contract with the department to provide social services to clients of the department.

"Purchase of service section" means a unit of the bureau of finance, division of management and budget which is responsible for administering the purchase of service system.

"Purchase of service system" means the system within the department for contracting and payment for services, including contracts for funding and contracts for technical assistance.

"Related to provider" means that the provider to a significant extent is associated or affiliated with or has control of, or is controlled by, the organization furnishing the services, facilities, or supplies.

"Relatives" include the following persons: Husband and wife; natural parent, child; sibling; adopted child and adoptive parent; stepparent, stepchild, stepbrother and stepsister; father-in-law, mother-in-law, son-in-law and daughter-in-law, brother-in-law and sister-in-law; grandparent and grandchild.

"Social services" means a set of actions purposefully directed toward human needs which are socially identified as requiring assistance from others for their resolution.

"Unit of service" means a specified quantity of service or a specific outcome as a result of the service provided.

441—150.2(234) Categories of contracts.

150.2(1) *Iowa purchase of social services.* An Iowa purchase of social services contract is between the department and a provider for a specified service or services to clients referred by the department. This contract establishes the service components to be provided, the rate per unit of service, a maximum number of units to be available, and other negotiated conditions.

a. Agency contract is a contract written with an agency.

b. Individual child day care provider contract is a contract written with an individual provider of family day care, group day care, or in-home day care services. Specific instructions may be found in chapter 170.

c. Individual in-home health-related provider contract is a contract written with an individual provider of in-home health services. Specific instructions may be found in chapter 177.

150.2(2) *Iowa purchase of administrative support.* An Iowa purchase of administrative support contract is between the department and a contractor for the provision of administrative support. This contract establishes the support services to be provided, the rate and the method of payment, and other negotiated conditions. A contractor or the division of a contractor who is a multiservice organization holding an administrative support contract may not provide direct client services during the period of the contract.

a. Volunteer services contract is the administrative support contract for volunteer services between an individual or agency and the department to secure volunteers to assist the department in service delivery.

b. General use Iowa purchase of administrative support contract is between the department and a contractor for the provision of administrative support.

150.2(3) *County board of supervisors' participation contract.* The county board of supervisors' participation contract is between a county board of supervisors and the department for the purchase of local purchase services. This contract establishes the conditions under which the county and the department will jointly participate in the provision and payment for services delivered by selected providers or contractors.

150.2(4) *Iowa donation of funds contract.* The Iowa donation of funds contract establishes the conditions under which a donor makes funds available to the department. This is generally for the purpose of matching state or federal funds for services or administrative support. A formal Iowa Donation of Funds Contract, Form SS-1502-0, shall be completed prior to the department's acceptance of the funds.

a. Area, service, and provider. The donor may specify the geographic area to be served and the specific service to be provided. When the donor is a public agency, the provider of the service may also be specified.

b. Contract content. The agreement shall contain specifications, concerning termination, transmittal of funds, accounting, and reversion of unspent funds. If the initial agreement is amended, it shall be done formally.

441—150.3(234) Iowa purchase of social services contract—agency providers.

150.3(1) *Initiation of contract proposal.*

a. Right to request a contract. All potential provider agencies have a right to request a contract.

b. Initial contact. The initial contact should be between the potential provider and the district administrator for the district in which the provider's headquarters is located. In the case of out-of-state providers this contact can be with the district administrator for either the closest district or the district initiating the contact.

c. Contract proposal development. When the district administrator determines that a contract is to be developed, a project manager will be assigned who will assist in contract development and processing. The project manager will assist the contractor in completing the contract proposal and fiscal information appropriate to the contract which will include documentation that the conditions of participation required below are met.

d. Contract proposal approval/rejection. Before a contract can be effective, it shall be signed by the following individuals within the timeframes provided:

(1) Authorized representative of the provider agency.

(2) County director of the department's local office within one week from receipt.

(3) District administrator within one week from receipt.

(4) Manager, purchase of service section within thirty (30) days from receipt.

The provider shall be notified of delays in the process or of rejection of the proposal. This notification, along with an explanation, shall be in writing. Payment cannot be made until the contract is signed by the provider's authorized representative and the manager of the purchase of service section.

e. Criteria for rejection. The following criteria may cause a proposed contract to be rejected:

(1) The service is not needed by department clients.

(2) The service is not in the state plan for the district(s) or county(ies) to be served by the program.

(3) No funds are available for the service being proposed.

(4) The proposed contract does not meet applicable rules, regulations, or guidelines, including service definition.

f. Contract effective date. When the agreed upon contract conditions have been met, the effective date of the contract is the first day of an agreed upon month following signature by the manager, purchase of service section.

150.3(2) *Contract administration.*

a. Contract management. During the contract period the assigned project manager will be the contract liaison between the department and the provider and shall be contacted on all interpretations and problems relating to the contract. The project manager will follow the issues through to their resolution. The project manager will also monitor performance under the contract and will provide or arrange for technical assistance to improve the provider's performance, if needed.

b. Contract amendments. The contract shall only be amended upon agreement of both parties. Amendments which affect the cost of services shall include reestablishment of applicable rates.

c. Contract renewal. A joint decision to pursue renewal of the contract must be made at least sixty (60) days prior to the expiration date. Each contract shall be evaluated and the results of the evaluation taken into consideration in the decision on renewal. This evaluation may involve use of the Monitoring and Evaluation Review Guide, Form SS-1637-0, or other evaluation tools specified in the contract.

d. Contract termination. Causes for termination during the period of the contract are:

(1) Mutual agreement of the parties involved.

(2) Upon demonstration that sufficient funds are unavailable to continue the service(s) involved.

(3) If required reporting is not made.

(4) Failure to make financial and statistical records available for review.

(5) Failure to abide by the provisions of the contract.

150.3(3) *Conditions of participation.* The provider shall meet the following standards:

a. Licensure/approval/accreditation. The provider shall obtain any license, approval, and accreditation required by law, regulation or administrative rules, or standards of operation required by the state or meet federal regulation before the contract can be effective. Out-of-state providers shall meet Iowa licensing standards related to treatment, professional staff to client ratio, and staff qualifications.

b. Signed contract. A contract can only be effective when signed by all parties required in 150.3(1)*"d."*

c. Civil rights laws. The providers shall be in compliance with all federal, state and local civil rights laws and regulations with respect to equal employment opportunity, or have a written work plan approved by the department to come into compliance.

d. Title VI compliance. The contractors shall be in compliance with Title VI of the 1964 Civil Rights Act, as amended, and all other federal, state, and local laws and regulations regarding the provision of services or have a written plan approved by the department to come into compliance.

e. Section 504 compliance. The providers shall be in compliance with all federal (Rehabilitation Act of 1973, as amended), state, and local section 504 laws and regulations or have a written work plan approved by the department to come into compliance.

f. Affirmative action. The providers shall be in compliance with all federal, state, and local laws and regulations regarding affirmative action, or have a written work plan approved by the department to come into compliance.

g. Abuse reporting. The provider shall have an approved policy and procedure for reporting abuse or neglect of children and dependent adult abuse.

h. Confidentiality. The provider shall comply with all applicable federal and state laws and regulations on confidentiality including rules on confidentiality contained in 441—chapter 9.

i. Client appeal/grievances. Clients receiving service through a purchase of service contract have the right to appeal adverse decisions made by the department or the provider. The provider shall have an approved policy and procedure for handling client appeals and grievances and shall provide information to clients about their rights to appeal.

j. Client reports. The provider shall maintain the following client records:

(1) Provider service plan/individual program plan. Providers shall have a written service plan/individual program plan for each client within thirty (30) days of service initiation. This shall include a concise description of the situation or area which will be the focus of the service; statement of the goal(s) to be achieved through the delivery of services; time limited and measurable objectives which will lead to the attainment of the goal to be achieved; specific service components, frequency, and the assignment of responsibility for the provision of the components; and the month and year when it is estimated the client will be able to achieve the current goal(s) and objectives.

(2) Quarterly progress reports. Quarterly progress reports shall be sent to the department caseworker responsible for the client. The first report shall be submitted to the department three (3) months after service is initiated and quarterly thereafter, unless provided for otherwise in rules for a specific service. The progress report shall include a description of the specific service components provided, their frequency, and who provided them; the client's progress with respect to the goals and service objectives; any recommended changes in the service plan/individual program plan and for all placement cases; interpretation of client's reaction to placement; a summary of medical or dental services that were provided; a summary of educational/vocational progress and participation; and a summary of the involvement of the family with the client and the services.

Reports for mental health services, purchased foster family home services, and independent living service shall also include supporting documentation including dates of client and collateral contacts, type of contact, person(s) contacted, and a brief explanation of the focus of each contact. Each unit of service for which payment is sought should be the subject of a written progress note.

(3) Termination of service summary. A termination of service summary shall be sent to the department caseworker responsible for the client within two (2) weeks of terminating the service. The termination of service summary shall include the rationale for service termination and the impact of the service components on the client in relationship to the established goals and objectives.

k. Financial and statistical records. Each provider of service shall maintain sufficient financial and statistical records, including program and census data, to document the validity of the reports submitted to the department.

(1) The records shall be available for review at any time during normal business hours by department personnel, the purchase of service fiscal consultant, state or federal audit personnel.

(2) These records shall be retained for a period of five (5) years after final payment.

l. Reports on financial and statistical records. Reports on financial and statistical records shall be submitted as required. Failure to do so within the required time limits will be grounds for termination of the contract.

m. Maintenance of client records. Client records must be retained by the provider for a period of three (3) years after service to the client terminates.

n. Provider charges. Provider shall not charge department clients more than it receives for services to nondepartment client.

o. Special purpose organizations. A provider may establish a separate, special purpose organization to conduct certain of the provider's client related or nonclient related activities (e.g., a development foundation assumes the provider's fund raising activity). Often, the provider does not own the special purpose organizaton (e.g., a nonprofit, nonstock-issuing corporation), and has no common governing body membership. However, such a special purpose organization is considered to be related to a provider if:

(1) The provider controls the special purpose organization through contracts or other legal documents that give the provider the authority to direct the special purpose organization's activities, management, and policies; or

(2) The provider is, for all practical purposes, the primary beneficiary of a special purpose organization's activities. The provider should be considered the special purpose organization's primary beneficiary if one or more of the three (3) following circumstances exist:

A special purpose organization, with provider approval, has solicited funds on the provider's behalf, and substantially all funds so solicited were contributed with intent of benefiting the provider.

The provider has transferred some of its resources to a special purpose organization, substantially all of whose resources are held for the benefit of the provider; or

The provider has assigned certain of its functions to a special purpose organization that is operating primarily for the benefit of the provider.

p. Certification by public transit division. Each service provider shall provide current documentation to the applicable district office of compliance with or exemption from public transit coordination requirements as found in Iowa Code chapter 601J and 820—[09,A] chapter 2 within ten (10) days of notification by the Iowa department of transportation, public transit division. Failure to cooperate in obtaining or providing the required documentation of compliance or exemption is grounds for denial or termination of the contract.

150.3(4) *Establishment of rates.* Rates to be paid shall be based on the following rules:

a. Day care centers enrolling six (6) or fewer department clients. The rate will be taken the same as paid by nondepartment clients when the center agrees to accept no more than six (6) department clients at a time, as openings are available.

b. All other in-state providers. The Financial and Statistical Report for Purchase of Service Agreements, Form SS-1703-0, will be the basis for establishing the rates to be paid.

c. Out-of-state providers.

(1) Rates for providers of residential services for children are established by subrule 156.9(2).

(2) Rates for providers with services not covered in the preceding paragraph shall have rates established using the applicable portions of the Financial and Statistical Report for Purchase of Service Agreements, Form SS-1703-0.

d. Homemaker and in-home health related care providers. For contracts to purchase homemaker and in-home health related care services after October 1, 1984, the department will establish the rate based on subrule 150.3(4)*"b,"* except that:

(1) Homemaker or in-home health related care providers who serve six (6) or fewer department Title XIX waiver clients at a time will have an option of utilizing the rate approved by the Iowa department of public health.

(2) Other homemaker or in-home health related care providers will have an option of utilizing the rate approved by the Iowa department of public health for a period of one hundred twenty (120) days from the effective date of the initial contract.

150.3(5) *Financial and statistical report.* The Financial and Statistical Report for Purchase of Service Agreements, Form SS-1703-0, shall be completed by those providers as required in 150.3(4). The reports shall be based on the following rules.

a. Accounting procedures. Financial information shall be based on the agency's financial records. When the records are not kept on an accrual basis of accounting, the provider shall make the adjustments necessary to convert the information to an accrual basis for reporting. Providers who are multiple program agencies shall submit a cost allocation schedule prepared in accordance with recognized methods and procedures.

(1) Direct program expense shall include all direct client contact personnel involved in a program including the time of a supervisor of a program, or the apportioned share of the supervisor's time when the supervisor supervises more than one program.

(2) Expenses other than salary and fringe benefits shall be charged as direct program expense when the expenses are identifiable to a program or when a method of distribution acceptable to the department is maintained on a consistent basis.

(3) Occupancy expenses shall be allocated to programs on a space utilization formula. The space utilization formula may be used for salaries and fringes of building maintenance and janitorial type personnel.

(4) All expenses which relate jointly to two or more programs shall be allocated to program service costs by utilizing a cost allocation method which fairly distributes costs to the related programs. Any expenses which relate directly to a particular program shall be reflected as such. All maintenance costs shall be charged directly or allocated proportionately to the related programs affected.

(5) Indirect program service costs shall be distributed over all applicable services.

(6) Expenses such as supplies, conferences, and similar expenses that cannot be directly related to a program shall be charged to indirect program service costs.

(7) A multiservice agency shall establish a method acceptable to the department of distributing indirect program service costs.

(8) Income received from fund raising efforts or donations shall be reported as revenue on the financial and statistical report and used to offset fund raising costs. Fund raising costs

remaining after the offset shall be an unallowable cost. Fund raising income shall be reported as follows:

1. All contributions shall be accompanied by a schedule showing the contribution and designated usage by the agency.

2. Income may be placed in restricted or appropriated accounts for purposes such as reasonable reserve accounts (ninety (90)-day operating expense reserve) and purchasing capital assets (present or future periods). Restricted accounts are those in which the donor has restricted the use of funds and appropriated accounts are those in which the agency has designated the use of funds. At the end of any reporting period, income from fund raising or donations may be designated to supplement sliding fees for private clients, to cover deficits (total costs over income), to cover costs not allowed by purchase of service rules, and to cover costs not reimbursed by purchase of service because of ceilings or limitations.

3. Income remaining undesignated shall then be applied proportionately to all service programs, including excluded programs, according to the direct service program costs. This income shall be used to reduce all program costs before determining the unit rate.

(9) When an agency has a certified public accounting firm perform an audit of its financial statements, the resulting audit report shall follow one of the uniform audit report formats recommended by the American Institute of Certified Public Accountants as specified in the Industry Audit Guide "Audits of Voluntary Health and Welfare Organizations" issued September 1973. A copy of the certified audit report shall be submitted to the department within sixty (60) days of receipt.

(10) All expenses reported on Form SS-1703-0 shall be supported by an agency's general ledger and documentation on file in the agency's office.

b. Failure to maintain records. Failure to maintain records adequate to support the Financial and Statistical Report, Form SS-1703-0, may result in termination of the contract. These records include but are not limited to:

(1) Reviewable, legible census reports.
(2) Payroll information.
(3) Capital asset schedules.
(4) All canceled checks, deposit slips, invoices (paid and unpaid).
(5) Audit reports (if any).
(6) Board of directors' minutes.

c. Submission of reports. The report shall be submited to the department no later than three (3) months after the close of the provider's established fiscal year. Failure to submit the report in time without written approval from the manager, purchase of service section, may reduce payment to seventy-five percent (75%) of the current rate. Failure to submit the report within six (6) months of the end of the fiscal year shall be cause for terminating the contract.

(1) Providers with established fiscal years ending December 31, 1983, through May 31, 1984, will be permitted to submit a six (6)-month report of costs incurred during the first half of their established fiscal year. Subsequent reports will be submitted on an annual basis.

(2) Providers with other established fiscal years shall submit reports for the full fiscal year as provided for in 150.3(3)*"d."*

d. Rate modification. Modification of rates shall be made when changes are due to changes in licensing requirements, changes in the law, or amendments to the contract. Requests for modification of a pay rate may be made when changes are due to program expansion or modification and have the approval of the district administering the contract.

e. Payment of new rate. New rates shall be effective for services provided beginning the first day of the second calendar month after receipt by the purchase of service section of a report sufficient to establish rates or, by mutual agreement, the first day of the month following completion of the fiscal review. Failure to submit a report sufficient to establish a rate will result in the effective date being delayed. At least one week prior to the deadline in paragraph "*c*" above must be allowed for the project manager to review and transmit to central office.

f. Exceptions to costs. Exceptions to costs identified by the purchase of service section or its fiscal consultant will be communicated to the provider in writing.

g. Accrual basis. Providers not using the accrual basis of accounting shall adjust amounts to the accrual basis when the financial and statistical report is completed. Records of cash receipts and disbursements shall be adjusted to reflect accruals of income and expenses.

h. Census data. Documentation of units of service provided which identifies the individual client shall be available on a daily basis and summarized on a monthly report. The documentation and reports shall be retained by the provider for review at the time the expenditure report is prepared and reviewed by the department's fiscal consultant.

i. Opinion of accountant. The department may require that an opinion of a certified public accountant or public accountant accompany the report when adjustments made to prior reports indicate noncompliance with reporting instructions.

j. Revenues. When the Financial and Statistical Report is completed, revenues shall be reported as recorded in the general books and records adjusted for accruals. Expense recoveries shall be reflected as revenues.

k. Capital asset use allowance (depreciation) schedule. The Capital Asset Use Allowance Schedule shall be prepared using the guidelines for provider reimbursement in the Medicare and Medicaid Guide, December 1981.

l. The following expenses shall not be allowed:

(1) Fees paid directors and nonworking officers' salaries.

(2) Bad debts.

(3) Entertainment expenses.

(4) Memberships in recreational clubs, paid for by an agency (country clubs, dinner clubs, health clubs, or similar places) which are primarily for the benefit of the employees of the agency.

(5) Legal assistance on behalf of clients.

(6) Costs eligible for reimbursement through the medical assistance program.

(7) Food and lodging expenses for personnel incurred in the city or immediate area surrounding the personnel's residence or office of employment, except when the specific expense is required by the agency and documentation is maintained for audit purposes. Food and lodging expenses incurred as part of programmed activities on behalf of clients, their parents, guardians, or consultants are allowable expenses when documentation is available for audit purposes.

(8) Business conferences and conventions. Meeting costs of an agency which are not required in licensure.

(9) Awards and grants to recognize board members and community citizens for achievement. Awards and grants to clients as part of treatment program are reimbursable.

(10) Survey costs when required certification is not attained.

(11) Federal and state income taxes.

m. The following expenses are limited for service without a ceiling established by administrative rule or law for that service.

(1) Moving and recruitment are allowed as a reimbursable cost only to the extent allowed for state employees. Expenses incurred for placing advertising for purposes of locating qualified individuals for staff positions are allowed for reimbursement purposes.

(2) Interest on short-term loans, when the need for borrowing is caused by delayed payments from the department, is allowable when a loan is necessary to pay critical operating costs; no-cost sources of funds are not available; payments to the provider from the department have not been received within thirty (30) days from the time the correct invoice was submitted to the local department office and the clients for whom payment has not been received are identified; the loan does not exceed the amount owed to the provider by the department; the interest to be incurred is not in excess of what a prudent borrower would have to pay in the money market existing at the time the loan was made, and to be paid to a lender not related through control or ownership or personal relationship to the borrowing organization; the loan is repayed as overdue payment totals are received by the provider; prior written approval is received from the project manager.

(3) Interest on loans for purchase of capital assets is allowable when the capital asset is required to operate a program, the provider has to borrow money to purchase the item, purchase with borrowed funds is shown to be the most cost-efficient method of obtaining the required asset, and prior written approval is received from the manager, purchase of service section.

Prior written approval shall be obtained by submitting Form 470-2208, Capital Asset Interest Request, to the district administrator or project manager. Form 470-2208 shall be made available to the provider upon request to the project manager.

(4) Costs for participation in educational conferences are limited to three percent (3%) of the agency's actual salary costs, less excluded or limited salary costs as recorded on the financial and statistical report.

(5) Costs of reference publications and subscriptions for program-related materials are limited to $500 per year.

(6) Memberships in professional service organizations are allowed to the extent they do not exceed one-half of one percent of the total salary costs less excluded salary costs.

(7) In-state travel costs for mileage and per diem expenses are allowable to the extent they do not exceed the maximum mileage and per diem rates for state employees for travel in the state.

(8) Reimbursement for air travel shall not exceed the lesser of the minimum commercial rate or the rate allowed for mileage in subparagraph (7) above.

(9) The maximum reimbursable salary for the agency administrator or executive director charged to purchase of service is $40,000 annually.

(10) Annual meeting costs of an agency which are required in licensure are allowed to the extent required by licensure.

n. The following expenses are limited for services with a ceiling established by administrative rule or law for that service.

(1) The maximum reimbursable compensation for the agency administrator or executive director charged to purchase of service annually is $40,000.

(2) Annual meeting costs of an agency which are required in licensure are allowed to the extent required by licensure.

o. Establishment of ceiling and reimbursement rate.

(1) The maximum allowable rate ceiling applicable to each service may be found in the rules for that particular service.

(2) When a ceiling exists, the reimbursement rate shall be established by determining on a per unit basis the allowable cost plus the current cost adjustment subject to the maximum allowable cost ceiling.

p. Rate limitations. During the period from July 1, 1986 to June 30, 1987, maximum rates for providers of social services shall remain in effect as established for the fiscal year which began July 1, 1985. Rates for foster group care and shelter care shall not exceed $66.15 per day.

(1) The maximum increase will be calculated on the maximum rate a provider may charge under the cost-based system.

(2) Maximums for service programs not included in a contract on July 1, 1986, will be calculated on the first actual cost-based rate determined for the provider.

(3) Interruptions in service programs will not affect the application of the maximum limit.

(4) If an agency assumes the delivery of service from another agency, the limit shall remain the same as for the former agency.

A reduction will be made because of the state budget situation. The amount of the reduction for each type of service and client is listed at paragraph *"r"* below.

Payments for claims submitted for services will be reduced by the specified percent for each agency provider unless by July 1, 1986, the provider elects a rate reduction in the amount specified in paragraph *"r."* Family and group day care and foster care maintenance costs are subject to the reduction, but are not subject to the election.

q. Related party costs. Costs (direct and indirect) applicable to services, facilities, equipment, and supplies furnished to the provider by organizations related to the provider are includable in the allowable cost of the provider at the cost to the related organization. All costs allowable at the provider level would also be allowable at the related organization level,

unless such related organization costs are duplicative of provider costs already subject to reimbursement.

(1) Allowable costs shall be all actual costs (direct and indirect) applying to any service or item interchanged between related parties, such as capital use allowance (depreciation), interest on borrowed money, insurance, taxes, and maintenance costs.

(2) When the related party's costs are used as the basis for allowable rental or supply costs, the related party shall supply documentation of these costs to the provider. The provider shall complete a schedule displaying amount paid to related parties, related party cost, and total amount allowable. The resulting costs shall be allocated according to subrule 150.3(5)*"a"*(3) to (7).

Financial and statistical records shall be maintained by the related party under the provisions in subrule 150.3(3)*"k."*

(3) Tests for relatedness shall be those specified in rule 441—150.1(234) and subrule 150.3(3)*"o."* The department or the purchase of service fiscal consultant shall have access to the records (e.g. financial and accounting records, board minutes, articles of incorporation, and list of board members) of the provider and landlord or supplier to determine if relatedness exists.

r. For services beginning July 1, 1986, the following reductions will apply:

(1) Payments for shelter care, independent living supervision, foster family supervision, and foster group care will be reduced two and seventy hundredths percent (2.70%).

(2) Payments for family-centered services purchased with home based funding will be reduced three and eighty-five hundredths percent (3.85%).

(3) Payments for family planning services will be reduced two and fifteen hundredths percent (2.15%).

(4) Payments for protective child day care will be reduced two and thirty-three hundredths percent (2.33%).

(5) Payments for local purchased services (e.g., adult residential services, adult day care, other child day care, community supervised apartment living arrangement services, community support services/mental health, family-centered services, work activity, sheltered workshop, and transportation) will be reduced ninety-three hundredths percent (.93%).

(6) Subparagraphs (1) to (5) above notwithstanding, payments for services to state cases will be reduced three and eighty-five hundredths percent (3.85%).

150.3(6) *Client eligibility and referral.*

a. Program eligibility. Clients in this category of eligibility, in order to receive services through the purchase of service system, shall have been determined eligible and formally referred by the department. The department shall not make payment for services provided prior to the client's application, eligibility determination, and referral.

The following forms shall be used by the department to authorize services:

Form SS-1701-0, County Authorized Local Administrator Referral of Client for Purchase of Social Services

Form SS-2611-0, Placement Agreement: Child Placing or Child Caring Agency (Provider)

b. When a court orders foster care and the department has no responsibility for supervision or placement of the client, the department will pay the rate established by these rules for maintenance and service provided by the facility.

150.3(7) *Client fees.* Rules governing client fees may be found in 130.4(234).

150.3(8) *Billing procedures.* At the end of each month the provider agency will prepare an AA-2241-0, Purchase of Service Provider Invoice, for services provided by the agency during the month. At the end of each month, the provider agency shall prepare Form AA-2246, Title XIX Home and Community Based Purchase of Service Provider Invoice, for Title XIX waiver services provided by the agency for that month. Separate invoices shall be prepared for each county from which clients were referred, each service, and each funding source involved in payment. Complete invoices are then sent to the department local office responsible for the client for approval and forwarding for payment.

More frequent billings may be permitted on an exception basis with the written approval of the district and manager, purchase of service section.

a. Time limit for submitting vouchers, invoices, or claims. The time limit for submission of original vouchers, invoices, or claims shall be the same as specified in Iowa Code section 8.13(1).

b. Resubmittals of rejected claims. Valid claims which were originally submitted within the time limit specified in paragraph "*a*" but were rejected because of an error shall be resubmitted without regard to timeframes.

150.3(9) *Reviews of department actions.* A provider who is adversely affected by a department decision may request a review. A review request may cause the action to be stopped pending the outcome of the review, except in cases where it can be documented that to do so would be detrimental to the health and welfare of clients. The procedure for review is:

a. A written request for review shall be sent by the provider within ten (10) days of receipt of the decision in question to the project manager responsible for the contract. This request shall document the specific area in question and the remedy desired. A written response from the project manager shall be provided within ten (10) days.

b. When dissatisfied with the response, the provider shall, within ten (10) days, submit the original request, the response received, and any additional information desired to the district administrator. The district administrator will study the concerns and the action taken, and render a decision in writing within fourteen (14) days. A meeting with the provider may be held to clarify the situation.

c. If still dissatisfied, the provider may request a review within ten (10) days by the manager, purchase of service section. The request for review should include copies of material from paragraphs "*a*" and "*b*" above. The purchase of service manager will review the issues and positions of the parties involved and provide a written decision within fourteen (14) days. A meeting with the provider, project manager, and district administrator or designee may be held.

d. The provider may appeal this decision within ten (10) days to the commissioner of the department who will issue the final department decision within fourteen (14) days.

150.3(10) *Reviews of financial and statistical reports.* Authorized representatives of the department or state or federal audit personnel shall have the right, upon proper identification, to review, using generally accepted auditing procedures, the general financial records of a provider to determine if expenses reported to the department have been handled as required by 150.3(5). The reviews may be on the basis of an on-site visit to the provider, the provider's central accounting office, the office(s) of the provider's agent(s), a combination of these, or by mutual decision, other locations.

150.3(11) Rescinded, effective 3/1/87.

441—150.4(234) Iowa purchase of social services contract—individual providers.

150.4(1) *Individual child day care provider contract.* Rules governing individual child day care provider contracts may be found in 441—chapter 170.

150.4(2) *Individual in-home health-related provider contract.* Rules governing individual in-home health-related provider contracts may be found in 441—chapter 177.

441—150.5(234) Iowa purchase of administrative support.

150.5(1) *Initiation of contract proposal.*

a. Right to request a contract. All potential contractors have a right to request a contract.

b. Initial contact.

(1) Volunteer contract. The initial contact may be between the potential contractor and the district administrator of the district in which the individual or the contractor agency's headquarters is located or between the potential contractor and the director, state volunteer program in the central office of the department, who will communicate with the district.

(2) Other administrative support contract. The initial contact may be between the potential contractor and the district administrator of the district in which the individual or contractor organization's headquarters is located or between the potential contractor and the

manager, purchase of service section, who will communicate with the district.

c. Contract proposal development. When the district administrator determines that a contract is to be developed, a project manager will be assigned who will assist in contract development and processing. The project manager will assist the contractor in completing the contract proposal and fiscal information appropriate to the contract which will include documentation that the conditions of participation required below are met.

d. Contract proposal approval/rejection. Before a contract can be effective it shall be signed by the following individuals within the timeframes provided:

(1) Volunteer contract.

Individual contractor or authorized representative of the contractor agency.

District administrator within one (1) week from receipt.

Director, state volunteer program within thirty (30) days from receipt.

(2) Other administrative support contract.

Individual contractor or authorized representative of the contractor agency.

District administrator within one (1) week from receipt.

Manager, purchase of service section within two (2) weeks from receipt.

Director, division of management and budget within two (2) weeks from receipt.

The contractor shall be notified of delays in the process or of rejection of the proposal. This notification along with an explanation shall be in writing. The applicant has a right to have the decision reviewed by the director, state volunteer program, or manager, purchase of service section.

e. Criteria for rejection. The following criteria may cause a proposed contract to be rejected.

(1) The proposed activity is not needed by the department.

(2) No funds are available for the activity being proposed.

(3) The proposed contract does not meet applicable rules, regulations, or guidelines.

f. Contract effective date. When the agreed-upon contract conditions have been met, the effective date of the contract is the first day of an agreed-upon month following signature by the director, state volunteer program, or manager, purchase of service section.

150.5(2) *Contract administration.*

a. Contract management. During the contract period the assigned project manager will be the contact liaison between the department and the contractor and shall be contacted on all interpretations and problems related to the contract. The project manager will follow issues through to their resolution. The project manager will also monitor performance under the contract and will provide or arrange for technical assistance to improve the contractor's performance, if needed.

b. Contract amendments. The contract shall only be amended upon agreement of both parties. Amendments which affect the cost of providing the volunteer services must include reestablishment of amounts to be paid.

c. Contract renewal. A joint decision to pursue renewal of the contract must be made at least sixty (60) days prior to the expiration date. Each contract shall be evaluated and the results of the evaluation taken into consideration in the decision on renewal. This evaluation may involve use of applicable administrative portions of the Monitoring and Evaluation Review Guide, Form SS-1637-0, or other evaluation tools specified in the contract.

d. Contract termination. Causes for termination during the period of the contract are:

(1) Mutual agreement of the parties involved.

(2) Demonstration that sufficient funds are unavailable to continue the service(s) involved.

(3) Reporting required by the contract is not made.

(4) Failure to make financial, statistical, and program records available.

(5) Failure to abide by the provisions of the contract.

150.5(3) *Conditions of participation.* The contractor shall meet the following standards:

a. Licensure/approval/accreditation. The contractor shall have any license, approval, and third-party accreditation required by law, regulation, or administrative rules, or meet standards of operation required by state or federal regulation before the contract can be effective.

b. Signed contract. A contract can only be effective when signed by all parties required in 150.5(1)*"d."*

c. Civil rights laws. The contractors shall be in compliance with all federal, state, and local civil rights laws and regulations with respect to equal employment opportunity, or have a written work plan approved by the department to come into compliance.

d. Title VI compliance. The contractors shall be in compliance with Title VI of the 1964 Civil Rights Act, as amended, and all other federal, state, and local laws and regulations regarding the provision of services, or have a written plan approved by the department to come into compliance.

e. Section 504 compliance. The contractors shall be in compliance with all federal (Rehabilitation Act of 1973, as amended), state, and local Section 504 laws and regulations, or have a written work plan approved by the department to come into compliance.

f. Affirmative action. The contractors shall be in compliance with all federal, state, and local laws and regulations regarding affirmative action, or have a written work plan approved by the department to come into compliance.

g. Abuse reporting. The contractor shall have an approved policy and procedure for reporting abuse or neglect of children and dependent adult abuse.

h. Confidentiality. The contractor shall comply with all applicable federal and state laws and regulations on confidentiality including rules on confidentiality contained in 441—chapter 9.

i. Financial and statistical records. Each contractor of service shall maintain sufficient financial and statistical records, including program and census data, to document the validity of the reports submitted to the department.

(1) The records shall be available for review at any time during normal business hours by department personnel, the purchase of service fiscal consultant, state or federal audit personnel.

(2) These records shall be retained for a period of five (5) years after final payment.

j. Certification by public transit division. Each contractor who supplies transportation services as defined in Iowa Code section 601J.1, subsection 8, shall provide current documentation to the applicable district office of compliance with, or exemption from, public transit coordination requirements as found in Iowa Code chapter 601J and 820—[09,A] chapter 2 within ten (10) days of notification by the Iowa department of transportation, public transit division. Failure to cooperate in obtaining or providing the required documentation of compliance or exemption is grounds for denial or termination of the contract.

150.5(4) *Establishing amounts to be paid.* The amounts to be paid under purchase of administrative support contracts are actual approved expenses as negotiated in the contract. Approved items of cost are based on submission of a proposed budget listing those items necessary for provision of the volunteer coordination or technical assistance to be delivered. The costs of services, facilities, equipment and supplies are subject to the provisions of subrule 150.3(5)*"q,"* where applicable. At the termination of the contract a statement of actual expenses incurred shall be submitted by the contractor.

150.5(5) *Billing procedures.* At the end of each month or as otherwise provided in the contract, the contractor will prepare a billing on a Voucher 1 form of expenses for which reimbursement is permitted in the contract. The claim is to be sent to the district office of the department administering the contract for approval and forwarding for payment.

a. Time limit for submitting claims. The time limit for submission of original claims shall be the same as specified in Iowa Code section 8.13(1).

b. Resubmittals of rejected claims. Valid claims which were originally submitted within the time limit specified in paragraph *"a"* but were rejected because of an error must be resubmitted but without regard to time frames.

150.5(6) *Reviews of department actions.* A contractor who is adversely affected by a department decision may request a review. A review request may cause the action to be stopped pending the outcome of the review process except in cases where it can be documented that to do so would be detrimental to the health and welfare of clients. The procedure for review is:

a. A written request for review shall be sent by the provider within ten (10) days of receipt of the decision in question to the project manager responsible for the contract. This request shall document the specific area in question and the remedy desired. A written response from the project manager shall be provided within ten (10) days.

b. When dissatisfied with the response, the contractor shall, within ten (10) days, submit the original request, the response received, and any additional information desired to the district administrator. The district administrator will study the concerns, the action taken and render a decision in writing within fourteen (14) days. A meeting with the contractor may be held to clarify the situation.

c. If still dissatisfied, the contractor may request a review within ten (10) days by the manager, purchase of service section. The request for review should include copies of material from paragraphs *"a"* and *"b"* above. The manager, purchase of service section will review the issues and positions of the parties involved and provide a written decision within fourteen (14) days. A meeting with the contractor, project manager, and district administrator or designee may be held.

d. The contractor may appeal this decision within ten (10) days to the commissioner of the department who will issue the final department decision within fourteen (14) days.

150.5(7) *Reviews.* Authorized representatives of the department or state or federal audit personnel have the right upon proper identification to review, using generally accepted auditing procedures, the general financial records of a contractor to determine if expenses reported to the department have been handled as required by 150.5(4). The reviews may be on the basis of an on-site visit to the contractor, the contractor's central accounting office, the office(s) of the contractor's agent(s), a combination of these, or by mutual decision, other locations.

This rule is intended to implement Iowa Code sections 234.6 and 601J.5, subsection 3, paragraph *"c."*

441—150.6(234) County board of supervisors participation contract.

150.6(1) *Contract development.* The district administrator or designee will assist the county board of supervisors in completion of the contract documents.

a. Contract approval/rejection. Before a contract can be effective it shall be signed by the following individuals within the time frames provided:

(1) Chairperson, county board of supervisors.

(2) County director of the department's local office within one (1) week from receipt.

(3) District administrator within one (1) week from receipt.

(4) Manager, purchase of service section within two (2) weeks from receipt.

b. Contract effective date. The effective date of the contract is the first day of an agreed-upon month following signature by the manager, purchase of service section.

c. Contract ending date. The contract ending date shall be specified in the contract but shall not be later than June 30 following the effective date of the contract.

150.6(2) *Contract administration and renewal.*

a. Contract management. During the contract period the district administrator or designee will be the contract liaison between the department and the county board and shall be contacted on all interpretations and problems relating to the contract. When a problem involves a particular service or administrative support contract, the project manager for that contract shall be notified by the contract liaison.

b. Contract amendment. The contract shall be amended when:

(1) The county or department is unable to comply with the existing terms of the contract and contract termination is not being sought.

(2) The county or department agrees to make additional resources available under the contract.

c. Contract termination. The contract may be terminated early if any of the following conditions exist:

(1) County and department agree to terminate the contract early.

(2) County or department fails to comply with contract terms.

d. Contract renewal. A joint decision to pursue renewal of the contract shall be made at least forty-five (45) days prior to expiration of the current contract.

150.6(3) *Conditions of participation.* The contractor shall meet the following standards:

a. Signed contract. A contract can only be effective when signed by all parties required in subrule 150.6(1)*"a."*

b. Civil rights laws. The county shall be in compliance with all federal, state, and local civil rights laws and regulations with respect to equal employment opportunity, or have a written work plan approved by the department to come into compliance.

c. Title VI compliance. The contractors shall be in compliance with Title VI of the 1964 Civil Rights Act, as amended, and all other federal, state, and local laws and regulations regarding provision of services, or have a written plan approved by the department to come into compliance.

d. Section 504 compliance. The county shall be in compliance with all federal (Rehabilitation Act of 1973, as amended), state, and local Section 504 laws and regulations, or have a written work plan approved by the department to come into compliance.

e. Affirmative action. The county shall be in compliance with all federal, state, and local laws and regulations regarding affirmative action, or have a written work plan approved by the department to come into compliance.

f. Confidentiality. The county shall comply with all applicable federal and state laws and regulations on confidentiality including rules on confidentiality contained in 441—chapter 9.

g. Eligible clients. The department shall determine eligibility for all clients applying for services funded under this contract. This eligibility determination shall be made according to eligibility criteria specified in 130.3(234).

h. Purchase of service system. The county shall comply with the rules of the purchase of service system, including chapters 130 and 153.

150.6(4) *Payment for services and reimbursement.* Unless the county chooses to use the donated funds procedures found in 150.7(234), the county will assume responsibility for full payment of services or administrative support provided under this contract. If the county provides documentation of this payment, the department shall provide reimbursement of seventy-five percent (75%) for all payments made when all of the following conditions are met:

a. A county board of supervisors participation contract was in effect during the period in which the service or administrative support was provided.

b. The payment was made for services or administrative support provided under a valid purchase of social services or purchase of administrative support contract.

c. The county certified that funds were available for the provider or contractor and these funds have not been exhausted.

d. The county has provided documentation that payment has been made to the provider or contractor in accordance with Iowa Code section 8.13(1).

441—150.7(234) Iowa donation of funds contract.

150.7(1) *Contract development.* The district administrator or designee will assist the donor in completion of the contract document.

a. Contract approval/rejection. Before a contract can be effective it shall be signed by the following individuals within the time frames provided:

(1) Donor or authorized representative.
(2) County director of the department's local office within one (1) week from receipt.
(3) District administrator within one (1) week from receipt.
(4) Manager, purchase of service section within two (2) weeks from receipt.

b. Contract effective date. The contract is effective upon signature of the manager, purchase of service section.

c. Contract ending date. The contract ending date shall be specified in the contract but shall not be later than June 30 following the effective date of the contract.

150.7(2) *Contract administration.*

a. Contract management. During the contract period the district administrator or designee will be the contract liaison between the department and the donor and shall be contacted on all interpretations and problems relating to the contract. When a problem involves a particular service or administrative support contract, the project manager for that contract shall be notified by the liaison.

b. Contract amendment. The contract shall be amended if:

(1) The donor or department is unable to comply with the existing terms of the contract and contract termination is not being sought.

(2) The donor decides to provide additional funds and the department agrees to accept them.

c. Contract termination. The contract may be terminated early if any of the following conditions exist:

(1) Donor and department agree to terminate the contract early.

(2) Donor or department fails to comply with contract terms.

d. Contract renewal. A donation of funds contract cannot be renewed. A new contract shall be negotiated when the donor wishes to provide funds in subsequent periods.

150.7(3) *Conditions of participation.*

a. Signed contract. A contract shall only be effective when signed by all parties required in 150.7(1)*"a."*

b. Civil rights laws. The donors shall be in compliance with all federal, state, and local civil rights laws and regulations with respect to equal employment opportunity, or have a written work plan approved by the department to come into compliance.

c. Title VI compliance. The contractors shall be in compliance with Title VI of the 1964 Civil Rights Act, as amended, and all other federal, state, and local laws and regulations regarding the provision of services, or have a written plan approved by the department to come into compliance.

d. Section 504 compliance. The donors shall be in compliance with all federal (Rehabilitation Act of 1973, as amended), state, and local Section 504 laws and regulations or have a written work plan approved by the department to come into compliance.

e. Affirmative action. The donors shall be in compliance with all federal, state, and local laws and regulations regarding affirmative action, or have a written work plan approved by the department to come into compliance.

f. Confidentiality. The donor shall comply with all applicable federal and state laws and regulations on confidentiality including rules on confidentiality contained in chapter 9.

g. Eligibility clients/programs. Clients for whom services are purchased using funds donated through this contract must be determined eligible by the department using 441—chapters 130 and 153.

h. Purchase of service system. The donor shall follow the purchase of service system established by the department.

i. Restrictions on donated funds. The donor may specify the geographical area to be served and the service to be provided. When the donor is a public agency the provider/contractor may also be specified.

j. Transmittal of funds. Any funds made available under this contract are to be transmitted at least quarterly. When funds are for match purposes, they shall be transmitted in amounts sufficient to cover the anticipated quarterly expenditures.

k. Accounting. The department will supply a monthly report to the donor which provides an accounting of the use of the funds.

150.7(4) *Administrative control of funds.* Except for restrictions permitted by subrule 150.7(3)*"h,"* all donated funds shall be donated on an unrestricted basis for use as if they were appropriated funds and shall be under the administrative control of the department.

150.7(5) *Reversion of unspent funds.* No funds donated and transmitted to the department will be returned to the donor unless the donor is a public agency. Unspent funds will be returned to the public agency donor after the contract period upon submittal of a written request to the manager, purchase of service section.

441—150.8(234) Provider advisory committee. The provider advisory committee serves in an advisory capacity to the department, specifically the purchase of service section. The provider advisory committee will be composed of representatives from member provider associations as appointed by the respective associations; individual representatives from provider agencies having a purchase of service contract but not belonging to an association may become members of the provider advisory committee upon simple majority vote of the committee members at a meeting; a representative of the purchase of service fiscal consultant who will be a nonvoting member; department representatives from the purchase of service section, field operations, community programs, and operational planning who will be nonvoting members.

441—150.9(234) Public access to contracts. Subject to applicable federal and state laws and regulations on confidentiality including 441—chapter 9, all material submitted to the department of human services pursuant to this chapter shall be considered public information.

These rules are intended to implement Iowa Code section 234.6.

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CHAPTERS 151 and 152
Reserved.

CHAPTER 153
SOCIAL SERVICES BLOCK GRANT

[Prior to 7/1/83, Social Services(770), Ch 131]
[Previously appeared as Ch 131—renumbered IAB 2/29/84]
[Prior to 2/11/87, Human Services(498)]

441—153.1(234) Definitions.

"County administrative costs" include the rent, utilities, and other related costs the county must pay to maintain a county social services office. These costs are funded from state, federal and county sources.

"Direct services" means services provided by staff of the department of human services to clients. This includes the administrative support necessary to maintain and oversee services. Direct services are funded with state and federal dollars.

"District offices" means the department of human services' eight field offices which coordinate all service delivery. The eight district offices are located in Cedar Rapids, Council Bluffs, Davenport, Des Moines, Mason City, Ottumwa, Sioux City, and Waterloo.

"Local purchase services" means those services available in any county. These services may vary from county to county. Local sources provide a twenty-five percent (25%) match for these services and the state and federal governments provide seventy-five percent (75%).

"Protective day care" means day care provided to children to prevent or alleviate child abuse or neglect. This purchase service is available throughout the state. Protective day care is funded with federal funds.

"State purchase services" means those services the department purchases in every county statewide. State purchase services are funded with state and federal funds.

441—153.2(234) Development of pre-expenditure report.

153.2(1) The department of human services shall develop the social services block grant pre-expenditure report on an annual basis. The report shall be developed in accordance with the Code of Federal Regulations, Title 45, Part 96 as amended to July 6, 1982. The report shall describe the services to be funded, in what areas services are available and the amount of funding available. The plan shall also indicate the source of funding.

153.2(2) The department shall issue a proposed pre-expenditure report prior to publication of the final report. The proposed report shall be available for public review and comment in each district office of the Iowa department of human services during regular business hours for a two (2)-week period.

153.2(3) The time and scope of pulic review will be announced each year. The announcement will indicate the time the proposed report can be viewed. The department shall make this information available to the media, post signs in each district and local human services office and may publish ads in each district listing the time of review.

153.2(4) The department shall accept comments about the pre-expenditure report during the specified public review and comment period. The advisory committees, individuals or groups may submit written comments to the district or to the Program Support Unit, Bureau of Adult, Children and Family Services, Iowa Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114. Public hearings may be arranged by the district administrator at which time testimony will be accepted.

Comments concerning locally purchased services will be forwarded to the county boards of supervisors within the district.

153.2(5) The department shall consider the public comment when developing the final pre-expenditure report.

153.2(6) A copy of the final pre-expenditure report will be available in each district office.

441—153.3(234) Amendment to pre-expenditure report.

153.3(1) The pre-expenditure report may be amended throughout the year. The department may file an amendment changing the kind, scope or duration of a service. Decisions to

change a direct service, state purchase service or protective day care will be made by the department; decisions to change the kind or duration of local purchase services will be made by county boards of supervisors.

Prior to filing an amendment the department and the county boards of supervisors will evaluate available funds and the effect any change will have on clients.

153.3(2) An amendment in the pre-expenditure report will be posted in the district and local offices affected by the amendment at least thirty (30) days prior to the effective date of the change. However, in the event funding for the service has been exhausted, an amendment shall be posted immediately notifying the public that the service will no longer be available. The district administrator will, whenever possible, give advance notice of a service termination made necessary because funds have been exhausted. When a service is added or extended, an amendment may be posted immediately and a thirty (30)-day posting period is not required.

153.3(3) The advisory committees, individuals or groups may submit written comments to the district or to the Program Support Unit, Bureau of Adult, Children and Family Services, Iowa Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114. Comments regarding amendments to local purchase services should also be directed to the county boards of supervisors in the county in which a change is being made.

153.3(4) Nothing in this rule will supersede the requirement for notifying clients of adverse action as provided in 130.5(234).

This rule is intended to implement Iowa Code section 234.6(6).

441—153.4(234) Service availability.

153.4(1) A client shall apply for services in the appropriate office of the Iowa department of human services.

a. The department shall determine eligibility according to 130.3(234).

b. The department shall develop a case plan to monitor the client's progress toward achieving goals as identified in 130.7(234).

153.4(2) An eligible client shall receive a service for which the client is eligible, subject to the provisions of chapter 130, when the service is listed in the geographic area in which the client resides. The geographic area for local purchase service is the county; the geographic area for direct, state purchase and protective day care is the state.

153.4(3) Funding for any service listed in the county's section of the pre-expenditure report is available for any eligible client who resides in that county, subject to the provisions of the report. The county of legal settlement shall provide the twenty-five percent (25%) match.

441—153.5(234) Allocation of block grant funds.

153.5(1) The amount of social services block grant dollars allocated to direct services shall be determined by estimating the cost of performing each direct service function. These estimates shall consider costs for direct staff salaries, administrative salaries and support costs, including data processing costs, rent, utilities, and similar items. The department will follow a cost allocation plan for determining the appropriate costs of the department's central office to be funded with block grant money.

153.5(2) The amount of funding allocated to state purchase services shall be based on the need for the service and on previous use of that service. Each district will receive state purchase funds.

a. The available family planning dollars will be divided among the districts at fifty percent (50%) of the funds on the basis of poverty population and fifty percent (50%) of the funds on the basis of the previous year's allocation.

b. The available foster care dollars are allocated among the districts based on previous utilization.

c. Administrative support dollars which are used for volunteer services are divided equally among the eight (8) districts.

153.5(3) The amount of funding available for local purchase services shall be based on previous use of these funds.

a. The amount of funding available for local purchase services shall then be divided among the districts based on the following formula: Fifty percent (50%) of the available funds will be divided on the basis of poverty population and fifty percent (50%) of the funds will be divided on the basis of the previous year's allocation.

b. Funds allocated to each district will be distributed to counties within the district by the district administrator using the following formula: Fifty percent (50%) based on the poverty population within a county and fifty percent (50%) based on the county's previous allocation.

153.5(4) The amount of funding available for protective day care is based on each district's projection of need.

153.5(5) The amount of funding available for county administration is determined by examining past utilization.

153.5(6) State supplemental day care funds shall be used to supplement and shall not be used to replace federal social services block grant funds or local purchase state funds. Such funds are allocated according to the formula in subrule 153.5(3). In order to receive supplemental funds, a county's local purchase allocation amount for child day care must be at least equal to the county's expenditure for child day care services in the fiscal year ending June 30, 1983. The department shall reallocate funds from counties which do not qualify for or have not utilized the funds to counties which do qualify for the funds.

This rule is intended to implement Iowa Code section 234.6 and 1985 Iowa Acts, chapter 259, sections 9 and 15.

441—153.6(234) Local purchase planning process.

153.6(1) The county board of supervisors in each county will determine what services they wish to provide with the social services block grant funds allocated to the county. The county board of supervisors may purchase services from other counties. They will choose services from a list provided by the department. The county boards of supervisors will determine how much funding they wish to place in each service and for what period of time during the pre-expenditure report year they wish to fund the services. However, in making these decisions, the supervisors must consider and comply with all provisions of these rules and chapter 130.

In making decisions about which services to fund, the supervisors may consult with consumers, providers, social services block grant advisory committee members and other interested parties.

153.6(2) The county shall sign Form SS-1504-0, County Board of Supervisor's Participation Agreement, describing the responsibilities of the county and the department. This agreement shall include the county's assertion that the county will provide a twenty-five percent (25%) match for all local purchase services.

Counties which use funds provided by 1985 Iowa Acts, chapter 259, section 9 and chapter 268, Division V, section 9, for the purchase of child care services are not required to provide a local match for the state supplemental child day care services fund or for up to four percent (4%) of the federal social services block grant funds and the state purchase of local services funds.

153.6(3) In no event shall a county claim more state and federal funds than are allocated to it.

153.6(4) The district administrator will notify the affected county boards of supervisors when available block grant funding for a service has been exhausted.

153.6(5) The district administrator shall maintain a system for recording the encumbrance of local purchase funds. In monitoring the balance of funds in a county, the district administrator shall consider the number of clients in a service, the number of clients expected to use a service and the cost of those services. The district administrator will then determine if the remaining funds for a service within a county are sufficient; if not, the district administrator will so notify the affected county board of supervisors.

In the event funds are depleted and the county board of supervisors does not wish to transfer federal and state block grant funds available to the county from another service, the district administrator shall terminate the service.

153.6(6) When, based on encumbrance records maintained by the district administrator, a county does not appear to require all funds allocated to it, the district administrator may transfer funds to other counties in the district. At least thirty (30) days prior to a transfer, the district administrator will present to the county board of supervisors the reasons the district administrator believes the county will have surplus funds. The county board of supervisors will have ten (10) days after receipt of the notice to respond. The county board of supervisors may present evidence agreeing or disagreeing with the reasons provided by the district administrator. The district administrator shall consider the evidence before transferring funds.

The district administrator shall have the authority to transfer funds.

This rule is intended to implement Iowa Code section 234.6 and 1985 Iowa Acts, chapter 259, sections 9 and 15 and chapter 268, Division V, section 9.

441—153.7(234) Advisory committees. The department of human services shall maintain and utilize the state and district advisory committees established for providing recommendations on the allocation and uses of federal social services block grant funds during the fiscal year ending June 30. Persons interested in participating in the district advisory committees may contact the district administrator who will select the members. The statewide advisory committee shall consist of members from each of the district advisory committees. Two (2) members shall represent each of the sixteen (16) social services district offices as constituted prior to March 1982. Costs for meals, lodging, and travel for the state level advisory committee members (or designated alternates attending in the place of members) shall be paid by the department of human services at the same rate as state employees traveling within the state. For a one-day meeting, only one overnight expenditure will be allowed.

These rules are intended to implement Iowa Code section 234.6.

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CHAPTER 154
CHILD CARE CENTER FINANCIAL ASSISTANCE

[Prior to 7/1/83, Social Services(770), Ch 133]
[Previously appeared as Ch 133—renumbered IAB 2/29/84]
[Prior to 2/11/87, Human Services(498)]

441—154.1(237A) Definitions.

"Day care consultant" means the department staff person assigned consultative and center licensing responsibilities in a district.

"Department" means the Iowa department of human services.

"Licensed facility" means a child care center or preschool licensed, or in the process of being licensed, under Iowa Code chapter 237A and IAC 441—chapter 109.

"Organization or agency" means an organization, agency, or association whose primary purpose is to serve licensed or registered facilities, and which has some evidence of legal entity status, such as a certificate of incorporation, 501.(c)(3) tax exemption, or articles of partnership.

"Registered facility" means a family day care home or group day care home registered under Iowa Code chapter 237A and IAC 441—chapter 110.

This rule is intended to implement Iowa Code sections 237A.13 to 237A.18 and 234.11.

441—154.2(237A) Limitations. Approval for child care center financial assistance is subject to the following limitations:

154.2(1) Assistance to remodel or improve physical facilities is limited to only that part of the physical facility that houses the child day care program in a licensed or registered facility, or that part of the physical facility that houses the organization or agency. A contractor's estimate with a breakdown of labor, parts, and equipment shall be attached to the application. Total remodeling costs exceeding five hundred dollars ($500) shall have two (2) estimates.

154.2(2) Assistance to acquire recreational or educational equipment or supplies may be approved to licensed or registered facility applicants, and to organization or agency applicants for a lending library for their member child care facilities.

a. For licensed child care centers only, equipment may include large kitchen equipment such as stoves, refrigerators, and dishwashers.

b. Approval will not be given for:

(1) Small kitchen equipment such as pots, pans, mixers, ladles, and similar items.

(2) Citizen band radios, polaroid cameras, and similar equipment.

(3) Paper goods such as cups, napkins, toilet paper, paper towels, and similar items.

c. Equipment or supplies shall be listed individually by catalog or name of supplier, and include the catalog number, when available, description, and cost.

d. Freight charges are limited to no more than ten percent (10%) of the total merchandise cost.

e. Requests for approval of transportation equipment or repairs must be accompanied by documentation of compliance with, or exemption from public transit coordination requirements as found in Iowa Code chapter 601J and department of transportation rules 820—[09,A] chapter 2. Failure to provide documentation will result in denial of the requests.

154.2(3) Assistance for program and staff development may be approved to licensed or registered facility applicants, and to organization or agency applicants for their member child care facilities.

a. Approved costs may include:

(1) Books and materials as resource information for staff.

(2) Tuition costs for courses related to program operations.

(3) Transportation and child care related to specific training approval under this subrule.

b. Approval will not be given for subscriptions to magazines, organization memberships, or other costs normally a part of the center's ongoing operaton or budget.

This rule is intended to implement Iowa Code sections 237A.13 to 237A.18 and 234.11.

441—154.3(237A) Applicant responsibilities.

154.3(1) Rescinded, effective 9/1/84.

154.3(2) All applicants shall complete the application, SS-1101-3, Child Care Center Financial Assistance Application, and submit it to the county board of social welfare before or on the deadline date established by the board.

154.3(3) Licensed or registered applicants shall maintain records of the number of children of low-income families served and the verification of how those numbers were established for a period of five (5) years.

154.3(4) The application shall be signed by the chairperson of the board or the owner or operator of the child care facility, or of the organization or agency.

154.3(5) An applicant receiving funds approved under these rules shall:

a. Use the funds only as prescribed in the application and approved by the county board of social welfare.

b. Return any funds to the department that remain unused or unencumbered twelve (12) months from the date of approval by the county board of social welfare.

c. Submit a final financial report of expenditures to the department within twelve (12) months from the date of approval by the county board of social welfare.

d. Submit a progress report on use of the funds when requested by the department or by the county board of social welfare.

e. Keep on file a copy of the final report and all corresponding invoices and receipts for five (5) years.

154.3(6) An organization or agency shall furnish some evidence of legal status, such as a certificate of incorporation, 501.(c)(3) tax exemption, or article of partnership, with the Child Care Center Financial Assistance Application, Form SS-1101-3.

This rule is intended to implement Iowa Code sections 237A.13 to 237A.18 and 234.11.

441—154.4(237A) County board of social welfare responsibilities.

154.4(1) The deadline date established by the board shall be between August 1 and January 31 of the fiscal year for which the funds are appropriated.

154.4(2) The board shall submit two (2) copies of all approved applications to the district office of the department within thirty (30) days following the deadline established by the board.

154.4(3) The board shall submit two (2) copies of all approved applications for reallocated funds to the district office of the department by June 15 of the fiscal year for which the funds are appropriated.

This rule is intended to implement Iowa Code sections 237A.14 and 237A.17.

441—154.5(237A) The right to appeal. Any organization or agency which serves day care facilities, and any licensed or registered facility that has been aggrieved by a decision of a county board under Iowa Code section 237A.17 and this chapter may request a fair hearing under the provisions of IAC 441—chapter 7.

154.5(1) The county board of social welfare shall direct the local office of the department to send the appropriate notice of the action taken by the county board to all applicants according to subrule 7.1(14).

154.5(2) No disbursements will be made to any facility or organization following issue of notice for a period of ten (10) calendar days. If an appeal is filed within the ten (10) days, all disbursements will be held pending a final decision on the appeal. All facilities involved will be notified if an appeal is filed and given the opportunity to be included as a party in the appeal.

This rule is intended to implement Iowa Code section 237A.15.

441—154.6(237A) Return of equipment. The county board of social welfare may require the return of any movable equipment purchased within the last three (3) years with funds awarded under this chapter when a child care facility's registration or license is terminated. Returned equipment shall be redistributed to other child care facilities.

This rule is intended to implement Iowa Code section 237A.16.

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CHAPTER 155
CHILD ABUSE PREVENTION PROGRAM

[Prior to 7/1/83, Social Services(770), Ch 146]
[Previously appeared as Ch 146—renumbered IAB 2/29/84]
[Prior to 2/11/87, Human Services(498)]

441—155.1(235A) Definitions.

"Advisory council" or *"council"* means the child abuse prevention program advisory council created by 1982 Iowa Acts, chapter 1259.

"Child abuse prevention program" or *"program"* means that program established by 1982 Iowa Acts, chapter 1259. Use of either term in the context of this chapter refers to the program as a whole rather than individual projects funded under the program.

"Commissioner" means the commissioner of the department of human services.

"Community based volunteer coalition or council" or *"community council"* means that group of persons who, by consensus of a community's human service providers, represent that community's interests in the area of prevention of child abuse and neglect and who serve in the representational capacity without compensation. The consensus of the community's human service providers may be demonstrated through letters of support or similar documentation.

"Contractor" means the single agency or organization with which the department contracts for administration of the child abuse prevention program funds.

"Department" means the Iowa department of human services.

"Fiscal year" means the twelve (12)-month period for which child abuse prevention program funds are appropriated.

"Grantees" or *"projects"* are terms used in this chapter to refer to the individual projects funded under the child abuse prevention program as approved by the advisory council.

441—155.2(235A) Child abuse prevention program administration. In any year in which the legislature appropriates funds for the child abuse prevention program, the department shall contract with a single agency or organization to administer the appropriated funds and to study and evaluate community based prevention projects and educational programs for the problems of families and children in accordance with the provisions of 1982 Iowa Acts, chapter 1259, and of these rules. Any grants, gifts or bequests to the department which are specifically designated by their source for use in the child abuse prevention program shall be administered in the same manner as funds appropriated for use in the program.

155.2(1) Eligibility for the program administration contract is limited to nonprofit statewide agencies or organizations which make maximum use of voluntary administrative services.

155.2(2) Agencies or organizations wishing to apply for the program administration contract shall submit a proposal to the department two (2) months prior to the commencement of the fiscal year. Contract proposals shall contain the following information:

a. A description of the organization or agency requesting the contract including a table of organization and articles of incorporation and a description of other services provided by the organization or agency.

b. A list of the amount and source of current funding and other funding applied for, including the current status of the applications, and the fiscal year budget, for the agency or organization.

c. A description of the proposed plan for administration of the program including:

(1) An action plan which details the use of paid and volunteer staff.

(2) A fiscal year budget showing proposed use of child abuse prevention program funds.

(3) A timetable for implementing the program.

(4) A description of the method to be used to determine whether the goals of the program, as defined by these rules, are being met.

(5) A description of methods to be used to evaluate the success of prevention projects.

(6) A description of proposed methods of coordinating the child abuse prevention program with services of other existing agencies and organizations.

d. Letters of support, especially from relevant professionals.

155.2(3) The commissioner or the commissioner's designee shall rank all proposals submitted for the program administration contract based upon the three (3) factors listed below in this subrule. The contract shall be awarded to the agency or organization whose proposal receives the highest total ranking when the rankings for all three (3) factors are added together. The factors which shall be considered in selecting the contractor are:

a. The general structure of the applicant agency or organization including but not limited to how well the program goals as established by the advisory council can be met, the stability of the applicant, the overall quality in comparison to other proposals offered.

b. The plan for using the funds and the ability of the applicant to administer the program.

c. The ability of the department to coordinate with other existing services.

155.2(4) The department shall execute a contract with the contractor for the amount of funds to be used by the contractor for program administration. The contract period shall not extend beyond the fiscal year for which the funds were appropriated. Contractor expenditures will be reimbursed monthly by the state following submission of a Voucher 1 which details expenditures. The contractor shall submit with the Voucher 1 receipts for all expenditures other than salary expenses.

155.2(5) The contractor shall keep statistical records of services provided, clients served, grants awarded, funds expended, and any other records required by the department as specified in the contract.

155.2(6) The contractor shall supply the department with quarterly progress reports that include but are not limited to the following information:

a. Grants awarded, funds expended, and progress of projects.

b. A compilation of the status of activities shown in the timetable for implementing the program.

c. Reasons for any delay in completion of planned activities.

d. Specific action plan for the following quarter.

e. A compilation of statistical records that the contractor is required to keep by subrule 155.2(5).

f. Any general comments on the progress of the program.

155.2(7) With the assistance of the advisory council, the department shall evaluate the contractor's program administration at least two (2) months prior to the end of the contract year to determine how well the goals of the program are being met.

155.2(8) The contractor may terminate the contract at any time during the contract period by giving thirty (30) days' notice to the department. The department may terminate the contract upon ten (10) days' notice when the contractor fails to comply with the contract stipulations, standards, or conditions. The department may terminate the contract at any time during the contract period by giving thirty (30) days' notice to the contractor.

441—155.3(235A) Project eligibility. In any year in which the department contracts with an agency or organization for the administration of child abuse prevention program funds, the contractor shall award the amount of funds specified in the contract for the purposes of matching federal funds to purchase services relating to community based programs for the prevention of child abuse and neglect and of funding the establishment or expansion of community based prevention projects or educational programs for the prevention of child abuse and neglect. Funds for the program or projects shall be applied for and received by community based volunteer coalition or councils.

441—155.4(235A) Proposals. The contractor shall widely disseminate a request for project proposals which fully describes the child abuse prevention program and procedures for applying for program funds. Community councils wishing to apply for funding shall submit a pro-

ject proposal to the contractor within thirty (30) days of the date of the request for proposals. Project proposals shall contain the following information:

155.4(1) A brief narrative describing the community council requesting funding.

155.4(2) A brief description of other services provided by the community council.

155.4(3) A statement of the unmet needs to be addressed by the services, including supporting statistics when available.

155.4(4) A description of the prevention services for which funding is being requested which includes but is not limited to the following:

a. The target population to be served.

b. Any service eligibility requirements which will be established by the council.

c. The anticipated source of referrals for the services.

d. The anticipated number of clients to be served.

e. A statement of the anticipated measurable outcomes of the service provision and the means of determining these outcomes.

f. Job descriptions and requirements for any new positions.

155.4(5) The proposal fiscal year budget for the services, other sources of income, plans for future funding of the service, including written commitments when possible, and any anticipated request for funding beyond the first year.

155.4(6) The applicant's statement of cooperation and coordination with existing service programs to avoid duplications and share resources. Similar statements from the existing service programs.

155.4(7) Letters of local support, especially from relevant professionals.

441—155.5(235A) Selection of project proposals.

155.5(1) All proposals for funding shall be reviewed by the contractor who shall make recommendations to the advisory council on project selection.

155.5(2) The advisory council shall make the final decision with respect to the approval of project grants.

155.5(3) The following factors will be considered in the contractor's recommendations and in the selection of proposals:

a. The demonstrated need for the service in the geographical area served.

b. The community support demonstrated and the cooperation and coordination with existing agencies.

c. The efforts of the project to secure other funding.

d. The general project structure including but not limited to, how well goals can be met, how realistic the objectives are, the administration of funds, stability of the organization, the overall quality in comparison to other proposals and services offered.

e. The plan for using the funds. The funds may be used only for purposes set forth in 441—155.3(235A).

155.5(4) The applicant may be requested to modify the proposal through the contracting process.

441—155.6(235A) Project contracts. The contractor shall execute a contract with each grantee for the amount of funds awarded to each project. The total amount of funds awarded shall not exceed the amount appropriated for the program less the administrative costs of the contractor. The contract period shall not extend beyond the fiscal year for which the funds were appropriated. The grantee shall submit a Voucher 1 to the contractor by the fifteenth day of the month following the month in which grantee expenses have been incurred. On the Voucher 1, the grantee shall enter the total monthly expenditures for each approved line item established in the project contract. With the Voucher 1 the grantee shall submit receipts for all expenses other than salary expenses. The contractor shall approve reimbursement of all expenses appropriately incurred by the grantee pursuant to the grantee's contract. Approved expenditures of the grantee will be reimbursed by the state monthly.

441—155.7(235A) Project records. Grantees shall keep statistical records of services provided and any other records as required by the contractor and specified in the project contract.

441—155.8(235A) Quarterly project progress reports. All grantees shall supply the contractor with quarterly progress reports that include but are not limited to the following information.

155.8(1) The grant dollars expended as they relate to each line item in the budget.

155.8(2) A list of activities completed on schedule.

155.8(3) Any activities not completed on schedule and the reason for the delay.

155.8(4) The number of clients served and the services provided.

155.8(5) The major goals for the next quarter.

155.8(6) Any general comments on the progress of the project.

441—155.9(235A) Evaluation. The contractor and department shall evaluate the grantee's project at least once per year at least two (2) months prior to the end of the contract year to determine how well the purposes and goals of the project are being met. Funds are to be spent to meet project goals as provided in the contract.

441—155.10(235A) Termination. The project contract may be terminated by the grantee at any time during the contract period by giving thirty (30) days' notice to the contractor. The contractor may terminate a project contract upon ten (10) days' notice when the grantee or any of its subcontractors fails to comply with the grant award stipulations, standards, or conditions. Within forty-five (45) days of the termination, the grantee shall supply the contractor with a financial statement detailing all costs up to the effective date of the termination.

441—155.11(235A) Advisory council. The advisory council shall establish specific program goals each fiscal year in which program funds are appropriated. The department shall consult with the advisory council in evaluating the contractor's program administration. The contractor shall obtain approval of the advisory council, pursuant to 441—155.5(235A) prior to awarding project grants. The contractor shall consult with the advisory council in evaluating the effectiveness of funded projects in meeting project goals.

155.11(1) The advisory council shall report at least once each fiscal year to the council on human services as to the operation of the child abuse prevention program. The report shall include all pertinent information regarding the effectiveness of the program projects, the competence of program administration and any recommendations regarding changes in administrative rules governing the program.

155.11(2) Reserved.

These rules are intended to implement Iowa Code chapter 235A.

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CHAPTER 156
PAYMENTS FOR FOSTER CARE AND FOSTER PARENT TRAINING

[Prior to 7/1/83, Social Services(770), Ch 137]
[Previously appeared as Ch 137—renumbered IAB 2/29/84]
[Prior to 2/11/87, Human Services(498)]

441—156.1(234,252C) Definitions.

"ADC schedule of living costs" means the aid to dependent children schedule of living costs as defined in subrule 41.8(2).

"Adjusted cost of foster care" means the cost of foster care to the department minus any unearned income of the child in foster care, and minus any parental liability of the noncustodial parent.

"Adjusted monthly net income" means the monthly net income minus the aid to dependent children schedule of living costs for the family size.

"Cost of foster care" means the service and maintenance costs of foster care. The service and maintenance costs are established in 441—chapter 156, computed pursuant to 441—chapter 150, or established by other states. The cost of foster care shall not include the salary, benefits or expenses of department staff except that the service cost of foster family care or independent living services for purposes of computing parental liability shall be two hundred and fifty dollars ($250) per month, whether the service is provided directly by the department or purchased from a private agency. When utilizing this average monthly cost for purchased foster family service or independent living services results in liability being collected in excess of the adjusted cost of foster care, the excess funds shall be placed in the child's escrow account.

"Custodial parent" means the parent(s) who has legal custody of the child.

"Department" means the Iowa department of human services.

"District administrator" means the department employee or designee responsible for managing department offices and personnel within a district and for implementing policies and procedures of the department.

"Director" means the director of the child support recovery unit of the department or the director's designee.

"Earned income" means income in the form of a salary, wages, tips, bonuses, commissions earned as an employee, income from job corps or profit from self-employment.

"Escrow account" means an interest bearing account in a bank or savings and loan association which is maintained by the department in the name of a particular child.

"Foster care" means substitute care furnished on a twenty-four (24)-hour-a-day basis to an eligible child, in a licensed or approved facility, by a person or agency other than the child's parent or guardian, but does not include care provided in a family home through an informal arrangement for a period of less than twenty (20) days. Child foster care shall include but is not limited to the provision of food, lodging, training, education, supervision and health care.

"Foster family care" means foster care provided in a single family living unit licensed by the department according to 441—chapter 113 or licensed or approved by the state in which it is located.

"Gross monthly income" means the income of the custodial parent(s) and family members as discussed in subrule 156.3(3) or the income of the noncustodial parent. For self-employed individuals, including farmers, gross income means the sum of the taxable income, as shown on previous year's Federal Income Tax Form 1040, and deferred compensation.

"Hardship allowance" means any of the following expenses:

Medical expenses in excess of three percent (3%) of the monthly net income not covered by health insurance.

Shelter costs in excess of thirty percent (30%) of the monthly net income.

Utility costs, not including the cost of a telephone, in excess of fifteen percent (15%) of the monthly net income.

The cost of court-ordered day care or child support for a child outside the home and not in foster care.

Anticipated expenses of the family to visit the child, participate in the child's treatment program or attend family counseling sessions if the district administrator approves the expenses as reasonable and beneficial to the child's treatment.

Any other documented expenses which the district administrator determines to be:

(1) Necessary to maintain the family or family dwelling.

(2) Beyond the usual expenses involved in maintaining a family or dwelling.

(3) A financial hardship for the family preventing them from meeting these expenses, maintaining the family and family dwelling and paying the full amount of parental liability.

"Income" means earned and unearned income.

"Mentally retarded" means a child meeting the definition in Iowa Code section 222.2(5).

"Monthly net income" means the gross monthly income of a parent(s) minus the deductions allowed in Iowa Code section 252C.10, subsection 1.

"Noncustodial parent" means the parent who does not have legal custody of the child.

"Parent" means the biological or adoptive parent of the child.

"Parental liability" means financial responsibility of a parent for the cost of a child's foster care.

"Personal allowance" means the ADC schedule of living costs for the areas of food, clothing, personal care and supplies, medicine chest items and communications as defined in subrule 41.8(2).

"Schedule of support guidelines" means the schedule of minimum support guidelines in Iowa Code section 252C.10. For monthly net income of four hundred dollars ($400) or less, the percentages for four hundred and one dollars ($401) shall be used.

"Stepparent" means an individual who is not a parent but who is married to a child's parent. A stepparent remains a stepparent until the parent and the stepparent have a legal separation or dissolution or the stepparent adopts the child.

"Unearned income" means any income which is not earned income.

This rule is intended to implement Iowa Code sections 234.39 and 252C.10.

441—156.2(252C) Foster care recovery. The department shall recover the cost of foster care provided by the department pursuant to the rules in this chapter.

156.2(1) Funds shall be applied to the cost of foster care in the following order and each source exhausted before utilizing the next funding source:

a. Unearned income of the child.

b. Parental liability of the noncustodial parent.

c. Parental liability of custodial parent(s).

156.2(2) The department shall serve as payee to receive the child's unearned income. When a parent or guardian is not available or is unwilling to do so, the department shall be responsible for applying for benefits on behalf of a child placed in the care of the department. Until the department becomes payee, the payee shall forward benefits to the department. For voluntary foster care placements of children age eighteen (18) and over, the child is the payee for the unearned income. The child shall forward these benefits, up to the actual cost of foster care, to the department.

156.2(3) The custodial parent shall assign child support payments to the department on Form CS-3104-0, Assignment of Support Payments-Foster Care.

156.2(4) Unearned income of a child and parental liability of the noncustodial parent shall be placed in an account from whence it shall be applied toward the cost of the child's current foster care and the remainder placed in an escrow account.

156.2(5) When a child has funds in escrow these funds may be used by the department to meet the current needs of the child not covered by the foster care payments and not prohibited by the source of the funds.

156.2(6) When the child leaves foster care, funds in escrow shall be paid to the custodial parent(s) or guardian or to the child when the child has attained the age of majority, unless a guardian has been appointed.

This rule is intended to implement Iowa Code section 252C.10.

441—156.3(252C) Computation and assessment of parental liability. The department shall compute and assess parental liability for voluntary foster care placements according to the rules in this chapter and Iowa Code chapter 252C. Parental liability for court-ordered foster care provided by the department shall be assessed by the court pursuant to Iowa Code section 234.39. Upon request the department shall provide the court with information regarding what the department's liability assessment would be. The liability of parents to a child in foster care shall be based on the parent's income. Parents are responsible for reporting changes in family income and family size to the department.

156.3(1) Unless otherwise ordered by the court or limited by law, the following shall apply to the assessment of parental liability:

a. The liability of a noncustodial parent is equal to the parent's child support responsibility and shall be computed by applying the schedule of support guidelines to that parent's monthly net income. If the noncustodial parent's liability is for more than one child, the column related to the number of children shall be used and the amount of parental liability shall be divided equally among the children, unless otherwise ordered by the court. If the liability has not already been ordered by the court, the district administrator may recommend to the court, for court-ordered placements, or to the director, for voluntary placements, that the assessed liability be less than the computed liability by subtracting a hardship allowance(s) from the parent's monthly net income before applying the schedule of support guidelines to the income.

b. The liability of a custodial parent(s) shall be computed by applying the schedule of support guidelines to that parent's(s') adjusted monthly net income, except that liability shall not exceed the adjusted cost of foster care. If the custodial parent(s) has more than one child in foster care the column related to the number of children shall be used and the amount of parental liability shall be divided equally among the children, unless otherwise ordered by the court. The district administrator may recommend to the court, for court-ordered placements, or to the director, for voluntary placements, that the assessed liability be less than the computed liability by substracting a hardship allowance(s) from the parent's(s') adjusted monthly net income before applying the schedule of support guidelines to the income.

c. The liability of parents who have a divorce, separation, or dissolution and who both retain legal custody of the child in foster care shall be computed according to subrule 156.3(1), paragraph "b" except that the combined liability of the two parents shall not exceed the adjusted cost of foster care. If the combined liability would exceed the adjusted cost of foster care, liability shall be prorated so that the sum of the liabilities equals the adjusted cost of foster care.

d. If a noncustodial parent cannot be located and has not been court-ordered to pay child support or parental liability for the child in foster care, the maximum liability of the custodial parent shall equal the cost of foster care minus the unearned income of the child in foster care.

e. The parents of a child who was adopted under the subsidized adoptions program shall not have any parental liability for the child unless the parents have a divorce, separation or dissolution in which case the noncustodial parent is assessed liability according to the rules in this chapter.

f. A custodial parent who is receiving aid to dependent children or supplemental-security-income-benefits shall not have any parental liability.

g. Parents shall not be assessed parental liability for a child age eighteen (18) and over unless otherwise ordered by the court. If a court order for child support extends beyond the child's eighteenth birthday, the parent receiving the support shall continue to assign the support to the department as long as the child is in foster care being paid by the department.

h. The noncustodial parent of a mentally retarded child shall be assessed liability according to the rules in this chapter except that no more than the personal allowance limit in Iowa Code section 222.78 shall be applied to the cost of foster care. Any liability in excess of the personal allowance limit shall be placed in an escrow account. The liability of the custodial parent(s) of a mentally retarded child shall be limited to that portion of the personal allowance limit not covered by the liability of the noncustodial parent.

i. Termination of parental rights eliminates parental liability for the child.

j. An individual who has been appointed as the guardian of a child but has not adopted the child shall not be assessed parental liability for the child.

k. Parental liability shall exist beginning the month the child enters foster care placement through the month the child leaves foster care.

156.3(2) The following shall be used to determine the number of family members for the custodial parent(s):

a. Parents of the child in the home are counted.

b. A dependent child in the home may be counted if the child is claimed by the person as a dependent for income tax purposes and the unearned income of the child is counted as family income. If the income is not counted, the child shall not be included when determining family size.

c. A dependent adult may be counted as a family member if the parent is supporting the person and claiming the person as a dependent for income tax purposes. Any income paid by this person for support to the parent, including unearned income for which the parent is the payee, shall be counted as income to the parents when computing parental liability.

d. A stepparent shall be counted.

e. The child in foster care is counted.

156.3(3) The following shall be used to determine the gross monthly income for the custodial parent(s):

a. All income of parents.

b. The income of the stepparent.

c. The unearned income of a dependent child in the home if the child is counted as a family member.

d. If a dependent adult is counted as a family member, any income paid by this person for support to the parents, including unearned income for which the parent is the payee, shall be counted.

156.3(4) The following apply to parents who fail to cooperate or to provide necessary information:

a. If parents fail to provide the necessary information to compute their parental liability, they shall be assessed a parental liability equal to the cost of foster care minus unearned income of the child in foster care.

b. If parents are the payees for the child's unearned income and fail to comply with subrule 156.2(2), the liability of the parents shall be equal to the cost of the foster care.

c. When parents have a separation, divorce or dissolution the following shall apply:

(1) When the noncustodial parent fails to provide the necessary information to compute parental liability, the person shall be assessed a liability equal to the cost of foster care minus the unearned income of the child in foster care.

(2) When the custodial parent fails to assign child support payments to the department, the person shall be assessed liability equal to the cost of foster care minus unearned income of the child in foster care.

(3) When the custodial parent fails to provide the necessary information to compute the person's liability, the custodial parent shall be assessed liability equal to the adjusted cost of foster care.

(4) When the noncustodial parent and custodial parent fail to provide the necessary information to compute parental liability, each parent shall be assessed a liability equal to one-half (½) the cost of foster care minus one-half (½) the unearned income of the child in foster care.

d. The parent shall be allowed thirty (30) days from the date of request to comply with the department's request for information or assignment of child support payments before being considered as failing to provide the information or to assign the child support payments. If the necessary information or the assignment of child support payments is provided later than thirty (30) days after the request for information or assignment, the liability of the parent(s) shall be revised effective the month following the provision of information or assignment of support.

e. When the department discovers that the parent(s) has understated the amount of income, the department shall calculate the amount of underpayment of liability and request the court,

for court-ordered cases, or the director, for voluntary placements, to modify the order to require the parent(s) to pay the additional amount.

f. The department shall continue to collect unpaid parental liability after the child leaves foster care.

g. The department shall terminate a voluntary placement agreement on the basis of continued failure to cooperate to assign child support payments, to pay parental liability or to forward unearned income of the child to the department.

This rule is intended to implement Iowa Code section 252C.10

441—156.4(252C) Redetermination of liability.

156.4(1) The department's determination of parental liability shall be reviewed at least every twelve (12) months or whenever one of the following occurs:

a. The cost of foster care changes.

b. The worker becomes aware that the family income changes.

c. The worker becomes aware that the household size changes.

d. The worker becomes aware that allowable deductions have changed.

e. The child's unearned income changes.

156.4(2) If the department's review indicates that the amount of parental liability would change, the department shall initiate action to change the amount of the existing order effective the month following the month of change.

This rule is intended to implement Iowa Code section 252C.10.

441—156.5(252C) Voluntary payment. Nothing in these rules shall preclude a parent from voluntarily paying more than the assessed amount, not to exceed the actual cost of foster care minus the unearned income of the child.

This rule is intended to implement Iowa Code section 252C.10

441—156.6(234) Rate of payment for foster family care.

156.6(1) A monthly payment for care in a foster family home licensed in Iowa shall be made to the operator of the foster care facility based on the following schedule.

Age of child	Monthly rate
0 through 5	$159
6 through 11	201
12 through 15	244
16 and over	255

156.6(2) A monthly payment for care in a foster family home licensed or approved in another state shall be made to the operator of the foster care facility based on the rate schedule in effect in that state.

156.6(3) When foster family care is used to provide respite care under the Title XIX waiver program as defined in rule 441—83.1(249), the rate of payment shall be that set forth in subrule 156.11(2). The foster family shall submit a bill for care provided on Form AA-2246, Title XIX Home and Community Based Purchase of Service Provider Invoice at the end of each month.

This rule is intended to implement Iowa Code section 234.38 and 1985 Iowa Acts, chapter 259, sections 10 and 15.

441—156.7(234) Specialized care.

156.7(1) When a child has a special need for care and supervision because of a physical, mental, emotional, social, or educational handicap which requires activities on the part of the foster parent above and beyond those normally required in caring for a child, an additional amount may be authorized upon recommendation of the social worker and with the approval of the local administrator. The amount shall be based on the severity of the child's handicap and the degree of extra effort required on the part of the foster parents.

The additional payment may be fifty dollars ($50) per month for a mild handicap requiring a moderate degree of extra effort by the foster parents, seventy-one dollars ($71) per month for a moderate handicap requiring a substantial extra effort by the foster parents, or ninety dollars ($90) per month for a severe handicap requiring almost constant extra effort on the part of the foster parents.

156.7(2) When a child is receiving care in a licensed residential or intermediate care facility, and is not eligible for supplemental security income or state supplementary assistance, the department will pay for the care in accordance with departmental standards for such care.

This rule is intended to implement Iowa Code section 234.38 and 1985 Iowa Acts, chapter 259, sections 10 and 15.

441—156.8(234) Special needs.

156.8(1) *Clothing allowance.* When in the judgment of the worker clothing is needed at the initial placement of a child in a foster family home, an allowance may be authorized, not to exceed two hundred fifty dollars ($250), to purchase clothing.

A second clothing allowance, not to exceed one hundred dollars ($100), may be approved by the district administrator when needed for the replacement of lost clothing or because of unusual growth or weight change.

Claims for these allowances shall be submitted to the department on Form SS-2615, Foster Care Clothing Allowance, with receipts for the expenditures. Claims shall be submitted within ninety (90) days after the expenditure is made.

156.8(2) *Independent living.* When a child is initially placed in independent living, the district administrator may authorize an allowance not to exceed two hundred fifty dollars ($250) if the child does not have sufficient resources to cover initial costs.

156.8(3) *Medical care.* When a child in foster care needs medical care or examinations which are not covered by the medical assistance program and no other source of payment is available, the cost may be paid from foster care funds with the approval of the district administrator. Claims shall be submitted to the department on a claim order/claim voucher within ninety (90) days after the service is provided.

156.8(4) *Transportation for medical care.* When a child in foster family care has expenses for transportation to receive medical care which cannot be covered by the medical assistance program, the expenses may be paid from foster care funds, with the approval of the district administrator. The claim for all the expenses shall be submitted to the department on a claim order/claim voucher within ninety (90) days after the trip. This payment shall not duplicate or supplement payment through the medical assistance program. The expenses may include the actual cost of meals, parking, child care, lodging, passenger fare, or mileage at the rate granted state employees.

156.8(5) *Funeral expense.* When a child under the guardianship of the department dies, the department will pay funeral expenses not covered by the child's resources, insurance or other death benefits, the child's legal parents, or the child's county of legal settlement, not to exceed $650.

The total cost of the funeral and the goods and services included in the total cost shall be the same as defined in subrules 56.3(3) and 56.3(4).

The claim shall be submitted by the funeral director to the department on a claim order/claim voucher and shall be approved by the district administrator. Claims shall be submited within ninety (90) days after the child's death.

441—156.9(234) Rate of payment for foster group care.

156.9(1) Public and private foster group care facilities licensed or approved in the state of Iowa shall not be reimbursed in excess of $66.15 per child per day. Rate setting procedures established in 441—150.3(234) shall be followed.

156.9(2) The payment rate for public or private agency group care licensed or approved in another state shall be either the payment rate established by the other state, subject to the limitations in effect in that state, or the agency's unit cost as determined by the department's

accounting and reporting procedure for purchase of service contracts, subject to the limitations in 156.9(1). For states in which local agencies negotiate individual contracts with each facility, the state payment rate shall be the payment rate established by the local contracting agency in that area of the state. The rate determination method shall be at the option of the agency. Children who were placed in out-of-state group care prior to May 1, 1983 at payment rates higher than those allowed by this rule may continue to be paid at the higher rate for the duration of those placements.

156.9(3) The department will retain the option to utilize facilities based upon the needs of the children, programs available, and comparability of costs.

This rule is intended to implement Iowa Code sections 234.6 and 234.38 and 1985 Iowa Acts, chapter 259, sections 10 and 15.

441—156.10(234) Reserve bed days.

156.10(1) Payment for reserve bed days in foster group care facilities shall be made only upon the written approval and at the option of the department through the use of Form SS-1107-0, Request for Reserve Bed Payment. The payment may be made up to a maximum of fourteen (14) consecutive days and shall require the facility to accept the child back into the facility during the period of reserve bed approval and the day after. Failure to report an absence within the time limits specified below may be grounds for denial of payment for reserve bed days. The following policies shall apply:

a. For a planned absence, the provider shall notify the worker at least one week in advance of the planned absence by completing Form SS-1107-0.

b. For an unplanned absence the provider shall notify the worker by telephone within twenty-four (24) hours of the unplanned absence and by completing Form SS-1107-0 within three (3) working days.

c. For absences requested by the department, Form SS-1107-0 shall be completed by the provider to indicate agreement to reserve the bed within three (3) working days of being informed of the absence by the department and submitted to the department for processing.

d. A reserve bed day payment is intended to maintain bed space for a child during temporary absence from the facility. Each reserve bed day payment shall be evaluated individually by the worker and supervisor to ensure the payment is to meet the needs of the child and not for the convenience of the worker or agency.

e. Approval for reserve bed days shall be canceled and payments returned if the facility refuses to accept the child back into the facility during the period of reserve bed day approval except when the department and the facility agree that the return would not be in the child's best interest. In these cases the approval of reserved bed payment shall be canceled effective the day after the joint decision not to return the child to the facility.

f. Approval for reserve bed days shall be canceled effective the day after a decision is made by the court or parent in a voluntary placement not to return the child to the facility.

g. Unless an exception is made by the district administrator, the department shall not approve a reserve bed payment which would result in the department paying for more than fourteen (14) consecutive reserve bed days. In no case shall reserve bed day payment be approved for more than thirty (30) consecutive days.

h. Any reserve bed day payment request which would result in the department paying for more than thirty (30) days in a six (6)-month period requires approval of the district administrator.

156.10(2) When a child in a foster family home is out of the home for two (2) weeks or less with the knowledge of and consent of the service worker, no reduction shall be made in the payment. When the child is out of the home for more than two (2) weeks, the payment shall be discontinued.

156.10(3) Reserve bed day payments in juvenile shelter care facilities shall be approved only when the child requires hospitalization. Policies in subrule 156.10(1) shall apply except that no more than three (3) reserve bed days shall be approved during any thirty (30)-day period.

This rule is intended to implement Iowa Code section 234.6.

441—156.11(234) Emergency care. Each district shall have facilities to provide twenty-four (24)-hour emergency foster care. Emergency care shall not exceed thirty (30) days in one six (6)-month period, and the facility's policy may limit placement to less than thirty (30) days. The following options shall be available for funding emergency care for each district:

156.11(1) Foster family homes designated to maintain beds for emergency care shall be paid according to rule 156.6(234). In order to assure that there are adequate emergency beds available, designated homes may be paid a subsidy of fifty dollars ($50) per month per bed. No emergency care facility shall be approved for more than five (5) beds under subsidy.

156.11(2) Foster family homes may be designated to provide emergency care and may be paid on a daily rate per child when a child is placed. Rates for children shall be:

Age of Child	Rate
Age 0-11	$10 per day ($300 per month)
Age 12 and over	$17 per day ($510 per month)

156.11(3) Public and private juvenile shelter care facilities approved or licensed in Iowa shall be paid according to rule 156.9(234), except that these facilities shall have the option of being paid a monthly sum which is calculated by multiplying the agency's unit cost (as defined in 156.9(1) by the utilization factor. The utilization factor shall be either the average department of human services monthly utilization for the last twelve (12) month period or the department of human services projected utilization, whichever is greater. 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 (6)-month utilization factor on a six (6)-month basis. The six (6)-month utilization factor is computed by multiplying the utilization factor by six (6) months. The six (6)-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.

b. The total reimbursement to the agency shall not exceed the agency's allowable costs as defined in 150.3(5). Agencies shall refund any payments which have been made in excess of the agencies' allowable costs.

This rule is intended to implement Iowa Code section 234.38 and 1983 Iowa Acts, chapter 201, sections 5 and 12.

441—156.12(234) Independent living. When a child, at least age sixteen and one-half (16½) but under age eighteen (18) under the legal custody or guardianship of the department is living in an independent living situation, an amount not to exceed the rate which would be paid for the child in a foster family home, may be paid to the child or another payee, other than a department employee, for the child's care.

441—156.13(234) Excessive rates. When the amount paid for a child in foster care prior to July 1, 1974, is higher than the rates set forth in these rules, such higher amount may be paid until the child's placement in that home is terminated.

441—156.14(234,252C) Voluntary placements. When placement is made on a voluntary basis the parent or guardian shall complete and sign Form SS-2604, Voluntary Placement Agreement.

441—156.15(234) Child's earnings. Earned income of a child who is not in an independent living arrangement and who is a full-time student or engaged in an educational or training program shall be reported to the department and its use shall be a part of a plan for service, but the income shall not be used towards the cost of the child's care as established by the department. When the earned income of children in independent living arrangements or of other children exceeds the foster care standard, the income in excess of the standard shall be applied to meet the cost of the child's care. When the income of the child exceeds twice the cost of maintenance, the child shall be discontinued from foster care.

441—156.16(234) Trust funds and investments.

156.16(1) When the child is a beneficiary of a trust and the proceeds therefrom are not currently available, or are not sufficient to meet the child's needs, the worker shall assist the child in having a petition presented to the court requesting release of funds to help meet current requirements. When the child and responsible adult cooperate in necessary action to obtain a ruling of the court, income shall not be considered available until the decision of the court has been rendered and implemented. When the child and responsible adult do not cooperate in the action necessary to obtain a ruling of the court, the trust fund or investments shall be considered as available to meet the child's needs immediately. When the child or responsible adult does not cooperate within ninety (90) days in making the income available the maintenance payment shall be terminated.

156.16(2) The Iowa department of human services shall be payee for income from any trust funds or investments unless limited by the trust.

156.16(3) Savings accounts from any income and proceeds from the liquidation of securities shall be placed in the child's account maintained by the department and any amount in excess of $1,500 shall be applied towards cost of the child's maintenance.

This rule is intended to implement Iowa Code section 234.39.

441—156.17(234) Adoptive homes. Payment for foster care for a child placed in an adoptive home will only be made when the placement is made in anticipation of a subsidized adoption. The payment shall be limited to the amount anticipated for subsidy, and shall terminate when the adoption decree is granted.

This rule is intended to implement Iowa Code section 234.38.

441—156.18(237) Reimbursement for foster parent training.

156.18(1) *Preservice training.* Each prospective foster parent and provisionally licensed foster parent who attends an approved preservice training program shall be reimbursed by the department (in accordance with department policies and procedures for employee reimbursement) for the cost in excess of three dollars ($3) of meals, mileage and lodging incurred while attending the preservice training. Each prospective and provisional foster family shall also be reimbursed for one-half (½) of the actual cost of child-care expenses.

156.18(2) *Required orientation.* No expense reimbursement is provided for orientation.

156.18(3) *Procedure for reimbursement.* Claims for expense reimbursement pursuant to this rule shall be submitted to the department on Form IFAS #A-1, "Claim Order/Claim Voucher," with receipts for the child care and lodging expenses. Claims shall be submitted within ninety (90) days after the expenditure is made. Late claims shall be denied payment.

This rule is intended to implement Iowa Code section 237.5A.

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CHAPTER 157
PURCHASE OF ADOPTION SERVICES
[Prior to 2/11/87, Human Services(498)]

PREAMBLE

These rules define which children are eligible for the purchase of adoption services, what components may be purchased, what the components of service must contain, and contracting and payment provisions.

441—157.1(600) Purchase of adoption services. Adoption services may be purchased from a licensed child placing agency, hereinafter referred to as the provider agency, for an eligible special needs child or sibling group.

441—157.2(600) Eligibility. Children eligible for purchased adoption services are special needs children and sibling groups who are legally free for adoption and under the guardianship of the department of human services and who are in one of the following groups:

157.2(1) Children in foster care supervised by a private agency whose foster parents wish to adopt the child.

157.2(2) Children registered on the Iowa Adoption Exchange and photolisted in Iowa's Waiting Children, who are currently in foster care.

157.2(3) Children registered on the Mid-American Exchange and the National Exchange for whom no family can be found and who are currently in foster care.

441—157.3(600) Components of adoption services. Any or all of the following components of adoption services may be purchased based on the needs of each child or sibling group:

157.3(1) *Recruitment.* Recruitment includes securing a prospective adoptive family to meet the needs of a specific special needs child or sibling group.

157.3(2) *Preplacement services.* Preplacement services include: The preplacement investigation of the prospective adoptive family; the preparation of the child for adoption; the preparation of the adoptive family for placement of a child; and the preplacement visits in the adoptive home.

The investigation shall include an assessment of the family's ability to parent a special needs child or sibling group as well as the following:

a. Motivation for adoption.

b. Family and extended family's attitude toward accepting an adoptive child and their plan for discussing adoption with the child.

c. The attitude towards adoption of significant other people involved with the family.

d. Emotional stability, physical health, and compatibility of adoptive parent(s).

e. Ability to cope with problems, stress, frustrations, crises, and loss.

f. Medical or health conditions which would affect the applicant's ability to parent a child.

g. Ability to provide for the child's physical and emotional needs.

h. Adjustment of biological children and previously adopted children, if any, including school reports.

i. Feelings about parenting a child not born to them.

j. Capacity to give and receive affection.

k. Types of children whose needs the family can meet.

l. Statements from references.

m. Attitudes of the adoptive applicants towards the birth parent(s) and the birth parent's(s') reason(s) for placing the child for adoption.

n. Recommendations for number, age, sex, characteristics, and special needs of children best served by this family.

The preplacement investigation shall include at least one face-to-face interview with each member of the household and at least one home visit.

The provider agency shall prepare a written assessment of the adoptive home including a recommendation as to whether the family is an appropriate placement for a special needs child

or sibling group.

157.3(3) *Placement.* Placement includes the placement of a child, or children, in an adoptive home for the purpose of adoption.

157.3(4) *Postplacement.* Postplacement services include the supervision and a minimum of three (3) adoptive home visits to assess the placement. Postplacement supervision should assess the placement in the following areas:

a. Integration and interaction of the child with the family.

b. Change in the family functioning which may be due to the child's placement.

c. Social, emotional and school adjustment of the child.

d. Changes that have occurred in the family since placement of the child.

e. Family's method of dealing with testing behaviors.

A minimum of three (3) postplacement supervisory reports shall be completed, one thirty (30) days after placement, one ninety (90) days after placement and a final report prior to finalization with recommendations regarding the finalization of the adoption.

441—157.4(600) Contracting requirements. The contracting parties, the department of human services and the provider agency, shall complete Form 470-1979, Purchase of Adoption Services Contract. Components to be provided each child or sibling group and the amount to be paid for each component will be stated in the contract.

The time limit for placement of a child in an adoptive home and completion of components of service is two (2) years from the effective date of the purchase contract. Time frames will be stated in the contract.

441—157.5(600) Payment. The department will make payment in two (2) lump sums payable at the completion of the preplacement component and after the court grants an adoptive decree. If an adoptive placement disrupts, the department shall make payment for that portion of the components completed. The provider agency shall submit request for payment on Form 075-0297, Claim Order/Claim Voucher.

These rules are intended to implement Iowa Code chapter 600 and 1985 Iowa Acts, chapter 259, sections 3 and 15.

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CHAPTERS 158 and 159
Reserved

CHAPTER 160
DOMESTIC ABUSE

[Prior to 7/1/83, Social Services(770), Ch 160]
[Prior to 2/11/87, Human Services(498)]

441—160.1(236) Definitions.

"Domestic abuse" means committing assault as defined in Iowa Code section 708.1 under either of the following circumstances:

1. The assault is between family or household members who resided together at the time of the assault; or

2. The assault is between separated spouses not residing together at the time of the assault.

"Emergency shelter services" include, but are not limited to, secure crisis shelters or housing for victims of domestic abuse.

"Family or household members" means spouses, persons cohabiting, parents or other persons related by consanguinity or affinity, except children under eighteen (18).

"Support services" include, but are not limited to, legal services, counseling services, transportation services, child care services, advocacy services, and twenty-four (24)-hour information and referral services.

441—160.2(68GA,ch8) Program eligibility. In any year in which the legislature appropriates funds, the department shall provide start-up moneys for certain selected programs to provide emergency shelter services and support services to victims of domestic abuse. The amount of money provided shall be contingent upon the amount of funds available.

160.2(1) Any program qualifying for and approved for state funds for more than one year may receive up to sixty-seven percent (67%) of those funds the second year and thirty-three percent (33%) of those funds the third. Second and third year funding shall be based on twelve (12) months of operation. When a program has received funding for less than twelve (12) months, twelve (12) months of operation will be determined by multiplying the average monthly funds by twelve (12). Each program shall be supported entirely by other funds after thirty-six (36) months of operations.

160.2(2) A grantee may apply for waiver of the three (3)-year limitation of grant awards or the annual percentage reductions specified herein. Application for the waiver shall be in writing and submitted as part of a grant application. Waiver applications shall include:

a. Substantiation of the need for waivered funds;

b. Documentation of efforts made to secure the needed funds and the results of these efforts; and

c. A description of the probable impact on the grantees program if a waiver is not granted.

160.2(3) The advisory committee shall review all waiver requests and make recommendations thereon to the commissioner. The recommendations shall be based upon determination of need for waivered funds and the availability of program funds.

160.2(4) Programs shall include the provision of emergency shelter, crisis intervention, and assistance with obtaining long-term solutions to client problems.

160.2(5) Funds may be used for a new program or for the addition of a new service to an existing program. Programs applying for second or third year funding may use the funds to maintain the existing program.

160.2(6) Funds may be used for minor improvements to make the shelter safe, such as locks, but not for the purchase of land, buildings, or furnishings.

160.2(7) Only nonprofit organizations or governmental units are eligible.

441—160.3(68GA,ch8) Proposals. Agencies wishing to apply for funding shall submit a funding proposal to the department. Proposals shall contain the following information:

160.3(1) A narrative of the program.

160.3(2) A brief description of services the agency provides to persons other than victims of domestic abuse.

160.3(3) A description of services to victims of domestic abuse, including referral sources, relationship with community resources, and the community education program.

160.3(4) A list of the amount and source of current funding and other funding applied for, including the current status of the applications, and the current twelve (12)-month budget for the domestic abuse program.

160.3(5) A description of the services for which departmental funding is requested, including referral sources, relationship with community resources, and the community education program; and the following:

a. The twelve (12)-month budget for the services.

b. Job descriptions, table of organization, and articles of incorporation.

c. A list of the goals for the project and how they will be accomplished, including the number of persons served or anticipated to be served.

d. A description of the evaluation component that will determine whether the goals have been reached.

e. The timetable for implementing the project.

f. A description of the security measures for the shelter and voluntary homes.

This rule is intended to implement Acts of the Sixty-ninth General Assembly, chapter 7, section 3.

441—160.4(68GA,ch8) Selection of proposals. All proposals received will be evaluated by the advisory committee and the commissioner to determine which agencies will receive grants. Agencies submitting applications for continuing programs which have demonstrated both a need and the ability to effectively operate the program will be given first consideration for funds. The commissioner shall make the final decision with respect to the expenditure of funds.

160.4(1) The following factors will be considered in selecting proposals.

a. The demonstrated need for the service in the program area served.

b. The community support demonstrated and the relationship to existing agencies.

c. The efforts of the program to secure other funding.

d. The general program structure including, but not limited to, how well goals can be met, how realistic the objectives are, the administration of funds, stability of the organization, the overall quality in comparison to other proposals and services offered.

e. The plan for using the funds. The funds may be used only for salaries, fringe benefits, contract services, job-related in-state travel, and operational expenses.

160.4(2) The applicant may be requested to modify the proposal through the contracting process.

441—160.5(68GA,ch8) Contracts. The contract period shall not exceed twelve (12) months and may be less than twelve (12) months for contracts signed during the fiscal year. Expenditures will be reimbursed monthly pursuant to regular reimbursement procedures of the state of Iowa.

441—160.6(68GA,ch8) Records. Grantees shall keep statistical records of services provided and any other records as required by the department and specified in the contract.

441—160.7(68GA,ch8) Advisory committee. The department shall consult with persons knowledgeable in the fields of health, law enforcement, social services, and domestic abuse. The advisory committee shall review the proposals and make recommendations on the distribution of funds to the commissioner. The final decision to fund projects rests with the commissioner.

441—160.8(68GA,ch8) Evaluation. The department shall evaluate the grantee's program at least once per year at least two (2) months prior to the end of the contract year to determine how well the purposes and goals of the program are being met. Funds are to be spent to meet program goals as provided in the contract.

441—160.9(70GA,ch201) Termination. The contract may be terminated by the grantee at any time during contract period by giving thirty (30) days' notice to the department. Currently funded programs may apply for funds remaining after a contract terminates.

160.9(1) The department may terminate a contract upon ten (10) days' notice when the grantee or any of its subcontractors fails to comply with the grant award stipulations, standards, or conditions.

160.9(2) Within forty-five (45) days of the termination, the grantee shall supply the department with a financial statement detailing all costs up to the effective date of the termination.

160.9(3) The department shall administer the funds for this program contingent upon their availability. If the department lacks the funds necessary to fulfill its fiscal responsibility under this program, the contracts shall be terminated or renegotiated. The department may terminate any agreement to distribute domestic abuse funds by giving the contractor thirty (30) days' notice of its intent to terminate.

441—160.10 Rescinded, effective January 1, 1986.

These rules are intended to implement 1983 Iowa Acts, chapter 201.

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CHAPTER 161
DISPLACED HOMEMAKER

[Prior to 7/1/83, Social Services(770), Ch 161]
[Prior to 2/11/87, Human Services(498)]

441—161.1(241) Definition.

"Displaced homemaker" means an individual who meets all of the following criteria:

1. Has worked principally in the home providing unpaid household services for family members.
2. Is not gainfully employed.
3. Has had, or would apparently have, difficulty finding appropriate paid employment.
4. Has been dependent on the income of another family member but is no longer supported by that income, is or has been dependent on government assistance, or is supported as the parent of a child who is sixteen (16) or seventeen (17) years of age.

441—161.2(241) Program eligibility. In any year in which the legislature appropriates funds, the department shall provide start-up moneys for certain selected programs to provide services to displaced homemakers. The amount of money provided shall be contingent upon the amount of funds available.

161.2(1) Any program qualifying for and approved for state funds for more than one year may receive up to sixty-seven percent (67%) of those funds the second year and thirty-three percent (33%) of those funds the third. Second and third year funding shall be based on twelve (12) months of operations. When a program has been receiving funding for less than twelve (12) months, twelve (12) months of operations will be determined by multiplying the average monthly funds by twelve (12). Each program shall be supported entirely by other funds after thirty-six (36) months of operation.

161.2(2) A grantee may apply for waiver of the three (3)-year limitation of grant awards or the annual percentage reductions specified herein. Application for the waiver shall be in writing and submitted as part of a grant application. Waiver application shall include:

a. Substantiation of the need for waivered funds;

b. Documentation of efforts made to secure the needed funds and the results of such efforts; and

c. A description of the probable impact on the grantee program if a waiver is not granted.

161.2(3) The advisory board shall review all waiver requests and make recommendations thereon to the commissioner. The recommendations shall be based upon determination of need for waivered funds and the availability of program funds.

161.2(4) Programs shall include the provision of intake, assessment, planning, and personal counseling services.

161.2(5) Funds may be used for a new program or for the addition of a new service to an existing program, but not for the payment of tuition. Programs applying for second or third year funding may use the funds to maintain the existing program.

161.2(6) Only nonprofit organizations or governmental units are eligible.

441—161.3(241) Proposals. Agencies wishing to apply for funding shall submit a funding proposal to the department. Proposals shall contain all the information specified in Iowa Code section 241.2, plus the following information.

161.3(1) A brief description of services the agency provides to persons other than displaced homemakers.

161.3(2) A list of the amount and source of current funding and other funding applied for, including the current status of the applications, and the current twelve (12)-month budget for the displaced homemaker program.

161.3(3) A description of the services for which departmental funding is requested, and the following:

a. Job descriptions, table of organization, and articles of incorporation.

b. A list of the goals for the project and how they will be accomplished, including the number of persons served or anticipated to be served.

c. A description of the evaluation component that will determine whether the goals have been reached.

d. The timetable for implementing the project.

441—161.4(241) Selection of proposals. All proposals received will be evaluated by the advisory board and the commissioner to determine which agencies will receive grants. Agencies submitting applications for continuing programs which have demonstrated both a need and the ability to effectively operate the program will be given first consideration for funds. The commissioner shall make the final decision with respect to the expenditure of funds.

161.4(1) The following factors will be considered in selecting proposals.

a. The demonstrated need for the service in the program area serviced.

b. The community support demonstrated and the relationship to existing agencies.

c. The efforts of the program to secure other funding.

d. The general program structure including, but not limited to, how well goals can be met, how realistic the objectives are, the administration of funds, stability of the organization, the overall quality in comparison to other proposals, and services offered.

e. The plan for using the funds. The funds may be used only for salaries, fringe benefits, contract services, job-related in-state travel, and operational expenses.

161.4(2) The applicant may be requested to modify the proposal through the contracting process.

441—161.5(241) Contracts. The contract period shall not exceed twelve (12) months and may be less than twelve (12) months for contracts signed during the fiscal year. Expenditures will be reimbursed monthly pursuant to regular reimbursement procedures of the state of Iowa.

441—161.6(241) Records. Grantees shall keep statistical records of services provided and any other records as required by the department and specified in the contract.

441—161.7(241) Evaluation. The department shall evaluate the grantee's program at least once per year at least two (2) months prior to the end of the contract year to determine how well the purposes and goals of the program are being met. Funds are to be spent to meet program goals as provided in the contract.

441—161.8(241) Termination. The contract may be terminated by the grantee at any time during the contract period by giving thirty (30) days' notice to the department. Currently funded programs may apply for funds remaining after a contract terminates.

161.8(1) The department may terminate a contract upon ten (10) days' notice when the grantee or any of its subcontractors fails to comply with the grant award stipulations, standards, or conditions.

161.8(2) Within forty-five (45) days of the termination, the grantee shall supply the department with a financial statement detailing all costs up to the effective date of the termination.

161.8(3) The department shall administer the funds for this program contingent upon their availability. If the department lacks the funds necessary to fulfill its fiscal responsibility under this program, the contracts shall be terminated or renegotiated. The department may terminate any agreement to distribute displaced homemaker funds by giving the contractor thirty (30) days' notice of its intent to terminate.

These rules are intended to implement Iowa Code section 241.2.

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CHAPTER 162
GAMBLERS ASSISTANCE PROGRAM
[Prior to 2/11/87, Human Services(498)]

PREAMBLE

These rules define and structure the department of human services' gamblers assistance program. This grant program is designed to make services available to persons who are experiencing difficulty as a result of gambling losses and to concerned persons who may also be affected, whether directly or indirectly. The program is also designed to promote awareness of gamblers anonymous and similar assistance programs.

Included within this grant program are therapy services on an outpatient basis to compulsive gamblers and concerned person(s) and dissemination of information to the public on compulsive gambling, gamblers anonymous and the gamblers assistance toll-free hotline.

These rules also document eligibility criteria, application procedures, time limits, and provisions for the termination of services to providers.

441—162.1(99E) Definitions.

"Allocation of funds" means the selection of the types of projects or services to be funded and the amount of anticipated funding to be available for those services or projects for the fiscal year. Apportioned objects of expenditure shall initially be public information, outpatient service, administration, and special projects.

"Applicant" means an incorporated agency or a unit of local government agency who makes application for a grant.

"Chemical substance" means alcohol, wine, spirits, and beer as defined in Iowa Code section 123.3 and drugs as defined in Iowa Code section 203A.2, subsection 3, which when improperly used could result in chemical dependency.

"Commissioner" means the commissioner of the department of human services or successor agency.

"Compulsive gambler" is a person who meets the following criteria:

a. The person is chronically and progressively unable to resist impulses to gamble.

b. Gambling compromises, disrupts, or damages family, personal, and vocational pursuits, as indicated by at least three of the following:

(1) Arrest for forgery, fraud, embezzlement, or tax evasion due to attempts to obtain money for gambling.

(2) Default on debts or other financial responsibilities.

(3) Disrupted family or spouse relationship due to gambling.

(4) Borrowing of money from illegal sources (loan sharks).

(5) Inability to account for loss of money or to produce evidence of winning money, if this is claimed.

(6) Loss of work due to absenteeism in order to pursue gambling activity.

(7) Necessity for another person to provide money to relieve a desperate financial situation.

c. The gambling is not due to antisocial personality disorder.

"Concerned persons" means persons who are in need of services as a result of a compulsive gambler having an effect on their lives or who are willing to involve themselves in the treatment of a compulsive gambler. The concerned person may be either a relative or nonrelative of the compulsive gambler.

"Department" means the Iowa department of human services.

"Mental health professional" means a person who meets all of the following conditions:

a. Holds at least a bachelor's degree in a mental health field, including, but not limited to, psychology, counseling and guidance, nursing, or social work; or, is a doctor of medicine (M.D.) or doctor of osteopathic medicine and surgery (D.O.).

b. Holds a current Iowa license when required by the Iowa licensure law.

c. Has at least two (2) years of postdegree experience, supervised by a mental health professional, in assessing mental health problems and needs of individuals and in providing appropriate

mental health services for those individuals.

"Peer counselor" is a person who is a reformed or recovered compulsive gambler who provides treatment services in an agency setting.

"Provider" means an applicant who has received a grant.

"Public information" means the dissemination of information to citizens on compulsive gambling through print, electronic, and other means. Also included is the gamblers assistance hotline.

A *"resident"* of Iowa means a person who is living in Iowa voluntarily with the intention of making that person's home there and not for a temporary purpose.

"Substance abuse professional" means an individual who, by virtue of education, training or experience, provides treatment to a person to allow an opportunity for the person to explore problems related directly or indirectly to substance abuse or dependence. The substance abuse professional must be capable of assessing the psychosocial history of a substance abuser to determine the treatment plan most appropriate for the client.

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

441—162.2(99E) Availability of grants or demonstration funds. In any year in which funds are available for gamblers assistance service, the commissioner shall award grants to eligible applicants for projects to promote public awareness or for selected outpatient services to compulsive gamblers and concerned persons who are residents of Iowa. The amount of the money granted shall be contingent upon the funds available. The allocation of funds shall be in compliance with legislation and approved by the council on human services. Moneys may be targeted to certain geographical areas.

441—162.3(99E) Eligible applicants.

162.3(1) All applicants must be an incorporated agency or a unit of local government.

162.3(2) All applicants shall have staff who have attended training on the treatment of compulsive gamblers offered by the department or by the Taylor Manor Gambling Treatment program in Ellicott City, Maryland.

162.3(3) All applicants that provide outpatient services must have one of the following professionals on staff to provide the services:

a. Mental health professional.

b. Substance abuse professional.

c. Peer counselor if supervised by mental health or substance abuse professional.

441—162.4(99E) Request for applications for grants or demonstration funds.

162.4(1) *Grant cycle.* The commissioner will announce through public notice the opening of an application period. Applicants for grants shall submit first a letter of intent and then a grant proposal by the deadlines specified in the announcement.

162.4(2) *Letter of intent.* Letters of intent should be no longer than three (3) typed pages and must:

a. Identify the population to be served.

b. State the need, problem, or issue the project would address.

c. Identify the service(s) to be provided.

d. Identify the objectives to be accomplished.

e. Estimate the project budget.

f. Identify the geographical area to be served.

Only letters of intent received by the deadline specified in the public notice will be considered. Applicants will be given a written acknowledgment of the letter of intent which includes comments on the project outlined in the letter.

162.4(3) *Grant proposal.* Applicants shall submit the proposal to the director on Form 470-2127, Application for Gamblers Assistance Program. If a proposal does not contain the information specified in the application package or if it is late it will be disapproved. Proposals shall contain the following information:

a. General agency information.
b. Specific project information.
c. A summary of the project.
d. An introductory section outlining agency background information.
e. A problem statement outlining the need or problem to be addressed.
f. Project goals and objectives.
g. Project methodology.
h. An evaluation plan.
i. A plan for future project funding.
j. A line item budget.
k. Assurances.
l. Letters of support.

441—162.5(99E) Selection of applications. All applications received meeting the minimum criteria above will be evaluated by the commissioner to determine who will receive the grants. Those applicants who have demonstrated both a need and the ability to effectively operate the program will be given first consideration for funds. Notification will be sent to all applicants.

162.5(1) The following factors will be considered in selecting applications:

a. The demonstrated need for the service in the program area serviced.
b. The community support demonstrated and the relationship to existing agencies.
c. The efforts of the program to secure other funding.
d. The general program structure including, but not limited to, how well goals can be met, how realistic the objectives are, the administration of funds, stability of the organization, the overall quality in comparison to other proposals, and services offered.
e. The plan for using the funds. The funds may be used only for salaries, fringe benefits, contract services, job-related in-state travel, and operational expenses. Funds may not be used for construction, capital improvement or purchase of real estate.

441—162.6(99E) Contracts. The funds for approved applications will be awarded through a contract entered into by the commissioner and the applicant. The contract period shall not exceed twelve (12) months and may be less than twelve (12) months for contracts signed during the fiscal year. Expenditures shall be reimbursed monthly pursuant to regular reimbursement procedures of the state of Iowa.

441—162.7(99E) Records. Providers shall keep client and specific fiscal records of services provided and any other records as required by the department and specified in the contract.

441—162.8(99E) Evaluation. The department shall evaluate the provider at least once per year prior to the end of the contract year to determine how well the purposes and goals are being met. Funds are to be spent to meet program goals as provided in the contract. The provider will receive a written report of the evaluation.

441—162.9(99E) Termination of contract. The contract may be terminated by either party at any time during the contract period by giving thirty (30) days' notice to the other party.

162.9(1) The department may terminate a contract upon ten (10) days' notice when the provider or any of its subcontractors fails to comply with the grant award stipulations, standards, or conditions.

162.9(2) Within forty-five (45) days of the termination, the provider shall supply the department with a financial statement detailing all costs up to the effective date of the termination.

162.9(3) The department shall administer the funds for this program contingent upon their availability. If the department lacks the funds necessary to fulfill its fiscal responsibility under this program, the contracts shall be terminated or renegotiated. The department may terminate any agreement to distribute gamblers assistance funds by giving the provider thirty (30) days' notice of its intent to terminate.

441—162.10(99E) Appeals. Applicants dissatisfied with the commissioner's decision on an application for funds may request a fair hearing under the provisions of 441—chapter 7.

No disbursements will be made to any applicant for a period of ten (10) calendar days. If an appeal is filed within the ten (10) days, all disbursements will be held pending a final decision on the appeal. All applicants involved will be notified if an appeal is filed and given the opportunity to be included as a party in the appeal.

These rules are intended to implement 1985 Iowa Code supplement section 99E.10.

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CHAPTERS 163 to 165
Reserved

CHAPTER 166
JUVENILE COMMUNITY-BASED GRANTS

[Prior to 7/1/83, Social Services(770), Ch 166]
[Prior to 2/11/87, Human Services(498)]

441—166.1(69GA,chs 7,11) Definitions.

"Commissioner" means the commissioner of the department of human services or successor agency.

"District" means one of the department of human services or successor districts.

"District administrator" means administrator of the district office.

"District office" means one of department of human services or successor agency district offices.

"District review committee" means the group of individuals designated by the district administrator to review juvenile community-based grant applications. The juvenile court, juvenile probation, public schools, consumer groups, local service providers, and other relevant groups shall be represented on this committee. No individual employed by an agency applying for a grant or on the board of directors of such agency shall serve on the district review committee. The district administrator may designate a subgroup of the district's human service planning council or representatives of regional human service planning councils to serve as a district review committee.

"Grantee" means the recipient of a juvenile community-based grant.

"Juvenile community-based grants" means those grants of state appropriated funds to private agencies or units of local government to develop or improve selected services to children and their families.

"State review committee" means a group of individuals with knowledge and experience in the development and delivery of services to juveniles who are designated by the commissioner to review juvenile community-based grant applications.

441—166.2(69GA,chs 7,11) Availability of grants.

166.2(1) In any year in which the legislature appropriates funds for juvenile community-based grants, the department shall provide start-up and continuation moneys for selected services. The amount of the money granted shall be contingent upon the funds available. The type of services selected for funding shall be in compliance with the legislative appropriation and intent language.

166.2(2) The department shall utilize these funds to develop or expand direct services provided by the department only when private agencies and units of local government are unwilling or unable to develop the selected services in the targeted areas.

441—166.3(69GA,chs 7,11) Who can apply. Applicants must be an incorporated agency or a unit of local government.

441—166.4(69GA,chs 7,11) Request for proposals.

166.4(1) The department shall distribute "request for proposals" (RFP's) no later than April 1 prior to the fiscal year for which state appropriated funds are available or are anticipated to become available for juvenile community-based grants.

166.4(2) The department shall distribute these RFP's through the following individuals, groups and agencies:

a. Iowa department of education
b. Iowa juvenile laws committee
c. Iowa juvenile probation officers association
d. Iowa state association of county governments

e. Relevant public and private provider associations
f. Community mental health centers
g. Department district and local offices
h. All applicants for funding from the previous year

166.4(3) The request for proposal shall:

a. Specify the geographical area(s) of the state that is being targeted.
b. Specify the service(s) which is being targeted for development or provision.
c. Explain where and how application materials may be obtained.
d. Inform potential applicants that district offices of the department will provide consultation regarding the following:

(1) Determination of the need for particular services.
(2) Definition of service components, measurable impacts and evaluation techniques.
(3) Completion of the application form.

441—166.5(69GA,chs 7,11) Application materials. Application for Juvenile Community-based Grants, Form SS-1116-0, shall be available through the district offices of the department by April 1 and shall require at least the following information:

166.5(1) A brief narrative describing the agency or unit of local government requesting funding.

166.5(2) If an agency, a brief description of other services provided by the agency.

166.5(3) A statement of the unmet needs to be addressed by the services, including supporting statistics as available.

166.5(4) A description of the services for which department funding is being requested which includes but is not limited to the following:

a. The geographical area to be served.
b. The target population to be served.
c. Eligibility requirements.
d. The anticipated source of referrals for the services.
e. The anticipated number of clients to be served.
f. A description of the components of the service(s).
g. A discussion of how the components of service(s) will meet the unmet need identified in 166.5(3).

166.5(5) A statement of the anticipated measurable outcomes of the service provision and the means of determining these outcomes.

166.5(6) Job descriptions and requirements for any new positions.

166.5(7) The proposed budget for the services, results of previous efforts to secure funding for this service, other sources of income, plans for future funding of the service, including written commitments, if possible.

166.5(8) Statement of cooperation and coordination from relevant professionals, such as juvenile judges, juvenile probation officers, department staff, other providers of service, consumers, etc., to demonstrate community support, involvement and utilization of the program to avoid duplication and to share the resources.

166.5(9) The table of organization and articles of incorporation, if a newly formed agency.

441—166.6(69GA,chs 7,11) Submission process.

166.6(1) All applicants shall submit three (3) copies of the completed application Form SS-1116-0, as discussed in 166.5(69GA,chs 7,11), to the department. One (1) copy of the application shall be supplied to the district office in the geographical area to be served and two (2) copies supplied to the commissioner or designee. In order to be included in the review process and considered for possible funding, applications shall be postmarked by midnight, May 10. Applications may be delivered to the department during regular business hours any time prior to the deadline.

166.6(2) If proposed projects will serve more than one district, a copy of the application shall be submitted to each district to be served.

441—166.7(69GA,chs 7,11) Selection process.

166.7(1) All proposals submitted to a district shall be reviewed by the district review committee who shall make funding recommendations to the district administrator.

166.7(2) The district administrator or designees shall review all proposals submitted to the district and the recommendations of the district review committee. The district administrator shall make funding recommendations to the commissioner. The district administrator shall also forward the district review committee's recommendations to the commissioner.

166.7(3) The state review committee shall review all proposals and submit funding recommendations to the commissioner.

166.7(4) The commissioner or designees shall review all proposals and the recommendations of the district review committee, the district administrator and the state review committee. The commissioner shall make the final funding decisions.

166.7(5) The following factors will be considered in selecting proposals:

a. The demonstrated need for the service in the geographical area served.

b. The community support demonstrated and the cooperation and coordination with existing agencies.

c. The efforts of the program to secure other funding.

d. The general program structure including but not limited to, how well goals can be met, how realistic the objectives are, the administration of funds, stability of the organization, the overall quality in comparison to other proposals and services offered.

e. The extent to which the utilization of the funds will expand or improve the continuum of services available to children in the district and meet the unmet need.

441—166.8(69GA,chs 7,11) Notification of applicants. Applicants shall be notified no later than June 15 as to whether their application has been denied or that the department is interested in negotiating a contract regarding their proposal. If the legislative appropriation for this program is signed by the governor after May 10, resulting in a delay in the selection process, all applicants shall be informed by June 15 of the delay and the date funding decisions will be announced.

441—166.9(69GA,chs 7,11) Contracts.

166.9(1) The contract shall be negotiated by the district and the applicant.

166.9(2) The applicant may be requested to modify the proposal in the negotiation process.

166.9(3) The applicant or the department may request a modification of the contract. Both parties must agree to any modification of the contract.

166.9(4) Funds are to be spent to meet the program goals as provided in the contract.

166.9(5) Expenditures will be reimbursed monthly pursuant to regular reimbursement procedures of the state of Iowa.

441—166.10(69GA,chs 7,11) Records. Grantees shall keep statistical records of services provided and any other records as required by the department and specified in the contract.

441—166.11(69GA,chs 7,11) Quarterly progress reports. All grantees shall supply the department with quarterly progress reports that incude but are not limited to the following information:

1. The state grant dollars expended as they relate to each line item in the budget.
2. A list of goals and activities completed on schedule.
3. Any goals or activities not completed on schedule and the reason for the delay.
4. The number of clients served and the services provided.
5. The major goals for the next quarter.
6. Any general comments on the progress of the project.

441—166.12(69GA,chs 7,11) Evaluation. The department shall complete an evaluation of the grantee's program by April 15 to determine how well the purposes and goals of the program are being met.

441—166.13(69GA,chs 7,11) Termination of contract.

166.13(1) The contract may be terminated by the grantee at any time during contract period by giving thirty (30) days' notice to the department.

166.13(2) The department may terminate a contract upon ten (10) days' notice when the grantee or any of its subcontractors fails to comply with the grant award stipulations, standards or conditions. The department may terminate a contract upon thirty (30) days' notice when there is a reduction of funds by executive order.

166.13(3) Within forty-five (45) days of the termination, the grantee shall supply the department with a financial statement detailing all costs up to the effective date of the termination.

441—166.14(69GA,chs 7,11) Reallocation of funds.

166.14(1) Grantees shall immediately notify the appropriate district administrator in writing when the grantee determines that at least $500 of the grant will not be expended.

166.14(2) The district administrator and the grantee may negotiate a revision to the contract to allow for expansion or modification of the services but shall not increase the total amount of the grant.

166.14(3) The department may request grantees to free anticipated unexpended funds so that they may be used for other projects.

166.14(4) Grantees may free anticipated unexpended funds by submitting in writing a request to the commissioner to reduce the amount of the contract.

166.14(5) Anticipated unexpended funds which have been freed may be granted to other applicants who were only partially funded or did not receive any funding. These funds may also be used to increase the contracts of grantees whose proposals were fully funded when additional funds would improve the quality or increase the quanitity of services being provided. The commissioner or designee shall determine how unexpended funds are reallocated.

These rules are intended to implement 1981 Iowa Acts, chapter 7, section 3, subsection 10, paragraph "a" and chapter 11, section 2, subsection 2.

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CHAPTER 167
REIMBURSEMENT FOR COUNTY OR MULTICOUNTY JUVENILE SHELTER CARE AND DETENTION HOMES

[Prior to 2/11/87, Human Services(498)]

441—167.1(232) Definitions.

"Allowable costs" means those expenses of the county or multicounty related to the establishment, improvements, operation, and maintenance of county or multicounty juvenile shelter care and detention homes.

"County or multicounty" means that the governing body is a county board of supervisors or a combination of members of participating county boards of supervisors.

441—167.2(232) Availability of funds. Any year that the Iowa legislature makes funds available for this program, the department shall accept requests for reimbursement from eligible facilities.

441—167.3(232) Eligible facilities. County and multicounty juvenile shelter care and detention homes shall be eligible for reimbursement under this program when:

167.3(1) The home is approved by the department under the standards of Iowa Code chapter 232 and IAC 441—chapter 105.

167.3(2) The home submits a State Claim Order/Claim Voucher, Form IFAS-#A-1, within the time frames of IAC 441—167.5(232).

167.3(3) The home does not receive reimbursement from the department under subrule 137.11(3).

441—167.4(232) Available reimbursement. The reimbursement for the participating facilities shall be the percentage of the allowable costs authorized in the appropriation language for the current fiscal year.

441—167.5(232) Submission of voucher. Eligible facilities shall submit a State Claim Order/Claim Voucher, Form IFAS-#A-1, for the legislatively authorized percentage of their allowable costs for the previous state fiscal year to the Department of Human Services, Division of Management and Budget, First Floor, Hoover State Office Building, Des Moines, Iowa 50319 by November 1, of the next state fiscal year. Only facilities which submit a State Claim Order/Claim Voucher, Form IFAS-#A-1, by November 1, shall receive reimbursement.

441—167.6(232) Reimbursement by the department. Reimbursement shall be made by December 1 to those participating facilities which have complied with these rules.

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CHAPTERS 168 and 169
Reserved

TITLE XV

INDIVIDUAL AND FAMILY SUPPORT AND PROTECTIVE SERVICES

CHAPTER 170

CHILD DAY CARE SERVICES

[Prior to 7/1/83, Social Services (770), Ch 132]
[Previously appeared as Ch 132—renumbered IAB 2/29/84]
[Prior to 2/11/87, Human Services(498)]

Preamble

The intent of this chapter is to establish requirements for the purchase of child day care services. Child day care services are for children of low-income parents who are in vocational training; or employed full time; or who are unable to provide adequate and necessary care for a mentally retarded or handicapped child; or for a limited period of time, when the caring person is absent due to hospitalization, physical or mental illness, or death; or for protective services (without regard to income). Services may be provided in a licensed child care center, a registered group day care home, a registered family day care home, the home of relatives, or the child's own home.

441—170.1(234) Definitions.

"Child day care" means a service that provides child care in the absence of parents for a portion of the day, but less than twenty-four (24) hours. Day care supplements parental care by providing care and protection for children who need care in or outside their homes for part of the day. Child day care provides experiences for each child's social, emotional, intellectual, and physical development. Child day care may involve comprehensive child development care or it may include special services for a mentally retarded or handicapped child. Components of this service include supervision, food services, program and activities, and transportation.

"Department" means the Iowa department of human services.

"Food services" means the preparation and serving of nutritionally balanced meals and snacks.

"Handicap" means a condition that prevents a child from functioning according to age-appropriate expectations in the areas of affective, cognitive, communicative, perceptual-motor, physical, or social development to such an extent that the child requires special help, program adjustments, and related services, on a regular basis, in order to function in an adaptive manner.

"Mental retardation" means a condition which reflects subaverage intellectual functioning that causes social incompetence.

"Program and activities" means the daily schedule of experiences in a day care setting.

"Provider" means:

1. A licensed child care center which has an approved purchase of services agreement with the department to provide child day care services.
2. A registered group day care home which has an approved child care placement agreement with the department to provide child day care services.
3. A registered family day care home which has an approved child care placement agreement with the department to provide child day care services.
4. A home of the child's relative which has an approved child care placement agreement with the department to provide child day care services.
5. A caretaker who has an approved child care placement agreement with the department to provide care for a child in the child's home.

"Supervision" means the care, protection, and guidance of a child.

"Transportation" means the movement of children in a four (4) or more wheeled vehicle designed to carry passengers, such as a car, van, or bus, between home and facility.

"Unit of service" means a full day, or a half day, or an hour as defined in subrule 130.4(3)*"a."*

"Vocational training" means department approved training that meets the same requirements as specified in rule 441—55.2(249C).

441—170.2(234) Eligibility.

170.2(1) *Financial.* Financial eligibility shall be determined according to rule 441—130.3(234) except recipients of aid to dependent children, refugee cash assistance or refugee medical assistance shall not be eligible for child day care services under this chapter when the recipient is eligible for child day care as a training allowance under 441—chapter 55.

170.2(2) *General eligibility requirements.* Child day care shall be provided only to children under eighteen (18) years of age.

170.2(3) *Need for service.* The need for child day care services shall be established through the assessment process as set forth in 441—chapter 131. The child or parents of the child shall meet one or more of the following requirements in order to be eligible for child day care services:

a. The parent or parents are in vocational training.

b. The parent is employed thirty (30) or more hours per week, or is employed an average of thirty (30) or more hours per week during the month. Child care services may be provided for the hours of employment of a single parent or the coinciding hours of employment of both parents in a two (2)-parent home, and for actual travel time between home, child care facility, and place of employment.

c. The child is mentally retarded or handicapped and the parent or parents are unable to provide adequate and necessary care.

d. Day care is part of a protective service plan to prevent or alleviate child abuse or neglect.

e. The person who normally cares for the child is absent from the home due to hospitalization, physical or mental illness, or death. Care under this paragraph is limited to a maximum of one (1) month, unless extenuating circumstances are justified and approved after case review by the district administrator.

441—170.3(234) Goals. Appropriate goals for child day care services are those described in subrule 130.7(1), paragraphs *"a," "c,"* and *"d."*

441—170.4(234) Elements of service provision.

170.4(1) *Case plan.* The case plan shall be developed by the department service worker and contain information described in subrule 130.7(2).

170.4(2) *Fees.* Fees are assessed and collected in accordance with rule 441—130.4(234).

170.4(3) *Method of provision.* Child day care shall be purchased by the department only from a provider whose facility has been approved as set forth below.

A provider shall be one of the following:

a. Child care center. The department may enter into a Purchase of Service Agreement, Form SS-1501-0, with a provider that is licensed by the department and meets all the standards set forth in 441—chapter 109. The child care center shall be approved by the department as complying with all standards or notified of specific deficiencies and the action necessary to bring the child care center into full compliance with the standards. Payment will be made only after the puchase of service contract is approved and signed by the department.

b. Group day care home. The department may enter into a Child Care Placement Agreement, Form WI-3102-5, with a group day care home that meets all the requirements for registration, has a Certificate of Registration, Form SS-1209-3, and meets all the standards set forth in 441—chapter 110. The group day care home shall be approved by the department as complying with all standards or notified of specific deficiencies and the action necessary to bring the group day care home into full compliance with the standards. Payment will be made only after the group day care home has been approved by the department.

c. Family day care home. The department may enter into a Child Care Placement Agreement, Form WI-3102-5, with a family day care home that meets all the requirements for registration, has a Certificate of Registration, Form SS-1202-3, and meets all the standards set forth in 441—chapter 110. The family day care home shall be approved by the department as complying with all standards or notified of specific deficiencies and the action necessary to bring the family day care center into full compliance with the standards. Payment will be made only after the family day care home has been approved by the department.

d. Family day care in the home of a relative. The department may enter into a Child Care Placement Agreement, Form WI-3102-5, with a relative's family day care home that meets all the requirements for registration for family day care homes. The home shall be approved by the department as complying with all standards or notified of specific deficiencies and the action necessary to bring the family day care home into full compliance with the standards. Payment will be made only after the family day care home has been approved by the department.

e. In-home care. The department may enter into a Child Care Placement Agreement, Form WI-3102-5, with an adult caretaker who meets the minimum requirements for a family day care home provider to provide care in the child's own home, when the child's home is safe, sanitary, and free of hazards in accordance with the minimum requirements required for family day care home registration. The child's home shall be approved by the department as complying with all standards or the parent shall be notified of specific deficiencies and the action necessary to bring the home into compliance with the standards. The caretaker shall be an adult. Payment will be made only after the home and the caretaker have been approved by the department.

170.4(4) *Components of service program.* Every child eligible for child day care services shall receive supervision, food services, and program and activities. Transportation may be provided to children in child care centers if transportation is available under the facility's purchase of service contract, and if the parent or parents have no private means of transportation, and live more than one-half (½) mile from the facility.

170.4(5) *Levels of service according to age.* Child day care services have been divided into different levels according to age. A purchase of service agreement shall list the levels of care that are to be purchased under the agreement. Each level contains the components of supervision, food services, and program and activities. Transportation is an optional component that may be included. The components of supervision, food services, and transportation shall meet the minimum licensing and registration requirements. The program and activities component shall meet the following standards for each level of care:

a. Level one—age two (2) weeks to two (2) years. For each infant, activities and a program shall be planned that provides stimulation; opportunities for crawling and exploration; noises and sounds to encourage language development; sensory experiences for touching, tasting, seeing, and smelling; equipment that can be grasped and encourages discrimination and manipulation skills, i.e., stacking blocks, rings, and pull toys; furniture that is child size; and consistency in staff, physical environment, and daily routine.

b. Level two—age two (2) years to four (4) years. A program with a schedule of activities shall be planned that is flexible, but routine enough for children to feel comfortable and secure. Child size equipment shall be provided.

(1) The program shall provide each child with opportunities to play alone and explore, to play in groups, to rest, for large muscle development, for small muscle development, for language development, for learning independence, for fostering a positive self-image, for eye-hand coordination, for problem solving, and to interact with adults alone and in groups.

(2) Activities shall include art, music, science, drama, outside play, field trips, story telling and storybook reading, nutrition, and safety and health.

c. Level three—age four (4) to kindergarten. A program with a schedule of activities shall be flexible, but routine enough for children to feel comfortable and secure. Child size equipment shall be provided.

(1) The program shall provide each child with opportunities to play alone and explore, to play in groups, to rest, for large muscle development, for small muscle development, for language development, for learning independence, for fostering a positive self-image, for eye-hand coordination, for problem solving, and to interact with adults alone and in groups.

(2) Activities shall include art, music, science, drama, outside play, field trips, story telling and storybook reading, nutrition, and safety and health.

d. Level four—school-age children. A program with a schedule of activities shall be planned that is independent of the child's school experience, but meets the needs of the school-age child.

(1) Activities for the kindergarten child at the center part of the day shall include art, crafts,

science, music, large and small muscle development, problem solving, and individual interaction with adults.

(2) Activities for children beyond kindergarten who are in child day care before and after school shall provide opportunities for quiet, solitary play and a variety of active, large muscle activities.

170.4(6) *Provider's individual program plan.* An individual program plan shall be developed by the child care center for each child within thirty (30) days after placement. The program plan shall be supportive of the service worker's case plan. The program plan shall contain goals, objectives, services to be provided, and time frames for review.

441—170.5(234) Adverse service actions. Services may be denied, terminated, or reduced according to rule 441—130.5(234).

441—170.6(234) Appeals. Notice of adverse actions and the right of appeal shall be given in accordance with 441—chapter 7.

These rules are intended to implement Iowa Code section 234.6(6)*"a."*

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CHAPTER 171
ADULT DAY CARE

[Prior to 7/1/83, Social Services(770), Ch 151]
[Previously appeared as Ch 151—renumbered IAB 2/29/84]
[Prior to 2/11/87, Human Services(498)]

441—171.1(234) Definitions.

"Adult day care" means a program of adult care, during the day, for eligible adults in an adult day care center.

"Adult day care center" means a facility providing a program of adult care for eligible adults during portion of the day but for less than twenty-four (24) hours.

"Department" means the Iowa department of human services.

"Facility" means the physical plant, equipment and personnel of an adult day care center whose program of adult care has been approved as meeting the standards established in these rules.

"Impaired adult" means an adult who has a medically certified psychological or physical impairment which necessitates some form of supervision or assistance.

"Person" or *"agency"* means individual, institution, partnership, voluntary association, and corporation.

"Program of adult care" means a program designed to provide supportive care in a protective environment which is therapeutically constructed to meet the physical, psychological, and sociological needs of its participants. The program includes but is not limited to providing preventive and restorative services involving medical, rehabilitation, personal care, nutrition, social work, patient activities, and transportation.

"Project manager" means a department employee who is responsible for the development, monitoring, and evaluation of a purchase of service agreement with a provider agency.

"Provider" means a provider as defined in Title XX, Social Security Act.

This rule is intended to implement Iowa Code section 234.6(7)*"a."*

441—171.2(234) Approval.

171.2(1) *Request.* A request for approval to provide services and receive payment for eligible clients shall be initiated by the provider. Approval shall be made by the project manager only when the provider meets the standards set forth in these rules. Requests shall be initiated by use of a purchase of service agreement addressed to the project manager in the county where the facility is located.

171.2(2) *Time limit.* Within fifteen (15) days of the date the purchase of service agreement is received by the project manager, the facility shall be notified in writing whether or not it meets the standards set forth in these rules. Payment will be made only after the purchase of service agreement is signed by all parties and approval or temporary approval is issued by the project manager.

171.2(3) *Conditions.* The facility shall be approved by the project manager as complying with all standards or notified of specific deficiencies and the actions necessary to bring the facility into full compliance with the standards.

171.2(4) *Temporary approval.* The project manager may recommend that a purchase of service agreement be approved even though the provider is not in full compliance with all standards. Such recommendation shall be made only after the provider's plan for bringing the facility into compliance has been received and approved by the project manager. A facility may operate with temporary approval for the period of time stated in the letter of temporary approval issued by the project manager, but the temporary approval shall not exceed one year.

171.2(5) *Review.* An adult day care center shall be reviewed for reapproval annually at the time of renewal of the purchase of service agreement.

This rule is intended to implement Iowa Code section 234.6(7)*"a"*.

441—171.3(234) Eligibility.

171.3(1) *Provider.* Adult day care shall be purchased by the department only from a provider whose facility has been approved as set forth in these rules and which has a valid purchase of service agreement presently in force with the department of human services as set forth in rules, chapter 150.

171.3(2) *Client.* Adult day care services shall be provided only to persons over eighteen (18) years of age who are impaired and are incapable of independent living without the services but who do not require twenty-four (24)-hour inpatient care. Each client must meet program and service requirements as set forth in these rules and eligibility requirements as set forth in rule 130.3(234).

441—171.4(234) Situations served.

171.4(1) *Family.* Services and counseling may be provided the family for the purpose of helping the family to cope with and care for an impaired adult.

171.4(2) *Individuals.* Day care services may be provided to improve the individual's physical and mental functioning so as to prevent the further general physical and mental deterioration of the individual; to develop an individual's self-sufficiency and personal independence by providing and supervising self-care training; or to reduce an individual's inactivity, isolation, loneliness, and social withdrawal.

This rule is intended to implement Iowa Code section 234.6(7)"*a*".

441—171.5(234) Standards. The provider shall certify that the adult day care center and its program meet the standards set forth in subrules 171.5(1) to 171.5(8). The provider shall keep records as required by the project manager and shall submit to the project manager documentation of compliance with standards as requested by the project manager.

171.5(1) *Compliance with federal, state and local laws.* The day care center shall be in compliance with applicable federal, state and local laws and regulation.

171.5(2) *Director.* The day care center shall have a director who is responsible for administration and the overall conduct of the adult day care program. The director may serve in a part-time capacity, and be affiliated with one or more private agencies.

171.5(3) *Full-time program director.* The day care center shall have a full-time program director who has experience in program administration and whose skills and competencies meet the type of program and the number of clients served. The program director shall have the following areas of responsibility:

a. Planning the adult day care program to meet the individual and collective needs of participants, including intake process, liaison with community agencies, and provision of needed social services to the individual and family.

b. Supervise and coordinate all program components and services.

c. Maintain fiscal records and forms.

d. Maintain client records of participation and progress, as well as pertinent social and medical information.

e. Acquaint new participants and their families with the services offered by the program thus facilitating adjustment to a new environment.

f. Provide ongoing orientation and education programs for the day care staff as well as the community agencies and groups.

g. Supervise the training and utilization of volunteers with consideration of their individual talents and activities to work specifically with the day care program.

h. Development, implementation, and review of appropriate policies and procedures.

171.5(4) *Professional and supportive personnel.* The day care center shall have sufficient professional and supportive personnel to provide quality services efficiently and effectively. Personnel that are working with people in day care are to be positively oriented toward maintaining an individual's maximum involvement in relationships and activities for as long as possible and not to provide or care for the clients so as to increase their dependence. Whether sufficient professional and supportive personnel exists shall be determined by the

department's project manager, utilizing minimum program standards as identified herein and stated scope and objectives of the individual program proposal. Whenever components of services are provided by other than direct program staff, written contractual agreements shall be entered into with appropriate professional and supportive personnel.

171.5(5) *Written policies and procedures.* The day care center shall have written policies and procedures which reflect the day care center's objectives and which govern the provision of services. The policies and procedures shall be submitted to and be approved by the project manager before approval is granted. At a minimum, the written policies and procedures shall be specific in the following areas:

a. Organizational structure.
(1) Legal status
(2) Table of organization
(3) Philosophy and goal and objectives
(4) Services offered
(5) Job descriptions

b. Criteria for admission.

c. Admission policies and procedures.

d. Payment for services.

e. Client records.
(1) Content
(2) Confidentiality

f. Policy on storage and on distribution of medications.

g. Policy for agency coordination with family and other appropriate individuals and agencies.

h. Facility disaster plan and has a posted, written disaster preparedness plan, covering all known types of disasters available to all personnel and has a disaster drill for clients at least once each quarter.

i. Discharge policies and procedures.

j. Appeal procedures for employee grievances.

k. Nondiscrimination statement.

171.5(6) *Written plan of day care.* The day care center shall provide a written individualized plan of day care for each participant. An individualized plan of care shall be prepared by the day care staff in cooperation with the service worker with active involvement of each program participant and the participant's family. The plan of care shall:

a. Set forth goals to be accomplished.

b. Prescribe an integrated program of individually designed activities, therapies and treatments necessary to achieve such goals.

c. Indicate which professional service or individual is responsible for each element of care or service prescribed in the plan. In order to coordinate activities in the best interests of the person, the plan shall be developed in cooperation with other community agencies involved with the individual.

d. The plan of care shall be reviewed and updated at least every three (3) months. Regular periodic review and implementation of necessary program changes shall be based upon needs of the client served and the program offered.

e. The factors to be used in determining what plan of day care is best suited to the client's needs shall include but not be limited to:
(1) Physical and mental abilities and needs.
(2) Social and emotional needs.
(3) Amount of supervision required.
(4) Specific individual problems.
(5) Medical and social prognosis.
(6) Treatment goals.
(7) Physician's instructions.
(8) Individual participant and family requests.

171.5(7) *Client record system.* The day care center shall have client record system which includes the maintenance of a complete file on each participant. The case record shall be retained in a closed file for three (3) years after services are terminated. Each record shall include as a minimum:

a. Identification information and admission data including medical and social history.

b. Physician's certification that the individual is able to participate in the day care program, and physician's orders pertaining to medications, treatments, diet and rehabilitation and special medical procedures required for the safety and well being of the participant. The physician's certification and orders shall be received in writing by the day care center prior to admission.

c. Current health evaluation, including complete physical examination. This health information shall be in the participant's individual record within sixty (60) days after admission to the program.

d. The written plan of day care as specified in subrule 171.5(6).

e. Copies of all initial and periodic examinations, evaluations, and progress notes relating to the formation and delivery of the plan of care. Reports, evaluations, and progress notes relating to services and consultations from health professionals shall be dated and signed.

f. Discharge summary.

g. Instructions for dealing with emergency situations. Medical records, including medications, medical treatment, and similar information, shall be maintained in the record for at least three (3) months.

171.5(8) *Physical plant.* The participating day care center shall have a physical plant which:

a. Complies with all applicable local and state building regulations;

b. Complies with all applicable local and state health and safety codes;

c. Is equipped and maintained to provide a safe, functional, sanitary, and comfortable environment, with special equipment for handicapped participants;

d. Contains an area for dining, social activities, and a suitable area for rest periods;

e. Contains an adequate number of easily accessible separate bathroom facilities for men and women.

171.5(9) *Waiver.* The project manager, with the approval of the district administrator, may issue a written waiver to a facility for a specific standard provided the provider furnishes a written statement from the state fire marshal when applicable, that to do so would present no imminent danger. The facility shall submit a written request for waiver including a statement of reasons why they cannot comply with the standard.

This rule is intended to implement Iowa Code section 234.6(7)"*a*".

441—171.6(234) Component services to be provided. The day care center shall provide the following component services:

171.6(1) *Medical emergency services.* Instructions for dealing with medical emergency situations shall be established in writing. The instructions shall include the name and telephone number of a physician on call, written arrangements with a nearby hospital for inpatient and emergency room service, and provisions for ambulance transportation.

171.6(2) *Rehabilitative services.* Rehabilitative services shall include physical therapy, occupational therapy, recreational therapy, and speech therapy services which are provided by the day care center directly or indirectly through arrangements with qualified outside sources and which are designed to improve or maintain ability for the client's independent functioning.

171.6(3) *Personal care services.* Personal care services shall include assistance with daily activities and training for independent daily living, such as walking, eating, toileting, grooming; and counseling in personal hygiene.

171.6(4) *Nutrition services.* The day care center shall provide or make adequate arrangements for a minimum of one meal per day which is of suitable quality and quantity as to supply at least one-third (⅓) of the daily nutritional requirement. Special diets and supplemental feeding shall be available if the client's needs so warrant.

171.6(5) *Social work services.* The day care center shall provide or arrange for social services designed to promote preservation and restoration of the client's physical and mental health. A plan for the preservation and restoration is recorded in the client's record and is periodically evaluated in conjunction with the client's total plan of care. At a minimum, the following social services shall be available:

a. Completion of required social history information,

b. Information and referral services,

c. Individual and family counseling,

d. Assessment services in order to determine appropriateness of referrals for adult day care and to contribute to formulation of a plan of care,

e. Consistent participation with the day care team in the formulation, implementation, and evaluation of the client's overall plan at the day care center,

f. Participation in the discharge planning and follow-up of clients,

g. Provision of in-service training to day care staff.

171.6(6) *Patient activities services.* A plan for independent and group activities shall be developed for each participant in accordance with needs and interests. The plan is incorporated in the overall plan of care and is reviewed, with the client participating, at least quarterly and altered as needed. Clients shall be encouraged, but not forced, to participate in planned activities appropriate to their individual needs. The facility shall provide adequate indoor and outdoor space and sufficient equipment and materials to support independent and group activities.

171.6(7) *Transportation services.* The day care center shall provide or arrange for transportation for clients to and from their homes and to other community facilities utilized in implementing the client's plan of day care.

This rule is intended to implement Iowa Code section 234.6(7)"*a*".

441—171.7(234) Availability of component day care services. All day care centers shall make available the component services set forth in 171.6(1), (2), (3), (4), (5), (6), and (7). To comply with this standard the center may make the services available by:

171.7(1) *Direct provision.* Providing the service itself as part of the day care program.

171.7(2) *Purchase.* Referring the client to an outside provider with the day care center guaranteeing payment. This arrangement would require written contracts between the outside provider and the day care center.

171.7(3) *Consultation.* Arranging for consultation by an outside consultant for periodic evaluations of the client's need for specific services. These arrangements would require written contracts between the consultant and the day care center.

This rule is intended to implement Iowa Code section 234.6(7)"*a*".

441—171.8(234) Termination.

171.8(1) *By department.* Payment for services to a client in adult day care shall be terminated by the department upon notice to the client and provider when a client no longer meets the eligibility requirements for services or when the physical or mental condition of the client requires more care than can be provided through adult day care, or if the client no longer has need for the services due to improvement of the client's physical or mental condition or a change in living circumstances. The department shall give ten (10) days' written notice of the termination to the provider and the client or the client's legal representative.

171.8(2) *By client.* The client or the client's legal representative shall be able to terminate adult day care service for any reason by giving the department and the provider ten (10) days' written notice of the client's intention to do so.

171.8(3) *By provider.* Services may be terminated by the provider when the client fails to cooperate in the written plan of day care provided for the client by giving ten (10) days' written notice to the department and the client.

This rule is intended to implement Iowa Code section 234.6(7)"*a*".

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CHAPTER 172
SHELTERED WORK/WORK ACTIVITY SERVICES

[Prior to 7/1/83, Social Services(770), Ch 155]
[Previously appeared as Ch 155—renumbered IAB 2/29/84]
[Prior to 2/11/87, Human Services(498)]

441—172.1(234) Definitions.

"Accreditation" means the official award of accreditation by the commission on accreditation of rehabilitation facilities (CARF) or the accreditation council for services for mentally retarded and other developmentally disabled persons (AC MRDD) that the facility substantially fulfills the standards established by the respective accrediting body.

A *"caseworker"* is a department employee who is responsible for eligibility determination, arranging for and acquiring assessment/evaluations, development of an individual service plan, participate as a member of the interdisciplinary team for developing the individual program plan, and to monitor for the department that services provided are consistent with the individual service plan and the individual program plan.

"Department" means the Iowa department of human services.

An *"evaluation program"* is a service component of sheltered work services that is a situational assessment and not more than three (3) months' duration, except that additional periods up to three (3) months may be approved subject to need justified by the facility and the caseworker, and using the medium of work to determine a client's potential, and which meets the standards in these rules.

A *"handicapped worker"* or *"client"* is an individual whose earning capacity is impaired by a handicapping condition and who is being served by a facility meeting these standards for rehabilitation facilities.

"Independent living skills" is a service component that assists the individual in acquiring and maintaining the basic day to day skills essential for self-sufficient and independent functioning at work and in the community at large, such as money management, health and hygiene, family planning, food and nutrition, clothing care, rights and responsibilities of citizenship, leisure time management, mobility and language.

"Meals" are a service component designed to provide adequate nutritional diets or snacks to individuals who are participating during meal/snack time.

"Personal/social adjustment" is a service component designed to assist the individual in adjusting to the psychological, social, and routine demands of work, home and community environments such as emotional development, self-assessment, self-confidence, social behavior, interpersonal relationships, responsibility, decision-making and communication.

"Placement and follow-up" is a service component designed to integrate the individual into the least restrictive environment with necessary support to assure movement toward goals and successful integration.

A *"project manager"* is a department employee who is designated as responsible for the development, monitoring and evaluation of purchase of service agreements with the rehabilitation facility/provider. Evaluation of a provider shall be based on the provisions of the purchase of service agreement and these rules.

A *"provider"* is a rehabilitation facility having a distinct administrative entity, either separate or within a larger organization which has an approved purchase of service agreement with the department to provide specific programs.

A *"rehabilitation facility"* is a facility or a distinct administrative entity, either separate or within a larger organization, operated for the purpose of providing vocational or rehabilitation services to handicapped clients through a program designed according to the physical, emotional, mental, social, and vocational restoration needs of the client.

"Sheltered work services" are services provided by a facility carrying out a recognized program of rehabilitation, habilitation, or education for the handicapped worker, designed to lead to competitive employment, or the provision of long-term, remunerative employment at a rate not less than the applicable certificate rate. Services provided may include, but are not

limited to, intake, evaluation/assessment (including work evaluation), work adjustment, vocational skills training, personal/social adjustment, independent living skills, placement, and follow-up, transportation and meals.

A *"training program"* is a service component of sheltered work services of not more than six (6) months' duration, except that additional periods up to three (3) months may be approved subject to need justified by the facility and the caseworker to develop vocational skills designed to:

1. Develop the patterns of behavior which will help a client adjust to a work environment, and
2. Teach the skills and knowledge related to specific work traits, and
3. Teach the skills and knowledge related to a specific occupational objective of a job family.

"Transportation" is a service component provided to individuals who need a means of travel to and from services, for specific needs or emergencies.

"Work activity services" are services for those individuals whose impairment is so severe as to make their productive capacity inconsequential and are designed to enable them to move to other appropriate training programs or employment. Services provided may include, but are not limited to, intake, evaluation/assessment, work adjustment, personal/social adjustment, independent living skills, placement and follow-up, transportation and meals.

"Work adjustment" is a service component designed to assist the individual to acquire and maintain optimal work competency through increasing the individual's ability to handle demands of employment skills as in the Dictionary of Occupational Titles, such as self-assessment, work habits, work skills, job seeking skills, vocational goal formation.

441—172.2(234) Approval.

172.2(1) *Request.* A request for approval to provide services and receive payment for eligible clients shall be initiated by the provider. Approval by the department shall be made only when the provider meets the standards set forth in these rules. Request shall be initiated by use of a purchase of service agreement addressed to the project manager in the county or district where the facility's home office is located.

172.2(2) *Conditions.* The facility shall be approved by the department as complying with all standards or notified of specific deficiencies and the actions necessary to bring the facility into full compliance with the standards. Payment will be made only after the purchase of service agreement is approved and signed by all necessary department administrators.

172.2(3) *Accreditation approval.* The department may enter into a purchase of service agreement only with a provider that has been accredited by CARF or the AC MRDD, and has furnished proof of the accreditation to the department in order to obtain a purchase of service agreement after July 1, 1983.

172.2(4) *Nonaccreditation interim approval.* The department may approve a purchase of service agreement after July 1, 1983, even though the provider is not accredited by CARF or the AC MRDD. Approval shall only be given as specified:

a. Those facilities which have contracted with the department prior to July 1, 1983, shall be granted a one-time eighteen (18)-month extension if they have submitted a formal plan for progressively bringing the facility into full accreditation by January 1, 1985, and the plan has been accepted by the department. This plan shall include assurances for protecting the life and safety of the clients served, and shall also include a target date for making application for accreditation, a target date for scheduling an accreditation survey, and may also include appropriate presurvey or on-site survey workshop consultations by persons competent in applying standards of the chosen accrediting body.

b. Those facilities which have not contracted with the department prior to July 1, 1983, shall be granted a one-time three (3)-year extension, from the starting date of their first contract, if they provide a formal plan for progressively bringing the facility into full accreditation during this period and the plan is accepted by the department. This plan shall include assurances for protecting the life and safety of the clients served, and shall also include a target date for making application for accreditation, a target date for scheduling an accreditation survey, and

may also include appropriate presurvey, or on-site workshop consultations by persons competent in applying standards of the chosen accrediting body.

c. Those facilities which go through their chosen accreditation process and are rejected or receive an abeyance from their accreditation body will be allowed a one-time one-year extension from the date of the rejection or abeyance when they have submitted a plan for progressively bringing the facility into compliance during this period, and the plan has been approved by the department. This plan shall include assurances for protecting the life and safety of the clients served and the schedule for achieving accreditation by the end of the extension.

441—172.3(234) Eligibility.

172.3(1) *Provider.* Sheltered work/work activity services shall be purchased by the department only from a provider whose facility has been approved as set forth in these rules and which has a valid purchase of service agreement presently in force with the department of human services as set forth in rules, chapter 150.

172.3(2) *Client.* Sheltered work/work activity services shall be provided only to persons who have a current documented diagnosis of a handicapping condition which prevents competitive employment, but who would be capable of some work productivity in a sheltered work/work activity environment. Each client shall meet program and service requirements as set forth in these rules, and eligibility requirements as set forth in rule 441—130.3(234).

441—172.4(234) Assessment (diagnosis and evaluation).

172.4(1) *When and how arranged.* A current diagnosis and evaluation shall be available or shall be scheduled by a department caseworker prior to the development of an individual service plan and prior to placement of the individual in any sheltered workshop or work activity program.

172.4(2) *By whom developed.* A diagnosis and evaluation shall be conducted by an interdisciplinary team which may consist of a physician, social worker, psychologist, educational/vocational counselor or other professionals depending on the individual's needs.

172.4(3) *Minimum components.* A diagnosis and evaluation shall give a written summary of medical, social, psychological and educational/vocational functioning and needs and shall give recommendations for appropriate services and prognosis for minimizing handicapping conditions as a result of service interventions.

441—172.5(234) Case plan (individual service plan).

172.5(1) *Development.* An individual service plan shall be developed by the caseworker based on the findings and recommendations of the diagnosis and evaluation and shall include input from the client or representative and agency personnel interested in the welfare of the client. The individual service plan shall be developed prior to placement in a sheltered workshop or work activity program.

172.5(2) *Minimum components.* The individual service plan shall contain information which documents the service goals and service needs of the individual on a short range and long range basis. It shall also identify providers of needed services, time frames for service provision and goal accomplishment as well as time frames and caseworker responsibility for follow-up activities.

172.5(3) *Follow-up.* Follow-up and progress review relative to the individual service plan shall be done with the client and other interested parties on at least a semiannual basis.

441—172.6(234) Provider's individual program plan.

172.6(1) *Development.* A rehabilitation facility providing sheltered work or work activity services shall develop a program plan for each client of the department placed in that service within thirty (30) days after such placement. The caseworker shall supply a copy of the diagnosis and evaluation and the individual service plan to the provider providing service and shall assure that the provider's individual program plan is supportive to the individual service plan.

172.6(2) *Minimum components.* The provider's individual program plan shall be based upon the evaluation/assessment data, shall include long term and short term goals, behavioral objectives, intervention strategies for specific objectives and periodically reviewed as provided herein. It shall identify specific services to be provided, time frames for review provision and goal and objective accomplishment.

172.6(3) *Follow-up and review.* Within one week after placement in a sheltered work or work activity program the caseworker shall have contact with the client and the facility to review program adjustment. The individual program plan of the provider shall be reviewed at least semiannually by the caseworker.

441—172.7(234) Termination.

172.7(1) *Financial eligibility.* Sheltered work/work activity services shall be terminated when the client no longer meets eligibility requirements specified in rule 441—130.3(234).

172.7(2) *Service eligibility.* Services shall be terminated:

a. When the client has progressed to competitive employment and needs no longer exist;

b. When the client or legal representative requests termination;

c. When it is determined that another service program can more adequately meet the client's needs;

d. When the handicapping condition requires more care than the facility can provide.

Termination may be enforced by the facility upon thirty (30) days' written notice to the department setting forth the conditions and reasons. When the client exhibits behavior dangerous to self or others, the facility may terminate services as soon as is necessary with immediate written notice to the department.

These rules are intended to implement Iowa Code section 234.6(6)"*i*".

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CHAPTER 173
FAMILY PLANNING SERVICES

[Prior to 7/1/83, Social Services(770), Ch 140]
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[Prior to 2/11/87, Human Services(498)]

441—173.1(234) Definitions.

"Clinical care services." Clinical care services include those services which assist a client in obtaining contraceptive devices and supplies from health practitioner resource persons such as physicians, nurse clinician, health clinic pharmacy or family planning center, in accordance with Iowa law.

"Delegate agency." Whenever delegate agency is used in these rules, it shall mean a family planning center which has an administrative and financial relationship with the state department of public health.

"Family planning educational services." Family planning educational services are services including group or individual discussions with clients informing them of the various types of birth control methods available and where they may be obtained.

441—173.2(234) Eligibility. Those persons eligible for services from the department shall be eligible for family planning services.

441—173.3(234) Choice of provider.

173.3(1) Individuals shall be assured a choice of provider of services.

173.3(2) When the department pays for the services under a purchase of service contract with the public health department, the services must be provided by a delegate agency.

441—173.4(234) Direct referrals. All persons who are income maintenance or services clients of the department and any other client requesting information on family planning shall be offered family planning services and referred to either a private physician or delegate agency.

441—173.5(234) Outside referrals. When a client goes directly to a delegate agency without referral by the department, the delegate agency shall make the preliminary determination of eligibility based on information provided by the client and shall then refer the information back to the department for final determination of eligibility.

441—173.6(234) Family planning liaison worker. The family planning liaison worker in the local offices of the department of human services shall be the primary contact person for clients requesting family planning services and shall have final responsibility for determining eligibility of clients requesting family planning services.

441—173.7(234) Need. In determining the need for family planning services, the family planning liaison worker shall take the following factors into consideration.

173.7(1) Family limitation, as when parents regard their current family as complete and want no more children.

173.7(2) Child-spacing, when parents seek a longer interval between the births of their children.

173.7(3) A mother's inability to cope with several small children.

173.7(4) A marital conflict which may be at least partially related to the earlier birth of unwanted children.

173.7(5) The presence in the home of a seriously handicapped child or adult with an emotional problem, which requires special, time-consuming and emotionally and physically draining supervision by the mother.

173.7(6) The mother's desire to seek employment outside the home.

173.7(7) Adolescent sexual activity as a social indication of the need for family planning services.

173.7(8) The possibility or the presence of neglect or abuse as an indication of the presence of an unwanted child in the home.

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CHAPTER 174
TRANSPORTATION SERVICES

[Prior to 7/1/83, Social Services(770), Ch 153]
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[Prior to 2/11/87, Human Services(498)]

441—174.1(234) Eligibility. Transportation services shall be provided to those clients needing the services who meet the eligibility requirements for services as specified in rule 441—130.3(234).

This rule is intended to implement Iowa Code section 234.6(7)*"h."*

441—174.2(234) Services provided. Services may be provided directly, by referral to another agency, or by purchase. Transportation may be provided to:

174.2(1) Receive social services.
174.2(2) Receive medical services.
174.2(3) Secure or retain employment.
174.2(4) Implement an approved case plan.

This rule is intended to implement Iowa Code section 234.6(7)*"h."*

441—174.3(234) Handicapped individuals. A physician's advice shall be secured on appropriate means of transportation for an elderly or physically or mentally handicapped individual.

This rule is intended to implement Iowa Code section 234.6(7)*"h."*

441—174.4(234) Payment. Transportation services that are purchased shall be paid for through a purchase of service agreement as specified in rules 441—chapter 150.

This rule is intended to implement Iowa Code section 234.6(7)*"h."*

441—174.5(234) Termination. Services shall be terminated when the individual no longer meets eligibility requirements or no longer needs the service.

This rule is intended to implement Iowa Code section 234.6(7)*"h."*

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CHAPTER 175
ABUSE OF CHILDREN

[Prior to 7/1/83, Social Services(770), Ch 135]
[Previously appeared as Ch 135—renumbered IAB 2/29/84]
[Prior to 2/11/87, Human Services(498)]

441—175.1(235A) Definitions.

"Adequate food, shelter, clothing or other care" shall mean that food, shelter, clothing, or other care which if not provided would constitute a denial of critical care.

"Appropriate investigation" shall mean that investigation reasonably believed by the department to be warranted by the facts and circumstances of the case as reported.

"Child abuse information" shall mean any or all individually identified data defined in Iowa Code section 235A.13, subsections (1), (2), (3), and (4), maintained by the registry or by any local office of the department of human services.

"Child abuse prevention services" shall be provided for the purpose of reducing or removing conditions which may cause or contribute to abuse of a child. These services shall include client assessment and case management, home management, child day care, mental health related and family planning services as the services are defined in their respective chapters of the IAC.

"Child abuse treatment services" shall be provided for the purposes of ensuring the safety of a child and reducing or removing conditions present in the home of a child or person responsible for a child's care which have caused or contributed to abuse of a child. These services shall include client assessment and case management, mental health, home management, child day care, emergency shelter, foster family home, foster group care, court ordered oversight, health related and family planning services as these services are defined in their respective chapter of the IAC.

"Collateral sources" shall mean any person or agency who is presently providing, either in a professional or paraprofessional capacity, service to the family or child including, but not limited to, doctors, teachers, counselors, and public health nurses.

"Denial of critical care" shall mean any of the following:

1. A pattern of care by the person responsible for the care of the child in which a child's basic needs are denied or ignored to such an extent that there is imminent or potential danger of the child suffering injury or death.
2. A denial of or a failure to provide the mental health care necessary to adequately treat a child's serious social maladjustment.
3. A gross failure of the person responsible for the care of the child to meet the emotional needs of the child necessary for normal development.
4. A failure by the person responsible for the care of the child to provide for the proper supervision of the child.
5. A failure to respond to a child's life threatening conditions by providing treatment including appropriate hydration, nutrition, and medication, which, in a physician's reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

a. The infant is chronically and irreversibly comatose;

b. The provision of such treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant;

c. The provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

"Facility providing care to a child" shall mean any public or private facility including an institution, hospital, health care facility, group home, mental health center, residential treatment center, shelter care facility, detention center, or child care facility. A public or private school is not considered a facility providing care to a child.

"Institution" shall not include public and nonpublic schools as those terms are defined in Iowa Code section 280.2.

"Investigation service" shall mean the study, investigation and evaluation of reported allegations of child abuse to determine the accuracy of the report, the need for protective intervention and the action to be taken as required by Iowa Code section 232.71.

"Multidisciplinary team" shall mean a group of individuals who possess knowledge and skills related to the investigation, diagnosis, assessment and disposition of child abuse cases and who are professionals practicing in the disciplines of medicine, public health, mental health, social work, child development, education, law, juvenile probation or law enforcement.

"Nonaccidental physical injury" shall mean an injury which was the natural and probable result of a caretaker's actions which the caretaker could have reasonably foreseen, or which a reasonable person could have foreseen in similar circumstances, or which resulted from an act administered for the specific purpose of causing an injury.

"Physical injury" shall mean damage to any bodily tissue to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition or damage to any bodily tissue to the extent that the tissue cannot be restored to a sound and healthy condition or damage to any bodily tissue which results in the death of the person who has sustained the damage.

"Preponderance of evidence" shall mean evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it.

"Primary caretaker" shall mean a person responsible for the care of a child, as defined in Iowa Code subsection 232.68(6) who exercises responsibility for meeting the basic needs of a child on a continuing twenty-four (24)-hour a day basis.

"Proper supervision" shall mean that supervision which a reasonable and prudent person would exercise under similar facts and circumstances, but in no event shall the person place a child in a situation that may endanger the child's life or health, or cruelly or unduly confine such child.

"Report" shall mean a verbal or written statement, made to the department, which alleges that child abuse has occurred.

"Substitute caretaker" shall mean a person to whom a primary caretaker has delegated temporary responsibility for the care of a child during the absence of the child's primary caretaker. The primary caretaker retains continuing responsibility for meeting the basic needs of the child during the absence.

This rule is intended to implement Iowa Code sections 232.67 to 232.77 and 235A.15 to 235A.17.

441—175.2(232) Denial of critical care. The failure on the part of a person responsible for the care of a child to provide for the adequate food, shelter, clothing, or other care necessary for the child's health and welfare when financially able to do so or when offered financial and other reasonable means to do so shall constitute denial of critical care to that child.

This rule is intended to implement Iowa Code section 232.68.

441—175.3(235A) Reports. The central registry and local office shall accept initial reports from mandatory reporters or any other person believing a child has been the subject of child abuse, as defined by Iowa Code section 232.68. A written report shall be made within forty-eight (48) hours after an oral report. The reporter may use the department's Form SS-1705-0, Suspected Child Abuse Reporting Form, or may use a form developed by the reporter which meets the requirements of Iowa Code section 232.70.

441—175.4(232) Eligibility for service and service provision.

175.4(1) *Investigation services.* Investigation of reports of suspected abuse shall be provided pursuant to the requirements of Iowa Code section 232.71.

175.4(2) *Child abuse treatment services.*

a. Child abuse treatment service shall be offered to the child, to other children in the same home and to the primary caretaker when both of the following conditions exist:

(1) The findings of an investigation of suspected child abuse support a conclusion that the child has been abused.

(2) The findings of the investigation support the conclusion that the conditions which caused or contributed to the abuse of the child remain present in the child's home.

b. Child abuse treatment service shall be offered to a substitute caretaker who is thought to be responsible for abusing a child when each of the following conditions exist:

(1) The findings of an investigation of suspected child abuse support a conclusion that a child has been abused by the person.

(2) The findings of the investigation support the conclusion that the conditions which caused or contributed to the abuse of the child remain present in the person's home.

(3) The person serves as either a primary or substitute caretaker for children other than the abused child or the person continues to serve as the substitute caretaker for the child who is thought to be abused.

c. The child abuse treatment services offered shall be the least restrictive available services which act to promote the safety of a child and to remove conditions which cause or contribute to abuse of a child. The department worker who makes the service offer shall explain to the caretaker that the department has no authority to compel acceptance of services. All child abuse treatment services shall provide for the development or restoration of a supportive network of extended family and community relationships for the family being served.

d. When child abuse treatment services are accepted by a person responsible for the care of a child without an order from the juvenile court, the length of time that service is provided shall be limited as required by the rules governing the specific type of treatment service being provided. In any event, all child abuse treatment services not ordered by the court shall be terminated as soon as the requirements of the case plan which affect the protection of the abused child or other children in the same home are met or as soon as the family withdraws from or refuses further treatment.

175.4(3) *Child abuse prevention services.*

a. Child abuse prevention services shall be offered to a child and to the primary caretaker of the child when either of the following conditions exist:

(1) The findings of an investigation of suspected child abuse support a conclusion that conditions in the home of a child or person responsible for a child's care are likely to cause or contribute to future abuse of the child or a child or a person responsible for the care of the child requests services to prevent abuse of the child.

(2) The primary caretaker requests service and an assessment of the child's home reveals that the caretaker is insulated or isolated from a stress relieving network of supportive persons to the extent that a child may be abused, copes inadequately with family or environmental stress to the extent that a child may be abused, possesses inadequate knowledge of child development or child rearing techniques to the extent that a child may be abused, has expectations of the child which exceed a child's capabilities to the extent that the child may be abused or uses disciplinary or child rearing methods which could become abusive to the child within the meaning of abuse, pursuant to Iowa Code subsection 232.68(2), or rule 175.2(232).

b. The child abuse prevention services offered shall be limited to the least restrictive available services which act to reduce or remove the conditions which may cause or contribute to abuse of a child. All child abuse prevention services shall provide for the development or restoration of a supportive network of extended family and community relationships for the family being served. The department has no authority to compel acceptance of services.

c. When child abuse prevention services are accepted by the primary caretaker, the length of time that service is provided shall be limited to a period of six (6) months unless other rules specify a different time limitation. In any event, all child abuse prevention service shall be terminated as soon as the requirements of the case plan which affect the protection of the child from potential abuse are met or as soon as the family withdraws or refuses further treatment.

175.4(4) *Juvenile court action.* Nothing in this rule shall preclude the department from initiating juvenile court action pursuant to Iowa Code subsection 232.71(9), when necessary to the best interests of the child. Child abuse treatment services ordered as a result of juvenile court action shall be provided for the length of time specified by the court.

175.4(5) *Payment for services.* Nothing in this rule shall prevent the court or the department, when otherwise authorized by law or rule, from requiring the person responsible for the care of a child being served to contribute to the payment of service cost.

441—175.5(232) Appropriate investigation.

175.5(1) After receipt of the report alleging child abuse, the field worker shall make a preliminary investigation to determine whether the information as reported, other known information, and any information gathered as a result of the worker's contact with collateral sources would tend to corroborate the alleged abuse.

175.5(2) When the information gathered in the preliminary investigation tends to corroborate, or the worker is uncertain as to whether it repudiates the allegations of the report, the worker shall immediately continue the investigation by making a reasonable effort to ensure the safety of the child. The worker and the worker's supervisor shall determine whether an immediate threat to the safety of the child is believed to exist. If an immediate threat to the physical safety of the child is believed to exist, the field worker shall make every reasonable effort to examine the child, as authorized by Iowa Code section 232.71, within one (1) hour after receipt of the report and shall take any lawful action necessary or advisable for the protection of the child. If the physical safety of the child is not endangered, the worker shall make every reasonable effort to examine the child within twenty-four (24) hours after receipt of the report.

175.5(3) In the event the information gathered in the preliminary investigation fails to corroborate the allegation of child abuse, the worker, with approval of the supervisor, may terminate the investigation and submit the "ninety-six (96)-hour report" required by Iowa Code section 232.71.

This rule is intended to implement Iowa Code section 232.71.

441—175.6(232) Photographs and X-rays. Any person who has taken or caused to be taken photographs or X-rays in accordance with Iowa Code section 232.77 may obtain reimbursement by submitting a Voucher 1 to the department. A letter shall accompany the voucher and contain the child's name, age, and address; the location of the photographs or X-rays; the date the photographs or X-rays were taken; and a statement by the reporter agreeing to retain the photographs or X-rays for five (5) years.

This rule is intended to implement Iowa Code section 232.77.

441—175.7(235A) Registry records. Central registry records shall be kept in the name of the child and cross-referenced in the name of the parents, guardian, or other person responsible for the child's care, or any other person responsible for a child's injury.

441—175.8(235A) Child abuse information disseminated and redisseminated. Upon approval of any request for child abuse information authorized by this rule, the department shall withhold the name of the person who made the report of suspected child abuse unless ordered by a juvenile court or district court after a finding that the person's name is needed to resolve an issue in any phase of a case involving child abuse.

175.8(1) *Written requests.* Requests for child abuse information shall be submitted on Form SS-1606-0, Request for Child Abuse Information, to the local or district office of the department except requests made for the purpose of determining employability of a person in a department operated facility shall be submitted to the central registry.

175.8(2) *Oral requests.* Requests may be made orally by telephone pursuant to the requirements of Iowa Code subsection 235A.16(2).

175.8(3) *Verification of identity.* The local or district office or the central registry shall verify the identity of the person making the request on Form SS-1606-0, Request for Child Abuse Information. Upon receipt of a request and verification of the identity of the person making the request, the local or district office shall transmit the request to the central registry.

For requests made pursuant to subrule 175.8(4)*"b,"* the district administrator or designee shall transmit a written record of the request and approval on Form SS-1606-0, Request for Child Abuse Information, to the central child abuse registry.

175.8(4) *Approval of requests.*

a. Approval by central registry. Upon receipt of a request for information, the central registry shall approve dissemination of child abuse information other than unfounded information to persons having authorized access only as follows:

(1) To a health practitioner who is examining, attending or treating a child whom the practitioner believes or has reason to believe has been the victim of abuse, the information disseminated shall be limited to the nature and extent of previous abuse sustained by a child or any other child in the same home and information necessary to treat the child or to monitor the child for abuse which may occur in the future.

(2) To a law enforcement officer having responsibility for temporary emergency removal of a child from the parent or other legal guardian, pursuant to Iowa Code section 232.79, the information disseminated shall be limited to that necessary for the officer to determine whether the continued presence of the child in the home of the parent or other guardian presents an imminent danger to the child's life or health.

(3) To a juvenile court or district court upon receipt of a verbal or written order requiring information to resolve an issue arising in any phase of a case involving child abuse, the information disseminated shall be limited to that required by the order. This rule shall not prevent the department from providing testimony without a court order about a child abuse case in any child in need of assistance proceeding in juvenile court.

(4) To an individual, agency or facility providing care, treatment or supervision to the person named in a report as having abused a child, the information disseminated shall be limited to that which is necessary to treat or monitor the abuse-related problems of the person about whom information is requested. When the information is requested for the purpose of pursuing presentence investigation, parole or probation revocation, or juvenile court delinquency proceedings, the information shall be disseminated only pursuant to subrule 175.8(4), paragraph *"a,"* subparagraph (3).

(5) To a facility, other than a department operated facility, which employs, with or without compensation, a person named in a report as having abused a child when other provisions of the Iowa Code or rules promulgated under Iowa Code chapter 17A require a child abuse background check to determine employability of the person about whom information is requested, the information disseminated shall be limited to the nature of the abuse and the employee's involvement in and responsibility for the abuse. If the central registry and local office files contain no information, the person making the request shall be so informed.

(6) To the legally constituted child protection agency of another state which is investigating or treating a child abuse case, the information disseminated shall be limited to that which is requested.

(7) To a parent having legal custody of the child about whom information is requested, the information disseminated shall be limited to that which is requested.

(8) To a parent of the child about whom information is requested when the child has been abused by a foster parent, an employee of the department or by an employee of an agency or facility licensed or regulated by the department and when legal custody or guardianship has been transferred to the department or to a juvenile probation officer but parental rights have not been terminated, the information disseminated shall be limited to that which is requested.

(9) To a parent of a child about whom information is requested when a juvenile or district court has assigned custody or guardianship of the child to a person, agency or facility other than the requesting parent, a juvenile probation officer or the department and when parental rights have not been terminated, the information disseminated shall be limited to the nature and extent of the abuse to the child.

(10) To a person who, in accordance with provisions of rule 441—175.9(235A), is determined to be conducting bona fide research, the information disseminated shall be limited to that which is necessary to implement the research design and shall contain no details identifying any subject of any child abuse report.

(11) To a child or attorney for the child about whom information is requested, the information disseminated shall be limited to that which is requested.

(12) To a person named in a report as having abused a child or to the attorney for the person, the information disseminated shall be limited to the portion of the information contained in the central registry and local office files which pertains to the person.

(13) To a department employee who is responsible for registering or licensing or for approving the licensing of an agency or facility regulated by the department, the information disseminated shall be limited to that which is requested.

(14) To a child placing agency responsible for a currently licensed foster home when a foster parent in the home is named in a report as having abused a child, the information disseminated shall be limited to that which is pertinent to continued placement of children in the home.

(15) To a multidisciplinary team whose composition is approved by the department in accordance with rule 441—175.13(235A) when the assistance of the team is needed to diagnose, assess or make disposition of the child abuse case, the information disseminated shall be limited to that necessary to accomplish the purpose of using the team in each individual case.

(16) To the mandatory reporter who is requesting information about a case reported by that person, the information shall be limited to that which is necessary to monitor the child for future abuse except as provided in rule 441—175.14(235A).

(17) To a department employee responsible for investigating or treating a child abuse case or for operation of the central registry, the information shall be limited to that which is requested.

(18) To an attorney representing the department, the information shall be limited to appropriate, necessary or requested information.

(19) To a licensing authority of a facility providing care for a child named in a report, pursuant to the requirements of Iowa Code section 232.71(4).

(20) To the department of public safety for the purpose of establishing eligibility for payment of a victim's reparation claim.

b. Approval by district administrator or designee. Upon receipt of a request for information from an individual, agency or facility, including an educational agency or facility, providing care, treatment or supervision to a child about whom information is rquested, the district administrator or designee shall approve dissemination of child abuse information. The information disseminated shall be limited to that which is necessary to monitor or treat abuse-related problems of the child. The district administrator or designee shall submit a written record of the request and approval on Form SS-1606-0 to the central child abuse registry.

175.8(5) *Access to unfounded child abuse information.* Access to unfounded child abuse information is authorized only to persons identified in subrule 175.8(4), paragraph *"a,"* subparagraphs (12), (16) and (17).

175.8(6) *Method of dissemination.* The central registry shall notify the local or district office of the decision made pursuant to subrule 175.8(4), paragraph *"a."* If the request is denied by the central registry, the local or district office shall inform the person making the request of the denial. If the request is approved by the central registry, the local or district office shall inform the person making the request of approval and shall disseminate to the person the information specified by the central registry on Form SS-1606-0, Request for Child Abuse Information.

If the request is approved by the district administrator or designee pursuant to subrule 175.8(4), paragraph *"b,"* the district administrator or designee shall inform the person making the request of the denial or approval and, if the request is approved, shall disseminate to the person the information specified on Form SS-1606-0, Request for Child Abuse Information.

175.8(7) *Requests concerning employees of department facilities.* When a request is made by the hiring authority of a department operated facility which provides direct client care and the request is made for the purpose of determining continued employability of a person employed, with or without compensation, by the facility, the information requested shall be disseminated to the personnel office of the department. The personnel office shall redisseminate the information to the hiring authority for the person involved only upon a finding that the information has a direct bearing on employability of the person involved.

When the personnel office determines that the information has no direct bearing on employability, the hiring authority shall be notified that no job-related child abuse information is available. If the central registry and local office files contain no information, the hiring authority shall be so informed.

175.8(8) *Record of dissemination.* When the central registry or the district administrator or designee approves dissemination of information, notice shall be filed in the registry on Form SS-1606-0, Request for Child Abuse Information.

175.8(9) A report which cannot be determined by a preponderance of the evidence to be founded or unfounded may be disseminated and redisseminated in accordance with this rule until the report is expunged. Information contained in the report may be used in subsequent reports and investigations.

This rule is intended to implement Iowa Code sections 235A.14, 235A.15, 235A.16, 235A.17 and 235A.19.

441—175.9(235A) Person conducting research. The person in charge of the central registry shall be responsible for determining whether a person requesting child abuse information is conducting bona fide research. To make this determination, the central registry may require such person to submit credentials and the research design. Any costs incurred in the dissemination of the information shall be assumed by the researcher. The department will keep a public record of persons conducting such research.

441—175.10(235A) Examination of information. Examination of information contained in the central registry can be made at the site of the central registry between the hours of 8 a.m. and 12 p.m. or 1 p.m. and 4 p.m., Monday through Friday, excepting state authorized holidays.

The person, or that person's attorney, requesting to examine the information in the registry which refers to that person, shall be allowed to inspect the information after providing appropriate identification.

441—175.11(235A) Maintenance of central registry records. Central registry records are maintained as follows:

175.11(1) A report of child abuse determined to be founded shall be retained and sealed by the registry in accordance with Iowa Code section 235A.18, subsection 1.

175.11(2) A report of child abuse determined to be unfounded shall be expunged six (6) months after the receipt of the initial report in accordance with Iowa Code section 235A.18, subsection 2.

175.11(3) A report of child abuse in which the information cannot be determined by a preponderance of the evidence to be founded or unfounded shall be retained for one (1) year and used as though founded until it is expunged by the registry in accordance with Iowa Code section 235A.18, subsection 2.

This rule is intended to implement Iowa Code section 235A.18.

441—175.12(232) Investigation when alleged perpetrator is a department employee. The department of human services shall arrange for the investigation of child abuse in which the alleged perpetrator is an employee of the department of human services and the allegedly abused child is being provided care in a facility or institution of the department of human services. The arrangement shall be implemented either by contract for fee or through intergovernmental agreement with a private social service agency, a separate governmental agency, or a law enforcement agency.

This rule is intended to implement Iowa Code section 232.71.

441—175.13(235A) Multidisciplinary teams.

175.13(1) *Purpose of multidisciplinary teams.* Any local or district office of the department may create a multidisciplinary team whose composition meets the requirements of subrule

175.1(13) for the purpose of assisting the department in assessing, diagnosing and making disposition of reported child abuse cases. Assisting the department in making disposition of cases may include the provision of treatment recommendations and services.

175.13(2) *Execution of team agreement.* When the team is created, the district administrator or designee of the district administrator and all team members shall execute an agreement which specifies:

a. That the team shall be consulted solely for the purpose of assisting the department in the assessment, diagnosis and treatment of child abuse cases.

b. That any team member may cause a child abuse case to be reviewed if approved by the department through use of the process of requesting child abuse information specified in rule 175.8(235A).

c. That no team members shall redisseminate child abuse information obtained solely through the multidisciplinary team. This shall not preclude redissemination of information as authorized by Iowa Code section 235A.17 when an individual team member has received information as a result of another authorized access provision of the Code.

d. That the department may consider the recommendation of the team in a specific child abuse case but shall not, in any way, be bound by the recommendations.

e. That any written report or document produced by the team pertaining to an individual case shall be made a part of the file for the case and shall be subject to all confidentiality provisions of Iowa Code chapter 235A and of IAC 441—chapter 175.

f. That any written records maintained by the team which identify an individual child abuse case shall be destroyed when the agreement lapses.

g. That consultation team members shall serve without compensation.

h. That any party to the contract may withdraw with or without cause upon the giving of thirty (30) days' notice.

i. The date on which the agreement will expire.

175.13(3) *Filing of agreement.* Whenever a team is created, a copy of the executed contract shall be filed with the central registry in addition to any other requirement placed upon execution of agreements by the department.

This rule is intended to implement Iowa Code section 235A.15.

441—175.14(235A) Required notification. Notwithstanding 175.8(6) the department shall:

175.14(1) Notify orally the mandatory reporter who made the report in an individual child abuse case of the results of the case investigation and of the confidentiality provisions of Iowa Code sections 235A.15 and 235A.21. The department shall subsequently transmit a written notice to the mandatory reporter who made the report which will include information regarding the results and confidentiality provisions. A copy of the written notice shall be transmitted to the registry and shall be maintained by the registry as provided in section 235A.18.

175.14(2) Notify orally the subject of a report of the results of the case investigation. The department shall subsequently transmit a written notice to the subject which will include information regarding the results, the confidentiality provisions of Iowa Code sections 235A.15 and 235A.21, and the procedures for correction or expungement and appeal of child abuse information as provided in Iowa Code section 235A.19.

175.14(3) Notify the licensing authority for the facility, the governing body of the facility, and the administrator in charge of the facility of a violation of facility policy, an instance in which facility policy, or lack of, contributed to the abuse, or an instance where facility practice differs from facility policy when it is alleged that an employee or agent of a facility providing care to a child abused the child. The notice shall include a statement to the facility, licensing authority, governing board, and administrator of their responsibilities pursuant to Iowa Code section 232.71(4) subsection 4.

This rule is intended to implement Iowa Code section 235A.18.

441—175.15(235A) Request for correction or expungement and appeal. Within six (6) months of the date of the notice of the investigation results, a person may file with the department a written statement to the effect that child abuse information referring to the person is partially or entirely erroneous. The person may also request a correction of that information or of the findings of the investigation report.

Unless the department corrects the information or findings as requested, the department shall provide the person with an opportunity for a hearing as provided by 441—chapter 7 to correct the information, or the findings. The department shall delay the expungement of information which is not determined to be founded until the conclusion of a proceeding to correct the information or findings. The department may defer the hearing until the conclusion of a pending juvenile court or district court case relating to the information or findings.

This rule is intended to implement Iowa Code section 235A.19.

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CHAPTER 176
DEPENDENT ADULT ABUSE

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[Prior to 2/11/87, Human Services(498)]

441—176.1(235B) Definitions.

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

1. Physical injury to or unreasonable confinement or cruel punishment of a dependent adult.
2. The commission of a sexual offense under Iowa Code chapter 709 (sexual abuse) or Iowa Code section 726.2 (incest) with or to a dependent adult.
3. Exploitation of a dependent adult.
4. The deprivation of the minimum food, shelter, clothing, supervision, physical and mental health care, and other care necessary to maintain a dependent adult's life or health.

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

"Appropriate evaluation" means that evaluation reasonably believed by the department to be warranted by the facts and circumstances of the case as reported.

"Caretaker" means a related or nonrelated person who has the responsibility for the protection, care, or custody of a dependent adult as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of the court.

"Collateral sources" means any person or agency who is presently providing, either in a professional or paraprofessional capacity, service to the dependent adult, including, but not limited to, doctors, counselors, and public health nurses.

"Denial of critical care" is a pattern of care in which the dependent adult's basic needs are denied or ignored to such an extent that there is imminent or potential danger of the dependent adult suffering injury or death, or is a denial of, or a failure to provide the mental health care necessary to adequately treat the dependent adult's serious social maladjustment, or is a gross failure of the caretaker to meet the emotional needs of the dependent adult necessary for normal functioning, or is a failure of the caretaker to provide for the proper supervision of the dependent adult.

"Department" means the department of human services and includes the local, district and central offices of the department, unless otherwise specified.

"Dependent adult" means a person eighteen (18) years of age or older who is unable to protect their own interests or unable to adequately perform or obtain services necessary to meet essential human needs, as a result of a physical or mental condition which requires assistance from another.

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

"Minimum food, shelter, clothing, supervision, physical and mental health care, and other care" means that food, shelter, clothing, supervision, physical and mental health care, and other care which, if not provided, would constitute denial of critical care.

"Physical injury" means damage to any bodily tissue to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition, or damage to any bodily tissue to the extent that the tissue cannot be restored to a sound and healthy condition, or damage to any bodily tissue which results in the death of the person who has sustained the damage.

"Preponderance of evidence" shall mean evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it.

"Proper supervision" means that supervision which a reasonable and prudent person would exercise under similar facts and circumstances, but in no event shall a person place a depen-

dent adult in a situation that may endanger the dependent adult's life or health or cruelly punish or unreasonably confine the dependent adult.

"Registry" means the central registry for child abuse information established in Iowa Code chapter 235A expanded to include the statewide registry for dependent adult abuse.

"Report" means a verbal or written statement, made to the department, which alleges that dependent adult abuse has occurred.

441—176.2(235B) Denial of critical care. The failure on the part of the caretaker or dependent adult to provide for minimum food, shelter, clothing, supervision, physical and mental care, and other care necessary for the dependent adult's health and welfare when financially able to do so or when offered financial and other reasonable means to do so shall constitute denial of critical care to that dependent adult.

441—176.3(235B) Situations not included as dependent adult abuse.

176.3(1) A report under Iowa Code chapter 236, domestic abuse, does not in and of itself constitute a report of dependent adult abuse.

176.3(2) Depriving a dependent adult of medical treatment when the dependent adult is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.

176.3(3) The withholding and withdrawing of health care from a dependent adult who is terminally ill in the opinion of a licensed physician when the withholding and withdrawing of health care is done at the request of the dependent adult or at the request of the dependent adult's next-of-kin or guardian pursuant to the applicable procedures under Iowa Code chapter 125, 222, 229 or 633.

176.3(4) All persons legally incarcerated in a penal setting, either in a local jail or confined to the custody of the director of the division of adult corrections.

441—176.4(235B) Reporters. Any person who believes that a dependent adult has suffered adult abuse may report the suspected abuse to the department.

441—176.5(235B) Reporting procedure.

176.5(1) Each report made by a reporter may be oral or written.

176.5(2) The report shall be made by telephone or otherwise to the department of human services. When the person making the report has reason to believe that immediate protection for the dependent adult is advisable, that person shall also make an oral report to an appropriate law enforcement agency.

176.5(3) The department of human services shall:

a. Immediately, upon receipt of a report, make an oral report to the registry;

b. Forward a copy of the report to the registry; and

c. Promptly notify the appropriate county attorney of the receipt of any report.

176.5(4) The report shall contain the following information, or as much thereof as the person making the report is able to furnish:

a. The names and home addresses of the dependent adult, appropriate relatives, caretakers, and other persons believed to be responsible for the care of the dependent adult.

b. The dependent adult's present whereabouts if not the same as the address given.

c. The reason the adult is believed to be dependent.

d. The dependent adult's age.

e. The nature and extent of the adult abuse, including evidence of previous adult abuse.

f. Information concerning the suspected adult abuse of other dependent adults in the same residence.

g. Other information which the person making the report believes might be helpful in establishing the cause of the abuse or the identity of the person or persons responsible for the abuse, or helpful in providing assistance to the dependent adult.

h. The name and address of the person making the report.

176.5(5) A report shall be accepted whether or not it contains all of the information requested in 176.5(4), and may be made to the department, county attorney, or law enforcement agency. When the report is made to any agency other than the department of human services, that agency shall promptly refer the report to the department.

441—176.6(235B) Duties of the department upon receipt of report.

176.6(1) When a report is received, the department shall promptly commence and appropriate evaluation, except that the state department of public health is responsible for the evaluation and disposition of a case of adult abuse in a health care facility, as defined in Iowa Code section 135C.1, subsection 4. The department shall promptly forward all reports and other information concerning adult abuse in a health care facility to the state department of public health. The state department of public health shall inform the registry of all actions taken or contemplated concerning the evaluation or disposition of a case of adult abuse in a health care facility. The primary purpose of the evaluation by the department shall be the protection of the dependent adult named in the report.

176.6(2) The evaluation shall include all of the following:

a. Identification of the nature, extent, and cause of the adult abuse, if any, to the dependent adult named in the report.

b. The identification of the person or persons responsible for the adult abuse.

c. A determination of whether other dependent adults in the same residence have been subjected to adult abuse.

d. A critical examination of the residential environment of the dependent adult named in the report, and the dependent adult's relationship with caretakers and other adults in the same residence.

e. A critical explanation of all other pertinent matters.

176.6(3) The evaluation, with the consent of the dependent adult or caretaker, when appropriate, may include a visit to the residence of the dependent adult named in the report and an examination of the dependent adult. If permission to enter the residence and to examine the dependent adult is refused, the district court, upon a showing of probable cause that a dependent adult has been abused, may authorize a person, authorized by the department, to make an evaluation, to enter the residence of, and to examine the dependent adult.

176.6(4) County attorneys, law enforcement agencies, multidisciplinary teams as defined in section 235A.13, subsection 9, and social services agencies in the state shall cooperate and assist in the evaluation upon the request of the department. County attorneys and appropriate law enforcement agencies shall also take any other lawful action necessary or advisable for the protection of the dependent adult.

176.6(5) The department, upon completion of its evaluation, shall transmit a copy of its preliminary report, including actions taken or contemplated, to the registry within ninety-six (96) hours after the department receives the adult abuse report, unless the registry grants an extension of time for good cause shown. If the preliminary report is not a complete report, a complete report shall be filed within ten working days of the receipt of the abuse report, unless the registry grants an extension of time for good cause shown.

176.6(6) The department shall also transmit a copy of the report of its evaluation to the appropriate county attorney. The county attorney shall notify the local office of the department of any actions or contemplated actions with respect to a suspected case of adult abuse.

176.6(7) Based on the evaluation, the department shall complete an assessment of services needed by a dependent adult believed to be the victim of abuse, the dependent adult's family, or a caretaker. The department shall explain that the department does not have independent legal authority to compel the acceptance of protective services. Upon voluntary acceptance of the offer of services, the department shall make referrals or may provide necessary protective services to eligible dependent adults, their family members, and caretakers. The department may establish a sliding fee schedule for those persons able to pay a portion of the protective services provided.

176.6(8) When, upon completion of the evaluation or upon referral from the state department of public health, the department determines that the best interests of the dependent adult require court action, the department shall initiate action for the appointment of a guardian or conservator, or for admission or commitment to an appropriate institution or facility, pursuant to the applicable procedures under Iowa Code chapter 125, 222, 229, or 633. The appropriate county attorney shall assist the department in the preparation of the necessary papers to initiate the action, and shall appear and represent the department at all district court proceedings.

176.6(9) The department shall assist the district court during all stages of court proceedings involving a suspected case of adult abuse.

176.6(10) In every case involving adult abuse which is substantiated by the department and which results in a judicial proceeding on behalf of the dependent adult, legal counsel shall be appointed by the court, to represent the dependent adult in the proceedings. The court may also appoint a guardian ad litem to represent the dependent adult when necessary to protect the dependent adult's best interests. The same attorney may be appointed to serve both as legal counsel and as guardian ad litem. Before legal counsel or a guardian ad litem is appointed pursuant to 1983 Iowa Acts, chapter 153, section 4, the court shall require the dependent adult and any person legally responsible for the support of the dependent adult to complete under oath a detailed financial statement. If, on the basis of that financial statement, the court deems that the dependent adult or the legally responsible person is able to bear all or a portion of the cost of the legal counsel or guardian ad litem, the court shall so order. In cases where the dependent adult or the legally responsible person is unable to bear the cost of the legal counsel or guardian ad litem, the expense shall be paid out of the court expense fund.

441—176.7(235B) Appropriate evaluation.

176.7(1) After receipt of the report alleging dependent adult abuse the field worker shall make a preliminary evaluation to determine whether the information as reported, other known information, and any information gathered as a result of the worker's contact with collateral sources would tend to corroborate the alleged abuse..

176.7(2) When the information gathered in the preliminary evaluation tends to corroborate, or the worker is uncertain as to whether it repudiates the allegations of the report, the worker shall immediately continue the evaluation by making a reasonable effort to ensure the safety of the adult. The worker and the worker's supervisor shall determine whether an immediate threat to the physical safety of the adult is believed to exist. If an immediate threat to the physical safety of the adult is believed to exist, the field worker shall make every reasonable effort to examine the adult, as authorized by 176.6(3), within one hour after receipt of the report and shall take any lawful action necessary or advisable for the protection of the adult. When physical safety of the adult is not endangered, the worker shall make every reasonable effort to examine the adult within twenty-four (24) hours after receipt of the report.

176.7(3) In the event the information gathered in the preliminary evaluation fails to corroborate the allegation of adult abuse, the worker with approval of the supervisor, may terminate the investigation and submit the "ninety-six (96) hour report" required by subrule 176.6(4).

441—176.8(235B) Immunity from liability for reporters. A person participating in good faith in making a report or cooperating or assisting the department in evaluating a case of dependent adult abuse has immunity from liability, civil or criminal, which might otherwise be incurred or imposed based upon the act of making the report or giving the assistance. The person has the same immunity with respect to participation in good faith in a judicial proceeding resulting from the report or assistance or relating to the subject matter of the report or assistance.

441—176.9(235B) Registry records. Central registry records shall be kept in the name of the dependent adult and cross-referenced in the name of the caretaker.

441—176.10(235B) Adult abuse information disseminated.

176.10(1) *Requests for information.* Written requests for adult abuse information shall be submitted to the local or district office of the department on Form SS-1114, Request for Dependent Adult Abuse Information except as provided in subrule 176.10(3), paragraph "c."

Requests may be made by telephone to the central registry pursuant to the requirements of Iowa Code subsection 235A.16(2). Oral requests must be followed by a written request to the central registry within seventy-two (72) hours on Form SS-1114.

176.10(2) *Verification of identity.* The local or district office shall verify the identity of the person making the request on Form SS-1114, Request for Dependent Adult Abuse Information. Upon verification of the identity of the person making the request, the local or district office shall transmit the request to the central registry.

176.10(3) *Approval of requests.* Upon receipt of a request for information, the central registry shall approve dissemination of information to persons authorized in Iowa Code subsection 235A.15(2).

a. Method of dissemination. Except as provided in paragraph *"c"* below, the central registry shall notify the local or district office of the decision made regarding the request. If the request is denied by the central registry, the local or district office shall inform the person making the request of the denial. If the request is approved by the central registry, the local or district office shall disseminate to the person making the request the information specified by the central registry on Form SS-1114, Request for Dependent Adult Abuse Information.

b. Dissemination of undetermined reports. A report which cannot be determined by a preponderance of the evidence to be founded or unfounded may be disseminated and redisseminated in accordance with Iowa Code sections 235A.15 and 235A.17 until the report is expunged. Information referred to in the report may be referred to in subsequent reports and evaluations.

c. Requests concerning employees of department facilities. When a request is made by the hiring authority of a department operated facility which provides direct client care and the request is made for the purpose of determining continued employability of a person employed, with or without compensation, by the facility, the information shall be requested directly from the central registry. The information requested shall be disseminated to the personnel office of the department. The personnel office shall redisseminate the information to the hiring authority for the person involved only upon a finding that the information has a direct bearing on employability of the person involved.

When the personnel office determines that the information has no direct bearing on employability, the hiring authority shall be notified that no job-related dependent adult abuse information is available. If the central registry and local office files contain no information, the hiring authority shall be so informed.

176.10(4) *Required notification.* The department shall notify orally the subject of a report of the results of the investigation. The department shall subsequently transmit a written notice to the subject which will include information regarding the results, the confidentiality provisions of Iowa Code sections 235A.15 and 235A.21, and the procedures for correction or expungement and appeal of dependent adult abuse information as provided in Iowa Code section 235A.19.

This rule is intended to implement Iowa Code sections 235A.15 to 235A.19.

441—176.11(235B) Person conducting research. The person in charge of the central registry shall be responsible for determining whether a person requesting dependent adult abuse information is conducting bona fide research. To make this determination, the central registry may require these persons to submit credentials and the research design. Any costs incurred in the dissemination of the information shall be assumed by the researcher. The department will keep a public record of persons conducting research.

441—176.12(235B) Examination of information. Examination of information contained in the central registry can be made at the site of the central registry between the hours of 8

a.m. and 12 p.m. or 1 p.m. and 4 p.m., Monday through Friday, except state authorized holidays.

The person, or that person's attorney, requesting to examine the information in the registry which refers to that person, shall be allowed to inspect the information after providing appropriate identification.

441—176.13(235B) Maintenance of central registry records. Central registry records are maintained as follows:

176.13(1) A report of dependent adult abuse determined to be founded shall be retained and sealed by the registry in accordance with Iowa Code section 235A.18, subsection 1.

176.13(2) A report of dependent adult abuse determined to be unfounded shall be expunged six (6) months after the receipt of the initial report in accordance with Iowa Code section 235A.18, subsection 2.

176.13(3) A report of dependent adult abuse in which the information cannot be determined by a preponderance of the evidence to be founded or unfounded shall be expunged by the registry in accordance with Iowa Code section 235A.18, subsection 2.

This rule is intended to implement Iowa Code section 235A.18.

441—176.14(235B) Central registry. The central registry for child abuse shall be expanded to include dependent adult abuse, and Iowa Code chapter 235A shall apply unless the context otherwise requires.

These rules are intended to implement Iowa Code section 235B.1 and 1985 Iowa Acts, chapters 173 and 174.

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CHAPTER 177
IN-HOME HEALTH RELATED CARE

[Prior to 7/1/83, Social Services(770), Ch 148]
[Previously appeared as Ch 148—renumbered IAB 2/29/84]
[Prior to 2/11/87, Human Services(498)]

441—177.1(249) In-home health related care. In-home health related care is a program of nursing care in an individual's own home to provide personal services to an individual because such individual's state of physical or mental health prevents independent self-care.

441—177.2(249) Own home. Own home means an individual's house, apartment, or other living arrangement intended for single or family residential use.

441—177.3(249) Service criteria. The client shall require services that would require the supervision of a professional registered nurse working under the certification of a physician.

177.3(1) Skilled services may include but not be limited to:

a. Gavage feedings of individuals unable to eat solid foods.

b. Intravenous therapy administered only by a registered nurse.

c. Intramuscular injections required more than once or twice a week, excluding diabetes.

d. Catheterizations, continuing care of indwelling catheters with supervision of irrigations and changing of Foley catheter when required.

e. Inhalation therapy.

f. Care of decubiti and other ulcerated areas, noting and reporting to physician.

g. Rehabilitation services including, but are not limited to: bowel and bladder training, range of motion exercises, ambulation training, restorative nursing services, reteaching the activity of daily living, respiratory care and breathing programs, reality orientation, reminiscing therapy, remotivation and behavior modification.

h. Tracheotomy care.

i. Colostomy care until the individual is capable of maintaining the colostomy personally.

j. Care of medical conditions out of control which includes brittle diabetes and terminal conditions.

k. Postsurgical nursing care, but only for short time periods, and primarily for individuals with complications following surgery, or with the need for frequent dressing changes.

l. Monitoring medications needed for close supervision of medications because of fluctuating physical or psychological conditions, i.e., hypertensives, digitalis preparations, narcotics.

m. Diets which are therapeutic and require evaluation at frequent intervals.

n. Vital signs which is the recording and reporting of change in vital signs to the attending physician.

177.3(2) Personal care services may include but not be limited to:

a. Supervision on a twenty-four (24)-hour basis for physical or emotional needs.

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

c. Helping client with toileting.

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

e. Helping client to re-establish activities of daily living.

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

g. Performing incidental household services which are essential to the client's health care at home and are necessary to prevent or postpone institutionalization.

441—177.4(249) Eligibility.

177.4(1) *Eligible individual.*

a. The individual shall be eligible for supplemental security income in every respect except for income.

b. The physician's certification shall include a statement of the specific health care services and that the services can be provided in the individual's own home. The certification shall be given on Form SS-1719-0, Assessment of Functional Capacity of Client and Recommendation for Services, or on a similar plan of care form presently used by public health agencies.

c. The individual shall live in the individual's own home.

177.4(2) *Relationship to other programs.* In-home health related care shall be provided only when other existing programs cannot meet the client's need.

177.4(3) *Maximum costs.* The maximum cost of service shall be $343.60. The amount paid by the department of human services as stated in the Provider Agreement, Form SS-1511-0, shall be reduced by three and eighty-five hundredths percent (3.85%). The provider shall accept the payment made and shall make no additional charges to the recipient or others. The amount of client participation is not affected by the reduction.

177.4(4) *Service plan.* A complete service plan shall be prepared which includes the services needed, the plan for providing these services, and the health care plan defined in rule 177.6(249).

177.4(5) *Certification procedure.* The approval by the district office of the department of human services of the case plan shall constitute certification and approval for payment.

177.4(6) *Temporary absence from home.* The client will remain eligible and payment will be made for services for a period not to exceed fifteen (15) days in any calendar month when the client is absent from the home for a temporary period. Payment will not be authorized for over fifteen (15) days for any continuous absence whether or not the absence extends into a succeeding month or months.

177.4(7) *Income for adults.* The gross income of the individual and spouse, living in the home, shall be limited to $343.60 per month if one needs care or $687.20 if both need care, with the following disregards:

a. The amount of the basic supplemental security income standard for an individual or a couple, as applicable.

b. When income is earned, $65.00 plus one-half (½) of any remaining income.

c. The amount of the supplemental security income standard for a dependent plus any established unmet medical needs, for each dependent living in the home. Any income of the dependent shall be applied to the dependent's needs before making this disregard.

d. The amount of the established medical needs of the ineligible spouse which are not otherwise met.

e. The amount of the established medical needs of the applicant or recipient which are not otherwise met and would not be met if the individual were eligible for the medical assistance program.

f. Rescinded, effective 7/1/84.

177.4(8) *Income for children.*

a. All income received by the parents in the home shall be deemed to the child with the following disregards:

(1) The amount of the basic supplemental security income standard for an individual when there is one parent in the home or for a couple when there are two (2) parents in the home.

(2) The amount of the basic supplemental security income standard for a dependent for each ineligible child in the home.

(3) The amount of the unmet medical needs of the parents and ineligible dependents.

(4) When all income is earned, an additional basic supplemental security income standard for an individual in a one-parent home or for a couple in a two-parent home.

(5) When the income is both earned and unearned, $65.00 plus one-half (½) of the remainder of the earned income.

b. The income of the child shall be limited to $343.60 per month with the following disregards:

(1) The amount of the basic supplemental security income standard for an individual.

(2) The amount of the established medical needs of the child which are not otherwise met and would not be met if the child were eligible for the medical assistance program.

(3) One-third (⅓) of the child support payments received from an absent parent.

c. Rescinded, effective 7/1/84.

177.4(9) *Payment.* The client or the person legally designated to handle the client's finances shall be the sole payee for payments made under the program and shall be responsible for making payment to the provider except when the client payee becomes incapacitated or dies while receiving service.

a. The department shall have the authority to issue one payment to a provider on behalf of a client payee who becomes incapacitated or dies while receiving service.

b. When continuation of an incapacitated client payee in the program is appropriate, the department shall assist the client and the client's family to legally designate a person to handle the client's finances. Guardians, conservators, protective or representative payees, or persons holding power of attorney are considered to be legally designated.

This rule is intended to implement Iowa Code section 249.(2)"*a.*"

441—177.5(249) Providers of health care services.

177.5(1) *Age.* The provider shall be at least eighteen (18) years of age.

177.5(2) *Physician's report.* The provider shall obtain a physician's report at the time service is initiated and annually thereafter. The report shall be on Form SS-1718-0, Provider Health Assessment Form.

177.5(3) *Qualifications.* The provider shall be qualified by training and experience to carry out the health care plan as specified in rule 177.4(4).

177.5(4) *Relative.* The provider may be related to the client, so long as the provider is not a member of the family as defined in rule 130.1(234).

177.5(5) *Title XIX waiver services.* For the purposes of Title XIX waiver services the provider of the in-home health services must be an agency meeting the standards specified in rule 470—80.3(69GA, ch 1260).

This rule is intended to implement 1984 Iowa Acts, chapter 1310, section 3.

441—177.6(249) Health care plan. The nurse shall complete the health care plan with the physician's approval. The health care plan shall include the specific types of services required, the method of providing those services, and the expected duration of services.

177.6(1) *Transfer from medical facility.* When the client is being transferred from a medical hospital or long-term care facility the service worker shall obtain a transfer document describing the client's current care plan, to be provided to the nurse supervising the in-home care plan.

177.6(2) *Medical records.*

a. Medical records shall include, whenever appropriate, transfer forms, physician's certification and orders, interdisciplinary case plan, interdisciplinary progress notes, drug administration records, treatment records, and incident reports. The nurse shall be responsible for assuring that record requirements are met.

b. Medical records shall be located in the nurse's case file, with a copy of the interdisciplinary plan of care and physician's plan of service in the service workers file, and all other records available to the service worker. Upon termination of the in-home care plan, the records shall be maintained in the local office of the department of human services, or in the office of the public health nurse and available to the service worker, for five (5) years or until completion of an audit.

c. The client or legal representative shall have the right to view the client's medical records.

177.6(3) *Review.* The continuing need for in-home health care services shall be reviewed:

a. At a minimum of every sixty (60) days by the physician, including a written recertification of continuing appropriateness of the plan;

b. At a minimum of every three (3) months by the service worker, including a review of the total care plan; and

c. At a minimum of every sixty (60) days by the nurse who shall review the nursing plan.

More frequent reviews may be required by the physician, the service worker, or the nurse.

177.6(4) *Annual physical.* The client shall obtain a physical examination report annually and shall be under the regular supervision of a physician.

This rule is intended to implement Iowa Code section 249.3(2)"a"(2).

441—177.7(249) Client participation.

177.7(1) All income remaining after the disregards in 177.4(7) and 177.4(8) shall be considered income available for services and shall be used for service costs before payment for in-home health care begins.

177.7(2) *First month.* When the first month of service is less than a full month, there is no client participation for that month. Payment will be made for the actual days of service provided according to the agreed upon rate.

This rule is intended to implement Iowa Code section 249.3(2)"*a*"(2).

441—177.8(249) Determination of reasonable charges. Payment will be made only for reasonable charges in-home health care services as determined by the service worker. Reasonableness shall be determined by:

177.8(1) *Community standards.* The prevailing community standards for cost of care for similar services.

177.8(2) *Services at no charge.* The availability of service providers at no cost to the department.

This rule is intended to implement Iowa Code section 249.3(2)"*a*"(2).

441—177.9(249) Written agreements.

177.9(1) *Independent contractor.* The provider shall be an independent contractor and shall in no sense be an agent, employee or servant of the state of Iowa, the Iowa department of human services, any of its employees, or of its clients.

177.9(2) *Liability coverage.* All professional health care providers shall have adequate liability coverage consistent with their responsibilities, as the department of human services assumes no responsibility for, or liability for, individuals providing care.

177.9(3) *Provider agreement.* The client and the provider shall enter into an agreement, using Form SS-1511-0, Provider Agreement, prior to the provision of service. The reduction of three and eighty-five hundredths percent (3.85%) shall be applied to the maximum amount paid by the department of human services as stated in the Provider Agreement by using Form 470-1999, Amendment to Provider Agreement.

This rule is intended to implement Iowa Code section 249.3(2)"*a*"(2).

441—177.10(249) Emergency services. Written instructions for dealing with emergency situations shall be completed by the nurse and maintained in the client's home and in the local department of human services office. The instructions shall include:

177.10(1) *Persons to notify.* The name and telephone number of the client's physician, the nurse, responsible family members or other significant persons, and the service worker.

177.10(2) *Hospital.* Information as to which hospital to utilize.

177.10(3) *Ambulance.* Information as to which ambulance service or other emergency transportation to utilize.

This rule is intended to implement Iowa Code section 249.3(2)"*a*"(2).

441—177.11(249) Termination. Termination of in-home health related care shall occur under the following conditions.

177.11(1) *Request.* Upon the request of the client or legal representative. When termination of the program would result in an individual being unable to protect the individual's own interests, arrangements for guardianship, commitment, or protective placements shall be provided.

177.11(2) *Care unnecessary.* When the client becomes sufficiently self-sustaining to remain in the client's own home with services that can be provided by existing community agencies as determined by the service worker.

177.11(3) *Additional care necessary.* When the physical or mental condition of the client requires more care than can be provided in the client's own home as determined by the service worker.

177.11(4) *Excessive costs.* When the cost of care exceeds the maximum established in 177.4(3).

177.11(5) *Other services utilized.* When the service worker determines that other services can be utilized to better meet the client's needs.

This rule is intended to implement Iowa Code section 249.3(2)"a"(2).

441—177.12(249A) Title XIX waiver services. When in-home health services are used to provide respite care services as defined in rule 441—83.1(249), the rate of payment shall not exceed $30.00 per day. Respite care is limited to thirty-six (36) days in a twelve (12)-month period.

This rule is intended to implement 1984 Iowa Acts, chapter 1310, section 3.

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CHAPTER 178
HEALTH RELATED SERVICES

[Prior to 7/1/83, Social Services(770), Ch 154]
[Previously appeared as Ch 154—renumbered IAB 2/29/84]
[Prior to 2/11/87, Human Services(498)]

441—178.1(234) Eligibility. Health related services shall be available to persons who meet the eligibility requirements for services as specified in rule 441—130.3(234) and who have health problems and need emergency or on-going medical services to prevent disease, alleviate existing problems, or maintain an optimal level of health.

This rule is intended to implement Iowa Code section 234.6(7)*"i."*

441—178.2(234) Services provided. Services may be provided directly or by referral to another agency or health care provider. Health related services include the following:

178.2(1) Follow up for early and periodic screening, diagnosis, and treatment as specified in rule 441—84.5(249A).

178.2(2) Other health screening, including physical examinations or diagnostic tests.

178.2(3) Securing supportive health care in the client's own home, practitioner's office or clinic, or other outpatient services.

178.2(4) Obtaining assessment for placement in state institutions, hospitals, skilled nursing facilities, intermediate care facilities, or residential care facilities.

178.2(5) Assistance in obtaining prescribed medical appliances or medications from appropriate vendors.

178.2(6) Securing in-home health related care as described in rules 441—chapter 177.

178.2(7) Securing homemaker-home health aide services.*

178.2(8) Securing medical service necessary to maintain the family unit and prevent institutionalization of one or more of its members.

178.2(9) Follow up on medical needs resulting from child abuse or neglect.

178.2(10) Provide consultation to medical facilities upon request.

178.2(11) Exploration of possible funding sources for medical care.

This rule is intended to implement Iowa Code section 234.6(7)*"i"*.

441—178.3(234) Termination. Health related services shall be terminated when the client no longer meets the eligibility requirements for service or when a joint decision is made between the client and the social worker to terminate the service.

This rule is intended to implement Iowa Code section 234.6(7)*"i"*.

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*See Health Department[470] Ch 80.

CHAPTER 179
HOME MANAGEMENT SERVICES

[Prior to 7/1/83, Social Services(770), Ch 158]
[Previously appeared as Ch 158—renumbered IAB 2/29/84]
[Prior to 2/11/87, Human Services(498)]

441—179.1(234) Definition.

"Home management services" means supportive or environmental casework services including but not limited to instructions and training in the following areas: management of household budgets, maintenance and care of the home, preparation of food, nutrition, consumer education, child rearing, health maintenance, socialization and stimulation to improve functioning.

441—179.2(234) Eligibility. Home management services shall be provided to persons who meet the eligibility requirements for services as specified in rule 441—130.3(234).

441—179.3(234) Service provision. Home management services are provided directly by departmental staff who have the necessary skills.

441—179.4(234) Situations served.

179.4(1) Home management services may be provided to individuals who have developed or are developing problems with or show a lack of knowledge about indebtedness, housekeeping, meeting nutritional requirements, maintaining health, raising children, or economical shopping.

179.4(2) Home management services may be provided to individuals who have shown tendencies toward isolation, lack of motivation, deteriorating personal relationships, or inability to cope with daily living.

441—179.5(234) Adverse service actions. Service shall be denied, terminated or reduced and appropriate notice given the client as specified in rule 441—130.5(234).

These rules are intended to implement Iowa Code section 234.6(7).

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CHAPTER 180
HOMEMAKER SERVICES
[Prior to 2/11/87, Human Services(498)]

441—180.1(249A) Homemaker services. Homemaker services are those services provided when the individual who usually performs these functions is absent, incapacitated, or is limited in some way. Components of this service include:

180.1(1) Essential shopping; shopping for basic need items such as food, clothing or personal care items, or drugs.

180.1(2) Limited housecleaning: maintenance cleaning such as vacuuming, dusting, scrubbing floors, defrosting refrigerators, cleaning stoves, and washing and mending clothes.

180.1(3) Accompaniment to medical or psychiatric service.

180.1(4) Meal preparation; planning, purchasing and preparing balanced meals.

441—180.2(249A) Eligibility. These services are available only to persons qualifying under Title XIX waiver services in accordance with 441—chapter 83.

441—180.3(249A) Elements of service provision.

180.3(1) Homemaker services can only be provided by agency trained and supervised staff. In order to receive reimbursement for service, homemaker agencies shall meet the standards in 470—80.3(1) and 80.3(2) *"a," "b," "c,"* and *"e."* The agency shall assure that each homemaker has received adequate training for each assigned case. The training requirement shall be met by completing training as described in 470—80.3(2) *"d"*(1).

180.3(2) Providers of homemaker services may be profit or nonprofit agencies.

180.3(3) A unit of service is one hour of direct service.

180.3(4) The actual cost of a unit of services shall not exceed $15 an hour.

441—180.4(249A) Adverse service action. Appropriate notice shall be given the client as specified in rule 441—130.5(234) when a service is denied, terminated or reduced.

These rules are intended to implement Iowa Code chapter 249A and 1984 Iowa Acts, chapter 1310, sections 3 and 10.

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CHAPTER 181
Reserved

CHAPTER 182
FAMILY-CENTERED SERVICES
[Prior to 2/11/87, Human Services(498)]

PREAMBLE

These rules define and structure the department of human services' family-centered services program. The program is designed to make services available to families to prevent and alleviate child abuse and neglect, to prevent out-of-home placements of children and to reunite families that have had children placed outside the home. These services promote family self-sufficiency by providing temporary assistance that permits and encourages parents to keep or gain a responsible level of control over their family's activities and their role in the community.

Included within this program are parent skill development services, therapy services, community assistance services, diagnosis and evaluation services, leisure time and recreational services, and supervision services. The program allows services to be combined in a variety of service packages designed to provide responses to specific family needs. The program recognizes the wide variety of family needs and requires that the frequency, intensity and comprehensiveness of the service approach vary to ensure that all reasonable efforts are made to provide the least restrictive appropriate response to each family receiving assistance.

These rules also document eligibility criteria, application procedures, methods of service provision, time limits and provisions for termination of service.

441—182.1(234) Definitions.

"Case plan" means the written document developed by the department pursuant to rule 441—130.7(234).

"Community assistance services" are activities undertaken to support the identification, development and provision of services within the community on behalf of the family or its individual members. The activities include helping the family identify ways they can utilize and benefit from community resources available to them. The activities also include consulting and collaborating with other community resources to develop and implement service approaches responsive to a particular family's needs. When possible, the family takes part in any consulting or collaborating with schools, homemaker-home health aides, employers, courts, training resources, volunteers, extended family, peer support groups or other community resources.

"Department" means the Iowa department of human services.

"Diagnosis and evaluation services" are activities undertaken by a service provider to identify the family's condition and the effects of the condition on the family or its individual members. These services are distinct from service management assessment activities in that they provide information to assist the department or the court to identify service needs and develop a family case plan or course of action, whereas assessment activities are undertaken to address identified needs and carry out certain case plan service directives the department has already deemed necessary.

"Family" refers to those individuals who may collectively receive family-centered services. For purposes of this chapter, these individuals are limited to the following:

1. Children at risk of placement, continued placement or abuse, their natural or adoptive parents or step-parents, and the children's siblings.

2. Other relatives or individuals who are identified as family members in the case plan and whose involvement with the children at risk influences the achievement of the case plan goals.

"Family-centered service" means any one of the services defined in this chapter when delivered as part of a service package pursuant to the provisions of this chapter. Such a service involves more than one family member in identifying family issues and resolving family problems.

"Homemaker-home health aide services" are those activities undertaken by agencies receiving state funds to provide homemaker-home health aide services to families pursuant to

470—chapter 80. For purposes of this chapter, these services are not family-centered services, and shall not be purchased as family-centered services. Homemaker-home health aide services may be requested as an allied service to a department service package.

"Leisure time and recreational services" are activities undertaken to enhance the family's ability to develop recreational, social, leisure time or hobby and cultural skills. Although planning and follow-up are usually an adequate service response to a family's needs regarding leisure time, activities such as active participation in the family's recreation may be undertaken when necessary to model appropriate behavior or observe family dynamics.

"Parent skill development services" are activities undertaken to train or educate parents to enable them to meet the needs of their children. These activities include parenting classes, in-home instruction and in-home role-modeling of appropriate parenting functions. Information to be introduced through these activities includes parenting methods, age-appropriate discipline, reasonable expectations of children, techniques of caring for children with special needs, and effective ways of communicating and problem solving. When this information is introduced, additional information on subjects such as nutrition, budgeting, personal hygiene and housekeeping may be appropriate temporary related services. Long-term needs identified in these areas shall be addressed through requests for an allied service such as a homemaker-home health aide service.

"Service management activities" are undertaken by the service provider to structure and facilitate the delivery of the service or services they are providing in response to the directions and goals of the department case plan. These activities include the following:

1. "Intake" activities to collect information about the family necessary to begin service delivery.
2. *"Assessment"* activities to review all available information on the family to identify the strengths and resources of the family and its individual members as well as obstacles impeding the family. Such strengths, resources and obstacles are analyzed throughout the service period to facilitate the service provider's response to the department's case plan directions and goals.
3. *"Planning"* activities to develop or revise a written service plan which reflects the assessment findings and describes the service provider's implementation of the department's case plan directions.
4. *"Termination"* activities to review information prior to the discontinuation of one or more services to develop a summary of service delivery and service outcome. Such a summary shall include recommendations to the department or the court regarding the family's needs for future services.

"Service package" means one or more of the family-centered services defined in this chapter and delivered to a family in a coordinated manner pursuant to the provisions of this chapter.

"Service plan" means the written document developed by a service provider through the provider's service management activities.

"Service provider" means an institution, organization, facility, or individual that has entered into a purchase of service contract with the department. For purposes of this chapter, service provider also means department staff who provide one or more of the services in a service package. Department staff providing only client assessment and case management services as described in 441—chapter 131 are not included within this definition.

"Supervision services" are activities undertaken to provide the structure needed by a family to utilize and benefit from other services defined in this chapter. These activities may include guidance, oversight and behavior monitoring.

"Therapy services" are activities undertaken to halt, control or reverse undue stress and severe social, emotional or behavioral problems that threaten, or have negatively affected the family's structure and stability. Activities undertaken through this service can include therapy, counseling and treatment to individuals, groups and families when the related service management activities and the overall service delivery process are directed toward and involve the entire family unit.

This rule is intended to implement Iowa Code section 234.6.

441—182.2(234) Eligibility. Families shall be eligible for family-centered services without regard to income and when the department has determined there is a need for service as evidenced by one of the following situations:

182.2(1) Families with children who are experiencing problems they have not been able to alleviate or solve that place the family in danger of separation through an out-of-home placement of one or more of the children.

182.2(2) Families that have had children placed out of their homes when the family conditions that warranted the initial or continued placement are not being alleviated through the provision of the placement service.

182.2(3) Families with children who are experiencing problems they have not been able to alleviate or solve through their own efforts that place one or more of the family's children in danger of abuse, neglect or exploitation if the families meet the eligibility guidelines established in rule 441—175.4(235A).

This rule is intended to implement Iowa Code section 234.6.

441—182.3(234) Application. Application for family-centered services shall be made according to 441—chapter 130 on Form SS-1120-0, Application for Social Services. Families who have terminated services may reapply for services and shall be handled as new applications.

This rule is intended to implement Iowa Code section 234.6.

441—182.4(234) Time limits. The delivery of family-centered services shall not exceed six (6) months from the date of initial provision of family-centered services except as provided in this rule.

182.4(1) *Exceptions.* The following shall be exceptions to the six (6)-month time limit:

a. Diagnosis and evaluation services shall be limited to a maximum of forty-five (45) days of service.

b. Court-ordered services shall be provided for the length of time specified by the court.

182.4(2) *Extensions.* Services other than diagnosis and evaluation services may be extended following the district administrator's approval of the family's and case manager's written request on Form SS-1117, Service Extension Request. Each extension shall be for a specified period of time not to exceed six (6) months.

This rule is intended to implement Iowa Code section 234.6.

441—182.5(234) Methods of service provision. All families receiving family-centered services from either department employees or purchase of service providers shall receive client assessment and case management services as defined in 441—chapter 131. The department staff responsible for such services shall determine the service package components and service provider or providers who are available and willing to deliver the service package.

182.5(1) *Service package requirements.* Service packages shall meet the following guidelines:

a. A therapy service or a parent skill development service may constitute a complete service package. At least one of these services must be included in any service package except as provided in subrule 182.5(2).

b. One or both of the services identified in subrule 182.5(1)*"a"* may be combined with one or more of the following: Community assistance services, recreational and leisure time services, and supervision services.

c. A community assistance service must be identified as a service package component whenever the department staff responsible for client assessment and case management services requires the service provider to interact with community resources other than the department.

182.5(2) *Diagnosis and evaluation service package.* A diagnosis and evaluation service may constitute a complete service package. A supervision service is the only service that may be delivered in combination with a diagnosis and evaluation service.

182.5(3) *Comprehensive service package availability.* The department shall enter into purchase of service contracts to ensure that one or more service providers exist in all areas of the state who have a capability and willingness to go into families' homes to deliver all the family-

centered services allowed for in subrule 182.5(1), paragraph *"b."* This requirement shall not be construed to prohibit the department from rejecting contract proposals or terminating existing contracts pursuant to rule 441—150.3(234).

182.5(4) *Department case management responsibilties.* Case management and case plan development shall adhere to the provisions of rules 441—130.6(234), and 441—130.7(234) and the following guidelines:

a. The case plan shall be submitted to any service provider or allied service provider to whom the family is referred. Unless service needs dictate otherwise, the case plan shall be submitted prior to the delivery of any service other than client assessment and case management.

b. When the case plan is not submitted prior to initial service provision, referral information shall be provided that includes a description of the family's needs, the department's goals and the services being requested. This information shall be confirmed or amended through the submission of a case plan no later than thirty (30) days after the date of the family's application for services.

c. Case plan directives regarding service frequency or service quantity shall address the potential need for crises interventions that the service provider will be unable to schedule.

d. Upon receipt of a service plan, progress report, other communication described in subrule 182.5(5) or other pertinent information, the case plan shall be reviewed with the service provider and may be altered to reflect the service provider's initial or ongoing assessment findings or other case developments.

e. When an allied service from a homemaker-home health aide agency is requested, the department staff responsible for client assessment and case management services shall be responsible for the service management activities related to the provision of the allied service as defined in health department subrule 80.3(2), paragraph *"e"* if a request for such assistance is made by the homemaker-home health aide agency. Time limits specified in rule 441—182.4(234) shall apply to any department role in the provision of an allied service to a family-centered service package.

182.5(5) *Service provider responsibilities.* Each service provider delivering one or more services in a service package shall undertake the required service management activities as defined in rule 441—182.1(234) and shall adhere to the following guidelines:

a. Except when the service being requested by the department is part of a diagnosis and evaluation service package, the service provider shall submit to the department a service plan which meets the requirements of 150.3(3)*"j"*(1).

b. Service providers delivering a diagnosis and evaluation service package shall submit, within forty-five (45) days of acceptance of the referral, a written report summarizing the specific information collected in response to the department's or the court's stated needs and Form SS-1750, Service Contract Report.

c. Except when the service being provided is part of a diagnosis and evaluation service package, the service provider shall submit to the department written information including reports which meet the requirements of 150.3(3)*"j"*(2) and Form SS-1750, Service Contract Report at the time progress reports are submitted.

d. Based on their ongoing assessment activities, service providers may communicate family service needs they believe are not adequately addressed in the department case plan at any time during their provision of service.

e. Termination activities shall culminate in a written report meeting the guidelines of 150.3(3)*"j"*(3) accompanied by Form SS-1750, Service Contract Report.

This rule is intended to implement Iowa Code section 234.6.

441—182.6(234) Location where family-centered services are delivered. Services shall be delivered in whatever locations the department's client assessment and case management findings indicate are appropriate to ensure that all reasonable efforts are being made to meet the family's needs. To coordinate the provision of family-centered services with the provision of other services, the following guidelines shall be followed:

182.6(1) *Setting restrictions for diagnosis and evaluation services.* When a family has a

child placed out of its home, the setting of the placement cannot be used as a setting for the delivery of a diagnosis and evaluation service package except as provided for in subrule 182.6(3).

182.6(2) *Restrictions on out-of-home placement settings.* Except as provided for in subrule 182.6(3), a family who has a child placed in foster care or a state institution may receive family-centered services, other than diagnosis and evaluation services, at the child's placement setting only when the following conditions are met:

a. The services to be provided involve family members not in placement.

b. The service and case plans address the needs of the family as a unit.

c. A service goal is family reunification.

d. The service is part of a service package that also includes services provided away from the placement setting.

182.6(3) *Foster family home exceptions.* Diagnosis and evaluation services may be provided in the homes of foster parents of children at risk of continued placement when the following criteria are met:

a. The department or the court requires information on the strengths and weaknesses of the relationship between the children, the foster parents and any member of the child's family who has remained active with the child.

b. The department has determined the child cannot be returned to parents in the reasonably near future.

c. The department has determined the child cannot be placed for adoption, with a legal guardian, or with relatives other than a parent.

This rule is intended to implement Iowa Code section 234.6.

441—182.7(234) Unit of service and unit rates. The provision of family-centered services through purchase of service contracts shall follow the requirements and procedures of 441—chapter 150. All members of a family shall collectively be considered one recipient of any unit of family-centered service. One hour of service to the family or one or more of its members shall be considered one unit of service.

182.7(1) *Direct contact unit service rates.* Except for community assistance services, service billings for all family-centered services shall be based on one hour, or any quarter portion thereof, of direct face-to-face contact between the service provider and the family or one or more of its members. Monthly cumulative units shall be rounded up or down to the nearest whole unit.

182.7(2) *Community assistance service unit rates.* Service billings for community assistance services shall be based on one hour, or any quarter portion thereof, of activities undertaken to assist the family with their use of community resources and to consult and collaborate on service directions with schools, homemaker-home health aides, employers, courts, training resources, volunteers, extended family members, peer support groups or other community resources on behalf of the family or its individual members. Monthly cumulative units shall be rounded up or down to the nearest whole unit.

182.7(3) *Allowable indirect costs.* Expenses of transporting clients, service management activities and other administrative functions shall be allowable indirect costs subject to the restrictions set forth in 441—chapter 150.

182.7(4) *Team approach to service delivery.* When two (2) or more individuals from a service provider agency jointly deliver a unit of service, billings for that unit of service shall be reimbursable in an amount equal to the cost of two (2) or more units of service if the following criteria are met.

a. The case plan requests a team approach to service delivery and specifies the number of individuals that will be working together on the team, and a purchase of service contract identifies the service provider's ability to provide such a team approach.

b. The specific number of individuals requested in the case plan who are representing the service provider are physically present to deliver the service to the family and the same individuals undertake the service management activities related to the provision of the service.

182.7(5) *Group services.* When more than one family receives services in a group setting,

all members of each family participating in the group service activity are to be considered as one participant for billing purposes. Purchase of service contracts shall specify a unit rate for group services separate from other services defined in the contract.

182.7(6) *Multiservice unit rates.* Unit rates may be determined for any combination of family-centered services allowed by subrule 182.5(1) and defined in a purchase of service contract. The unit rate for any diagnosis and evaluation service package defined in a purchase of service contract shall be distinct from other service or service package unit rates.

This rule is intended to implement Iowa Code section 234.6.

441—182.8(234) Service provider qualifications.

182.8(1) *Diagnosis and evaluation or therapy service providers.* Persons providing diagnosis and evaluation services or therapy services to department clients shall meet the following minimum education and experience requirements:

a. Graduation from an accredited four (4)-year college or university and the equivalent of three (3) years of full-time experience in a social work or related human service capacity in a public or private agency, or

b. A bachelor's degree in social work or related human service field from an accredited four (4)-year college or university and the equivalent of two (2) years of full-time experience in a social work or related human service capacity in a public or private agency, or

c. A master's degree in social work or related human service field from an accredited college or university, or

d. Any equivalent combination of graduate education in the social or behavioral sciences from an accredited college or university and qualifying experience up to a maximum of thirty (30) semester hours for one year of the required experience, or

e. Current continuous experience in the state classified service system or other public or private agency that includes the equivalent of one year of full-time experience in an occupation requiring a level of qualifications equal to those listed in subrule 182.8(2).

182.8(2) *Parent skill development or community assistance service providers.* Persons providing parent skill development services or community assistance services to department clients shall meet the following minimum education and experience requirements:

a. Graduation from an accredited four (4)-year college or university with a bachelor's degree in social work, education or related human service field, or

b. Graduation from an accredited four (4)-year college or university and the equivalent of one year of full-time experience in social work, education or related human service occupation, or

c. An equivalent combination of qualifying experience and education substituting one year of qualifying experience for each thirty (30) semester hours of education, or

d. Graduate education in a social work, education or related human service field from an accredited college or university may be substituted for the required experience on the basis of thirty (30) semester hours for the one year of required experience.

182.8(3) *Supervision or recreational and leisure time service providers.* Persons providing supervision services or leisure time and recreational services to department clients shall meet the following minimum education and experience requirements:

a. The equivalent of two (2) years of full-time work experience involving direct contact with people in overcoming their social, emotional or behavioral problems, or

b. Two (2) years of college coursework in a program with social work concentration or satisfactory completion of a relevant, concentrated, certified type curriculum such as human service specialist programs as offered in Iowa Area Community Colleges, or

c. College coursework with an emphasis in the social or behavioral sciences can substitute for up to eighteen (18) months of the required experience on the basis of thirty (30) semester hours being equivalent to one year.

182.8(4) *Service management personnel.* Service management activities shall be undertaken by persons who meet or are under the direct supervision of persons who meet the minimum education and experience requirements specified in subrule 182.8(1).

182.8(5) *Department employees.* When the direct service provider is an employee of the

department, the district administrator shall ensure that the minimum qualifications listed in subrules 182.8(1) to 182.8(4) are met. The district administrator shall also ensure that any department staff providing a family-centered service or who is responsible for the family's client assessment and case management activities has access to training and education in family dynamics and family service approaches.

182.8(6) *Purchase of service agency employees.* When the direct service provider is not an employee of the department, the service provider shall be able to demonstrate that the minimum qualifications listed in subrules 182.8(1) to 182.8(4) are met and that service providing personnel have access to training and education in family dynamics and family service approaches. Compliance with this subrule shall be determined by the project manager as defined in rule 441—150.1(234).

This rule is intended to implement Iowa Code section 234.6.

441—182.9(234) Termination and adverse service actions.

182.9(1) *Termination requirements.* Services not ordered by a court may be terminated at any time prior to, but no later than, six (6) months from the initiation of service or the maximum service period allowed through extensions granted pursuant to subrule 182.4(2). Diagnosis and evaluation services not ordered by a court may be terminated at any time prior to, but no later than, thirty (30) days from the initiation of service.

182.9(2) *Adverse service actions.* Services shall be denied, terminated or reduced and appropriate notice given the client as specified in rule 441—130.5(234) unless otherwise provided for in this chapter.

This rule is intended to implement Iowa Code section 234.6.

441—182.10(234) Appeals. Decisions made by the department or its designee adversely affecting clients may be appealed pursuant to 441—chapter 7. Decisions made by the department adversely affecting service providers may be reviewed pursuant to subrule 150.5(5).

This rule is intended to implement Iowa Code section 234.6.

441—182.11(234) Compliance transition period. All purchase of service contracts for family-centered services, all department case plans and all service provider service plans shall comply with the rules of this chapter no later than six (6) months from the effective date. During this six (6)-month transition period, the guidelines listed below shall be followed:

182.11(1) *Purchase of service contracts.* All purchase of service contracts, contract amendments and contract renewals for family-centered services that are initiated to go into effect on or after the effective date of this chapter shall comply with the rules of this chapter on the beginning date of the contract period. Any contract for family-centered services in effect prior to the effective date of this chapter shall be amended as is necessary to assure compliance with this chapter prior to the end of the six (6)-month transition period.

182.11(2) *Application and eligibility.* Rule 441—182.2(234) and rule 441—182.3(234) shall govern the department's determination of service eligibility for all applications for family-centered services received on or after the effective date of this chapter.

182.11(3) *Service provision.*

a. All family-centered services initiated on or after the effective date of this chapter shall be delivered according to the requirements of rule 441—182.4(234), rule 441—182.6(234), rule 441—182.9(234) and rule 441—182.10(234). During the six (6)-month transition period, compliance with the provisions of rule 441—182.5(234) shall be required unless these provisions are in conflict with contractual service definitions or contractual agreements in effect prior to the effective date of this chapter.

b. Each case plan and service plan for family-centered services initiated prior to the effective date of this chapter shall undergo a special review by the department and the service provider. This review shall take place within four (4) months of the effective date of this chapter. The review shall result in case plan and service plan changes necessary to assure compliance with this chapter before the end of the six (6)-month transition period.

This rule is intended to implement Iowa Code section 234.6.
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CHAPTERS 183 to 199
Reserved

TITLE XVI
ALTERNATIVE LIVING

CHAPTER 200
ADOPTION SERVICES

[Prior to 7/1/83, Social Services(770), Ch 139]
[Previously appeared as Ch 139—renumbered IAB 2/29/84]
[Prior to 2/11/87, Human Services(498)]

441—200.1(600) Application. Persons wishing to adopt a child through the department of human services may make application on Form SS-6101-4, Application for Adoption. Application is for adoption of children who are or will be under the guardianship of the department.

200.1(1) No applications will be accepted in any district for the adoption of an easy-to-place child, i.e., a normal, healthy Caucasian child or sibling group of two (2) children who are age seven or less, or a healthy minority child age seven or less from Caucasian applicants until fewer than twenty (20) applications are pending in that district. Applications will then be accepted only until thirty (30) applications are on file. An exception to this rule may be made for relatives of the child, or foster parents or other persons applying to adopt a child with whom the applicant has a significant relationship.

200.1(2) Reserved.

This rule intended to implement Iowa Code section 600.22.

441—200.2(600) Foster parent(s). A foster parent(s) shall be given consideration for selection as the adoptive placement for a child in the foster parent's(s') care who is legally free for adoption if:

200.2(1) The child is hard to place, or

200.2(2) The child has been in the foster parent's(s') care one year or longer.

This rule is intended to implement Iowa Code section 600.1.

441—200.3(600) Termination of parental rights. The Iowa department of human services shall place a child in an adoptive home only after termination of parental rights.

This rule is intended to implement Iowa Code chapter 600.

200.4(600) Rescinded, effective June 1, 1985.

200.5(600) Rescinded, effective June 1, 1985.

441—200.6(600) Investigations and reports. Requests for preplacement investigations received by the department shall be referred to a private agency or a certified investigator unless one of the following exists:

200.6(1) *Fee.* The client is unable to pay the cost of service according to the fee schedule guidelines.

200.6(2) *Hard to place child.* The client is interested in adopting a hard to place child.

200.6(3) *Preference.* The client prefers that the department provide the service, depending upon availability of staff.

This rule is intended to implement Iowa Code section 600.8(3).

441—200.7(600) Department fees for adoptive parents.

200.7(1) *Cost of service.* The adoptive parents shall be charged for the cost of service according to fee schedules based on the reasonable cost of providing the service. Fee schedules shall be compiled by the department for:

a. Preplacement studies.

b. Postplacement studies.

c. Postplacement supervision.

d. Any supplemental reports required.

200.7(2) *Verification of income.* Income shall be verified by inspecting the adoptive parents' latest federal income tax report. A copy of the report shall be kept in the parents' record.

200.7(3) *Waiver of fee.* The fee shall be waived for any family wanting to adopt a physically or mentally handicapped child, a child six (6) years of age or older, a sibling group, or an otherwise hard to place child.

This rule is intended to implement Iowa Code section 600.8(6).

441—200.8(600) Interstate placements. Interstate placements shall follow interstate compact on placement of children procedures according to Iowa Code section 238.33.

This rule is intended to implement Iowa Code chapter 600.

441—200.9(600) Foreign and international adoptions. Foreign and international adoptions shall follow the procedures for interstate compact on the placement of children, Iowa Code section 238.33, when applicable. When the compact is not applicable, a child will only be placed after the department has been furnished a preplacement investigation report as required by Iowa Code section 600.8, documents which demonstrate the child is legally free for adoption, and all available medical and social information concerning the child.

This rule is intended to implement Iowa Code section 600.15.

441—200.10(600) Research.

200.10(1) *Requests.* Any person seeking access to information for the purpose or purposes set forth in Iowa Code section 600.16(1)*"c,"* shall submit a request to the commissioner. Each request shall contain sufficient facts to establish that the information sought is necessary for conducting a legitimate research project or for treating a patient in a medical facility.

200.10(2) *Committee.* Upon receipt of a request for information sought in conducting a research project, the commissioner shall appoint a committee consisting of no less than three (3) departmental employees. Research requests shall be approved or denied by this committee. On a request for information for treating a patient in a medical facility, approval shall be by the commissioner or designee.

This rule is intended to implement Iowa Code section 600.24*"c."*

441—200.11(600) Appeals. Prospective adoptive parents may appeal nonapproval by the person making the investigation according to rules in 441—chapter 7.

This rule is intended to implement Iowa Code sections 600.2(2) and 600.8(2)*"b."*

441—200.12(600) Notice of adoption hearing. When notice of adoption hearing is served to the department, the service shall be made to the director, division of community programs, department of human services.

This rule is intended to implement Iowa Code section 600.11.

441—200.13(600) Information to be released.

200.13(1) Requests for information from adoption records of the department shall be made in writing to the bureau of adult, children and family services or to local offices. The request shall contain as much of the following information as the individual can provide:

a. Names of the adopted person and adoptive parent(s).

b. Date and place of adoption.

c. Birth date of the adopted person.

d. Name of the adopted person prior to adoption.

e. Whether the adopted person was a resident of the Annie Wittenmyer home (Iowa soldier's and sailor's home).

200.13(2) Requests for information from adoption records shall be signed by the person making the request, and shall indicate whether the individual making the request is:

a. The adopted person, who is now an adult, or

b. The adoptive parent(s), or

c. A legal representative of either the adopted person or the adoptive parent(s), or

d. The biological parent(s) or the biological parent's(s') legal representative.

200.13(3) All information which meets, or appears to meet, the definition of background information in Iowa Code section 600.8(1)*"c,"* shall be made available to those eligible under 200.13(2) except:

a. The names and addresses of the biological parents, grandparents, siblings, aunts and uncles, and other relatives.

b. The occupation, title or position of a biological parent when such information would allow easy identification of the parents' name.

200.13(4) Information may be provided in the form of photocopies of pages or typed excerpts from the adoption record.

200.13(5) Requests for information from adoption records shall be denied when the person requesting the information is not one of the parties specified in 200.13(2).

200.13(6) Photocopied pages shall be made available at the cost of reproduction.

This rule is intended to implement Iowa Code section 600.16(1).

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CHAPTER 201
SUBSIDIZED ADOPTIONS

[Prior to 7/1/83, Social Services(770), Ch 138]
[Previously appeared as Ch 138—renumbered IAB 2/29/84]
[Prior to 2/11/87, Human Services(498)]

441—201.1(600) Administration. The Iowa department of human services through the director of the division of community services shall administer the subsidized adoption program, in conformance with the legal requirements for adoption as defined in Iowa Code chapter 600.

441—201.2(600) Definitions.

"Child" means the same as defined in Iowa Code section 234.1.

"Maintenance subsidy" means a monthly payment to cover the cost of room, board, clothing, and spending money. The child will also be eligible for medical assistance pursuant to chapter 75.

"Mental health professional" means the same as defined in the department's rule 33.1(225C,230A).

"Mental retardation professional" means the same as defined in rules of the public health department 470—64.1(21).

"Special services subsidy" means reimbursement for medical, dental, therapeutic, educational, or other similar service or appliance required by a child due to a handicapping condition.

441—201.3(600) Conditions of eligibility.

201.3(1) The child is eligible for subsidy if the child is hard to place for adoption for one of the following reasons:

a. The child has a medically diagnosed disability which substantially limits one or more major life activities, requires frequent professional treatment, assistance in self-care, or the purchase of special equipment.

b. The child has been determined to be mentally retarded by a qualified mental retardation professional.

c. The child has been determined to be at high risk of being mentally retarded by a qualified mental health or mental retardation professional or physically disabled by a physician. Until a determination has been made that the child is mentally retarded or physically disabled, only a special services subsidy can be provided.

d. The child has been diagnosed by a qualified mental health professional to have a psychiatric condition which impairs the child's mental, intellectual, or social functioning, and for which the child receives professional services.

e. The child has been diagnosed by a qualified mental health professional to have a behavioral disorder characterized by situationally inappropriate behavior which deviates substantially from behavior appropriate to the child's age or significantly interferes with the child's intellectual, social and personal adjustment.

f. The child is age eight (8) or over.

g. The child is a member of a minority race or ethnic group, not Caucasian, or whose biological parents are of different races.

h. The child is a member of a sibling group of three (3) or more who are placed in the same adoptive home, or a sibling group of two (2) if one of the children is hard to place due to one of the above reasons.

201.3(2) Subsidies for children who were determined to be eligible prior to the effective date of this rule shall continue unless one of the conditions for termination defined in 441—201.7(600) is present.

201.3(3) The determination of whether a child meets eligibility requirements is made by the Iowa department of human services. An adverse determination may be appealed according to rules in 441—chapter 7.

441—201.4(600) Application. Application for the subsidy may be made on Form SS-6102-6 (Application for Adoption Subsidy) at any time in the adoptive process prior to finalization of the adoption.

201.4(1) The prospective adoptive family who has been studied and approved for adoptive placement by the department, a child-placing agency licensed by the department, a certified adoption investigator, or, for a family residing outside of the state of Iowa, a governmental child-placing agency or a licensed child-placing agency in that state, may apply for subsidy for an eligible Iowa child.

201.4(2) Withdrawal of the application for the subsidy shall be reported to the department as soon as this information is available.

201.4(3) The effective date for new subsidy agreements will be the date the final adoption or interlocutory decree was granted. The agreement shall state the amount of subsidy, frequency and duration of payments.

441—201.5(600) Determination of amount of subsidy.

201.5(1) The amount of subsidy shall be determined through an agreement between the department and the adoptive parents, Form SS-6602-6 (Adoption Subsidy Agreement), based upon the needs of the child and the financial circumstances of the family.

201.5(2) Other services available to the family free of charge to meet the needs of the child, such as other federal, state, and local governmental and private assistance programs, and the family's insurance, shall be explored and used prior to the expenditure of state funds for subsidy.

201.5(3) Income scales to determine the amount of a maintenance subsidy shall be compiled by the department based on the 1981 United States Labor Department's cost of living standards, with adjustment made according to the change in the consumer price index.

201.5(4) All earned and unearned income of the prospective adoptive parents shall be verified and considered in determining the amount of subsidy. Earned income shall be verified by inspecting the latest federal income tax return. When the income tax return differs substantially from current income, verification of current income shall be required.

201.5(5) If a child is a full- or part-time student, the child's earned income shall not be considered. If the child is not in school, the child's earnings shall be considered in determining the amount of subsidy. The child's unearned income shall be used to reduce the amount of subsidy.

201.5(6) A maintenance subsidy may be no less than ten dollars ($10) per month.

201.5(7) A review of eligibility for and amount of subsidy shall be completed annually.

201.5(8) Subsidy shall continue under the same rules if the adoptive family moves outside of the state of Iowa.

201.5(9) The maximum monthly maintenance payment shall be the foster family care maintenance ceiling according to the age of the child as found in 156.6(1).

This rule is intended to implement Iowa Code section 600.19 and 1983 Iowa Acts, chapter 201, section 5.

441—201.6(600) Types of subsidy.

201.6(1) *Special services only.* Reimbursement is provided to the adoptive family, or direct payment made to a provider, for medical, dental, therapeutic, educational or other service required by the child's handicapping condition for children defined in 201.3(1)*"a," "b," "c," "d,"* or *"e."*

a. The need for special services shall be established through a report from the agency having guardianship of the child, plus substantiating information from specialists providing the services.

b. Attorney fees for adoptive services may be considered a special service, if needed and if the adopting family cannot secure legal assistance without paying a fee.

201.6(2) *Maintenance only.* A monthly allotment for room, board, clothing and spending money may be provided, as determined under 201.5(600). The child will also be eligible for medical assistance pursuant to chapter 75.

201.6(3) *Maintenance and special services.* For handicapped children defined in 201.3(1)*"a"* to *"e,"* a special services subsidy will be included when a maintenance subsidy is provided.

441—201.7(600) Termination of subsidy. Subsidy will terminate when any of the following occur:

201.7(1) The adoptive child becomes an adult.

201.7(2) The child is married.

201.7(3) The child no longer resides in the home, unless special services for which the adoptive parents are responsible and for which no other resource is available, continue to be needed while the child is receiving inpatient treatment or is institutionalized.

201.7(4) Death of the child.

201.7(5) Changes in the circumstances of the family so that financial assistance in caring for the child is no longer needed.

201.7(6) The child no longer needs special services, when subsidy was for special services only.

201.7(7) Adoptive parents refuse to cooperate in verifying income.

441—201.8(600) Reinstatement of subsidy. Reinstatement of subsidy will be made when the subsidy was terminated for reasons in 201.7(3), 201.7(5), or 201.7(6), and a subsequent change in the family's circumstances results in the need for financial assistance.

These rules are intended to implement Iowa Code sections 600.17 to 600.21.

441—201.9(600) New application. New applications will be taken at any time, but processed only so long as funds are available. Maintenance and special services already approved will continue.

This rule is intended to implement Iowa Code section 600.22.

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CHAPTER 202
FOSTER CARE SERVICES

[Prior to 7/1/83, Social Services(770), Ch 136]
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[Prior to 2/11/87, Human Services(498)]

441—202.1(234) Definitions.

"Case plan" shall mean the plan identifying needs, services, and time frames for delivery of the services to the child and natural parents, setting forth objectives and goals to be met and responsibilities of all parties involved.

"Child" shall mean the same as defined by Iowa Code section 234.1.

"Department" shall mean the Iowa department of human services and includes the local, county, and district offices of the department.

"District administrator" shall mean the department employee responsible for managing department offices and personnel within the district and for implementing policies and procedures of the department.

"Eligible child" shall mean a child for whom the court has given guardianship to the department or has transferred legal custody to the department or for whom the department has agreed to provide foster care services on the basis of a signed placement agreement or who has been placed in emergency care for a period of not more than thirty (30) days upon the approval of the commissioner or the commissioner's designee.

"Facility" means the personnel, program, plant and equipment of a person or agency providing child foster care.

"Foster care" shall mean substitute care furnished on a twenty-four (24)-hour a day basis to an eligible child, in a licensed foster care facility or approved shelter care facility, by a person or agency other than the child's parent or guardian, but does not include care provided in a family home through an informal arrangement for a period of less than thirty (30) days. Child foster care shall include but is not limited to the provision of food, lodging, training, education, supervision, and health care.

"Natural parent" shall mean a parent by blood, marriage, or adoption.

"Person" or *"agency"* shall mean individuals, institutions, partnerships, voluntary associations, and corporations, other than institutions under the management or control of the department, who are licensed by the department as a foster family home, child caring agency or child placing agency, or approved as a shelter care facility.

This rule is intended to implement Iowa Code section 234.6(6)*"b."*

441—202.2(234) Eligibility.

202.2(1) Only an eligible child as defined in these rules shall be considered for foster care services supervised by the department.

202.2(2) The need for foster care placement and service shall be determined by an assessment of the child and family to determine their needs and appropriateness of services. Assessments include the educational, physical, psychological, social, family living, and recreational needs of the child and the family's ability to meet these needs. The assessment is a continual process to identify needed changes in service or placement for the child.

202.2(3) With the exception of emergency care, a social history shall be completed on each child prior to a department recommendation for foster care placement. For voluntary emergency placements a social history shall be completed before a decision is made to extend the placement beyond thirty (30) days. For court-ordered emergency placements a social history shall be completed before the disposition hearing.

202.2(4) Foster care placement shall be recommended by the department only after efforts have been made to prevent or eliminate the need for removal of the child from the family unless the child is in immediate danger at home.

202.2(5) The need for foster care and the efforts to prevent placement shall be evaluated by a review committee prior to placement, or, for emergency placements only, within thirty (30) days after the date of placement.

The review shall meet the following requirements:

a. Department staff on the review committee shall be the child's service worker, a supervisor knowledgeable in child welfare, and one or more additional persons appointed by the district administrator. At least one of these persons shall not be responsible for the case management or the delivery of services to either the child or the parents or guardian who are the subject of the review.

b. The review shall be open to the participation of the parents or the guardian of the child, local and area education staff and juvenile court staff, and the guardian ad litem.

c. The present foster care provider, if any, and previous foster care providers who have cared for the child in the thirty-six (36) months prior to the review month shall be notified of the review and have the opportunity to participate. If the provider is no longer licensed, consent of the parents is required to allow participation.

d. Written notice of the review shall be sent to the child's parents or guardian at least five (5) working days prior to the date of the review.

e. Other persons may be invited to the review with the consent of the parents or guardian.

f. A written summary of the review recommendations shall be sent to the child's parents or guardian following the review.

g. Review committee recommendations shall be advisory to the service worker and supervisor, who are responsible for development of the department case plan and for reports and recommendations to the juvenile court.

202.2(6) Foster care services may be used to provide respite care as defined in rule 441—83.1(249) to eligible individuals in the Title XIX waiver program.

This rule is intended to implement Iowa Code section 234.6(6)*"b."*

441—202.3(234) Voluntary placements.

202.3(1) All voluntary placement agreements shall terminate after six (6) months unless the placement is extended or court action is taken to commit the child to the commissioner or to transfer legal custody to the department. All voluntary placements that extend beyond six (6) months or beyond the age of eighteen (18) years shall be approved by the district administrator or designee.

202.3(2) Voluntary placements will only be extended when there is documentation that the child has an emotional, physical or intellectual handicap which necessitates care and treatment of a longer duration than six (6) months, and documentation that the natural parents have demonstrated a willingness to fulfill their responsibilities to the child as defined in the case plan.

202.3(3) Each extension granted shall be for only six (6) months' duration.

202.3(4) A signed voluntary placement agreement Form SS-2604 shall be completed by the local office where the parent or guardian resides.

This rule is intended to implement Iowa Code section 234.6(6)*"b."*

441—202.4(234) Selection of facility.

202.4(1) Placement consistent with the best interests and special needs of the child shall be made in the least restrictive facility available and in close proximity to the child's home.

202.4(2) Foster family care shall be used for a child unless the child has problems requiring specialized service which cannot be provided in a family living arrangement. Reasons for using a more restrictive placement shall be documented in the case record.

202.4(3) A foster family shall be selected on the basis of compatibility with the child, taking into consideration:

a. The extent to which interests, strengths, abilities and needs of the foster family enable the foster family members to understand, accept and provide for the individual needs for the child.

b. The child's individual problems and plans for future care.

c. The capacity of the foster family to understand the needs and attitudes of the child's parents and the relationship of the child to the parents.

d. The characteristics of the foster family that offer a positive experience for the child who has specific problems as a consequence of past relationships.

e. An environment that will cause minimum disruption of the child including few changes in placement for the child.

202.4(4) A foster group care facility shall be selected on the basis of its ability to meet the needs of the child, promote the child's growth and development, and ensure physical, intellectual and emotional progress during the stay in the facility. The department shall place a child only in a licensed or approved facility which has a current purchase of service agreement with the department.

This rule is intended to implement Iowa Code section 234.6(6)*"b."*

441—202.5(234) Preplacement. Except for emergency foster care, a child placed in a facility shall have a preplacement visit involving the child, the foster parents or agency staff if the child is placed in a public or private agency, and the service worker. The natural parents shall also be involved in the preplacement visit when their presence would not be disruptive to the child's placement.

This rule is intended to implement Iowa Code section 234.6(6)*"b."*

441—202.6(234) Placement.

202.6(1) Prior to placement, the worker shall provide the facility with pertinent information regarding the child and the case plan, including a physical examination, medical needs, behavioral patterns, educational arrangements, and financial arrangements; and medical authorizations and other releases.

202.6(2) For placement in a foster family home supervised directly by department staff, Form SS-2605-0, Foster Family Placement Contract, shall be completed by the provider and department representatives. A new foster family placement contract shall be completed when the rate of payment or special provisions change.

202.6(3) A follow-up visit to the facility shall be made within two (2) weeks of the initial placement.

202.6(4) The case plan shall be reviewed every six (6) months to assure appropriateness of the child's placement. A copy of the case plan and report to the court shall be submitted to the court every six (6) months or as requested by the court.

202.6(5) In conjunction with the case plan review, the case shall be presented every six (6) months to a review committee which conforms to the requirements in subrule 202.2(5) except those cases being reviewed by a local foster care review board in the sixth judicial district as authorized in Iowa Code section 237.19 shall not be subject to a review by the department's review committee. When the court holds a hearing to review the placement, the district administrator may waive or modify the department review committee procedure. The review committee shall:

a. Evaluate the continuing necessity for foster care placement.

b. Evaluate the continuing appropriateness of the foster care placement.

c. Evaluate the extent of compliance with the case plan.

d. Evaluate the extent of progress made toward lessening the causes for foster care placement.

e. Project a likely date by which the child will leave foster care.

This rule is intended to implement Iowa Code sections 234.6(6)*"b,"* and 237.19.

441—202.7(234) Out-of-district placements.

202.7(1) When the department makes a placement of a child in the foster care system out of the district in which the child resides, such placement shall occur only when there is no

appropriate placement within the district, when the placement is necessary to facilitate reunification of the child with the parents, or when an out-of-district agency is closer to the community where the child resides than an in-district agency offering the same services.

202.7(2) The authority for approving out-of-district placements rests with both the placing and receiving district administrators.

202.7(3) Transfer of responsibility for supervision, planning, and visitation shall be approved by the placing and receiving district administrators and, when appropriate, by the court.

This rule is intended to implement Iowa Code section 234.6(6)*"b."*

441—202.8(234) Out-of-state placements.

202.8(1) The department shall make an out-of-state foster family care placement only with the approval of the district administrator. Approval shall be granted only when the placement will not interfere with the goals of the child's case plan and when one of the following conditions exists:

a. The foster family with whom the child is placed is moving out of state.

b. An out-of-state family having previous knowledge of the child desires to provide foster care to the child.

c. An out-of-state family is approved to adopt the child under subsidy and is eligible to receive maintenance payments until the adoption is final.

d. An out-of-state placement is necessary to facilitate reunification of the child with the parents.

202.8(2) The department shall make a placement in an out-of-state group facility only with the approval of the district administrator and the director of the division of social services or designee. Approval shall be granted only when the placement will not interfere with the goals of the child's case plan and when one of the following conditions exists:

a. An out-of-state placement is necessary to facilitate reunification of the child with the parents.

b. The out-of-state facility is closer to the community where the child resides than in-state facilities offering the same services.

c. The out-of-state facility offers a more specialized program than can be obtained in state.

202.8(3) All out-of-state placements shall be made pursuant to interstate compact procedures.

This rule is intended to implement Iowa Code section 234.6(6)*"b."*

441—202.9(234) Independent living. An independent living arrangement shall be used to prepare the child for self-support and care.

202.9(1) To be considered for independent placement a child shall meet all of the following conditions:

a. Be at least sixteen and one-half (16½) years old but less than eighteen (18) years old.

b. Be under the legal custody or guardianship of the department.

c. Be working full-time or be attending school and working part-time.

d. Have demonstrated a capacity to be self-maintaining.

202.9(2) A child who is not currently employed may be placed in independent living only with prior approval of the state director.

202.9(3) The case plan for a child in independent living shall demonstrate that the child will be independent by age eighteen (18) before such child can be approved for independent living.

202.9(4) All requests for independent living shall be approved by the district administrator of the district where the child resides. The district administrator or designee shall review all independent placements quarterly as to appropriateness and make any necessary adjustments.

This rule is intended to implement Iowa Code section 234.6(6)*"b."*

441—202.10(234) Services to foster parents. Foster parents shall be provided necessary supportive services for the purpose of aiding them in the care and supervision of the child. These services shall include, but not be limited to:

202.10(1) Availability of social service staff on a twenty-four (24)-hour basis in case of emergency.

202.10(2) Conferences to develop in-depth planning regarding family visits, expectations of the department, future objectives and time frames, use of resources, and termination of placements.

202.10(3) Visitation by the service worker at least monthly regardless of the duration of the placements.

202.10(4) Making available all known pertinent information needed for the care of the child.

This rule is intended to implement Iowa Code section 234.6(6)*"b."*

441—202.11(234) Services to the child. The service worker shall maintain a continuous relationship with the child and help the child plan for the future, evaluate the child's needs and progress, supervise the living arrangement, arrange for services from other resources as needed, and counsel the child in adjusting to the placement.

202.11(1) When the child is placed in a foster family home, visits to the child shall be at least monthly to provide any needed services and review the progress of the child.

202.11(2) When the child is placed with an agency, the services worker shall visit the child at least every six (6) weeks to fulfill responsibilities set forth in the case plan and to review the progress of the child.

This rule is intended to implement Iowa Code section 234.6(6)*"b."*

441—202.12(234) Services to natural parents.

202.12(1) Services shall be made available to the natural parents throughout the period of placement for the purpose of reuniting the family in an agreed upon time frame.

202.12(2) The natural parents shall be notified of the location and nature of the child's placement, unless it is documented in the child's case record that to do so would be disruptive to the placement.

202.12(3) The case plan shall specify the services to be provided and the time frame for reuniting the family. This plan shall be developed in cooperation with the natural parents.

202.12(4) Personal contact shall be made at least monthly with the natural parents and the progress towards goals attainment reviewed and the progress documented in the case record.

This rule is intended to implement Iowa Code section 234.6(6)*"b."*

441—202.13(234) Removal of the child.

202.13(1) When the department plans to remove a child from a facility, the facility shall be informed in writing of the date of the removal, the reason for the removal, the recourse available to the facility, if any, and that the chapter 17A contested case proceeding is not applicable to the removal. The department shall inform the facility ten (10) days in advance of the removal, except that the facility may be informed less than ten (10) days prior to the removal in the following instances:

a. When the parent or guardian removes the child from voluntary placement.

b. When the court orders removal of a child from placement.

c. When there is evidence of neglect or physical or sexual abuse.

202.13(2) The department may remove a child from a facility when any of the following conditions exist:

a. There is evidence of abuse, neglect, or exploitation of the child.

b. The child needs a specialized service that the facility doesn't offer.

c. The child is unable to benefit from the placement as evidenced by lack of progress of the child.

d. There is evidence the facility is unable to provide the care needed by the child and fulfill its responsibilities under the case plan.

e. There is lack of cooperation of the facility with the department.

202.13(3) If a foster family objects in writing within seven (7) days from the date that the information of plans to remove the child is mailed, the district administrator shall grant a conference to the foster family to determine that the removal is in the child's best interest.

This conference shall not be construed to be a contested case under the Iowa administrative procedure Act, Iowa Code chapter 17A.

The conference shall be provided before the child is removed except in instances listed in 202.13(1)*"a"* through *"c"*. The district administrator shall review the propriety of the removal and explain the decision to the foster family.

The district administrator, on finding that the removal is not in the child's best interests, may overrule the removal decision unless a court order or parental decision prevents the department from doing so.

202.13(4) When the facility requests a child be removed from its care, it shall give a minimum of ten (10) days' notice to the department so planning may be made on behalf of the child.

This rule is intended to implement Iowa Code section 234.6(6)*"b."*

441—202.14(234) Termination. The foster care services shall be terminated when the child is no longer an eligible child, or when the attainment of goals in the case plan has been achieved, or when the goals for whatever reasons cannot be achieved, or when it is evident that the family or individual is unable to benefit from the service or unwilling to accept further services.

This rule is intended to implement Iowa Code section 234.6(6)*"b."*

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CHAPTERS 203 to 205
Reserved

CHAPTER 206
COMMUNITY SUPERVISED APARTMENT LIVING ARRANGEMENTS SERVICES PROGRAM

[Prior to 2/11/87, Human Services(498)]

PREAMBLE

The intent of this chapter is to establish requirements for the purchase of community supervised apartment living arrangements for adults by the department of human services. Community supervised apartment living arrangements is a program of services for adults with mental illness, mental retardation or developmental disabilities who are capable of living semi-independently. Services are provided to enable the adults to live in the community with minimal supervision. Community supervised apartment living arrangements are approved by the department according to rules found in 441—chapter 36.

441—206.1(234) Definitions.

"Adult" means a person eighteen (18) years of age or older or a minor who has attained majority by marriage.

"Approved provider" means an agency that has been approved to provide community supervised apartment living arrangements according to 441—chapter 36.

"Community supervised apartment living arrangements" means the provision of or assistance to secure a residence, and supervision of one or more persons who have mental illness, mental retardation, or a developmental disability and who are capable of living semi-independently in a community setting.

"Community supervised apartment living arrangements services program" means a program of service as defined in rule 441—36.3(225C).

"Department" means the Iowa department of human services.

"Project manager" means a department employee who is designated as responsible for the development, monitoring, and evaluation of service arrangements with agencies that provide a community supervised apartment living arrangement program of services.

441—206.2(234) Client eligibility.

206.2(1) *Financial.* Financial eligibility shall be determined according to rule 441—130.3(234).

206.2(2) *Need for service.* The need for community supervised apartment living arrangements program of services shall be established through the assessment process as set forth in 441—chapter 131. The person shall also meet the following conditions:

a. The person shall require minimal supervision but not the level of care and supervision provided in licensed residential care facilities as supported by Form SS-1719, Physician's Report.

b. The person shall be diagnosed as mentally ill, mentally retarded, or developmentally disabled as defined in rule 441—36.1(225C).

c. The person shall be an adult as defined in rule 441—206.1(234).

441—206.3(234) Goals. Appropriate goals for persons living in community supervised living arrangements are those described in subrule 130.7(1), paragraphs *"a," "b,"* and *"d."*

441—206.4(234) Elements of service provision.

206.4(1) *Provider standards.* Services under this chapter shall be purchased by the department only from a provider who has been approved pursuant to subrule 36.10(1) or 36.10(2). The provider shall submit a copy of the department's approval to the project manager.

206.4(2) *Required services.* The provider shall ensure that certain services outlined in subrule 36.3(1) and defined in rule 441—36.1(225C) are available to the client as needed: Service coordi-

nation services (case-management services), diagnostic and evaluation services, community living skills training, self-care training, support, and transportation services. In addition, the provider shall ensure that the client receives necessary supervision as required in subrule 36.2(2).

The provider may deliver the services directly or subcontract for the services from another provider. If some services are delivered by subcontracting, the provider shall include the costs for these services in its unit rate. No payment shall be allowed for the other services outlined in subrule 36.3(1).

206.4(3) *Method of payment.* The provider may request a reimbursement rate be established on a per diem or a per hour basis. Rates will be developed in accordance with the requirements and procedures in 441—chapter 150 for purchase of service providers.

206.4(4) *Department responsibilities.* Case management and case plan development shall adhere to the provisions of rules 441—130.6(234) and 441—130.7(234). A copy of the case plan shall be submitted to the provider at the time of admission.

206.4(5) *Service provider responsibilities.* The provider shall adhere to the following guidelines:

a. The provider shall submit a written report to the department summarizing the results of the diagnostic and evaluation services as required in subrule 36.6(3) within thirty (30) days following the client's admission to the program and no less than annually thereafter. However, the report need not include any diagnostic or evaluation information supplied by the department.

b. The provider shall submit a copy of the social history as required by subrule 36.6(5) to the department within thirty (30) days of the client's admission to the program. However, the report need not include any information supplied by the department.

c. The provider shall submit a copy of the individual program plan as required in subrule 36.6(6) to the department within thirty (30) days following the client's admission to the program and no less than annually thereafter.

d. Based on ongoing service coordination responsibilities as defined in rule 441—36.1(225C) and subrule 36.6(4), the provider shall communicate needs not adequately addressed in the department case plan at any time during the provision of service.

441—206.5(234) Adverse service actions. Services may be denied, terminated, or reduced according to the provisions of rule 441—130.5(234).

441—206.6(234) Appeals. Notice of adverse actions and the right of appeal shall be given clients in accordance with 441—chapter 7.

441—206.7(234) Compliance transition period. All purchase of service contracts for community supervised living arrangements services shall comply with subrule 206.4(1) no later than six (6) months from the effective date. During this six (6)-month transition period, a purchase of service contract may be entered into prior to the department's approval of the provider's program pursuant to subrule 36.10(1) or 36.10(2) if copies of the following are submitted to and approved by the project manager:

206.7(1) A copy of the provider's "Application for Approval of a Community Supervised Living Arrangements Program," Form 470-2070.

206.7(2) The provider's operating plan.

206.7(3) A completed Self-Survey Form, Form 470-2068.

206.7(4) A corrective action plan which gives time frames for implementation for each standard that the provider indicates on the self-survey form is out of compliance.

These rules are intended to implement Iowa Code section 234.6 and 1985 Iowa Acts, chapter 259, section 1.

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CHAPTER 207
RESIDENTIAL SERVICES FOR ADULTS
[Prior to 2/11/87, Human Services(498)]

PREAMBLE

These rules define the residential services program for handicapped adults administered by the Iowa department of human services. This program provides habilitation, rehabilitation and related services for adults who are not able to live independently because of a physical or mental handicap or developmental disability. Persons enrolled in this program must live in a licensed, twenty-four (24)-hour-per-day residential care facility operated by a service provider.

Residential services are individually planned for each person by the person's interdisciplinary team and are based on assessments by a physician and other relevant professional people. These services are integrated with the room and board, supervision, personal care, and other services required of residential care facilities by licensure regulations.

The residential services program is one in a continuum of service programs available to Iowa's handicapped adults. Its purpose is to provide services which will enable handicapped adults to achieve or maintain their optimum in self-care, self-reliance and independence. Upon completion of this program, persons may advance into a community supervised apartment living arrangement or an independent living arrangement or return to their families or other previous living arrangements. They would then have increased knowledge, skills and interests, and be better able to care for themselves and contribute to the work in their households.

These rules describe the residential services program for handicapped adults in the department's purchase of services program.

Rules for the two related programs of residential services and respite care in residential services for handicapped adults, provided in the department's Title XIX waiver program, are in 441—chapter 83.

441—207.1(234) Definitions.

"Department" means the Iowa department of human services.

"Individual program plan" means a written goal-oriented plan of care and services developed for a person by the person's interdisciplinary team.

"Interdisciplinary team" means a group of people representing the client, the provider, the department and relevant professionals, who plan, monitor and replan the care and services for a person.

"Person" means a recipient of residential services.

"Provider" means an organization which has a written purchase-of-service agreement with the department to furnish residential services.

"Qualified professional" means personnel who meet the following professional standards:

1. *"Qualified physician"* means a person licensed to practice medicine and surgery under the provisions of Iowa Code chapter 148, or to practice osteopathic medicine and surgery under Iowa Code chapter 150A.

2. *"Qualified social worker"* means a person who is licensed as a social worker under Iowa Code chapters 147 and 154C, or who is certified as a social worker by the Academy of Certified Social Workers, or who holds a bachelor's or master's degree in social work from an accredited college or university, or who has a bachelor's degree in a field other than social work from an accredited college or university and three years of social work experience under the supervision of a qualified social worker and who, in all cases, has one year or more of experience in providing services to physically or mentally handicapped persons.

3. *"Qualified psychologist"* means a person who is licensed to practice psychology under Iowa Code chapters 147 and 154B or who has at least a master's degree in psychology from

an accredited college or university and specialized training, or one year or more of postgraduate experience, in providing services to physically or mentally handicapped persons.

4. *"Qualified nurse"* means a person who holds a bachelor's degree in liberal arts or a bachelor of science degree from an accredited college or university and is a registered nurse under the provisions of Iowa Code chapter 152 and has one year or more of experience under the supervision of a qualified professional in providing services to physically or mentally handicapped persons.

"Reserve bed days" means a payment mechanism which allows state supplementary assistance and social service block grant residential care payments to continue for a specified period during a recipient's vacation, visitation or hospitalization. The purpose of these payments is to enable recipients to pay providers to "hold" their bed in the residential care facility and their enrollment in the providers' program during prescribed absences.

"Residential services" means a program of habilitation, rehabilitation, and other services which will enable adults who are unable to live independently, due to handicapping physical or mental conditions or developmental disability, to achieve or maintain their optimums in self-care, self-reliance and independence.

"Residential services" includes the following component services: basic living skills training, social living skills training, independent living skills training; health screening services; leisure-time and recreational services, special treatment services, behavior therapy, support services, transportation, and transition services.

"Respite care" means a program of residential services for handicapped adults, provided on a temporary basis, for up to thirty-six (36) days per year, to give needed relief to the handicapped adult person's usual caregiver(s). Respite care is one of the department's Title XIX waiver programs.

"Title XIX waiver services" means the department's Title XIX programs described in 441—chapter 83, which includes programs of residential services and respite care.

441—207.2(234) Eligibility requirements. Residential services shall be available to anyone who meets the eligibility requirements for services from the department, as defined in rule 441—130.3(234) and the following additional conditions:

207.2(1) The person must be handicapped because of a physical, mental or developmental condition and therefore require supervision, personal care or other assistance on a daily basis to live in reasonable safety and comfort.

207.2(2) The person must live in a residential care facility or a residential care facility for the mentally retarded which is licensed by the department of public health and which operates a program of care to serve adults.

207.2(3) A licensed physician of medicine or osteopathy must complete Form SS-1719-0, Physician's Report, certifying that the person needs care, personal services or supervision on a daily basis but does not need nursing services and the person's needs can be met in a licensed residential care facility. The Physician's Report shall be completed yearly and used for all redeterminations of eligibility.

207.2(4) Persons are eligible for those specific components of residential services which:

a. Are needed to enable them to achieve or maintain self-care, self-reliance or independence.

b. Have been planned for them by their interdisciplinary team and are included in their individual program plan.

c. Are directed toward the goals specified in subrule 130.7(1), paragraph *"b," "d,"* or *"e."*

441—207.3(234) Services provided. Recipients of residential services receive both purchased services and direct services.

207.3(1) *Direct services.* Case management services shall be provided to persons by a department service worker, as described in rule 441—130.6(234).

207.3(2) *Purchased services.* Persons shall be provided the components of purchased residential services which are required by their individual program plan. The component services

in purchased residential services shall include the following:

a. Basic living skills training: Instruction, planned experiences and guidance in activities which are essential to a person's successful functioning in daily living. It includes training in self-help, physical development, socialization, and personal health.

(1) *Self-help training:* Services which enable a person to develop the knowledge, habits and skills essential to care of the self. It includes training in the areas of eating and drinking, toileting, bathing and grooming, dressing and undressing, and physical movement.

(2) *Physical development training:* Services which enhance motor and sensory development and services which enable the person to acquire or maintain the knowledge, attitudes and skills needed for physical fitness. It includes special training and physical exercise programs.

(3) *Personal health training:* Services designed to enable the person to develop the knowledge, habits and skills essential to maintain good personal health and avoid the spread of disease. It includes training in the areas of personal hygiene and sanitation, nutrition, sickness, communicable disease, medication and health habits.

b. Social living skills training: Instruction, planned experiences and guidance in matters which are essential to a person's successful functioning in interpersonal and group relationships and in the activities of the family, neighborhood and community. It includes socialization training and communication training.

(1) *Socialization training:* Services designed to enable the person to develop self-awareness, self-control, social responsiveness, interpersonal and group relationship skills, social amenities, and other useful personal characteristics and social skills.

(2) *Communication training:* Instruction and guided practice in verbal, nonverbal and written language provided to develop the person's receptive and expressive communication and knowledge of communication techniques and processes.

c. Independent living skills training: Planned instruction and experiences and guidance in matters which are essential to a person's management of personal property, physical environment, personal and family business affairs and community living. It includes arithmetic training and training in meal preparation and menu planning, laundry and care of clothing, housekeeping, use of telephone, money management, time management, travel, shopping, banking, the use of other private businesses and of public services, and personal safety.

Arithmetic training: Services designed to enable the person to develop number recognition and skills in the numerical computations useful in daily living, such as counting, making change, telling time, addition and subtraction.

d. Health screening services: Examination, testing and study of persons to identify and assess their physical, mental and sensory problems or conditions. These are provided by members of the health professions for the purpose of early detection and referral of persons for treatment of acute and chronic health conditions and correction of or compensation for sensory deficits.

e. Leisure time and recreational services: Instruction, planned activities and guidance provided to persons to help them develop recreational, social, hobby and cultural skills and the ability to use leisure time constructively. Activities include tours, performances, lectures, training experiences and guided active or spectator participation in crafts, games, gardening, sports, the arts and other avocational pursuits.

f. Special treatment services: Services which reduce or eliminate the personal and social problems and functional limitations associated with acute and chronic physical, mental or developmental conditions. These are provided by individuals licensed by the state or certified by their professions and include occupational therapy, physical therapy, psychotherapy, and speech therapy.

g. Behavior therapy: Behavior modification programs, including token economy, positive reinforcement and other programs planned by a qualified psychologist or other qualified professional trained in this treatment modality. In behavior therapy, the desirable and undesirable behaviors of persons are identified and prescribed measures are taken by caretaker and professional staff to change, modify or reinforce the behaviors.

h. Support services: Counseling, guidance and other services provided to enable persons to resolve problems, achieve understandings, enhance their personal development or make successful adaptations to their environment, living arrangement, the significant people in their lives, and to their conditions of work and programs of training and service.

(1) Counseling consists of planned interviews and discussions provided on an individual, small group or family basis.

(2) Guidance consists of coaching, advising, modeling, encouragement and informal instruction or correction provided to instruct or to reinforce or change the behavior or performance of persons.

i. Transportation: Movement of persons from one place to another in a car, van or bus to enable them to receive services or meet essential needs. This may be provided to persons on an individual or group basis and by public or private-sector carrier.

j. Transition service: Case-planning, counseling, consultation and other services which enable persons to make a successful transition and adaptation to a new living arrangement or job or training program.

441—207.4(234) Administration.

207.4(1) *Providers eligible.* The department may purchase residential services from a provider who meets the requirements in 441—chapter 150 for purchase of service contracts and who meets the following additional conditions. The provider:

a. Must have a licensed residential care facility, which is used as a living arrangement and also as a training site for recipients of residential services.

b. Must arrange a day activity program for each client based upon the client's individual program plan.

c. Must be able to furnish all of the components of residential services either directly or through subcontracting as allowed in subrule 207.4(2).

207.4(2) *Provisions of components.* The provider must furnish the components of residential services to persons in its residential service program either directly or by written contract or agreement with another source as follows:

a. The support services, including counseling and guidance, the program of behavior therapy and transition services shall be provided directly by provider staff.

b. The provider may subcontract for some, but not all of each of the following components: Leisure-time and recreational services, independent living skills training, social living skills training, and basic living skills training services. These services, whether subcontracted or not, shall be provided by qualified professionals or by people who work under their direction and supervision.

c. The provider may provide directly or subcontract for health screening services and special treatment services. These services must be provided by or under the direction and supervision of individuals who are licensed by the state of Iowa or certified by their professions to provide the services to be rendered.

d. The provider may provide directly or subcontract for transportation services with providers meeting the requirements of subrule 150.5(3)*"d."*

207.4(3) *Payment.* The following policies shall apply to payment for residential services under the department's purchase of services program:

a. Services eligible. Payment may be made for only those services described in subrule 207.3(2). Prevocational, vocational and religious training services are not eligible for payment.

b. Subcontracted services. The provider agency shall include all residential services furnished by subcontract in their unit cost.

c. Unit of service. For payment purposes, one day of service to a client shall be considered a unit of service.

d. Rate of payment. Payment for residential services shall be determined by the department's rate setting procedures described in rule 441—150.3(234).

e. Out-of-state placement. Payment for residential services provided by an agency out of Iowa shall be determined in accord with rule 441—150.3(234).

207.4(4) *Reserve bed days.* The policies governing reserve bed days for service payment shall be the same as those established for reserve bed days in the department's state supplementary assistance residential care program. (See subrule 52.1(3), *"e"* and *"f."*) Form SS-1107-0, Request for Reserved Bed Payment, shall be used to authorize payments for reserve bed days.

441—207.5(234) Method of provision. Residential services must be integrated with the standards and requirements of state licensure for residential care facilities, contained in the public health department rules 470—chapters 57, 60 and 63. In addition, the requirements of the department's state supplementary assistance residential care program apply for persons who are recipients of that program. Other considerations regarding service planning and service delivery are as follows:

207.5(1) *Interdisciplinary team.* Residential services shall be individually planned for each person by the person's interdisciplinary team.

a. Membership. The interdisciplinary team shall include, at minimum:

(1) The person, and as appropriate, the person's representative as designated by the person or the court.

(2) Representatives of the provider who are, or will be, directly involved in providing services to the person.

(3) The person's department service worker.

(4) At least one qualified professional.

Individuals writing reports which are to be used in developing a person's individual program plan shall be invited to meetings of the interdisciplinary team and to participate in planning for the person.

b. Meetings. The interdisciplinary team shall meet as often as necessary, but at least semiannually, to review the person's health status, performance and needs, and to replan and rewrite the person's individual program plan.

207.5(2) *Individual program plan.* Each person receiving residential services shall have an individual program plan written by their interdisciplinary team which is reviewed and revised semiannually or more often if required by the person's condition or situation.

a. Contents. The individual program plan shall include the following:

(1) A description of the person's development, physical and mental health, and functional abilities and limitations.

(2) Short- and long-range goals and specific objectives the person is to achieve.

(3) The specific components of service, supervision, maintenance and care to be provided the person, and for each, the expected date of initiation, the number of units, the expected duration of each component, and the person or agency responsible for each component.

(4) The schedules for evaluation and for rewriting of the individual program plan.

b. Reports. To assist them in developing the individual program plans, the interdisciplinary team shall have current reports from a qualified physician and from other representatives of professions, disciplines and services areas relevant to identify the person's needs and designing programs to meet them.

207.5(3) *Provider responsibilities.* The provider shall ensure that the following conditions apply for each person in its residential service program.

a. An interdisciplinary team is established and appropriately staffed and individual program plans are developed and maintained as required by these rules.

b. The care, supervision and services provided each person are based on the person's own individual program plan.

c. Residential services are provided by qualified professionals or by people who work under their direction and supervision.

d. All the components of residential services are available and provided when needed.

e. Other services are made available to the person when they are needed.

f. Semiannual reports and termination reports are submitted to the department service worker responsible for the person, as specified in subrule 150.3(3).

441—207.6(234) Reduction, denial or termination of services. Residential services may be denied, terminated or reduced according to rule 441—130.5(234). In addition, services shall be denied or terminated when the department's service worker determines in consultation with the person's interdisciplinary team that either of the following conditions apply:

207.6(1) The person could live in a less restrictive living arrangement and receive needed services.

207.6(2) The person's behavior or condition is such that the person requires a higher level of care.

441—207.7(234) Appeals. Decisions made by the department or its designee adversely affecting clients may be appealed pursuant to 441—chapter 7. Decisions made by the department adversely affecting service providers may be reviewed pursuant to subrule 150.3(9) or 150.10(7).

These rules are intended to implement Iowa Code section 234.6(6)*"i."*

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CHAPTER 208
Reserved

CHAPTER 209
CHILDREN IN NEED OF ASSISTANCE OR CHILDREN FOUND TO HAVE COMMITTED A DELINQUENT ACT

[Prior to 7/1/83, Social Services(770), Ch 141]
[Previously appeared as Ch 141—renumbered IAB 2/29/84]
[Prior to 2/11/87, Human Services(498)]

441—209.1(232) Rescinded, effective November 7, 1979.

441—209.2(232) Placement. This rule applies only to those children adjudicated under Iowa Code chapter 232 prior to July 1, 1979. Before a youth is placed from one of the children's institutions, a Placement Contract, Form SS-3605-0, which outlines the conditions of the placement, shall be signed by the youth, superintendent, social worker and parents.

441—209.3(232) Return from placement to children's institutions for violation of placement contract. This rule applies only to those children adjudicated under Iowa Code chapter 232 prior to July 1, 1979.

209.3(1) A youth may be returned to a children's institution for violation of placement contract (parole).

209.3(2) Upon an initial determination by the department of human services' service worker that the youth has violated the youth's placement contract (parole), the youth may be held in a children's institution or other appropriate facility pending a hearing or informal settlement of the matter. In the event a hearing is required, said hearing shall be held within fifteen (15) calendar days of the date from which the youth is held. Nothing in this rule shall be construed to mean that a child in need of assistance may be held at the Iowa training school for boys or the Iowa training school for girls.

441—209.4(232) Hearing procedure for violation of placement contract (parole). This rule applies only to those children adjudicated under Iowa Code chapter 232 prior to July 1, 1979. The following procedures shall be followed, notwithstanding any conflicting rules in chapter 7 of human services rules in returning a youth to a children's institution for parole violation, unless the return is ordered by an Iowa court.

209.4(1) Informal settlements of controversies are encouraged. (See Iowa Code section 17A.10). Nothing herein shall be in derogation of the youth's right to a hearing. Any waiver of hearing by a youth must be willful and voluntary. It shall be the duty of the service worker to fully inform the youth of the right to a hearing. When a youth waives hearing, however, Form SS-3809-0, Waiver of Parole Violation Hearing, shall be signed by the youth and a copy sent to such youth's parents or person responsible for such youth.

209.4(2) When the youth does not waive hearing, the department of human services' service worker shall immediately contact the office of appeals and fair hearings to schedule a hearing. Written notice shall be given to the youth or sent to the youth by the service worker in accordance with subrule 7.9(4), paragraph *"b."* A copy shall be sent to the youth's parents or person responsible for the youth. The notice of hearing shall be given or sent to the youth at least five (5) calendar days before the hearing and the notice shall contain the following:

a. A statement of the time, place and nature of the hearing.

b. A statement of the legal authority and jurisdiction under which the hearing is to be held.

c. A reference to the particular sections of the statutes and rules involved.

d. A short and plain statement of the matters asserted.

209.4(3) In the event the youth fails to appear after proper service of notice, the presiding officer may, if no adjournment is granted, proceed with the hearing and make a decision in the absence of the youth.

209.4(4) Opportunities shall be offered to the youth to respond and present evidence and arguments on all issues involved and to be represented by counsel at the youth's own expense.

As an alternative to legal counsel, the youth may bring another adult to speak in the youth's behalf as counsel, but the adult person may not be the youth's parents or person responsible for the youth. The youth's parents shall be notified and requested to attend the hearing.

209.4(5) The record in this hearing shall include:

a. All pleadings, motions and intermediate rulings.

b. All evidence received or considered and all other submissions.

c. A statement of all matters officially noticed.

d. All questions and offers of proof, objections and rulings thereon.

e. All proposed findings and exceptions.

f. Any decision opinion or report by the officer presiding at the hearing.

209.4(6) The proceedings shall be recorded either by mechanized means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription thereof shall be filed with and maintained by the agency for at least five (5) years from the date of decision.

209.4(7) Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record. (Iowa Code section 17A.12). The issue to be resolved in said hearing shall be whether the youth has broken the placement contract (parole).

209.4(8) All other conduct of the hearing shall be in accordance with Iowa Code chapter 17A and rules of the department, chapter 7.

This rule is intended to implement Iowa Code sections 17A.10, 17A.12 and 17A.22.

441—209.5(232) Reimbursement to counties.

209.5(1) *Base cost computation requirement.* The county auditor of each county shall submit, on or before August 15, 1979, the computed amount the county shall be required to expend as its base cost, pursuant to the provisions of Iowa Code section 232.141(4)*"a"*.

a. Form AA-2038-0, Form for Use in Computing Base Cost, shall be used by the county auditor to supply the required information and shall be submitted in triplicate.

b. The form shall be submitted to Department of Human Services, Division of Management and Budget, First Floor, Hoover State Office Building, Des Moines, Iowa 50319-0114.

c. Failure on the part of the county auditor to furnish the base cost computation as required by these rules shall result in denial by the department of claims for reimbursement submitted by the county.

d. Each county auditor shall maintain and make available upon request to the bureau of accounts and audits, division of administrative services, department of human services, the records used in computing the county's base cost. These records shall be subject to audit by the department's bureau of audits.

209.5(2) *Reporting and reimbursement requirements.* The department of human services shall reimburse a county for enumerated costs once it has expanded its base amount (adjusted for inflation and hereinafter called "base") and when claims are submitted according to the following procedures:

a. Reports shall be submitted monthly on Form AA-2244-0, Report of Expenditures. Reports shall include all those costs, enumerated in Iowa Code section 232.141(1)*"a,"* *"b,"* *"c,"* *"d"* and *"e,"* and in 209.5(3) of these rules, that have been incurred and paid by the county. In a month when no costs are incurred, a report shall be submitted showing "no expense."

b. Reports shall be submitted to the Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319, by the fifteenth day of the month following the month for which the report is being submitted.

c. One copy of the report shall be submitted each month until the county has reached its base. Once the county base has been reached, the original plus two (2) copies of the report shall be submitted monthly.

d. When the county has expended its base amount during the current fiscal year, the Report of Expenditures shall be accompanied by two (2) copies of a State Voucher 1, completed and signed.

e. Any report of expenditures for treatment or care shall be accompanied by an explanation of the type of service provided and the name of the agency providing the service.

f. Each county auditor shall maintain and make available upon request to the department of inspections and appeals the records, including court orders, used in submitting claims for reimbursement. The records shall be subject to audit by the department of inspections and appeals.

g. In the event an audit of the base cost amount submitted by the county fails to verify the amount, the county shall reimburse the department of the amount of the difference between the amount submitted by the county and the amount verified upon audit, not to exceed the amount paid by the state.

h. When the county fails to maintain adequate records for auditing purposes, fails to make records available for auditing, or when the records, upon audit, fail to support the claims submitted, the county shall reimburse the department for the amount of any claims not supported by audit.

209.5(3) *Expenses to be reimbursed.* The specific examples of expenses that are either eligible or ineligible for reimbursement are intended to be illustrative, but not exhaustive lists of these expenses. Any expense denied reimbursement shall be returned to the county auditor with a written explanation of the reason for denial of reimbursement.

a. The expenses for which reimbursement shall be made under the costs enumerated in Iowa Code section 232.141(1) *"a," "b," "c," "d,"* and *"e,"* include:

(1) Any expenses and costs to a witness being called to testify in a juvenile proceeding, including mileage and fees.

(2) Expenses and mileage of sheriffs, officers, or other designated persons delivering notices and subpoenas.

(3) When court ordered, the cost of serving a notice by certified mail or publication.

(4) Expenses, other than salary, incurred by a person ordered by a court in transporting a child to a place designated by a child placing agency for the care of the child when the court transfers legal custody to a child placing agency, including mileage and meals.

(5) Expenses, other than salary, incurred by a person ordered by the court, in transporting a child to or from a place designated by the court, including mileage and meals.

(6) Fees for attorneys appointed by the court to represent any child in a proceeding under Iowa Code chapter 232, whether or no adjudicated, but not juvenile court referee fees or other court costs.

(7) Fees for attorneys appointed by the court to represent the parent or guardian of a child in a proceeding under Iowa Code chapter 232, when the parent or guardian is not financially able to employ counsel.

(8) The expense of treatment or care ordered by the court whenever legal custody of a minor is transferred by the court; the minor is placed by the court with someone other than the parents; homemaker-home health aide service is provided under Iowa Code section 232.80; or a minor is given a physical or mental examination or treatment under order of the court; or, upon certification by the department of human services to the board of supervisors, a minor is given physical or mental examinations or treatment with the consent of the parent, guardian or legal custodian, relating to a child abuse investigation and no provision is otherwise made by the law for payment for the care, examination, or treatment of the minor. Care and treatment expenses for which no other provision for payment is made by law that shall be reimbursable include court ordered:

In-home services, family therapy, and aftercare.

Outpatient counseling.

Diagnosis and evaluation on an outpatient basis.

Physical or mental examinations ordered pursuant to Iowa Code section 232.49 or 232.98 except those set forth in subparagraph 209.5(3)*"b"*(3) below or those eligible for payment pursuant to Iowa Code chapter 249A.

Services ordered under family in need of assistance proceedings.

Court ordered, predispositional shelter care at rates set out in the department's subrule 156.11(3).

b. Expenses that are excluded from reimbursement, under Iowa Code section 232.14(2), because another provision exists in the law include:

(1) Foster care. Payment provisions are Iowa Code sections 234.35 and 234.36.

(2) All charges for which the county is obligated by statute to pay including:

Care and treatment of patients by any state mental health institute. Payment provision is Iowa Code section 230.20(5).

Care and treatment of patients by either of the state hospital-schools or by any other facility established under Iowa Code chapter 222. Payment provision is Iowa Code section 222.60.

Care and treatment of patients by the psychiatric hospital at Iowa City. Payment provision is Iowa Code chapter 225.

Care and treatment of persons at the alcoholic treatment center at Oakdale or any other facility as provided in Iowa Code chapter 125. Payment provision is Iowa Code section 125.45.

Care of children admitted or committed to the Iowa juvenile home at Toledo. Payment provision is Iowa Code section 244.14.

Clothing, transportation, and medical or other services provided persons attending the Iowa braille and sight-saving school, the Iowa school for the deaf, or the state hospital-school for severely handicapped children at Iowa City for which the county becomes obligated to pay pursuant to Iowa Code sections 263.12, 269.2, and 270.4 to 270.7.

Care and treatment of persons placed in the county hospital, county care facility, a health care facility as defined in Iowa Code section 135C.1, subsection 4, or any other public or private facility in lieu of admission or commitment to a state mental health institute, hospital-school, or other facility established pursuant to Iowa Code chapter 222; or upon discharge, removal or transfer from a state mental health institute or state hospital-school or other institution established pursuant to Iowa Code chapter 222. Payment provisions are Iowa Code sections 222.50, 230.1 and 244.12(3).

(3) Child abuse photos and X-rays. Payment provision is Iowa Code section 232.77, and rule 175.5(232).

(4) Any expenses set forth in paragraph 209.5(3)*"a"* above which qualify for payment pursuant to Iowa Code chapter 249A.

c. Expenses for detention are excluded from reimbursement.

209.5(4) *Amount to be paid.* In determining the amount to be paid, the percentage rate of change amount, as computed according to Iowa Code section 232.141(4)*"b"*, shall be added to the reported costs for the fiscal year beginning July 1, 1979, and each succeeding year thereafter.

a. By November 30 of the current fiscal year, the department shall calculate a base cost for each county for the current fiscal year. The department shall notify each county of its estimated base cost by December 15. The following formula shall be used to calculate the base:

Estimated base cost for current FY = base cost for previous FY + (base cost for previous FY X % rate of change in CPI).

For example, if the base cost for the previous fiscal year is $1000, the predicted consumer price index for the current fiscal year is 229.45, and the consumer price index for the previous fiscal year is 205.23, the estimated base cost for the current fiscal year would be $1,118.

$$\$1{,}000 + \left(\$1{,}000 \times \frac{229.45 - 205.23}{205.23}\right) =$$

$$\$1{,}000 + \left(\$1{,}000 \times \frac{24.22}{205.23}\right) =$$

$$\$1{,}000 + (\$1{,}000 \times .118) = \$1{,}000 + \$118 = \$1{,}118.$$

(1) The estimated percentage rate of change in the consumer price index shall be established by subtracting the consumer price index for the previous fiscal year from that predicted consumer price index for the current fiscal year and dividing this sum by the consumer price index for the previous fiscal year.

(2) The consumer price index projected for the current fiscal year shall be that provided by the Bureau of Labor statistics for the national, all urban consumers index. When this figure is not available, the department shall predict the consumer price index for the current fiscal year.

(3) By August 31 of the current fiscal year, the department shall calculate the consumer price index for the previous fiscal year. This shall be the average of the monthly consumer price indexes for the national, all urban consumer index provided by the Bureau of Labor statistics for the previous fiscal year.

b. When the actual average value of the consumer price index for the previous fiscal year differs from the estimate made in November by more than five percent (5%), the department shall recalculate each county's base to reflect the difference. Each county shall be notified of the adjustment by the department by August 31 of the current fiscal year.

For example,

Predicted CPI for fiscal year 1979-1980 229.45
Actual CPI for fiscal year 1978-1979 205.23

$$\text{Estimated \% rate of change in CPI} = \frac{229.45 - 205.23}{205.23} = .118 \text{ or } 11.8\%.$$

If the actual % rate of change in the CPI varies more than 5 percentage points from that estimated, the county base will be adjusted. For example:

Actual CPI for fiscal year 1979-1980 240.50

$$\text{Actual \% rate of change in CPI} = \frac{240.50 - 205.23}{205.23} = .1719 \text{ or } 17.19\%$$

County base would be adjusted upward to reflect this change. If the actual CPI for fiscal year 1979-80 falls between 219.19 and 239.71 the county base will not be adjusted, as this will result in a % rate of change within 5 percentage points of that predicted. If the actual CPI is outside of those parameters, an adjustment will be necessary.

(1) Adjustments to the county base for the previous fiscal year shall be made by the department by August 31 of the current fiscal year.

(2) Each county's account for the current fiscal year shall be debited when the percentage rate of change in the consumer price index for the previous fiscal year is more than five percentage points greater than predicted and credited when that change is more than five percentage points less than predicted.

(3) Counties with debited accounts shall be reimbursed by the department for expenses for the current fiscal year only after they have met their base cost plus the amount debited to their account for the previous fiscal year.

(4) Counties with credited accounts shall be reimbursed for the current fiscal year once they have paid costs equal to their current base cost estimate minus the amount credited to their account for the previous fiscal year.

This rule is intended to implement Iowa Code section 232.141, as amended by 1985 Iowa Acts, chapter 173, section 14.

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[Filed emergency 7/3/79—published 7/25/79, effective 7/3/79]
[Filed 9/6/79, Notice 6/27/79—published 10/3/79, effective 11/7/79]
[Filed 10/24/79, Notice 7/25/79—published 11/14/79, effective 12/19/79]
[Filed 5/5/80, Notice 3/19/80—published 5/28/80, effective 7/2/80]
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[Filed emergency 2/10/84—published 2/29/84, effective 2/10/84]
[Filed emergency 6/14/85—published 7/3/85, effective 7/1/85]
[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]

ENVIRONMENTAL PROTECTION COMMISSION[567]

Former Water, Air and Waste Management[900], renamed by 1986 Iowa Acts, Senate File 2175, Environmental Protection Commission under the "umbrella" of the Department of Nautral Resources.

TITLE I
GENERAL

CHAPTER 1
OPERATION OF ENVIRONMENTAL PROTECTION COMMISSION

1.1(17A,71GA,SF2175) Scope
1.2(17A,71GA,SF2175) Time of meetings
1.3(17A,71GA,SF2175) Place of meetings
1.4(17A,71GA,SF2175) Notification of meetings
1.5(17A,71GA,SF2175) Attendance and participation by the public
1.6(17A,71GA,SF2175) Quorum and voting requirements
1.7(17A,71GA,SF2175) Conduct of meeting
1.8(17A,71GA,SF2175) Minutes, transcripts, and recordings of meetings
1.9(17A,71GA,SF2175) Officers and duties
1.10(17A,71GA,SF2175) Election and succession of officers

CHAPTER 2
PUBLIC AND CONFIDENTIAL INFORMATION

2.1(22,455B) Adoption by reference

CHAPTER 3
SUBMISSION OF INFORMATION AND COMPLAINTS—INVESTIGATIONS

3.1(17A,455B) Adoption by reference

CHAPTERS 4 to 7

See Water, Air and Waste Management[900]

CHAPTER 8
TAX CERTIFICATION OF POLLUTION CONTROL PROPERTY

8.1(427) Scope
8.2(427,17A) Form
8.3(427) Time of submission
8.4(427) Notice
8.5(427) Issuance
8.6(427) Criteria for determining eligibility

CHAPTER 9
DELEGATION OF CONSTRUCTION PERMITTING AUTHORITY

9.1(455B) Scope
9.2(455B,17A) Forms
9.3(455B) Procedures
9.4(455B) Criteria for authority

CHAPTER 10
ADMINISTRATIVE PENALTIES

10.1(455B) Scope
10.2(455B) Criteria for screening and assessing administrative penalties
10.3(455B) Assessment of administrative penalties

CHAPTERS 11 to 19
Reserved

TITLE II
AIR QUALITY

CHAPTER 20
SCOPE OF TITLE—DEFINITIONS—FORMS—RULES OF PRACTICE

20.1(455B,17A) Scope of title
20.2(455B) Definitions
20.3(455B) Air quality forms generally

CHAPTER 21
COMPLIANCE

21.1(455B) Compliance schedule
21.2(455B) Variances
21.3(455B) Emission reduction program
21.4(455B) Circumvention of rules

CHAPTER 22
CONTROLLING POLLUTION

22.1(455B) Permits required for new or existing stationary sources
22.2(455B) Processing permit applications
22.3(455B) Issuing permits
22.4(455B) Reserved
22.5(455B) Special requirements for nonattainment areas

567—1.10(17A,71GA,SF2175) Election and succession of officers.

1.10(1) *Elections.* Officers shall be elected annually during May.

1.10(2) *Succession.*

a. If the chairperson does not serve out the elected term, the vice chairperson shall succeed the chairperson for the remainder of the term. A special election shall be held to elect a new vice chairperson to serve the remainder of the term.

b. If the vice chairperson does not serve out the elected term, a special election shall be held to elect a new vice chairperson to serve the remainder of the term.

c. If the secretary does not serve out the elected term, a special election shall be held to elect a new secretary to serve the remainder of the term.

These rules are intended to implement Iowa Code sections 17A.3(1)*"a"* and 1986 Iowa Acts, Senate File 2175, section 1806.

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CHAPTER 2
PUBLIC AND CONFIDENTIAL INFORMATION

[Prior to 2/11/87, see Water, Air and Waste Management, 900—4.1 to 4.4]

567—2.1(22,455B) Adoption by reference. The commission adopts by reference 561—chapter 2, Iowa Administrative Code.

This rule is intended to implement Iowa Code chapters 22 and 455B.

[Filed 1/23/87, Notice 11/19/86—published 2/11/87, effective 3/18/87]

CHAPTER 3
SUBMISSION OF INFORMATION AND COMPLAINTS—INVESTIGATIONS

[Prior to 2/11/87, see Water, Air and Waste Management, 900—4.5]

567—3.1(17A,455B) Adoption by reference. The commission adopts by reference 561—chapter 3, Iowa Administrative Code.

This rule is intended to implement Iowa Code sections 17A.3(1) and 455B.105.

[Filed 1/23/87, Notice 11/19/86—published 2/11/87, effective 3/18/87]

CHAPTERS 4 TO 7

See Water, Air and Waste Management[900]

NATURAL RESOURCE COMMISSION[571]

[Prior to 12/31/86, see Conservation Commission(290), renamed Natural Resource Commission[571] under the "umbrella" of Department of Natural Resources by 1986 Iowa Acts, chapter 1245]

TITLE I
GENERAL

CHAPTER 1
OPERATION OF NATURAL RESOURCE COMMISSION

1.1(17A,71GA,ch 1245) Scope
1.2(17A,71GA,ch 1245) Time of meetings
1.3(17A,71GA,ch 1245) Place of meetings
1.4(17A,71GA,ch 1245) Notification of meetings
1.5(17A,71GA,ch 1245) Attendance and participation by the public
1.6(17A,71GA,ch 1245) Quorum and voting requirements
1.7(17A,71GA,ch 1245) Conduct of meeting
1.8(17A,71GA,ch 1245) Minutes, transcripts, and recordings of meetings
1.9(17A,71GA,ch 1245) Officers and duties
1.10(17A,71GA,ch 1245) Election and succession of officers

CHAPTER 2
PUBLIC AND CONFIDENTIAL INFORMATION

2.1(22,71GA,ch 1245) Adoption by reference

CHAPTER 3
SUBMISSION OF INFORMATION AND COMPLAINTS—INVESTIGATIONS

3.1(17A,71GA,ch 1245) Adoption by reference

CHAPTERS 4 to 7
Reserved

CHAPTER 8
FORFEITED PROPERTY

8.1(71GA,ch1140) Purpose
8.2(71GA,ch1140) Definitions
8.3(71GA,ch1140) Jurisdiction
8.4(71GA,ch1140) Supervisor approval
8.5(71GA,ch1140) Disposition of general property
8.6(71GA,ch1140) Disposition of guns
8.7(71GA,ch1140) Property destroyed
8.8(71GA,ch1140) Disposition of furs

CHAPTER 9
STATE MIGRATORY WATERFOWL, TROUT AND HABITAT STAMP DESIGN CONTESTS

9.1(110,110B) Design contests
9.2(110,110B) Winning entrants
9.3(110,110B) Artist nonperformance

CHAPTERS 10 to 14
Reserved

TITLE II
LICENSES AND PERMITS

CHAPTER 15
GENERAL LICENSE REGULATIONS

15.1(110) Hunter safety and ethics education program
15.2(110) License depositaries
15.3(110) Lost or destroyed license blanks

CHAPTER 16
PUBLIC, COMMERCIAL, AND PRIVATE DOCKS AND DOCK MANAGEMENT AREAS

16.1(111) Definitions
16.2(111) Permit required
16.3(111) Conditions of permits
16.4(111) Application for permits
16.5(111) Standard requirements for all docks
16.6(111) Additional requirements for private docks on lakes
16.7(111) Standard requirements for private docks on rivers
16.8(111) Additional requirements for public and commercial docks
16.9(111) Establishment of dock management areas

CHAPTER 17
EXEMPT SALES

26.7(422)	Investment counseling
26.8(422)	Bank service charges
26.9(422)	Barber and beauty
26.10(422)	Boat repair
26.11(422)	Car wash and wax
26.12(422)	Carpentry
26.13(422)	Roof, shingle and glass repair
26.14(422)	Dance schools and dance studios
26.15(422)	Dry cleaning, pressing, dyeing and laundering
26.16(422)	Electrical repair and installation
26.17(422)	Engraving, photography and retouching
26.18(422)	Equipment and tangible personal property rental.
26.19(422)	Excavating and grading
26.20(422)	Farm implement repair of all kinds
26.21(422)	Flying service
26.22(422)	Furniture, rug, upholstery, repair and cleaning
26.23(422)	Fur storage and repair
26.24(422)	Golf and country clubs and all commercial recreation
26.25(422)	House and building moving
26.26(422)	Household appliance, television and radio repair
26.27(422)	Jewelry and watch repair
26.28(422)	Machine operators
26.29(422)	Machine repair of all kinds
26.30(422)	Motor repair
26.31(422)	Motorcycle, scooter and bicycle repair
26.32(422)	Oilers and lubricators
26.33(422)	Office and business machine repair
26.34(422)	Painting, papering and interior decorating
26.35(422)	Parking facilities
26.36(422)	Pipe fitting and plumbing
26.37(422)	Wood preparation
26.38(422)	Private employment agency, executive search agency
26.39(422)	Printing and binding
26.40(422)	Sewing and stitching
26.41(422)	Shoe repair and shoeshine
26.42(422)	Storage warehousing, storage locker, and storage warehousing of raw agricultural products prior to and subsequent to July 1, 1978
26.43(422)	Telephone answering service
26.44(422)	Test laboratories
26.45(422)	Termite, bug, roach and pest eradicators
26.46(422)	Tin and sheet metal repair
26.47(422)	Turkish baths, massage and reducing salons
26.48(422)	Vulcanizing, recapping or retreading
26.49(422)	Reserved
26.50(422)	Weighing
26.51(422)	Welding
26.52(422)	Well drilling
26.53(422)	Wrapping, packing and packaging of merchandise other than processed meat, fish, fowl and vegetables
26.54(422)	Wrecking service
26.55(422)	Wrecker and towing
26.56(422)	Cable television
26.57(422)	Camera repair
26.58(422)	Campgrounds
26.59(422)	Gun repair
26.60(422)	Janitorial and building maintenance or cleaning
26.61(422)	Lawn care
26.62(422)	Landscaping
26.63(422)	Pet grooming
26.64(422)	Reflexology
26.65(422)	Tanning beds and tanning salons
26.66(422)	Tree trimming and removal
26.67(422)	Water conditioning and softening
26.68(422)	Motor vehicle, recreational vehicle and recreational boat rental
26.69(422)	Security and detective services
26.70(422,423)	Lobbying

Persons regularly engaged in selling tangible personal property which is exempt from tax, making nontaxable transactions, or engaged in performing a service which is not enumerated in Iowa Code section 422.43 shall not be required to obtain a sales tax permit. However, if the retailer makes taxable sales or provides taxable services, the retailer will be required to hold a permit under the provisions of this rule.

This rule is intended to implement Iowa Code section 422.53.

701—12.5(422,423) Regular permit holders responsible for collection of tax. A regular permit holder may operate by selling merchandise by trucks, canvassers, or itinerant salespeople over fixed routes within the county in which the permanent place of business is located or other counties in this state. When this occurs, the regular permit holder is liable for reporting and paying tax on these sales. The person doing the selling for the regular permit holder shall be required to have a form, either in possession or in the vehicle, which authorizes that person to collect tax. This form is obtained from the department and shall contain the name, address, and permit number of the retailer according to the records of the department.

This rule is intended to implement Iowa Code sections 422.53 and 423.9.

701—12.6(422,423) Sale of business. A retailer selling the business shall file a return within the succeeding month thereafter and pay all tax due. Any unpaid tax shall be due prior to the transfer of title of any personal property to the purchaser and the tax becomes delinquent one month after the sale.

A retailer discontinuing business shall maintain the business's records for a period of five (5) years from the date of discontinuing the business unless a release from this provision is given by the department. See rule 16.50(422,423) regarding the sales and use tax consequences relating to the sale of a business.

This rule is intended to implement Iowa Code sections 422.51(2) and 422.52.

701—12.7(422) Bankruptcy, insolvency or assignment for benefit of creditors. In cases of bankruptcy, insolvency or assignment for the benefit of creditors by the taxpayer, the taxpayer shall immediately file a return with the tax being due.

This rule is intended to implement Iowa Code section 422.51(2).

701—12.8(422) Vending machines and other coin-operated devices. An operator who places machines on location shall file a return which includes gross receipts from all machines or devices operated by the retailer in Iowa during the period covered by the return. The mandatory beverage container deposit required under the provisions of Iowa Code chapter 455C shall not be considered part of the gross receipts.

This rule is intended to implement Iowa Code sections 422.42.(16), 422.43, 422.51, and Iowa Code chapter 455C.

701—12.9(422) Claim for refund of tax. Refunds of tax shall be made only to those who have actually paid the tax. A person or persons may designate the retailer who collects the tax as an agent for purposes of receiving a refund of tax. A person or persons who claim a refund shall prepare the claim on the prescribed form furnished by the department.

A claim for refund shall be filed with the department, stating in detail the reasons and facts and, if necessary, supporting documents for which the claim for refund is based. 1968 O.A.G. 879. If the claim for refund is denied, and the person wishes to protest the denial, the department will consider a protest to be timely if filed no later than thirty (30) days following the date of denial. See rule 7.8(17A).

Claims for refund for sales tax filed after January 1, 1983, where the tax was voluntarily paid, will not be allowed if the claim is based upon an alleged mistake of law regarding the validity or legality under the laws or Constitution of the United States or under the Constitution of the State of Iowa of the tax.

When a person is in a position of believing that the tax, penalty, or interest paid or to be paid will be found not to be due at some later date, then in order to prevent the statute of limitations from running out a claim for refund or credit must be filed with the department within the statutory period provided for in Iowa Code section 422.73(1). The claim must be filed requesting that it be held in abeyance pending the outcome of any action which will have a direct effect on the tax, penalty or interest involved. Nonexclusive examples of such action would be: court decisions, departmental orders and rulings, and commerce commission decisions.

EXAMPLE: X, an Iowa sales tax permit holder, is audited by the department for the period July 1, 1972—June 30, 1977. A $10,000 tax, penalty and interest liability is assessed on materials the department determines are not used in processing. X does not agree with the department's position, but still pays the full liability even though X is aware of pending litigation involving the materials taxed in the audit.

Y is audited for the same period involving identical materials used to those taxed in the audit of X. However, Y, rather than paying the assessment, takes the department through litigation and wins. The final litigation is not completed until September 30, 1983.

X, on October 1, 1983, upon finding out about the decision of Y's case, files a claim for refund relating to its audit completed in June 1977. The claim will be totally denied as beyond the five (5) year statute of limitations. However, if X had filed a claim along with payment of its audit in June 1977, and requested that the claim be held in abeyance pending Y's litigation, then X would have received a full refund of their audit liability if the decision in Y's case was also applicable to X.

EXAMPLE: X, a utility company, filed a request for a rate increase with the commerce commission on June 30, 1967. The rate increase became effective January 1, 1968. However, a final decision of whether X was allowed this rate increase is not made until September 30, 1974. The rate increase was disallowed. X then had to refund to its customers all disallowed, but collected, rate increases plus sales tax. X files a claim for refund of the involved sales tax on December 30, 1974. Only the tax for the years 1970-1974 will be refunded. The tax for the years 1968 and 1969 will be denied as being beyond the five (5)-year statute set forth in Iowa Code section 422.73(1). However, if X had filed a claim covering the rate increase any time before January 31, 1973, requesting it be held in abeyance pending the outcome of the commerce commission ruling, then X would have been allowed a full refund of all the sales tax that is refunded from the effective date of the rate increase, January 1, 1968, through September 30, 1974.

EXAMPLE: X is audited by the department for the period July 1, 1973—June 30, 1978, and assessed July 31, 1978. X pays the assessment on December 31, 1978. No protest was filed and no claim for refund or credit was filed requesting it be held in abeyance. On January 31, 1980, X files a claim for refund relating to the entire audit. The claim is based on a recent court decision which makes the tax liability paid by X now refundable. However, only the tax paid from January 1, 1975, through June 30, 1978, will be allowed as this is the only portion within the five (5)-year statute of limitations set forth in section 422.73(1). If the claim had been filed on or before December 31, 1979, then the entire audit period July 1, 1973—June 30, 1978, could have been considered for refund as the claim would have been filed within one year of payment.

This rule is intended to implement Iowa Code section 422.73.

701—12.10(422,423) Penalty and interest computation.

12.10(1) *Computations for tax periods where the due date occurs after December 31, 1980.* The filing of the tax return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed, unless it is shown that such failure was due to reasonable cause. Iowa Code section 422.58(1), provides a penalty for failure to file a permit holder's semimonthly or monthly tax deposit or a return or, if a permit holder fails to remit at least ninety percent of the tax due with the filing of the return or pay less than ninety percent of any tax required to be shown on the return, excepting the period between the completion of an examination of the books and records of a taxpayer and the giving of notice to the taxpayer that a tax or additional tax is due. The rate of penalty shall be five percent per month or fraction thereof, not to exceed twenty-five percent in the aggregate for failure to file a deposit or return and for failure to pay at least ninety percent of the tax due.

In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. However, the imposition of the penalty for failure to file does not preclude the imposition of a penalty for failure to pay, if after the return is filed, there is a continued failure to pay during the five-month period after the tax was due (taking into consideration any extensions of time to file and pay). The combined penalties for failure to file or pay shall not exceed twenty-five percent of the tax due. The penalties are computed on the amount of the tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of the tax shown to be due on the return. Therefore, if an audit results in an additional tax which was required to be shown as due on the return, the additional tax is subject to the penalty for failure to pay, unless the failure was due to reasonable cause. See subrule 44.3(3) for examples of the penalty computation. These examples would also apply to sales and use tax unless ninety percent of the tax is remitted timely, then no penalty applies.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax then due in the order specified.

In addition to the penalty, interest accrues on the tax or additional tax at the rate of three-fourths of one percent per month, counting each fraction of a month as an entire month, computed from the date the return or deposit was required to be filed until December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

12.10(2) *Computations for tax periods for taxes initially due and payable on or after January 1, 1985, but before January 1, 1987.*

a. Penalty for failure to file return. Subsequent to December 31, 1984, a permit holder or other person who fails to file a semimonthly or monthly tax deposit form or a quarterly or annual return shall be subject to penalty for this failure only if the failure to file is willful. The penalty for willful failure to file a deposit form or return is fifty percent of the amount required to be shown on the deposit form or return, see 1983 Iowa Code Supplement section 422.58(1). When it is appropriate to impose this fifty percent penalty, it shall be in lieu of the penalty described in subrule 12.10(4), paragraph *"b."*

b. Penalty for failure to timely remit tax. If a permit holder or other person fails to remit with the deposit form or pay with the return at least ninety percent of the tax due and owing, there shall be added to the amount of tax required to be shown on the deposit form or return a penalty of ten percent of the tax due. Under 1983 Iowa Code Supplement section 422.58(1), as amended by 1984 Iowa Acts, House File 2507, the director cannot waive payment of this penalty. Thus, the equitable doctrine of waiver is not available to a permit holder or other person seeking relief from the penalty.

Also, that portion of the statute allowing the right to demonstrate that failure to timely pay has been due to reasonable cause has been repealed, House File 2507 supra. No statutory basis for remission of the ten percent penalty now exists. Therefore, if it is shown that a fixed amount of tax was due to be paid upon a date certain and less than ninety percent of that amount has been paid, the director may not excuse payment of penalty. The penalty described in this subrule shall include a penalty for additional tax shown to be due and owing as the result of an audit. See department subrule 44.3(5) for examples which illustrate the computation of penalty for tax due on or after January 1, 1985.

c. Application of payments. All payments shall be first applied to penalty, then interest, and the balance, if any, to the amount of tax then due in the order specified. If penalty, interest, and tax are due and owing for more than one tax period, any payment shall be applied first to the penalty, then the interest, then the tax for the oldest tax period; then to the penalty, interest and tax to the period immediately subsequent, and so on until the payment is exhausted.

EXAMPLE: A permit holder is an annual filer. As a result of audit, it is determined that the permit holder owes penalty, interest, and tax for the years 1984, 1983, and 1982. The total amount owed for tax, penalty and interest for the three (3) years is $1,200. $200 of this amount is tax for the year 1984. The permit holder remits a single payment of $1,000. The payment would be applied first to the penalty, then interest, then tax owing for 1982. The same application would then be made to penalty, interest and tax owing for 1983. Any amount remaining would be applied first to penalty and then interest owing for 1984. The $200 in tax due for the year 1984 would remain to be paid.

d. Computation of penalty for taxes initially due and payable prior to January 1, 1985, and overdue and payable on that date. The date upon which the tax initially became delinquent (taking into consideration any extension of time to pay the tax due) determines which penalty applied. If the initial delinquency occurs prior to January 1, 1985, the aggregating penalty applies. If the initial delinquency occurs on or after January 1, 1985, only the flat rate penalties of five or ten percent apply.

12.10(3) *Computations for tax periods for taxes initially due and payable on or after January 1, 1987.*

a. Penalty for failure to file return. Subsequent to December 31, 1986, a permit holder or other person who willfully fails to file a semimonthly or monthly tax deposit form or a quarterly or annual return will be subject to penalty for this failure. The penalty for willful failure to file a deposit form or return is seventy-five percent (75%) of the amount required to be shown on the deposit form or return, see 1985 Iowa Code section 422.58(1) as amended by 1986 Iowa Acts, House File 764. When it is appropriate to impose this seventy-five percent (75%) penalty, it will be in lieu of the penalty described in subrule 12.10(5)*"b."*

b. Penalty for failure to timely remit tax. If a permit holder or other person fails to remit with the deposit form or pay with the return at least ninety percent (90%) of the tax due and owing on or before the due date of the deposit or return, there will be added to the amount of tax required to be shown on the deposit form or return a penalty of fifteen percent (15%) of the tax due. Under 1985 Iowa Code section 422.58(1), the director cannot waive payment of this penalty. Thus, the equitable doctrine of waiver is not available to a permit holder or other person seeking relief from the penalty.

Also, that portion of the statute allowing the right to demonstrate that failure to timely pay has been due to reasonable cause has been repealed. No statutory basis for remission of the fifteen percent (15%) penalty now exists. Therefore, if it is shown that a fixed amount of tax was due to be paid upon a date certain and less than ninety percent (90%) of that amount has been paid, the director may not excuse payment of penalty. The penalty described in this subrule will include a penalty for additional tax shown to be due and owing as the result of an audit. See department subrule 44.3(7) for examples which illustrate the computation of penalty for tax due on or after January 1, 1987.

c. Application of payments. All payments must be first applied to penalty, then interest, and the balance, if any, to the amount of tax then due in the order specified. If penalty, interest, and tax are due and owing for more than one tax period, any payment must be applied first to the penalty, then the interest, then the tax for the oldest tax period; then to the penalty, interest, and tax to the period immediately subsequent, and so on until the payment is exhausted.

EXAMPLE: A permit holder is an annual filer. As a result of audit, it is determined that the permit holder owes penalty, interest, and tax for the years 1984, 1983, and 1982. The total amount owed for tax, penalty, and interest for the three (3) years is $1,200. $200 of this amount is tax for the year 1984. The permit holder remits a single payment of $1,000. The payment would be applied first to the penalty, then interest, then tax owing for 1982. The same application would then be made to penalty, interest, and tax owing for 1983. Any amount

remaining would be applied first to penalty and then interest owing for 1984. The $200 in tax due for the year 1984 would remain to be paid.

d. Computation of penalty for taxes initially due and payable prior to January 1, 1987, and overdue and payable on that date. The date upon which the tax initially became delinquent determines which penalty applied. If the initial delinquency occurs prior to January 1, 1987, the ten percent (10%) penalty applies. If the initial delinquency occurs on or after January 1, 1987, only the flat rate penalties of seven and one-half or fifteen percent apply.

See rule 701—10.5(421) for statutory exemptions to penalty for tax due and payable on or after January 1, 1987.

This rule is intended to implement Iowa Code section 422.58(1) as amended by 1986 Iowa Acts, chapter 1007.

701—12.11(422,423) Request for waiver of penalty. Any taxpayer who has good reason to object to any penalty imposed by the department for failure to timely file returns, monthly deposits or pay the tax may submit a request for waiver seeking that the penalty be waived for taxes initially due and payable prior to January 1, 1985. If it can be shown to the director's satisfaction that the failure was due to reasonable cause, the penalty will be adjusted accordingly. The request must be in the form of an affidavit and must contain all facts alleged as reasonable cause for the taxpayer's failure to file the return, monthly deposit or pay the tax as required by law. The following are examples of situations that may be accepted by the director as being reasonable cause:

a. Where the return, monthly deposit or payment was filed on time, but filed erroneously with another state agency or the Internal Revenue Service.

b. A showing that the completed return, monthly deposit was mailed in time to reach the department in the normal course of mails, within the legal period. If the due date is a Saturday, Sunday or legal holiday, the following business day is within the legal period.

c. Where the delay was caused by death or serious illness of the taxpayer responsible for filing.

d. Where the delay was caused by prolonged unavoidable absence of the taxpayer responsible for filing.

e. Where the delinquency was caused by destruction by fire or other casualty of the taxpayer's records.

f. A showing that the delay or failure was due to erroneous information given the taxpayer by an employee of the department.

g. The department will allow without penalty one late return or monthly deposit, or one timely filed return containing a mathematical error if the taxpayer has had no reported delinquencies in the past 36 months. (Not applicable to penalty established by audit.)

h. Where the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return or monthly deposit within the prescribed time, then the delay is due to reasonable cause. A failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that ordinary business care and prudence were exercised in providing for payment of the taxpayer's liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if the taxpayer paid on the due date. What constitutes ordinary business care and prudence must be determined by the particular facts of a particular case, *Armstrong's Inc. vs. Iowa Department of Revenue,* 320 N.W.2d 623 (Iowa 1982).

A request for waiver of penalty on an assessment will be treated as timely filed with the department, if filed no later than thirty (30) days following the date of the notice of assessment. See rule 11.6(422,423) regarding notices of adjustment and assessment.

This rule is intended to implement Iowa Code sections 422.58 and 423.18.

701—12.12(422) Extension of time for filing. Upon a proper showing of the necessity for extending the due date, the director is authorized to grant an extension of time in which to file a return. The extension shall not be granted for a period longer than thirty (30) days. The request for the extension must be received on or before the original due date of the return. It will be granted only if the person requesting the extension shall have paid by the twentieth day of the month following the close of such quarter, ninety percent (90%) of the estimated tax due.

This rule is intended to implement Iowa Code section 422.51.

701—12.13(422) Determination of filing status. Iowa Code sections 422.51(4) and 422.52 provide, based on the amount of tax collected, how often retailers file deposits or returns with the department (see rule 12.1(422).

The department will determine if the retailer's current filing status is correct by reviewing the most recent four (4) quarters of the retailer's filing history.

The following criteria will be used by the department to determine if a change in filing status is warranted.

Filing Status	Statutory Requirement	Test Criteria
Semimonthly	$4,000 in tax in a semimonthly period.	Tax remitted in 3 of most recent 4 quarters exceeds $24,000.
Monthly	$50 in tax in a month.	Tax remitted in 3 of most recent 4 quarters exceeds $150.
Annual	$120 or less in tax in prior year.	Retailer remits $120 or less in tax, for last 4 quarters and requests annual filing.
Seasonal		Retailer remits tax for only one quarter during the previous calendar year and requests filing for one quarter only.
Quarterly	All other filers.	

When it is determined that a retailer's filing status is to be changed, the retailer will be notified and will be given thirty (30) days to provide the department with a written request to prevent the change.

Retailers may request that they be allowed to file less frequently than the filing status selected by the department but exceptions will only be granted in two (2) instances:

1. Incorrect historical data is used in the conversion. A business may meet the criteria based on information available to the computer, but upon investigation, the filing history may prove that the business does not meet the dollar criteria because of adjustments, amended returns, or requests for refunds.
2. Data available may have been distorted by the fact that it reflected an unusual pattern in tax collection. The factors causing such a distortion must be documented and approved by the excise tax division.

Exceptions will not be granted in instances where the retailer's request is based on a decline in business activity, reduction in employees or other potentially temporary business action which will affect current and future reporting.

Retailers will be notified in writing of approval or denial to their request for reduced filing periods.

Retailers may request that they be allowed to file more frequently than the filing status selected by the department. Approval will be granted based upon justification contained in the retailer's request.

This rule is intended to implement Iowa Code sections 421.14, 422.51 and 422.52.

701—12.14(422,423) Immediate successor liability for unpaid tax. A retailer ceasing to do business is obligated to prepare a final return and pay all tax due within the time required by law. If a retailer ceasing to do business fails to do this, any immediate successor to the retailer who purchases the business or stock of goods is obligated to withhold from the purchase price enough of the purchase price to pay the tax, interest, or penalty which the retailer owes. Any immediate successor who intentionally fails to withhold sufficient of the purchase price to pay the delinquent tax, interest, and penalty is personally liable for the payment of the tax. However, if the immediate successor's purchase of the business or stock of goods was made in good faith that the retailer owed no tax, interest, or penalty, then the department may waive the immediate successor's liability.

12.14(1) *Immediate successors having a duty to withhold.* Only an immediate successor who, pursuant to a contract of sale, pays a purchase price to a retailer in return for the transfer of a going business or a stock of goods is obligated to inquire if tax, penalty, or interest is due and to withhold a portion of the purchase price if necessary. Persons who fail some aspect of this test, e.g., because they take by operation of law rather than by contract or provide no consideration, are not obligated to investigate or withhold. Nonexclusive examples of persons not so obligated are the following:

a. A person foreclosing on a valid security interest.

b. A person retaking possession of premises under a valid lease.

c. A spouse electing to take under a will.

d. A person taking by gift.

e. Any other person taking for what would legally be considered "for value" but without the payment of a recognizable "purchase price."

Included within the meaning of the phrase "immediate successor" is a corporation resulting from the action of a sole proprietor who incorporates a business in which the sole proprietor is the only or the controlling shareholder; or a sole proprietorship established from a corporation of which the sole proprietor was the exclusive, majority, or controlling stockholder.

12.14(2) *More than one immediate successor.* If a retailer sells a business or stock of goods to two (2) or more persons the following rules apply:

a. Sale of stock of goods to two (2) or more persons. If a retailer sells a substantial portion of the retail business's stock of goods to another person who will in turn offer those goods for sale in a retail business, that person is an "immediate successor" and personally liable for payment of tax to the extent of tax, interest, or penalty owed or the amount of the individual purchase price, whichever is the lesser.

EXAMPLE: A sells the stock of goods from a furniture business, in unequal portions, to B, C, and D. B pays a $5,000 purchase price for a portion of the stock of goods, C pays $20,000 for a portion of the stock of goods; and D pays a $30,000 purchase price for the remainder of A's stock of goods. A, at the time of the transfers, owes the department of revenue and finance $10,000 in sales tax, interest, and penalty. Neither B, C, or D withholds any amount for payment of tax from the purchase price. B, C, and D individually and together are liable for payment of the tax. Each is personally liable up to the amount of the purchase price which each has paid or the amount of tax, interest, and penalty owing, whichever is the lesser. In this example, B is liable for $5,000, the lesser amount of B's purchase price ($5,000) and the amount of tax which A owes ($10,000); C is liable for $10,000, since purchase price and tax owed are equal, and D is liable for $10,000, the lesser amount of tax owed ($10,000) and D's purchase price ($30,000). The department can proceed against any one, two, or all three of the immediate successors up to the amount of tax which each owes, as it chooses.

b. Purchase of differing places of business. If one person owns two (2) or more places of business, each having a separate sales tax permit, each location having its own permit is a separate

business and has a separate stock of goods for the purpose of determining successor liability. A person purchasing the business at one location or the stock of goods from one location would be personally liable only for the tax owed under the permit assigned to that location.

12.14(3) *"Sale of a retailer's business" characterized.* Usually, the sale of only the machinery or equipment used in a business without the sale or leasing of the realty of the business is not a sale of the business itself. People v. Gabriel, 135 P.2d 378 (Cal. App. 1943). The transfer of a retailer's machinery or equipment and business realty to a person who continues to use the machinery, equipment, and realty for the sale of any type of tangible personal property constitutes the selling of the retailer's business, and the person to whom the business is sold is an "immediate successor" and liable for tax.

EXAMPLE: A is a furniture dealer. The furniture business falls on hard times. A sells the stock of goods (the furniture offered for sale) to B. A then sells the furniture store (business realty) to C. A also sells C the office equipment and all other tangible personal property used in the operation of the furniture store except for the stock of goods (furniture). C then uses the purchased store and the office equipment in the operation of a sporting goods store. B takes the furniture purchased from A to B's furniture store where it is sold. A owed the department $7,000 in sales tax. Both B and C are immediate successors to A and personally liable for the sales tax.

12.14(4) *"Good faith" characterized.* An immediate successor to a retailer has purchased the retailer's business or stock of goods "in good faith" if the immediate successor demonstrates, by suitable evidence, that one of the following situations exists. The list of situations is exclusive:

a. At the time of purchase no tax liens were filed against the retailer;

b. The department has informed the immediate successor that at the time of purchase no delinquent tax, interest, or penalty was due to the department from the retailer; or

c. The immediate successor has taken "in good faith" a certified statement from a retailer that no delinquent tax, interest, or penalty remains unpaid as of the date of purchase. Immediate successors should not rely upon oral statements from department personnel that no tax, interest, or penalty is unpaid. An immediate successor should request a written statement to this effect. A "certified statement" from a retailer is a statement the truth of which is attested to before a notary public or other officer authorized to take oaths. A certified statement has been taken from a retailer "in good faith" if the immediate successor, in the exercise of due diligence, had no reason to believe a retailer's statement was false or no reason to question the truth of the retailer's statement.

701—12.15(422,423) Officers and partners—personal liability for unpaid tax. If a retailer or purchaser fails to pay sales tax when due, any officer of a corporation or association, or any partner of a partnership, who has control of, supervision of, or the authority for remitting the sales tax payments and has a substantial legal or equitable interest in the ownership of the corporation or partnership is personally liable for payment of the tax, interest, and penalty if the failure to pay the tax is intentional. This personal liability is not applicable to sales tax due and unpaid on accounts receivable. The dissolution of a corporation, association, or partnership does not discharge a responsible person's liability for failure to pay tax.

12.15(1) *Personal liability—how determined.* There are various criteria which can be used to determine which officers of a corporation have control of, supervision of, or the authority for remitting tax payments. Some criteria are:

a. The duties of officers as outlined in the corporate bylaws,

b. The duties which various officers have assumed in practice,

c. Which officers are empowered to sign checks for the corporation,

d. Which officers hire and fire employees, and

e. Which officers control the financial affairs of the corporation. An officer in control of the financial affairs of a corporation may be characterized as one who has final control as to which of the corporation's bills should or should not be paid and when bills which had been selected for payment will be paid. "Final control" means a significant control over which

bills should or should not be paid rather than exclusive control. The observations in this paragraph are applicable to partnerships as well as corporations.

12.15(2) *"Accounts receivable" described.* Officers and partners are not responsible for sales tax due and owing on accounts receivable. An "account receivable" is a contractual obligation owing upon an open account. An open account is one which is neither finally settled or finally closed, but is still running and "open" to future payments or the assumption of future additional liabilities. The ordinary consumer installment contract is not an "account receivable." The amount due has been finally settled and is not open to future adjustment. The usual consumer installment contract is a "note receivable" rather than an account receivable. An account receivable purchased by a factor or paid by a credit card company is, as of the date of purchase or payment, not an account receivable. An officer or partner will be liable for the value of the account receivable purchased or paid. Officers and partners have the burden of proving that tax is not due because it is a tax on an account receivable.

12.15(3) *Beginning date of personal liability.* Officers and partners are not personally liable for sales tax due and unpaid prior to March 13, 1986. They are liable for sales taxes which are both due and unpaid on and after that date.

701—12.16(422) Show sponsor liability. Persons sponsoring flea markets or craft, antique, coin, stamp shows, or similar events are, under certain circumstances, liable for payment of sales tax, interest, and penalty due and owing from any retailer selling property or services at the event. Included within the meaning of the term "similar event" is any show at which guns or collectibles, e.g., depression glassware or comic books, are sold or traded. To avoid liability, sponsors of these events must obtain from retailers appearing at the events proof that a retailer possesses a valid Iowa sales tax permit or a statement from the retailer, taken in good faith, that the property or service which the retailer offers for sale is not subject to sales tax. "Good faith" may demand that the sponsor inquire into the nature of the property or service sold or why the retailer believes the property or services for sale to be exempt from tax. A sponsor who fails to take these measures assumes all of the liabilities of a retailer. This includes not only the obligation to pay tax, penalty, and interest, but also to keep the records required of a retailer and to file returns.

Excluded from the requirements of this rule and from sponsor liability are organizations which sponsor events fewer than three times a year and state, county, or district agricultural fairs.

This rule is intended to implement the requirements of Iowa Code section 422.52 as amended by 1986 Iowa Acts, House File 764, section 30.

701—12.17(422) Purchaser liability for unpaid sales tax. For sales occurring on and after March 13, 1986, if a purchaser fails to pay sales tax to a retailer required to collect the tax, the tax is payable by the purchaser directly to the department. The general rule is that the department may proceed against either the retailer or the purchaser for the entire amount of tax which the purchaser is, initially, obligated to pay the retailer. However, see subrule 15.3(2) for a situation in which the obligation to pay the tax is imposed upon the purchaser alone.

This rule is intended to implement Iowa Code section 422.52 as amended by 1986 Iowa Acts, chapter 1007, section 30.

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CHAPTER 13
PERMITS
[Prior to 12/17/86, Revenue Department(730)]

701—13.1(422) Retail sales tax permit required. When used in this chapter or any other chapter relating to retail sales the word "permit" shall mean "a retail sales tax permit."

A person shall not engage in any Iowa business subject to tax until the person has procured a permit except as provided in 13.5(422). There is no charge for a retail sales tax permit. If a person makes retail sales from more than one location, each location shall be required to hold a permit. Retail sales tax permits are issued to retailers for the purpose of making retail sales of tangible personal property or taxable services. Persons shall not make application for a permit for any other purpose.

This rule is intended to implement Iowa Code section 422.53.

701—13.2(422) Application for permit. An application for a permanent permit shall be made upon a form provided by the department, and the applicant shall furnish all information requested on such form.

An application for a permit for a business operating under a trade name shall state the trade name, as well as the individual owner's name, in the case of a sole ownership by an individual; or, the trade name and the name of all partners, in the case of a partnership.

The application shall be signed by the owner, in the case of an individual business; by a partner, in the case of a partnership, although all partners' names shall appear on the application; and by the president, vice president, treasurer or other principal officer of a corporation or association, unless written authorization is given by the officers for another person to sign the application.

The application shall state the date when the applicant will begin selling tangible personal property or taxable services at retail in Iowa from the location for which the application is made.

This rule is intended to implement Iowa Code section 422.53.

701—13.3(422) Permit not transferable—sale of business. Permits shall not be transferable. A permit holder selling the business shall cancel the permit, and the purchaser of the business shall apply for a new permit in the purchaser's own name.

This rule is intended to implement Iowa Code section 422.53.

701—13.4(422) Permit—consolidated return optional. A permit holder procuring more than one permit may file a separate return for each permit; or, if arrangements have been made with the department, the permit holder may file one consolidated return reporting sales made at all locations for which a permit is held.

When a taxpayer makes a consolidated return, forms furnished by the department shall be required to be filed.

All working papers used in the preparation of the information required must be available for examination by the department.

This rule is intended to implement Iowa Code sections 422.51 and 422.53.

701—13.5(422) Retailers operating a temporary business. A person not regularly engaged in selling at retail and not having a permanent place of business but is temporarily selling from trucks, portable roadside stands, concessionaires at state, county, district or local fairs, carnivals and the like shall not be required to hold a permit. These retailers shall request an identification card from the department. The card shall be in a form prescribed by the director and shall be completed and displayed by the retailer to show authorization to collect tax. The issuance of the card by the department shall be dependent upon the frequency of sales and other conditions as each individual case may warrant.

This rule is intended to implement Iowa Code section 422.53(6).

701—13.6(422) Reinstatement of canceled permit. A person who previously held and canceled a permit and wishes to reengage in business in the same county shall apply to the department for reinstatement of the permit. Upon receipt of the proper clearance for previous tax returns, a new permit shall be issued.

This rule is intended to implement Iowa Code section 422.53.

701—13.7(422) Reinstatement of revoked permit. A revoked permit shall be reinstated only on such terms and conditions as the case may warrant. Terms and conditions include payment of any tax liability which may be due to the department. See rule 13.17(422) for a description of the circumstances under which nonpayment of taxes may lead to revocation of a permit.

Pursuant to the director's statutory authority in Iowa Code section 422.53(5) to restore licenses after a revocation, the director has determined that upon the revocation of a sales tax permit the initial time, the permit holder will be required to pay all delinquent sales tax liabilities, to file returns, and to post a bond and to refrain from taxable occurrences under section 422.43 as required by the director prior to the reinstatement or issuance of a new sales tax permit.

As set forth above, the director may impose a waiting period during which the permit holder must refrain from taxable occurrences pursuant to the penalties of Iowa Code section 422.58(2), not to exceed ninety (90) days to restore a permit or issue a new permit after a revocation. The department may require a sworn affidavit, subject to the penalties of perjury, stating that the permit holder has fulfilled all requirements of said order of revocation, and stating the dates on which permit holder refrained from taxable occurrences.

Each of the following situations will be considered one offense, for the purpose of determining the waiting period to reinstate a revoked permit or issue a new permit after a revocation unless otherwise noted.

Failure to post a bond as required.

Failure to file a quarterly return or monthly deposit timely.

Failure to pay tax timely (including unhonored checks, failure to pay, and late payments).

Failure to file a quarterly return or a monthly deposit and pay tax shown on the return or deposit timely (counts as two offenses).

The hearing officer or director of revenue and finance may order a waiting period after the revocation not to exceed:

Five days for one through five offenses.

Seven days for six through seven offenses.

Ten days for eight through nine offenses.

Thirty days for ten offenses or more.

The hearing officer or director of revenue and finance may order a waiting period not to exceed:

Forty-five days if the second revocation occurs within twenty-four months of the first revocation.

Sixty days if the second revocation occurs within eighteen months of the first revocation.

Ninety days if the second revocation occurs within twelve months of the first revocation.

Ninety days if the thrid revocation occurs within thirty-six months of the second revocation.

This rule is intended to implement Iowa Code sections 422.53, as amended by 1986 Iowa Acts, chapter 1007, and 422.58(2).

701—13.8(422) Withdrawal of permit. After investigation, the department will withdraw a permit under the following conditions:

13.8(1) Upon a determination that the permit holder cannot be located in the state of Iowa and upon failure to obtain service of an order to appear and show cause, after sending the notice by registered certified mail or an attempt to personally serve the notice of the order.

13.8(2) Upon a determination that the permit holder cannot be located in the state of Iowa and upon a determination by the department that a business has been terminated or abandoned by the permit holder, without a request for cancellation signed by the permit holder.

13.8(3) The permit holder has become incapacitated or unable to respond or is deceased and has no duly appointed trustee, guardian or individual holding a power of attorney, executor or administrator.

The withdrawal shall not constitute a revocation of said license, nor shall any penalties imposed for revocation be applicable. A permit so withdrawn shall be reissued in its prior status at such time as any affected permit holder so requests. The proceedings for withdrawal will be in conformity with Iowa Code section 17A.18.

This rule is intended to implement Iowa Code section 17A.18.

701—13.9(422) Loss or destruction of permit. When it becomes necessary to replace an active permit by reason of loss or destruction, the department will furnish a duplicate permit.

This rule is intended to implement Iowa Code section 422.53.

701—13.10(422) Change of location. When a retailer changes business location, the permit shall be canceled and an application shall be made for another permit at the new location.

This rule is intended to implement Iowa Code section 422.53.

701—13.11(422) Change of ownership. A retailer changing their business entity shall apply for a new permit under the name of the new entity. This is required but not limited to such entity changes as proprietorship to partnership, partnership to corporation or any combination thereof.

This rule is intended to implement Iowa Code section 422.53.

701—13.12(422) Permit must be posted. The permit shall be conspicuously posted at all times in the taxpayer's place of business in such manner and position that it may be readily seen and read by the public.

This rule is intended to implement Iowa Code section 422.53(3).

701—13.13(422) Trustees, receivers, executors and administrators. By virtue of their appointment, trustees, receivers, executors and administrators who continue to operate, manage or control a business involving the sale of tangible personal property or taxable services or engage in liquidating the assets of a business by means of sales made in the usual course of trade shall collect and remit tax on inventory and noninventory items. In Re Hubs Repair Shop, Inc. 28 B.R. 858 (Bkrtcy 1983).

A permit of a ward, decedent, cestui que trust, bankrupt, assignor or debtor for whom a receiver has been appointed, which is valid at the time a fiduciary relation is created, shall continue to be a valid permit for the fiduciary to continue the business for a reasonable time or to close out the business for the purpose of settling an estate or terminating or liquidating a trust.

This rule is intended to implement Iowa Code sections 422.42(1) and 422.53.

701—13.14(422) Vending machines and other coin-operated devices. An operator who places machines on location shall hold one permit for the principal place of business, whether the same is located in the state of Iowa or outside the state of Iowa.

This rule is intended to implement Iowa Code sections 422.43 and 422.53 as amended by 1986 Iowa Acts, House File 2471, and 1985 Iowa Code supplement section 422.42 as amended by 1986 Iowa Acts, House File 2471.

701—13.15(422) Other amusements. Billiard and pool tables, shooting galleries and other similar undertakings operated in a regular place of business owned and managed by the operator shall not come within the provisions of the rule with respect to holding one permit for the entire state. The provision requiring a permit shall not include devices operated at

fairs, circuses and carnivals which are temporarily located within the state of Iowa.

This rule is intended to implement Iowa Code chapter 422.

701—13.16(422) Substantially delinquent tax—denial of permit. The department may deny a permit to any applicant who is, at the time of application, substantially delinquent in paying any tax due which is administered by the department or the interest or penalty on the tax. If the applicant is a partnership, a permit may be denied if a partner is substantially delinquent in paying any tax, penalty, or interest regardless of whether the tax is in any way a liability of or associated with the partnership. If an applicant for a permit is a corporation, the department may deny the applicant a permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. This is in contrast to the situation regarding a partnership.

The local option sales and service tax is a tax administered by the department. Local vehicle, property, whether imposed on centrally assessed property or not, beer and liquor, and insurance premium taxes are nonexclusive examples of taxes which are not administered by the department.

The amount of tax delinquent, the number of filing periods for which a tax remains due and unpaid, and the length of time a tax has been unpaid are the principal, but nonexclusive circumstances, which the department will use to determine whether an applicant is "substantially" or insubstantially delinquent in paying a tax. The department may deny a permit for substantial delinquency. Nonexclusive factors which the department will consider in determining whether substantial delinquency will or will not result in the denial of an application for a permit are the following: Whether the delinquency was inadvertent, negligent, or intentional; the amount of tax, interest, or penalty owed in relation to the applicant's total financial resources; and, whether the applicant's business is likely to survive over the long term if a license or permit is granted. This rule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

This rule is intended to implement Iowa Code subsection 422.53(2) as amended by 1986 Iowa Acts, chapter 1007.

730—13.17(422) Substantially delinquent tax—revocation of permit. The department may revoke a permit if the permit holder has become substantially delinquent in paying any tax which is administered by the department or the interest or penalty on the tax. If the person holding a permit is a corporation, the department may revoke the permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the permit-holding corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. If the permit holder is a partnership, a permit cannot be revoked for a partner's failure to pay a tax which is not a liability of the partnership. This is in contrast to the situation regarding an application for a permit. See rule 13.16. Also, see rule 13.16(422) for characterizations of the terms "tax administered by the department" and "substantially delinquent" and for a description of some of the factors which the department will use in determining whether substantial delinquency will or will not result in the revocation of a permit. This rule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

This rule is intended to implement Iowa Code subsection 422.53(5), as amended by 1986 Iowa Acts, chapter 1007.

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CHAPTER 15
DETERMINATION OF A SALE AND SALE PRICE
[Prior to 12/17/86, Revenue Department(730)]

701—15.1(422,423) Conditional sales to be included in gross sales. When a conditional sale agreement exists the seller shall bill the purchaser for the full amount of tax due. This amount shall be computed on the entire contract price except interest and finance charges when separately stated and reasonable in amount, and the seller shall remit the tax to the department at the close of the period during which the sale was made.

This rule is intended to implement Iowa Code sections 422.42(2), 422.42(3), 422.42(13), 422.42(16), and 423.1.

701—15.2(422,423) Repossessed goods. When tangible personal property which has been repossessed either by the original seller or by a finance company is resold to final users or consumers, the gross receipts from such sales shall be subject to tax.

A retailer repossessing sold merchandise shall be entitled only to a deduction for the amount of unpaid sales when the collected tax on that amount has been refunded to the purchaser. *S & M Finance Company Fort Dodge v. Iowa State Tax Commission,* 1968, Iowa, 162 N.W. 2d 39.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 423.1, and 423.2.

701—15.3(422,423) Certificates of resale or processing.

15.3(1) *On and after January 1, 1979.* The gross receipts from the sale of tangible personal property for the purpose of resale or processing by the purchaser are not subject to tax as provided by the Iowa sales and use tax statutes. However, the following are requirements for the exemption:

a. The sales tax liability for all sales of tangible personal property is upon the seller (and on and after March 13, 1986, the purchaser as well) unless the seller takes in good faith from the purchaser a valid exemption certificate stating that the purchase is for resale or for processing. Where tangible personal property or services are purchased tax free pursuant to a valid exemption certificate which is taken in good faith by the seller, and the tangible personal property or services are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes and must remit the taxes directly to the department.

When a processor or fabricator purchases tangible personal property exempt from the sales or use tax and subsequently withdraws the tangible personal property from inventory for their own use or consumption, the tax shall be reported in the period when the tangible personal property was withdrawn from inventory.

b. The director is required to provide exemption certificates to assist retailers in properly accounting for nontaxable sales of tangible personal property or services to buyers for purposes of resale or for processing. Since Iowa Code section 422.47 defines a "valid exemption certificate" as one supplied by the director, the director cannot for periods commencing on or after January 1, 1979, and ending on or before June 30, 1982, recognize an exemption certificate other than their own. This exemption certificate must be completed as to the information required on the form in order to be valid.

15.3(2) *On and after July 1, 1982.* For periods commencing after June 30, 1982, retailers may provide their own exemption certificates. The exemption certificates must contain information required by the department, including, but not limited to: the seller's name, the buyer's name and address, the buyer's nature of business (wholesaler, retailer, manufacturer, lessor, other), the reason for purchasing tax exempt (resale or processing), the general description of the products purchased, and state sales tax or I.D. registration number. The certificate must be signed and dated by the buyer.

a. An exemption certificate or blanket exemption certificate as referred to in paragraph *"b"* cannot be used to make a tax free purchase of any tangible personal property or service not covered by the certificate. For example, the certificate used to purchase a chemical consumed in processing cannot be used to purchase a generator which is going to become an integral part of other tangible personal property which will be ultimately sold at retail.

b. Any person repeatedly selling the same type of property or service to the same purchaser for resale or for processing may accept a blanket certificate covering more than one (1) transaction. A seller who accepts a blanket certificate is required periodically to inquire of the purchaser to determine if the information on the blanket certificate is accurate and complete. Such an inquiry by the seller shall be deemed evidence of good faith on the part of the seller.

c. When due to extraordinary circumstances in the nature of fire, flood, or other cases of destruction beyond the taxpayer's control, a seller does not have an exemption certificate on file, they may show by other evidence, such as a signed affidavit by the purchaser, that the property or service was purchased for resale or for processing.

d. The liability for the tax does not shift from the seller to the purchaser if the seller has not accepted a valid exemption certificate in good faith. If the seller has actual knowledge of information or circumstances indicating that it is unlikely that the property or services will be resold or used in processing, then in order to act in good faith the seller must make further inquiry to determine the facts supporting the valid exemption certificate. In addition, if the nature of the business of the purchaser, as shown by the valid exemption certificate, indicates that it is unlikely that the property or services will be resold or used in processing, then in order to act in good faith the seller must make further inquiry to determine the facts supporting the valid exemption certificate.

EXAMPLE 1. A seller is expected to inquire to discover the facts supporting the claimed exemption if the seller knows that the property or services will not be, or it is unlikely that the property or services will be, resold or used in processing by that purchaser. This further inquiry is expected even when there is nothing in the nature of the business as shown on the valid exemption certificate to cause the seller to make further inquiry.

EXAMPLE 2. A seller is expected to inquire to discover the facts supporting the claimed exemption of the sale of sawdust or a tool chest purchased by a gas station since such items are rarely resold by a gas station.

EXAMPLE 3. A seller is not expected to make further inquiry, in the absence of actual knowledge, to determine which light bulbs bought by a hardware store are for use in the store or those purchased for resale.

If the seller has met the requirements set forth above in accepting a valid exemption certificate, the seller shall be deemed to have acted in good faith and the liability for the tax shifts to the purchaser who becomes solely liable for the taxes.

e. A seller is relieved from liability for sales tax if (1) a purchaser deletes the tax reimbursement from the payment to the seller or if the purchaser makes a notation on an invoice such as "not subject to tax" or "resale" and (2) if the seller can produce written evidence to show that an attempt was made to obtain an exemption certificate to show that the transaction was exempt from tax but was unable to obtain said certificate from the purchaser.

f. The failure of a permit holder to act in good faith while giving or receiving exemption certificates may result in the revocation of the sales tax permit. Revocation is authorized under the provisions of Iowa Code section 422.53(5).

g. The purchase of tangible personal property or services which are specifically exempt from tax under the Iowa Code need not be evidenced by an exemption certificate. However, if certificates are given to support these transactions, they do not relieve the seller of the responsibility for tax if at some later time the transaction is determined to be taxable.

h. A person who is selling tangible personal property or services, but who is not making taxable sales at retail, shall not be required to hold a permit. When this person purchases tangible personal property or services for resale, they shall furnish a certificate in accordance with these rules to the supplier stating that the property or services was purchased for the purpose of resale.

i. For information regarding the use of exemption certificates for contractors, see chapter 19 of the rules.

This rule is intended to implement Iowa Code sections 422.42(3), 422.42(13), 422.42(16), 422.47 as amended by 1986 Iowa Acts, chapter 1007, and Iowa Code sections 422.53 and 423.1(1).

701—15.4(422,423) Bad debts. Bad debts shall be allowed as a credit on tax when all the following facts have been shown:

15.4(1) Tax has been previously paid on the gross receipts from the accounts on which the taxpayer claims credit for tax.

15.4(2) The accounts have been found to be worthless.

15.4(3) The taxpayer has records to show that the accounts have actually been charged off for income tax purposes.

Credit for bad debts shall not be allowed on merchandise which was exempt from tax when sold.

When credit on tax has been taken on account of bad debts and the debts are subsequently paid, the proceeds from the collection of such accounts shall be included in the gross receipts for the period in which payment is made.

Effective March 1, 1983, the sales and use tax rate increased from three percent (3%) to four percent (4%).

Bad debts which occur prior to March 1, 1983, and are charged off after March 1, 1983, may be charged off at the tax rate of four percent (4%). Bad debts which have been charged off prior to March 1, 1983, and all or any part of the bad debt is recovered after March 1, 1983, will be subject to tax at the rate of four percent (4%). All the provisions of this rule and rule 15.5(422,423) apply.

This rule is intended to implement Iowa Code sections 422.42(16), 422.46, and 423.1(10).

701—15.5(422,423) Recovery of bad debts by collection agency or attorney. When bad debts have been charged off and later recovered in whole, or in part, through the services of a collection agency or an attorney, the full amount of the debt recovered shall be included with the gross sales for the period which the collection was made. The services of an agency or attorney are services purchased by a retailer and shall not reduce the gross amount collected for the retailer by the agency or attorney.

This rule is intended to implement Iowa Code sections 422.42(16), 422.46, and 423.1(10).

701—15.6(422,423) Discounts, rebates and coupons.

15.6(1) *Discounts.* A discount is an abatement from the face of an account, with the remainder being the actual purchase price of the goods charged in the account. The purchaser entitled to the discount will never owe the face of the bill as a debt—this being the net of the bill after the agreed discount has been deducted. The word "discount" means "to buy at a reduction." *Benner Tea Company v. Iowa State Tax Commission,* 1961, 252, Iowa 843, 109 N.W.2d 39.

Any discount allowed by a retailer and taken on taxable sales is a proper deduction when collecting and reporting tax. This is not the case when the retailer offers a discount to a purchaser but bills and collects tax on the gross charge rather than on the net charge. The customer must receive the benefit of the discount, for sales tax purposes, in order for the retailer to exclude it from gross receipts.

Certain retailers bill their customers on a gross and net basis, with the difference considered to be a discount for payment purposes. When a customer does not resolve the bill within the net payment period, tax shall apply on the gross charge shown on the billing.

15.6(2) *Rebates.* A rebate is a return of part of an amount paid for a product. Manufacturers rebates are not discounts and cannot be used to reduce the gross receipts received from a sale or reduce the purchase price of a product. This rule applies even though the rebate is used by the seller to reduce the selling price or is used by the purchaser as a down payment. The rebate is considered a transaction between the manufacturer and the purchaser. See 1972 O.A.G. 332.

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CHAPTER 18
TAXABLE AND EXEMPT SALES DETERMINED BY METHOD OF TRANSACTION OR USAGE

[Prior to 12/17/86, Revenue Department(730)]

701—18.1(422,423) Tangible personal property purchased from the United States government. Tangible personal property purchased from the United States government or any of the governmental agencies shall be exempt from sales tax, but such purchases shall be taxable to the purchaser under the provisions of the use tax law. Persons making purchases from the United States government, unless exempt from the provisions of Iowa Code section 422.44 shall report and pay use tax at the current rate on the purchase price of such purchases.

This rule is intended to implement Iowa Code sections 422.44 and 423.3.

701—18.2(422,423) Sales of butane, propane and other like gases in cylinder drums, etc. Sales of butane, propane and other like gases in cylinder drums and other similar containers purchased for cooking, heating and other purposes shall be taxable.

When gas of this type is sold and motor vehicle fuel tax is collected by the seller, tax shall not be due. If Iowa motor vehicle fuel tax is not collected by the seller at the time of the sale, tax shall be collected and remitted to the department, unless the sale is specifically exempt.

If tax is not collected by the seller at the time of sale, any tax due shall be collected by the department at the time the user of the product makes application for a refund of the motor vehicle fuel tax.

The gross receipts from the rental of cylinders, drums and other similar containers, by the distributor or dealer of the gas shall be subject to tax when the title remains with the dealer. Gas converter equipment which might be sold to an ultimate consumer shall be subject to tax.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 422.45(11), 423.1 and 423.2.

701—18.3(422,423) Chemical compounds used to treat water. Chemical compounds placed in water which is ultimately sold at retail should be purchased exempt from the tax. The chemical compounds become an integral part of property sold at retail. Chemical compounds placed in water which is directly used in processing are exempt from the tax, even if the water is consumed by the processor and not sold at retail.

Chemical compounds which are used to treat water that is not sold at retail or which are not used directly in processing shall be subject to tax. An example would be chlorine or other chemicals used to treat water for a swimming pool.

Special boiler compounds used by processors when live steam is injected into the mash or substance, whereby the steam liquefies and becomes an integral part of the product intended to be sold at retail and does become a part of the finished product shall be exempt from tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1, and 423.2.

701—18.4(422) Mortgages and trustees. Pursuant to the provisions of a chattel mortgage, the receipts from the sale of tangible personal property at a public auction shall be taxable even if the sale is made by virtue of a court decree of foreclosure by an officer appointed by the court for that purpose.

The tax applies to inventory and noninventory goods provided the owner is in the business of making retail sales of tangible personal property or taxable services. In Re Hubs Repair Shop, Inc. 28 B.R. 858 (Bkrtcy. 1983).

This rule is intended to implement 1983 Iowa Code sections 422.42, 422.43, 423.1 and 423.2.

701—18.5(422,423) Sales to agencies or instrumentalities of federal, state, county and municipal government.

18.5(1) The gross receipts from the sale of tangible personal property or enumerated taxable services made directly by or to the United States government or to recognized agencies or departments of the United States government shall not be subject to sales tax.

The gross receipts from sales at retail made directly to patients, inmates or employees of an institution or department of the United States government shall be taxable, since they are not made directly to the government. However, sales similarly made by post exchanges and other establishments organized and controlled by federal authority shall not be subject to sales tax.

18.5(2) The gross receipts from sales to the United States government, state of Iowa, or federal bureaus, departments, or instrumentalities are not taxable.

18.5(3) Starting July 1, 1978, the gross receipts from the sale of goods, wares, merchandise, or services used for public purposes to any tax-certifying or tax-levying body of the state of Iowa or governmental subdivision thereof, including the state board of regents, state department of social services, state department of transportation, and all divisions, boards, commissions, agencies, or instrumentalities of the state, federal, county, or municipal government which have no earnings going to the benefit of an equity investor or stockholder, except the sale of goods, wares, or merchandise used by or in connection with the operation of any municipally owned public utility engaged in selling gas, electricity, or heat to the general public, shall be exempt. Goods, wares, merchandise, or services used for public purposes and sold to any municipally owned solid waste facility which sells all or part of its processed waste as a fuel to a municipally owned public utility shall be exempt.

EXAMPLES:

a. A group of exempt instrumentalities, such as cities, issues bonds to finance the construction of a sewage disposal facility. X, a corporation, purchases the bonds but is not involved in the project in any other way. Since X does not enjoy the benefits of earnings of the solid waste facility, the exemption provided the instrumentalities is applicable.

b. Corporation Y, which is an instrumentality of the federal government and which Congress has allowed by statute to be subject to state sales and use taxes, purchases tangible personal property. Said purchases are subject to tax because the profits of the corporation are distributed to the stockholders thereof.

This tax exemption does not apply to construction contractors who create or improve real property for federal, state, county, and municipal instrumentalities or agencies thereof. The contractors, therefore, shall be subject to sales and use tax on all tangible personal property they purchase regardless of the identity of their construction contract sponsor. See chapter 19 of the rules.

This rule is intended to implement Iowa Code chapters 422 and 423.

701—18.6(422,423) Relief agencies.

18.6(1) Relief agency means the state, any county, city and county, city or district thereof, or any agency engaged in actual relief work. Nonexclusive examples of relief agencies are

For purposes of this rule, the terms morticians or funeral directors shall also include cemeteries, cemetery associations and anyone engaged in activities similar to those discussed in the rule.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

701—18.22(422,423) Physicians, dentists, surgeons, ophthalmologists, oculists, optometrists, and opticians. Physicians, dentists, surgeons, ophthalmologists, oculists, optometrists, and opticians shall not be liable for tax on services rendered such as examinations, consultations, diagnosis, surgery and other kindred services, nor on the applicable exemptions prescribed under the rules in chapter 20.

The purchase of materials, supplies, and equipment by these persons is subject to tax unless the particular item is exempt from tax when purchased by an individual for the individual's own use. For example, the purchase for use in the office of prescription drugs would not be subject to tax nor would the purchase of prosthetic devices such as artificial limbs or eyes.

Sales of tangible personal property to dentists, which are to be affixed to the person of a patient as an ingredient or component part of a dental prosthetic device, are exempt from tax. These include artificial teeth, and facings, dental crowns, dental mercury and acrylic, porcelain, gold, silver, alloy, and synthetic filling materials.

Sales of tangible personal property to physicians or surgeons, which are prescription drugs to be used or consumed by a patient, are exempt from tax.

Sales of tangible personal property to ophthalmologists, oculists, optometrists, and opticians, which are prosthetic devices designed, manufactured, or adjusted to fit a patient, are exempt from tax. These include prescription eyeglasses, contact lenses, frames, and lenses.

The purchase by such persons of materials such as pumice, tongue depressors, stethoscopes, which are not in themselves exempt from tax, would be subject to tax when purchased by such professions.

The purchase of equipment, such as an X-ray machine, X-ray photograph or frames for use by such persons is subject to tax. On the other hand, the purchase of an item of equipment that is utilized directly in the care of an illness, injury or disease, which item would be exempt if purchased directly by the patient, is not subject to tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 422.45(13-15), 423.2 and 423.4(4).

701—18.23(422) Veterinarians. Purchase of drugs, medicines, bandages, dressings, serums, tonics, and the like, but not to include tools and equipment, which are used in treating livestock raised as part of agricultural production is exempt from tax. Where these same items are used in treating animals maintained as pets for hobby purposes, sales tax is due.

A veterinarian engaged in retail sales in addition to furnishing professional services, must account for sales tax on the gross receipts from such sales.

This rule is intended to implement Iowa Code sections 422.42(3) and 422.43.

701—18.24(422,423) Hospitals, infirmaries, and sanitariums. Hospitals, infirmaries, sanitariums, and like institutions are engaged primarily in the business of rendering services. Such facilities shall not be subject to tax on their purchases of items of tangible personal property exempt under rules of chapter 20 when such items would be exempt if purchased by the individual and if the item is used generally for the tax exempt purpose.

Unless otherwise exempt from tax, hospitals, infirmaries and sanitariums are deemed to be the purchasers for use or consumption of such tangible personal property that is used in furnishing services. *Modern Dairy Co. v. Department of Revenue,* 1952, 413 ILL. 55, 108 N.E.2d 8.

Such facilities shall not be liable for sales tax on their gross receipts from meals or other tangible personal property, when such items are used in rendering hospital service.

This rule is intended to implement Iowa Code chapters 422 and 423.

701—18.25(422,423) Warranties and maintenance contracts.

18.25(1) In general—definitions. "Mandatory warranty." A warranty is mandatory within the meaning of this regulation when the buyer, as a condition of the sale, is required to purchase the warranty or guaranty contract from the seller. "Optional warranty." A warranty is optional within the meaning of this regulation when the buyer is not required to purchase the warranty or guaranty contract from the seller.

18.25(2) Mandatory warranties. When the sale of tangible personal property or services includes the furnishing or replacement of parts or materials which are pursuant to the guaranty provisions of the sales contract, a mandatory warranty exists. If the property subject to the warranty is sold at retail, and the measure of the tax includes any amount charged for the guaranty or warranty, whether or not such amount is purported to be separately stated from the purchase price, the sale of replacement parts and materials to the seller furnishing them thereunder is a sale for resale and not taxable. Labor performed under a mandatory warranty which is in connection with an enumerated taxable service is also exempt from tax.

18.25(3) Optional warranties. For periods after June 30, 1981. The sale of optional service or warranty contracts which provide for the furnishing of labor and materials and require the furnishing of any taxable service enumerated under Iowa Code section 422.43 is considered a sale of tangible personal property the gross receipts from which are subject to tax at the time of sale.

18.25(4) A preventive maintenance contract is a contract which requires only the visual inspection of equipment and no repair is or shall be included. The gross receipts from the sale of a preventive maintenance contract is not subject to tax.

18.25(5) Additional charges for parts and labor furnished in addition to that covered by a warranty or maintenance contract which are for enumerated taxable services shall be subject to tax. Only parts and not labor will be subject to tax where a nontaxable service is performed if the labor charge is separately stated.

This rule is intended to implement Iowa Code sections 422.42, 422.43 and 423.2.

701—18.26(422) Service charge and gratuity. When the purchase of any food, beverage or meals automatically and invariably results in the inclusion of a mandatory service charge to the total price for such food, beverage or meal, the amounts so included shall be subject to tax. The term "service charge" means either a fixed percentage of the total price of or a charge for food, beverage or meal.

The mandatory service charge shall be considered (1) a required part of a transaction arising from a taxable sale and a contractual obligation of a purchaser to pay to a vendor arising directly from and as a condition of the making of the sale and (2) a fixed labor cost included in the price for food, beverage or meal even though such charge is separately stated from the charge for the food, beverage or meal.

When a gratuity is voluntarily given for food, beverage or meal it shall be considered a tip and not subject to tax.

Cohen v. Playboy Club International, Inc., 19 ILL. App. 3d 215, 311 N.E.2d 336; *Baltimore Country Club, Inc. v. Comptroller of Treasury*, 272 MD. 65, 321 A.2d 308.

This rule is intended to implement Iowa Code section 422.43.

which the retailer intends to sell and the sale of which will be subject to Iowa use tax.

Specific but nonexclusive examples of "automotive fluids" are motor oil and other automobile lubricants, hydraulic, brake, and transmission fluids, sealants, undercoatings, antifreeze, and gasoline additives.

This rule is retroactive to January 1, 1979, for sales of automotive fluids occurring on and after that date. It is intended to implement Iowa Code section 422.45 as amended by 1986 Iowa Acts, Senate File 106.

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Executive Search Firm (cont'd)	Employment Agency (cont'd)
7. Paid on retainer or by an hourly charge or by contract. Paid whether or not individual is hired.	Paid on a contingent-fee basis. Paid only if a referred person is hired.
8. Does not advertise available positions.	Does engage in general advertising of available positions.
9. Overall placement of individual requires extensive and sophisticated analysis of position and individual.	Overall placement of individual is not as extensive or sophisticated.

This rule is intended to implement Iowa Code section 422.43 as amended by 1984 Iowa Acts, Senate File 2330.

701—26.39(422) Printing and binding. Prior to July 1, 1984, persons engaged in the business of printing or binding any printed matter other than for the purpose of ultimate sale at retail are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Printing" shall include any type of printing, lithographing, mimeographing, typing incidental to multiple reproduction(s) listed herein, photocopying and similar reproduction. The following activities are representative of services, the gross receipts from which are subject to tax: the printing of pamphlets, leaflets, stationery, envelopes, folders, bond and stock certificates, abstracts, law briefs, business cards, matchbook covers, campaign posters and banners for the users thereof. For the treatment of printing and binding on and after July 1, 1984, see rule 16.51(422,423).

701—26.40(422) Sewing and stitching. Persons engaged in the business of sewing and stitching are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.41(422) Shoe repair and shoeshine. Persons engaged in the business of repairing or shining any type of footwear, such as shoes, boots and sandals, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Repair" shall include the mending or renovation of existing parts and the replacement of defective parts, but shall not include installation of new parts or accessories which are not replacements of the footwear in any manner. "Shoeshine service" is meant to be the shining of any type of footwear.

701—26.42(422) Storage warehousing, storage locker, and storage warehousing of raw agricultural products prior to and subsequent to July 1, 1978.

26.42(1) *Storage warehousing of raw agricultural products on and after July 1, 1978.* Beginning July 1, 1978, only the storage warehousing of raw agricultural products is subject to tax. However see rule 26.23(422) relating to fur storage.

a. For the purpose of this rule, raw agricultural products include, but are not limited to, corn, beans, oats, milo, fruits, vegetables, animal semen, and like items that have not been subjected to any type of processing. Grain drying is not processing.

b. A "warehouse" is defined as an enclosure not readily accessible to the public, which would normally require a roof of some sort or some type of structure designed to afford protection to the products. Placing the products on the ground, even though surrounded by a fence, would not constitute a warehouse. *Lynch v. State,* 1889, 89 Ala. 7 So. 829.

26.42(2) For the purpose of this rule, the term "principal" shall refer to the person who ships raw agricultural products to the warehouse, or the person who is billed by the warehouse for service performed. The term "purchaser" shall refer to the person who purchases the goods from the principal.

26.42(3) *Storage and delivery.*

a. Raw agricultural products originating inside the state and delivered inside the state. Assuming the raw agricultural products originate in Iowa, are stored in an Iowa warehouse, and after storage, are delivered to a destination in Iowa; the tax is imposed on storage pursuant to Iowa Code section 422.43. The interstate commerce exemption in Iowa Code section 422.42, subsections 13 and 16, is not applicable.

b. Raw agricultural products originating outside the state and delivered inside the state. Assuming the raw agricultural products originate from a principal outside the state of Iowa, are sent to an Iowa warehouse, and after storage, are delivered to a destination in Iowa; tax on these warehouse services has been imposed since October 1, 1967, and there is no interstate commerce exemption, either under the United States Constitution, or under the statutory exemption for services performed on tangible personal property delivered into interstate commerce. The delivery, in this example, is clearly intrastate and the storage is subject to tax. *Iowa Movers and Warehousemen's Association v. Briggs,* 1976, Iowa, 237 N.W.2d 759.

c. Raw agricultural products originating inside or outside of the state and shipped by the warehouse out of Iowa. Assuming the raw agricultural products originated either in Iowa or outside of Iowa, are shipped to an Iowa warehouse, and after storage, are sent by the warehouse directly out of Iowa or are given to a common carrier to be shipped out of Iowa, with destination being out of Iowa; the storage of the raw agricultural products would have been subject to Iowa tax from October 1, 1967, to May 8, 1969, and would be exempt after May 8, 1969, with the passage of Acts of the Sixty-third General Assembly, First Session, 1969, chapter 247, which enacted the interstate commerce exemption on services contained in Iowa Code section 422.42, subsections 13 and 16.

d. Raw agricultural products originating either inside the state or outside the state and the principal or purchaser of the raw agricultural products picks them up at the Iowa warehouse. Assuming the raw agricultural products originated either in Iowa or out of Iowa, and are sent to an Iowa warehouse for storage, and upon the completion of the storage, the principal directs the warehouse to allow the purchaser of the raw agricultural products to pick them up at the Iowa warehouse; the warehouse service would be subject to Iowa sales tax.

This example involves a situation similar to the one found in *Dodgen Industries, Inc., v. Iowa State Tax Commission,* 160 N.W.2d 289 (Ia 1968).

In that case, the court held that where the sale of goods is made by an Iowa principal, delivery of the goods physically made to the purchaser in Iowa constitutes an intrastate delivery, and the Iowa sales tax applies. Therefore, where physical delivery of goods in the form of transfer of possession is made from the Iowa warehouse directly to the principal or the purchaser, such direct delivery constitutes a delivery into intrastate commerce and the warehouse services performed on these goods would be subject to Iowa sales tax.

26.42(4) *Other charges invoiced separately.*

a. Transportaion. The gross receipts from the sale, furnishing, or service of transportation services are exempt from the Iowa sales and use taxes under Iowa Code section 422.45(2). This would include delivery charges which are itemized or shown separately on the customer's invoice.

b. Handling. A charge assessed for labor and equipment used to unload rail cars, trucks, or other vehicles, place the raw agricultural products in storage and remove from storage and load rail cars, trucks, or other vehicles. Handling charges billed after October 1, 1967, are exempt as transportation charges if they are itemized or shown separately on the customer's invoice. If handling charges are not ascertainable on the invoice, the total amount thereon is deemed to be storage and, therefore, taxable.

c. Clerical. A charge assessed for special services such as, but not limited to, compiling stock reports and statements, reporting serial numbers, physical checking of raw agricultural products, and reporting by special report of receipt transactions and shipments. If

such charges are predominantly related to storage, they are subject to tax. If clerical charges are predominantly related to transportation activities, they are exempt from tax.

d. Communications. A charge assessed for postage, telephone, teletype, or telegram, and for other than normal communication at the request of the customer. If such charges are predominantly related to storage, they are subject to tax. If communication charges are predominantly related to transportation activities, they are exempt from tax.

e. Car cleaning. A charge assessed for cleaning rail cars of bracing and debris as required by the Interstate Commerce Commission. This is related to transportation activities and not subject to tax.

f. Recoupering. A charge assessed for handling merchandise damaged in transit so as to prevent further loss due to transit damage. This is predominantly a charge for storage and is subject to tax unless it can be shown that it is predominantly related to transportation.

g. Dunnage and bracing. A charge assessed for labor and material used in blocking and bracing in rail cars and trucks; blocking and bracing are necessary to protect or prevent movement of raw agricultural products while in transit. This charge is separate from the storage charge and is related to transportation. Therefore, it is not subject to tax.

h. Extra labor. A charge assessed for other-than-normal handling, such as shipping or receiving, during other-than-usual business hours. This charge is predominantly related to transportation, and when separately listed from storage, is not subject to tax.

i. Bonded custom charges. A charge assessed in addition to regular rates for merchandise being held under United States Custom Bond. This is considered a tariff on foreign goods entering the country and is not subject to tax.

j. Trash disposal. A charge assessed for removal and disposal of waste dunnage or damaged material. This usually involves transportation to landfill or other disposal area. This is considered a nontaxable enumerated service, and is not subject to tax.

k. Cartage. A charge assessed for transporting raw agricultural products from the storage facility to the customer's place of business or residence, or from the customer's place of business or residence to the storage facility, or from one place of business to another, or from one residence to another. This is a transportation charge and is not subject to tax.

l. Crating. This is a charge for packing and wrapping. If predominantly related to storage, it is taxable; if it is predominantly related to transportation, it is exempt.

m. Canning and bagging. A charge assessed for receiving raw agricultural products in bulk, unloading, and placing in containers, such as bottles, bags, cans, or drums. If this service is predominantly related to storage, it is subject to tax. If this service is predominantly related to transportation, it is exempt from tax.

n. Unpacking. This would be predominantly related to storage and subject to tax, unless it can be shown to be predominantly related to transportation.

26.42(5) ***Wrapping and packaging.***

a. Wrapping and packaging services performed on raw agricultural products are taxable or exempt, depending upon whether the predominant service is storage or transportation. Iowa Movers and Warehousemen's Association, supra.

b. Wrapping, packing and packaging predominantly for storage of merchandise is subject to tax unless the interstate commerce exemption is applicable.

c. Warehouses which sell packing materials to their customers are considered retailers of these materials and should collect sales tax. When the packaging materials are not billed separately to the customer, the warehouse will be subject to the standards set forth in rule 18.31(422,423) regarding tangible personal property purchased for use in performing services.

26.42(6) ***Transit warehouses.*** The department recognizes that the operations of transit warehouses present some administrative difficulties in the collection of sales taxes. Raw agricultural products are shipped to transit warehouses in bulk quantities and shipped to different locations at different times. Storage of raw agricultural products delivered in Iowa would be subject to tax, while storage of raw agricultural products placed into interstate commerce would be exempt from tax. Since it is extremely difficult under these circumstances to determine the cost of storage on raw agricultural products delivered in Iowa, the

department will allow transit warehouses to compute tax on storage fees on the basis of a formula, the numerator of which is the quantity of raw agricultural products stored in the warehouse with intrastate delivery in Iowa, and the denominator of which is the total quantity of goods stored in the warehouse. This information, in most cases, must be supplied by principals storing goods in the warehouse. However, it is the responsibility of the warehouse to acquire the information needed to compute the Iowa sales tax under the formula. This information should be verified with the principal at least once every ninety (90) days. Included in the numerator of the formula will be raw agricultural products picked up at an Iowa warehouse by a principal or purchaser, or raw agricultural products delivered to a principal or purchaser in Iowa even though the principal or purchaser may subsequently deliver the raw agricultural products to a common carrier for shipment outside Iowa.

26.42(7) *Government storage.* Storage of raw agricultural products is exempt from tax if the storage contract is with a tax-certifying or tax-levying body of the state of Iowa or to any instrumentality of the state, county, or municipal government, or with the federal government or its instrumentalities. Storage fees relating to raw agricultural products placed in storage by the producer and later consigned to the federal government under a loan agreement are not exempt from tax. In order for the storage to be exempt from tax, the federal government must actually own the raw agricultural products during the period the goods are stored and make payment to the warehouse for the storage.

Also refer to *Iowa Movers and Warehousemen's Association v. Briggs,* Equity No. 75910, Polk County District Court, May 8, 1974, and 237 N.W.2d 759.

This rule is intended to implement Iowa Code sections 422.43 and 423.2.

701—26.43(422) Telephone answering service. Persons engaged in the business of providing telephone answering service, whether by person or machine, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.44(422) Test laboratories. Persons engaged in the business of providing laboratory testing of any substance for any experimental, scientific or commercial purpose, except for tests on humans, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

This rule is intended to implement Iowa Code sections 422.43 and 423.2.

701—26.45(422) Termite, bug, roach and pest eradicators. Persons engaged in the business of eradicating or preventing the infestation by termites, bugs, roaches and all other living pests are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. Persons who eradicate, prevent or control the infestation of any type of pest by means of spraying are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.46(422) Tin and sheet metal repair. Persons engaged in the business of repairing tin or sheet metal, whether the same has or has not been formed into a finished product are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.47(422) Turkish baths, massage and reducing salons. Persons engaged in the business of operating turkish baths, reducing salons or in the business of massaging are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Turkish baths" shall mean any type of facility wherein the individual is warmed by steam or dry heat. "Reducing salons" shall mean any type of establishment which offers facilities or a program of activities for the purpose of weight reduction. "Massaging" shall include the kneading, rubbing or manipulating of the body to condition the body, but not include any body manipulation undertaken and incidental to the practice of one or more of the healing arts. Persons engaged in the business of operating health studios which, as a part of their operation, offer any or all of the services of turkish baths, massages or

reducing facilities or programs shall be subject to tax upon the gross receipts from the above-named service.

701—26.48(422) Vulcanizing, recapping or retreading. Prior to May 18, 1984, persons engaged in the business of recapping or retreading tires for any vehicle or vulcanizing any type of product for others are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. For the purposes of this rule, vulcanizing shall mean the act or process of treating crude rubbers, synthetic rubber, or other rubber-like material with a chemical and subjecting it to heat in order to increase its strength and elasticity. On and after May 18, 1984, the sale of vulcanizing, recapping or retreading is treated as a sale of tangible personal property. See rule 16.51(422,423) for the effects of this change and for certain changes in the treatment of vulcanizing, recapping or retreading for the period beginning January 1, 1979, and ending May 17, 1984.

701—26.49(422) Rescinded, effective 3/18/87.

701—26.50(422) Weighing. Persons engaged in the business of weighing any item of tangible personal property are rending, furnishing or performing a services, the gross receipts from which are subject to tax.

701—26.51(422) Welding. Persons engaged in the business of welding materials whether for the purpose of mending existing articles, adding to them or creating new articles are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.52(422) Well drilling. Persons engaged in the business of well drilling who perform repair services are rendering a service, the gross receipts from which are subject to tax. Services within the ambit of subrule 26.2(1) are not subject to tax.

701—26.53(422) Wrapping, packing and packaging of merchandise other than processed meat, fish, fowl and vegetables. Persons engaged in the business of wrapping, packing and packaging of merchandise other than processed meat, fish, fowl and vegetables are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. If the person "wraps, packs or packages" merchandise as a service incidental to the sale of such merchandise and does not charge for the service, no sales or use tax, in addition to that paid on the purchase price of the merchandise, need be collected or remitted. However, if a separate charge be made for "wrapping, packing or packaging", the gross receipts therefrom are subject to tax.

701—26.54(422) Wrecking service. Persons engaged in the business of wrecking, tearing down, defacing or demolishing tangible personal or real property or any parts thereof are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

701—26.55(422) Wrecker and towing. Persons engaged in the business of towing any vehicle by means of pushing, pulling, carrying or freeing any vehicle from mud, snow or any other impediment, including hoisting incidental thereto, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. The gross receipts from service charges made when any person travels to any place to lift, extricate or tow any vehicle or to salvage any vehicle are subject to tax. Towing does not include transporting

operable vehicles from one location to another where no operative aspect of such vehicle is integral to such transporting. The exemption for transportation services shall not apply.

26.55(1) *"Vehicle"* means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway. "Vehicle" does not include:

a. Any device moved by human power.

b. Any device used exclusively upon stationary rails or tracks.

c. Any steering axle, dolly, or other integral part of another vehicle, except an auxiliary axle as defined in subsection 2 which in and of itself is incapable of commercially transporting any person or property but is used primarily to support another vehicle.

d. Any integral part of a truck tractor or road tractor which is mounted on the frame of the truck tractor or road tractor immediately behind the cab and which may be used to transport persons and property but which cannot be drawn upon the highway by the truck tractor or another motor vehicle.

26.55(2) *"Auxiliary axle"* means a transferable axle with pneumatic tires utilized to convert any single axle to a tandem axle, or to convert any semitrailer to a full trailer with four or more wheels and which may be registered as if a vehicle.

This rule is intended to implement Iowa Code sections 422.43 and 423.1(7).

701—26.56(422) Cable television. On and after July 1, 1985, persons engaged in the business of distributing to subscribers the signals of one or more television broadcasting stations, or other television programming, and using any cable as a transmission path for these signals are rendering a taxable service. The gross receipts from any service not using a cable as a transmission path to distribute signals to subscribers are not taxable as the receipts from "cable television." Thus, the gross receipts from a company broadcasting signals from a satellite directly to a customer's "satellite dish" or other receiving antenna would not be subject to tax. Such a system could, however, be a "communication service" which is subject to tax. See rule 18.20(422). A cable television service includes any facility which uses fiber optics as a transmission path for its distribution of signals to its customers. The gross receipts from payments to view single events, as well as subscription payments, are subject to tax. The gross receipts from the installation of cable television service, separately itemized and billed, are not subject to tax.

Also subject to tax are the gross receipts from any cable television service serving fewer than fifty (50) subscribers or serving only customers in one or more multiple unit dwellings under common ownership, control or management.

Any person distributing signals by a cable to television screens in auditoriums or other buildings which show boxing matches and other events for view by a paying audience is in the business of providing a "cable television" service. Gross receipts from the providing of these signals to exhibitors of the boxing matches or other events are subject to tax.

See rule 18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code section 422.43(11) as amended by 1985 Iowa Acts, Senate File 395, section 83.

701—26.57(422) Camera repair. The gross receipts from repair of any still photograph, motion picture, video, or television camera are subject to tax. Included within the term "camera repair" is the repair of any camera part which may be detached from the camera body but which can be used only with a camera and would ordinarily be considered a part of the camera. Nonexclusive examples of such accessories are: Detachable lenses, flash units and motor drives.

This rule is intended to implement Iowa Code section 422.43(11) as amended by 1985 Iowa Acts, Senate File 395, section 83.

701—26.58(422) Campgrounds. On and after July 1, 1985, the gross receipts from "campgrounds" are subject to tax. A "campground" is any location at which sites are provided for persons to place their own temporary shelter, such as a tent, travel trailer or motor home. Excluded from this characterization of "campground" is any hunting, fishing or other type of camp at which accommodations are provided in cabins or other permanent structures. The

gross receipts from the operation of these camps were taxable prior to July 1, 1985, and remain taxable after that date. See rule 18.40(422,423). The gross receipts from the use of a site at a campground are subject to tax even if rented by the same person for a period of more than thirty-one (31) consecutive days.

Included within the meaning of "gross receipts" from the services of a campground are any mandatory or optional charges imposed on persons using a site on the campground. These include, but are not limited to, campground entry fees, electric, water and sewer fees, fees for the use of swimming pools or showers, and fees for the privilege of keeping extra persons or extra vehicles at the campsite. The gross receipts from the use of any state park as a campground are subject to tax. The gross receipts from the use of any county or municipal park as a campground are exempt from tax.

Excluded from this characterization of the gross receipts from a campground are any charges to persons who are not residing on a site at the campground and who are, therefore, not camping there. Charges to such persons for the use of picnic areas, swimming pools, hiking trails or hayrides are not the gross receipts from a campground, but are the gross receipts from "commercial recreation" which are subject to tax and were subject to tax prior to July 1, 1985. See rule 26.24(422). Fees charged which allow entry for a vehicle to any state, county or municipal park (commonly called "park user fees") shall not be subject to tax.

See rule 18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code section 423.43(11) as amended by 1985 Iowa Acts, Senate File 395, section 83.

701—26.59(422) Gun repair. On and after July 1, 1985, the gross receipts from "gun repair" are subject to tax. The term "gun repair" means the repair of any pistol, revolver or other hand gun, as well as the repair of any shoulder or hip-fired gun such as a rifle or shotgun. See *State v. Christ,* 177 N.W. 54 (Ia. 1920).

See rule 18. 43(422,423) for an ememption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code section 422.43(11) as amended by 1985 Iowa Acts, Senate File 395, section 11.

701—26.60(422) Janitorial and building maintenance or cleaning. On and after July 1, 1985, gross receipts from janitorial services and building maintenance and cleaning are subject to tax. "Janitorial services" means the type of cleaning services performed by a janitor in the regular course of duty, whether such services are performed individually, under separate contract, or are included within a general contract to perform a combination of such services. The term includes, but is not limited to, contracts to perform interior window washing, floor cleaning, vacuuming and waxing, the cleaning or interior walls and woodwork, and cleaning or restrooms and furnaces. Also included within the meaning of the term is the movement of furniture and other items of personal property within a building. Persons performing either one or a number of janitorial services are engaged in a business the gross receipts of which are subject to tax. Therefore, for example, a person engaged only in cleaning the interior windows of a building is engaged in taxable, janitorial services.

The gross receipts from services which would otherwise be considered "janitorial" services are not subject to tax if those services are performed in a private residence, including an apartment or multiple housing unit, and the person paying for the services is an occupant of the residence. Such services are more in the nature of "housekeeping" than "janitorial" services and are not taxable.

Cleaning of the exterior walls or windows of any building or any other act performed upon the exterior of a building with the intent to keep the building in good upkeep or condition, other than a repair, is the service of "building maintenance." Its gross receipts are subject to tax. Excluded from "building maintenance" is any service performed upon the exterior of a building which is a private residence and which is paid for by an occupant of the building.

Janitorial services or building maintenance performed on or in connection with new construction, reconstruction, alteration, expansion or remodeling of structure is exempt from tax. See rule 19.13(422,423).

See rule 18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code section 422.43(11) as amended by 1985 Iowa Acts, Senate File 395, section 83.

701—26.61(422) Lawn care. On or after July 1, 1985, persons engaged in the business of "lawn care" are performing a service the gross receipts of which are subject to tax. "Lawn care" includes but is not limited to the following services: mowing, trimming, watering, fertilizing, reseeding, resodding and killing of insects, moles, other vermin, weeds, or fungi which may be threatening a lawn. Persons who mow lawns are providing a taxable service regardless of their ages.

See rule 18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code section 422.43(11) as amended by 1985 Iowa Acts, Senate File 395, section 83.

701—26.62(422) Landscaping. On or after July 1, 1985, the gross receipts from the service of "landscaping" are subject to tax. The services performed by one who arranges and modifies the natural condition of a given parcel or tract of land so as to render the land suitable for public or private use or enjoyment is engaged in the business of "landscaping." Any services for which registration is required as a "landscape architect" under Iowa Code section 118A.2 are not subject to tax on the service of "landscaping" if performed by a registered landscape architect and separately stated and separately billed on a charge for landscape architecture. The gross receipts from landscaping performed on or in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure shall not be subject to tax. See rule 19.13(422,423).

See rule 18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code section 422.43(11) as amended by 1985 Iowa Acts, Senate File 395, section 83.

701—26.63(422) Pet grooming. On or after July 1, 1985, persons engaged in the business of pet grooming are rendering a service, the gross receipts of which are subject to tax. A "pet" is any animal which has been tamed or gentled and which is kept by its owner for pleasure or affection rather than for utility or profit. "Grooming" consists of any act performed to maintain or improve the appearance of a pet and includes, but is not limited to, washing, combing, currying, hair cutting and nail clipping. Livestock are not pets, and the gross receipts from the grooming of livestock (e.g., to prepare those livestock for exhibition at fairs or shows) are nontaxable gross receipts. The gross receipts paid to any person who is not a veterinarian for the grooming of any dog (other than a seeing eye dog) or cat will be presumed to be the gross receipts from "pet grooming" and subject to tax.

If pet grooming is done for veterinary purposes, the sales tax does not apply since the grooming is an integral part of the nontaxable service of veterinary care. If pet grooming is done for both veterinary and cosmetic reasons, the primary purpose for the treatment will determine if sales tax should be collected. In situations where the charge for the cosmetic treatment and the veterinary-related treatment can be invoiced separately, sales tax should be collected only on the cosmetic portion of the billing. It will be presumed that pet grooming activities such as washing, trimming, and cutting are for cosmetic purposes unless it can be shown that the treatment was primarily done for veterinary purposes.

See rule 18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code section 422.43(11) as amended by 1985 Iowa Acts, Senate File 395, section 83.

701—26.64(422) Reflexology. On and after July 1, 1985, persons engaged in the business of reflexology are rendering a service, the gross receipts of which are subject to tax. "Reflexology" is a system for the treatment of illness which assumes that there exists certain "reflex

points" in the feet or hands and that each of these reflex points is related to the health of one organ or portion of the body. By massaging these reflex points, a "reflexologist" seeks to alleviate nervous tension, and by this alleviation to relieve arthritis, headaches, backaches, stiff necks and other ailments.

See rule 18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code section 422.43(11) as amended by 1985 Iowa Acts, Senate File 395, section 83.

701—26.65(422) Tanning beds and tanning salons. On or after July 1, 1985, persons engaged in the business of providing tanning beds and tanning salons are performing a service, the gross receipts of which are subject to tax.

See rule 18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code section 422.43(11) as amended by 1985 Iowa Acts, Senate File 395, section 83.

701—26.66(422) Tree trimming and removal. On or after July 1, 1985, persons engaged in the business of tree trimming and removal are performing a service, the gross receipts of which are subject to tax. Persons engaged in "stump removal" are engaged in a taxable service, as are persons engaged in the removal of any other portion of a tree, such as the branches or trunk. The trimming or removal of any shrub which has a woody main stem or trunk with branches shall constitute tree trimming or removal and the gross receipts from the trimming or removal of such a shrub shall be subject to tax. Persons engaged in the business of tree trimming and removal who cut the wood from the trees which they trim or remove into sizes suitable for sale as firewood and who sell this wood for firewood are engaged in the sale of tangible personal property, and the gross receipts from the sale of this wood are subject to tax. The services of persons who trim or remove trees and sell the wood which they have cut are not services sold for resale and are subject to tax.

See rule 18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code section 422.43(11) as amended by 1985 Iowa Acts, Senate File 395, section 83.

701—26.67(422) Water conditioning and softening. On and after July 1, 1985, persons engaged in the business of water conditioning and softening are performing a service, the gross receipts of which are subject to tax. "Water softening" means the removal of minerals from water to render it more suitable for drinking and washing. "Water conditioning" means any action other than water softening taken with respect to water which renders the water fit for its intended use or more healthful or enjoyable for human consumption. The phrase "water conditioning" includes but is not limited to water filtration, water purification, deionization and reverse osmosis. The service of water purification is taxable whether performed for residential, commercial, industrial, or agricultural users.

See rule 18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code section 422.43(11) as amended by 1985 Iowa Acts, chapter 32, section 83.

701—26.68(422) Motor vehicle, recreational vehicle and recreational boat rental. On and after July 1, 1985, the gross receipts from the rental of certain motor vehicles subject to registration, which are registered for a gross weight of thirteen (13) tons or less, recreational vehicles and recreational boats are subject to tax.

26.68(1) *Use of vehicles and boats with drivers or operators.* For the purposes of this rule, if the services of a driver or operator are provided as part of the fee for the use of any vehicle or boat, no rental of the vehicle or boat has occurred. Even though the person using the vehicle or boat has the right to control the driver's or operator's movements, the gross receipts from use of the vehicle are not subject to tax as vehicle or boat rental. If the vehicle or boat is rented from one person and the services of the driver or operator rented from another, tax will apply.

26.68(2) *Rental of vehicles subject to registration.*

a. "Long-term" leases not subject to tax. The gross receipts from the leasing of any vehicle subject to registration for a gross weight of thirteen (13) tons or less are not subject to tax if the lease is a written agreement providing for the lease of the vehicle for more than sixty (60) days and if the lessor, at the time of the signing of the lease, is licensed under Iowa Code chapter 321F.

b. Transactions subject to Iowa sales tax. A "rental" of tangible personal property, such as a vehicle subject to registration, occurs when one person transfers possession of tangible personal property to another person for temporary possession and use, pursuant to contract, *A.C. Nelsen Auto Sales v. Turner,* 44 N.W. 2d 36 (Iowa 1950) and *Ballstadt v. Iowa Department of Revenue,* 368 N.W. 2d 147 (Iowa 1985). Therefore, a "rental" of a vehicle has occurred in Iowa when, pursuant to a rental contract, possession of a vehicle is transferred to a customer in this state unless paragraph *"a"* of this subrule is applicable. The tax is collectible when any lump-sum or periodic payment is due under the rental agreement and paid in Iowa. Transfer of possession of the vehicle must have occurred in Iowa; the contract for rental of the vehicle need not have been executed here. Sales tax is payable on transfer to a customer upon possession of a rented vehicle in Iowa regardless of whether the vehicle is subsequently used exclusively in interstate commerce or not if payment by the customer is made in Iowa.

EXAMPLE 1. Customer A signs a rental contract with and takes possession of a rental car from an office of a rental agency located in Des Moines. Thereafter, A drives the car from Des Moines to Dubuque, Iowa, and back. In Des Moines, the rental agency collects gross receipts from the rental of one hundred dollars ($100). Such gross receipts would be subject to tax. If the customer had driven the rental car from Des Moines to Madison, Wisconsin, and back to Des Moines, the gross receipts would also be subject to tax.

EXAMPLE 2. Customer B enters into a contract to rent an automobile with a rental agency's office located in Omaha, Nebraska. B takes possession of the car rented under the contract at the rental agency's office in Council Bluffs, Iowa. B then drives the car from Council Bluffs to Dubuque and back. All gross receipts from the rental are subject to Iowa sales tax since delivery and payment occurred in Iowa.

EXAMPLE 3. Customer C enters into a contract to rent and takes possession of a rented automobile in Des Moines. Thereafter, C drives the vehicle to California and returns the vehicle to the rental agency's office in Los Angeles, and there pays a total charge for the rental of three hundred dollars ($300). No Iowa sales tax is due. Transfer of possession occurred here, but payment under the lease did not.

EXAMPLE 4. Customer D rents and takes possession of a truck in Des Moines. Before taking possession, D pays the rental agency a $500 deposit. Rental of the truck is on a mileage and per-day basis. Customer D drives the truck to Phoenix, Arizona. There it is discovered that the mileage and per-day charges add up to $600. Customer D pays the rental agency an additional $100 in Phoenix. Iowa sales tax is due upon the $500 deposit paid in Des Moines but not on the $100 paid in Phoenix. Only the payment made under the lease in Iowa is subject to tax.

EXAMPLE 5. Customer E rents a car in Chicago, Illinois, and drives it to Des Moines. In Des Moines E pays $200 for the use of the car. Although payment under the lease occurred in Iowa, transfer of possession of the vehicle did not take place here. This transaction is not subject to sales tax but may be subject to use tax; see rule 33.8(423).

26.68(3) *Tax collected from customer.* The person renting any vehicle subject to registration must collect from the customer and remit to the state of Iowa sales tax on each and every rental payment made in Iowa, no matter how calculated. Tax must be remitted for the period in which each rental payment is due and owing. Rental payments whether calculated in one lump sum, or on a mileage basis, or periodically are subject to tax. Also subject to tax are any charges, such as those for compulsory insurance, which are characterized as something other than rent payments but which are required to be paid as a condition of the rental. Specifically, but not exclusively excluded from the meaning of gross receipts from rental of

a vehicle subject to registration are items such as optional collision damage waiver fees, optional personal accident insurance fees, and fuel. If these charges are not to be included as part of rentals, a charge must be separately stated, separately itemized, and the charge cannot be required as a condition of the rental.

26.68(4) *Recreational boats.* The term "recreational boats" includes, but is not limited to, sailboats, rowboats, motorboats, paddleboats, and canoes. The gross receipts from the sale of tickets on river steamboats carrying passengers for pleasure rides are not taxable as the gross receipts of "recreational boat" rental but are taxable as the gross receipts from an "amusement enterprise." See rule 16.32(422).

26.68(5) *Recreational vehicles.* The term "recreational vehicles" includes, but is not limited to, bicycles, go-carts, golf carts and horse-drawn wagons or carriages, if rented without a driver. Rental of a recreational vehicle that is a vehicle subject to registration is also subject to tax.

This rule is intended to implement Iowa Code section 422.45 as amended by 1985 Iowa Acts, chapter 32, section 84.

701—26.69(422) Security and detective services. On or after July 1, 1985, persons engaged in the business of providing security or detective services are performing services, the gross receipts of which are subject to tax.

26.69(1) *Security service characterized.* Any person who provides a service, the purpose of which is to protect property from theft, vandalism or destruction; or individuals from physical attack or harassment is providing a "security service." Persons engaged in the following services are providing a taxable security service. The list is not exclusive: rental of guard dogs, burglar and fire alarm systems; providing security guards, body guards and mobile patrols; and protection of computer systems against unauthorized penetration.

26.69(2) *Detective services characterized.* Persons engaged, for a consideration, in the service of investigation for the purpose of obtaining information regarding any one or more of the following matters are engaged in the business of providing a "detective service," and their gross reciepts shall be subject to tax. Investigation of crimes or wrongs done or threatened; the habits, conduct, movements, whereabouts, associations, transactions, or reputation or character of any person; the credibility of witnesses or other persons; the investigation or recovery of lost or stolen property or the cause, origin, or responsibility for fires, accidents, or injuries to property; the investigation of the truth or falsity of any statement or representation; the detection of deception; or the business of securing evidence to be used before authorized investigating committees, boards of award or arbitration, or in the trial of civil or criminal cases. The services of a peace officer engaged privately in security or detection work are also subject to tax.

26.69(3) *Gross receipts not subject to tax.* Gross receipts from the following activities are not subject to tax as the gross receipts from security or detective services.

a. The services of a person employed full- or part-time by an employer in connection with the affairs of the employer.

b. The services of an attorney licensed to practice in Iowa, while performing duties as an attorney.

c. The services of a person engaged exclusively in the business of obtaining and furnishing information regarding the financial rating or standing and credit of any person.

d. The services of a person exclusively engaged, either as an employee or an independent contractor, in making investigations and adjustments for insurance companies.

e. The service of notice, or any other document, to a party, witness or any other person in connection with any criminal, civil or administrative litigation.

f. The service of soliciting any debtor to pay or collecting payment for any debt.

g. The service of securing information regarding the fitness or unfitness of any individual for prospective employment, if such information is secured by written or electronic communication only, e.g., checking of resumes.

h. Services as a consultant, who is rendering advice or providing training with regard to security and detection matters.

26.69(4) *Charges excluded from gross receipts.* Mileage and other travel expenses, lodging and meal expenses, fees paid for records, and amounts paid for information do not constitute a portion of the gross reciepts from security or detective services if separately identified, separately billed and reasonable in amount.

See rule 18.43(422,423) for an exemption for written contracts in effect on April 1, 1985.

This rule is intended to implement Iowa Code section 422.43, subsection 11 as amended by 1985 Iowa Acts, chapter 32, section 83.

701—26.70(422,423) Lobbying. On and after July 1, 1985, the gross receipts from any "lobbying" service shall be subject to tax. For purposes of this rule "lobbying" means rendering, furnishing, or performing, for compensation, activities which are intended or used for the purpose of encouraging the passage, defeat, or modification of legislation or for influencing the decision of the members of a legislative committee or subcommittee; or the representing, for compensation, on a regular basis of an organization which has as one of its purposes the encouragement of the passage, defeat, or modification of legislation or the influencing of the decision of the members of a legislative committee or subcommittee. Excluded from the definition of "lobbying" are the activities of any federal, state, or local government official or employee acting within the course of that official's or employee's duties or the activities of a representative of the news media engaged only in the reporting and dissemination of news and editorials. The gross receipts from any lobbying service for an "employer" as defined in Iowa Code section 422.42(13) are exempt from tax. See *Minneapolis Star and Tribune Company v. Minnesota Commissioner of Revenue,* 460 U.S. 575, 75 L.Ed.2d 295, 103 S.Ct. 1365 (1983), 1986 O.A.G., 86-3-3 and 1983 O.A.G., 83-7-1.

This rule is intended to implement 1985 Iowa Acts, chapter 32.

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CHAPTER 27
Reserved

◊ Two ARC's

TITLE IV
USE

CHAPTER 28
DEFINITIONS
[Prior to 12/17/86, Revenue Department(730)]

701—28.1(423) Taxable use defined. A "taxable use" is the exercise of any right of ownership over tangible personal property in Iowa by any person owning the property but does not include the right to sell the property in the regular course of business or the right to process or manufacture the property into another article of tangible personal property intended to be sold ultimately at retail.

A taxable use is also an enumerated taxable service rendered, furnished or performed for use in Iowa or the product or result of such enumerated service used in Iowa. For list of enumerated services and exemptions from tax, see chapter 26 of these rules.

701—28.2(423) Processing of property defined. "Processing of property" is defined to include:

28.2(1) Personal property which forms an integral or component part of the manufactured product which is intended to be sold ultimately at retail.

28.2(2) Property which is consumed as fuel in creating power, heat or steam for processing, including grain drying or generating electric current, or consumed in implements of husbandry engaged in agricultural production.

28.2(3) Property consisting of chemicals, solvents, sorbents or reagents which are directly used, consumed or dissipated in processing personal property which is intended to be sold ultimately at retail, even though such property does not become a component or integral part of the finished product. This ordinarily does not include any item of machinery, tools or equipment.

701—28.3(423) Purchase price defined. "Purchase price" means the total amount for which tangible personal property is sold, valued in money, whether paid in money or otherwise, provided that cash discounts and trade-in allowances allowed and taken on sales or purchases shall not be included.

These rules are intended to implement Iowa Code chapter 423.

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CHAPTER 29
CERTIFICATES
[Prior to 12/17/86, Revenue Department(730)]

701—29.1(423) Certificate of registration. A retailer located outside the state who maintains a place of business in this state shall apply to the department for a certificate of registration to collect use tax. [See 30.1(423)]. Each certificate of registration issued shall be assigned an individual number which shall appear immediately above the registrant's name on the certificate. When invoicing the purchase for use in Iowa, the holder of the certificate shall bill the use tax due as a separate item on the billing or invoice and indicate his registration number.

29.1(1) An application for a certificate of registration for a retailer located outside the state shall show the following:

a. Business identification name of the person to whom the certificate is to be issued.

b. Address of the location from which the use tax returns are to be filed.

c. Names and addresses of all officers, in the case of a corporation; the names of all partners, in the case of a partnership; the name of the owner, in the case of an individual ownership.

d. Date when the applicant, as a retailer maintaining a place of business in this state, will begin or has begun selling tangible personal property or rendering, furnishing or performing of enumerated taxable services in Iowa or for use in Iowa subject to use tax law.

e. Names and addresses of all offices, warehouses or other places of business in Iowa, either owned or controlled by the applicant or its subsidiary.

f. Names and addresses of all agents of the applicant operating in the state either permanently or temporarily.

g. Names and addresses of all out-of-state locations from which tangible personal property will be delivered in Iowa for use in Iowa and from which billing for the merchandise will be made.

h. Any other information the department may require.

It shall not be necessary for more than one certificate to be held in order to collect and remit all use tax due, even though shipments and billings may be made from several out-of-state locations.

29.1(2) Reserved.

701—29.2(423) Cancellation of certificate of registration. When the holder of a certificate of registration ceases to sell tangible personal property for use in Iowa, the holder shall immediately notify the department and request cancellation of the certificate of registration.

701—29.3(423) Certificates of resale or processing. When tangible personal property or service is sold in interstate commerce for delivery in Iowa, it shall be presumed that such property or service is sold for use in Iowa. The registered seller is required to collect use tax from the purchaser. If the tangible personal property or service sold for delivery in Iowa is not sold for use in Iowa and is not subject to use tax, the seller shall be required to secure a properly written certificate from the purchaser showing the exempt use to be made of the property or service.

When the registered seller repeatedly sells the same type of property or service to the same Iowa customer for resale or processing, the seller may, at the seller's risk, accept a blanket certificate covering more than one transaction.

Suggested forms of certificate may be obtained from the department upon request.

These rules are intended to implement Iowa Code chapter 423.

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CHAPTER 30
FILING RETURNS, PAYMENT OF TAX, PENALTY AND INTEREST

[Prior to 12/17/86, Revenue Department(730)]

701—30.1(423) Liability for use tax and denial and revocation of permit.

30.1(1) Collection responsibility is placed upon all interstate sellers who sell tangible personal property or taxable services for use in Iowa, provided the seller maintains directly or by a subsidiary, an office, distribution house, sale house, warehouse, or other place of business or any agent operating within the state either permanently or temporarily. The seller is required to apply for and hold a certificate of registration and file a retailer's use tax return. The registered seller shall bill the Iowa customer, show tax as a separate item on the invoice, and indicate thereon the seller's registration number.

Generally the following nonexclusive factual situations would constitute sufficient nexus for the state of Iowa to require an out-of-state vendor to collect Iowa use tax:

a. Out-of-state retailer owns or maintains within Iowa, either directly or by subsidiary, an office, distribution house, warehouse or other place of business.

b. Out-of-state retailer has an agent located in Iowa permanently or temporarily.

1. Agent solicits sales in Iowa as an employee of the retailer.

2. Agent solicits sales in Iowa as an independent broker, or jobber who is under contract with the vendor.

3. Agent is an employee of the retailer who acts as a consultant and while not taking orders, provides regular and significant services to a customer or customers in Iowa.

c. Out-of-state retailer installs in Iowa property it sells.

d. Out-of-state retailer is a construction contractor performing a contract, in whole or in part, in Iowa.

e. Out-of-state retailer performs service work in Iowa.

f. Out-of-state retailer regularly engaged in delivery of its products by its own trucks in the state of Iowa.

Nelson v. Sears, Roebuck & Company, 312 U.S. 359 (1941); *General Trading Company v. State Tax Commission of the State of Iowa,* 322 U.S. 335 (1944); *Scripto v. Carson,* 362 U.S. 207 (1960); *National Geographic Society v. California Board of Equalization,* 430 U.S. 551 (1977); In Re: *Webber Furniture,* 290 N.W.2d 865 (S.D. 1980); *Standard Pressed Steel Company v. State of Washington Department of Revenue,* 419 U.S. 560 (1975).

30.1(2) The purchaser for use in this state shall pay tax to the seller, if the seller is registered with the department to collect use tax for the state. If the seller is not registered with the department to collect use tax for the state, the purchaser shall remit the tax directly to the department.

30.1(3) The department may deny a permit to collect use tax to any applicant who is, at the time of application, substantially delinquent in paying any tax due which is administered by the department or the interest or penalty on the tax. If the applicant is a partnership, the department may deny the applicant a permit if a partner is substantially delinquent in paying any tax, penalty, or interest regardless of whether the tax is in any way a liability of or associated with the partnership. If an applicant for a permit is a corporation, the department may deny the applicant a permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest and the officer must be personally and secondarily liable for the tax. This is in contrast to the situation regarding a partnership. See rule 13.16(422) for characterizations of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. This subrule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

30.1(4) The department may revoke the permit of any permit holder who becomes substantially delinquent in paying any tax which is administered by the department or the interest or penalty on the tax. If the permit holder is a corporation, the department may revoke the permit if any corporate officer, with a substantial legal or equitable interest in the ownership

of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the permit-holding corporation must, initially, owe the delinquent tax, penalty, or interest and the officer must be personally and secondarily liable for the tax. A permit may not be revoked if the permit holder is a partnership and a partner is substantially delinquent in paying tax, penalty, or interest which is not a liability of the partnership. This is in contrast to the situation regarding an application for a permit. See the preceding subrule. Also, see rule 13.16(422) for characterizations of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. This subrule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

This rule is intended to implement Iowa Code sections 423.6; 423.9 as amended by 1986 Iowa Acts, chapter 1007; 423.10 and 423.14.

701—30.2(423) Measure of use tax. The current rate of tax shall be applied to the purchase price of:

30.2(1) Tangible personal property, less the amount of tangible personal property traded in on the purchase.

30.2(2) The use in Iowa of the product or result of enumerated services obtained outside this state or the use in Iowa of enumerated services rendered, furnished or performed in Iowa.

This rule is intended to implement Iowa Code sections 423.1(3) and 423.2.

701—30.3(423) Consumer's use tax return. A person purchasing tangible personal property or taxable service from an out-of-state source for use in Iowa subject to the use tax law shall be liable for the payment of use tax. Such person shall be required to file a consumer's use tax return with the department, reporting and remitting use tax on all property or taxable service purchased for use in Iowa during the quarterly period covered by the return, unless the seller from whom the purchase is made is registered with the department and has collected use tax on the purchase.

A person purchasing tangible personal property or a taxable service in only one quarter during the year may request, and the director may grant, permission to file and remit use tax for only that specific quarter.

If it is expected that the total annual tax liability of a consumer will not exceed one hundred twenty dollars for a calendar year, the consumer may request, and the director may grant, permission to file and remit use tax on a calendar year basis. The return and tax will be due and payable no later than January 31 following each calendar year.

This rule is intended to implement Iowa Code section 423.14.

701—30.4(423) Retailer's use tax return. Every retailer collecting or owing more than fifteen hundred dollars in tax in any one month shall make a monthly deposit with the department. The deposit is due by the twentieth of the month following the month in which the tax is collected and applies only to the first two months of the quarter. The monthly deposit requirement is effective April 1, 1982.

A seasonal business retailer with gross receipts in only one quarter during the year may request, and the director may grant, permission to file and remit use tax for only that specific quarter in which the retailer conducted business.

If it is expected that the total annual tax liability of a retailer will not exceed one hundred twenty dollars for a calendar year, the retailer may request, and the director may grant, permission to file and remit sales tax on a calendar year basis. The return and tax will be due and payable no later than January 31 following each calendar year in which the retailer carried on business.

A retailer's use tax return form shall be furnished by the department to each holder of a certificate of registration at the close of each quarterly period for use in reporting and remitting use tax due for the preceding quarterly period. The quarterly periods for the year end respectively on March 31, June 30, September 30 and December 31. One month shall be allowed immediately following the quarterly period in which to file returns and remit tax without becoming delinquent, unless the department shall otherwise provide.

On the quarterly return, every retailer shall report the gross sales for the entire quarter, listing allowable deductions and figuring tax for the entire quarter. Space is provided on the return for a deduction of tax deposited the first and second months of the quarter.

When the due date falls on Saturday, Sunday, or a legal holiday, the monthly deposit or return will be due the first business day following such Saturday, Sunday, or legal holiday. If a deposit or return is placed in the mails, properly addressed and postage paid, and postmarked on or before the due date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Sales/Use Tax Processing, P.O. Box 10412, Des Moines, Iowa 50306.

701—30.10(423) Penalties for late filing of a monthly tax deposit or use tax returns. Use tax monthly deposits shall be filed on or before the twentieth of the month following the month in which the tax was collected. Use tax quarterly returns shall be required to be filed on or before the last day of the month following the close of each quarterly period.

30.10(1) For taxes initially due and payable prior to January 1, 1985, failure to file a monthly deposit or use tax return or a corrected return or to pay use tax due on or before the due date shall result in a delinquent deposit or return and be subject to penalty and interest. See subrules 12.10(1), 12.10(2) and 12.10(3) for computation of penalty.

30.10(2) For taxes initially due and payable on or after January 1, 1985, but before January 1, 1987, only willful failure to file a monthly deposit or use tax return or a corrected return will be subject to penalty. Persons who fail to timely pay use tax are subject to a penalty which cannot be waived by the director and may not be excused for reasonable cause. If the person who fails to timely pay use tax is a retailer maintaining a place of business in this state, the penalty for failure to pay will be ten percent (10%) of the tax required to be paid. Department rule 30.1(423) describes in detail the persons who are subject to this ten percent (10%) penalty. For any person who is not a retailer, the penalty for failure to timely pay use tax is five percent (5%) of the tax required to be paid.

See rule 12.10(422,423) for computation of penalty and interest.

30.10(3) For taxes initially due and payable on or after January 1, 1987, only willful failure to file a monthly deposit or use tax return or a corrected return will be subject to penalty. Persons who fail to timely pay use tax are subject to a penalty which cannot be waived by the director and may not be excused for reasonable cause. If the person who fails to timely pay use tax is a retailer maintaining a place of business in this state, the penalty for failure to pay is ten percent (10%) of the tax required to be paid. Department rule 30.1(423) described in detail the persons who are subject to this ten percent (10%) penalty. For any person who is not a retailer, the penalty for failure to timely pay use tax is seven and one-half percent of the tax required to be paid. See rule 701—10.5(421) for statutory exemptions to penalty for taxes due and payable on or after January 1, 1987. See rule 12.10(422,423) for computation of penalty and interest.

This rule is intended to implement Iowa Code sections 422.58 and 423.18 as amended by 1986 Iowa Acts, chapter 1007.

701—30.11(423) Claim for refund of use tax. A claim for refund of use tax shall be made upon forms provided by the department. Each claim shall be filed with the department, properly executed and clearly stating the facts and reasons upon which the claim is based.

Refunds of tax shall be made only to those who have actually paid the tax. A person or persons may designate the person who collects the tax as an agent for purposes of receiving a refund of tax. Use tax paid to the county treasurer or motor vehicle division, Iowa department of public safety, on motor vehicles shall be refunded directly to the person paying the tax upon presentation of a properly documented claim.

Claims for refund for use tax filed after January 1, 1983, where the tax was voluntarily paid, will not be allowed if the claim is based upon an alleged mistake of law regarding the validity or legality under the laws or Constitution of the United States or under the Constitution of the State of Iowa of the tax.

When a person believes the tax, penalty, or interest paid or to be paid will be found not to be due at some later date, then to prevent the statute of limitations from running, a claim for refund must be filed with the department within the statutory period provided in Iowa Code section 422.73(1). The claim must be filed requesting that it be held in abeyance pending the outcome of any action which will have a direct effect on the tax involved and a possible refund. Nonexclusive examples of situations would be court decisions, departmental rulings, and commerce commission decisions. See rule 12.9(422) for specific examples.

This rule is intended to implement Iowa Code sections 422.73(1) and 423.23.

701—30.12(423) Extension of time for filing. Upon a proper showing of the necessity for extending the due date, the director is authorized to grant an extension of time in which to file a return. The extension shall not be granted for a period longer than thirty (30) days. The request for the extension must be received on or before the original due date of the return, and it must be signed by the retailer or a duly authorized agent.

This rule is intended to implement Iowa Code section 423.13.

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63.26(1) *Requirements for license.* In order to become licensed as a fuel distributor, the person must file a written application with the department. The license must be conspicuously displayed, is valid until revoked or canceled, and is nonassignable. The application shall include, but not be limited to, the following information:

a. The name under which the distributor will transact business in the state.

b. The location of the principal place of business of the distributor.

c. The name and address of the owner(s) of the business, or if a corporation or association, the names and addresses of the principal officers.

d. The type of fuel(s) to be handled.

e. The approximate volume of fuel(s) to be handled.

f. The source of the fuel(s).

g. The type of customers to be served.

h. Whether the applicant has a license for a different type of fuel, and if so, the license number.

63.26(2) *Assignment of a license.* The following are nonexclusive situations that are considered assignments, and the acquiring distributor must apply for a new license.

a. A sale of the taxpayer's business, even if the new owner operates under the same name.

b. A change of the name under which the distributor conducts business.

c. A merger or other business combination which results in a new or different entity.

63.26(3) *Denial of a license.* The department may deny a license to any applicant who is, at the time of application, substantially delinquent in paying any tax due which is administered by the department or the interest or penalty on the tax. If the applicant is a partnership, a license may be denied if a partner is substantially delinquent in paying any tax, penalty, or interest regardless of whether the tax is in any way a liability of or associated with the partnership. If an applicant for a license is a corporation, the department may deny the applicant a license if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. This is in contrast to the situation regarding a partnership. See rule 13.16(422) for a characterization of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. This subrule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

For information concerning records to be kept, see rule 63.3(324).

63.26(4) *Revocation of a license.* The department may revoke the license of any licensee who becomes substantially delinquent in paying any tax which is administered by the department or the interest or penalty on the tax. If a licensee is a corporation, the department may revoke the license if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. If the licensee is a partnership, the license may not be revoked for a partner's substantial delinquency in paying any tax, penalty, or interest which is not a liability of the partnership. See rule 13.16(422) for characterizations of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. This subrule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

This rule is intended to implement Iowa Code sections 324.4 as amended by 1986 Iowa Acts, chapter 1007; 324.5; and 324.36.

701—63.27(324) Reinstatement of license canceled for cause. A license holder making application to the department for reinstatement of a license canceled for cause shall be charged the fee required by law.

A license canceled for cause shall be reinstated only on such terms and conditions as the cause may warrant. Terms and conditions will include payments of any applicable fuel tax liability including interest and penalty which is due the department.

Pursuant to the director's statutory authority in Iowa Code section 324.68, to restore licenses after being canceled for cause, the director has determined that upon the cancellation of a motor vehicle fuel tax license the initial time, the license holder will be required to pay all delinquent fuel tax liabilities including interest and penalty, to file reports, and to post a bond and refrain from activities requiring a license under sections 324.4, 324.6, 324.18 and 324.36 as required by the director prior to the reinstatement or issuance of a new motor vehicle fuel tax license.

As set forth above, the director may impose a waiting period during which the license holder must refrain from activities requiring a license pursuant to the penalties provided in Iowa Code section 324.74, for a period not to exceed ninety days to restore a license or issue a new license after canceled for cause. The department may require a statement stating that the license holder has fulfilled all requirements of said order canceling the license for cause, and stating the dates on which the license holder refrained from restricted activities.

Each of the following situations will be considered one offense, for the purpose of determining the waiting period to reinstate a license canceled for cause or issuing a new license after being canceled for cause unless otherwise noted.

Failure to post a bond as required.

Failure to file a monthly or quarterly report timely.

Failure to pay tax timely (including unhonored checks, failure to pay and late payments.)

Failure to file a monthly or quarterly report and pay tax as shown on the report (counts as two offenses).

The hearing officer or director of revenue may order a waiting period after the cancellation for cause not to exceed:

Five days for one through five offenses.

Seven days for six through seven offenses.

Ten days for eight through nine offenses.

Thirty days for ten offenses or more.

The hearing officer or director of revenue may order a waiting period not to exceed:

Forty-five days if the second cancellation for cause occurs within twenty-four months of the first cancellation for cause.

Sixty days if the second cancellation for cause occurs within eighteen months of the first cancellation for cause.

Ninety days if the second cancellation for cause occurs within twelve months of the first cancellation for cause.

Ninety days if the third cancellation for cause occurs within thirty-six months of the second cancellation for cause.

This rule is intended to implement Iowa Code section 324.68.

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701—81.13(98) Permit applications and denials.

81.13(1) *Applications for permits.* The application forms for all permits issued under Iowa Code chapter 98 are available from the department upon request. The applications shall include, but not be limited to:

a. The nature of the applicant's business;

b. The type of permit requested;

c. The address of the principal office of the applicant;

d. The place of business for which the permit is to apply;

e. The names and addresses of principal officers or members not to exceed three, if the business is not a sole proprietorship;

f. A list of persons who will be the applicant's suppliers or customers or both (whichever is applicable);

g. If the applicant intends to operate as a cigarette distributor, a certificate from a manufacturer of cigarettes indicating an intention to sell unstamped cigarettes to the applicant;

h. Whether or not the applicant possesses any other permit issued under Iowa Code chapter 98; and

i. The signature of the person making the application.

81.13(2) *Denial of application for permit.* The department may deny a permit to any applicant who is, at the time of application, substantially delinquent is paying any tax due which is administered by the department or the interest or penalty on the tax. If the applicant is a partnership, a permit may be denied if a partner is substantially delinquent in paying any tax, penalty, or interest regardless of whether the tax is in any way a liability of or associated with the partnership. If an applicant for a permit is a corporation, the department may deny the applicant a permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. This is in contrast to the situation regarding a partnership. See rule 13.16(422) for characterizations of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. This subrule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

81.13(3) *Revocation of a permit.* The department may revoke the permit of any permit holder who becomes substantially delinquent in paying any tax which is administered by the department or the interest or penalty on the tax. If the permit holder is a corporation, the department may revoke the permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must, initially, owe the delinquent tax, penalty, or interest, and the officer must be personally and secondarily liable for the tax. If the permit holder is a partnership, a permit cannot be revoked for a partner's substantial delinquency in paying any tax, penalty, or interest which is not a liability of the partnership. See rule 13.6(422) for characterizations of the terms "tax administered by the department" and "substantially delinquent" in paying a tax. This subrule is applicable to tax, interest, and penalty due and payable on and after January 1, 1987.

81.13(4) *Applications for retail cigarette permits.* Applications for retail cigarette permits are supplied by the department to city councils and county boards of supervisors. The application must be obtained from and filed with the individual council or board.

This rule is intended to implement Iowa Code sections 98.13 and 98.22, as amended by 1986 Iowa Acts, chapter 1007; 98.16; 98.17; 98.23; and 98.44.

701—81.14(98) Confidential information. The release of information contained in any reports filed under Iowa Code chapter 98 is governed by the general provisions of Iowa Code chapter 22 since there are no specific provisions relating to confidential information contained in chapter 98. Any requests for information must be made pursuant to department rule 701—6.2(17A) and subrule 6.1(5). See rule 6.3(17A).

Any request for information contained in a cigarette and tobacco report must be made in writing to the director. The taxpayer who filed the report will be notified of the request for information and will be allowed two (2) weeks to respond as to whether the information requested, if released, would give advantage to competitors and serve no public purpose. The taxpayer who filed the report must substantiate any claim of confidentiality. If substantiated, the request will be denied, otherwise, the information will be released to the requesting party. This rule will not prevent the exchange of information between state and federal agencies.

This rule is intended to implement Iowa Code sections 98.25 and 98.49.

701—81.15(98) Request for waiver of penalty. This rule is only applicable to tax due on or before December 31, 1984, and to penalty imposed by Iowa Code section 98.31 for tax due on or after January 1, 1985. Any taxpayer who believes there is a good reason to object to any penalty imposed by the department for failure to timely file returns or pay the tax may submit a request for waiver seeking that the penalty be waived. If it can be shown to the director's satisfaction that the failure was due to reasonable cause, the penalty will be adjusted accordingly. The request must be in the form of an affidavit and must contain all facts alleged as reasonable cause for the taxpayer's failure to file the return, or pay the tax as required by law. The following are examples of situations that may be accepted by the director as being reasonable causes:

1. Showing that the delay in filing was caused by the death or serious illness of the taxpayer or the person charged by the taxpayer to prepare and timely file the report on the taxpayer's behalf.
2. Showing that the delay in filing was caused by destruction by fire or other casualty of the taxpayer's records.
3. Showing that the delay in filing was due to erroneous information given to the taxpayer by an authorized employee of the department.
4. Showing that the delay in filing was caused by a prolonged unavoidable absence of the taxpayer responsible for the filing.
5. Showing that the report or remittance was filed on time, but filed erroneously with another state agency or the Internal Revenue Service.
6. If the taxpayer has had no late filed reports or late payments in the past thirty-six (36) months, the department will allow one late return to be filed without penalty. However, this does not apply to a penalty established by audit.
7. If the return is filed on time, but the face of the return contained a mathematical error and if the taxpayer has had no late filed reports including mathematical errors in the past thirty-six (36) months. However, this does not apply to a penalty established by audit.
8. Showing that the delinquency existed even though the taxpayer exercised ordinary business care and prudence to ensure that the filing of the return or remittance of the tax would occur timely.
9. Where the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time. Failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that ordinary business care and prudence were exercised in providing for payment of the liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if the taxpayer paid on the due date. What constitutes ordinary business care and prudence must be determined by the particular facts of a particular case, *Armstrong's Inc. vs. Iowa Department of Revenue,* 320 N.W.2d 623 (Iowa 1982).

Penalty which results from a check given in payment of tax not being honored because of insufficient funds in the account upon which the check is drawn shall not be waived.

This rule is intended to implement Iowa Code sections 98.31 and 98.46.

701—81.16(98) Inventory tax. All persons required to be licensed under Iowa Code section 98.13 as distributors shall take an inventory of all cigarettes and little cigars in their possession prior to delivery for resale upon which the tax has been affixed and all unused cigarette and little cigar tax stamps and unused metered imprints in their possession at the close of business on September 30, 1985.

Persons required to take an inventory shall remit the tax due on all cigarette stamps or metered imprints and all cigarettes and little cigars with revenue affixed in their possession prior to delivery for resale. The tax is equal to the difference between the amount paid for cigarette stamps or metered imprints purchased prior to October 1, 1985 (nine mills per cigarette) and the amount that is to be paid for cigarette stamps or metered imprints after September 30, 1985 (thirteen mills per cigarette).

In computing the inventory tax, any discount allowed or allowable under Iowa Code section 98.8, shall not be considered.

This rule is intended to implement Iowa Code sections 98.6 and 98.43 as amended by 1985 Iowa Acts, chapter 32.

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ECONOMIC DEVELOPMENT DEPARTMENT*(cont'd)*

EDUCATION DEPARTMENT*(cont'd)*

EDUCATIONAL RADIO AND TELEVISION FACILITY BOARD

EGG COUNCIL, IOWA

WATER
See also SOIL CONSERVATION
Aquifiers
Permits **567**—50.6(1,4), 51.3, 51.5
Tests **567**—41.4(5), 50.6(1,5), 52.6(4)
Withdrawals **567**—50.6(1), 51.6, 52.4, ch 54
Cisterns **470**—71.10(2), 81.2(1)*c*; **567**—40.2
Conservation measures, shortages **567**—52.9
Definitions **567**—40.2, 50.2, 81.1
Districts, rural **567**—51.6(4), 81.1
Drinking **470**—81.2(1)*c,e*; **498**—109.6(6); **561**—1.2(2), 1.3(2)*h*; **567**—41.2, 41.3, 41.4(5-7), 41.5(1)*b*, 41.5(3)*b*, 41.12
Flood plain development
See also FLOOD CONTROL
Generally **567**—ch 70
Dams **567**—ch 70, 71.3, 72.3, ch 73, *see also DAMS*
Federal projects **567**—ch 76
Levees/dikes **567**—71.4, 72.4
Milldams/races **567**—ch 74
Natural resources department authority **561**—1.2(5), 1.3(2)*h*
Fluoridation **470**—170.4(4); **567**—41.3(1)*b*, 41.4(3)*e*(5), 41.14
Geological survey bureau **460**—ch 1; **561**—1.3(2)*g*(2); **567**—50.6(1)*a*(1), 51.6(6), 52.4, 52.6
Groundwater **460**—1.1; **561**—1.2(7,11,12), 1.3(2)*h*; **567**—41.4(5), 50.1, 50.5(2), 50.6, 50.7(2), ch 51, 52.4, 52.5(2), 52.10, chs 53, 54
Irrigation **567**—50.2, 50.6(2), 52.2, 52.4(3)
Nitrates **470**—71.10(10), 81.2(1)*e*
Permits **567**—40.3 - 40.5, 41.6, 41.7, chs 50 - 53
Pollution, *see POLLUTION*
Recreation, projects grants **571**—ch 27
Resource data system **70**—12.3(3)
Standards **199**—21.7; **567**—40.1, 40.2, 40.4(4), 41.3, 41.4, 41.6(5), 41.12, 41.14(3)*b*(2), ch 61
Storage/diversion **561**—1.2(12); **567**—chs 50 - 52
Streams, protected **567**—50.6(6), 52.3, 52.4, 52.8, ch 53, 71.9, 72.2, 72.9, 72.31, 72.50 - 72.52
Supply
Appeals **567**—50.9
Campgrounds **470**—18.1(4), 81.2
Care facilities, *see HEALTH CARE FACILITIES*
Child care centers **498**—109.6(6)
Cities, boundary changes **220**—2.3(10,13)
Construction **470**—71.4, 71.10; **567**—ch 9, 40.3, 40.4, 41.12, 41.13, 41.14(2)*a*
Definitions **567**—40.2, 81.1
Disinfection **470**—71.10(9,10); **567**—40.2, 41.4(5)
Foster homes **498**—113.6(3,4), 114.4(7,8)
Hazards **567**—41.11, 41.12
Hearings **567**—41.7(3,4)
Mass gatherings **470**—19.4(1)
Migrant labor camps **470**—81.2
Mobile home parks **470**—71.3(14,16), 71.4, 71.10