State of Iowa

# Iowa Administrative Code Supplement

Biweekly

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Pursuant to Iowa Code section 17A.6, the Iowa Administrative Code [IAC] Supplement is published biweekly.

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 the Administrative Rules Coordinator 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.

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. 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 of 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**

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record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

**Agency No.—X.8(17A,22) Notice to suppliers of information.** When the agency requests a person to supply information about that person, the agency shall notify the person of the use that will be made of the information, which persons outside the agency might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means. (Each agency should revise its forms to provide this information.)

PREAMBLE

The Governor's Task Force has developed this set of contested case rules to serve as a model for state agencies. Although the wide variety of statutory hearings may preclude the adoption of all of these rules by every agency to cover every hearing, the goal of the Task Force is to develop rules which can serve as a model for most agency hearings.

Each agency would designate the appropriate entity or time period in lieu of the language marked by parentheses. For example, wherever the word "agency" or phrase "board, commission, director" appears in the draft rules, the agency would need to carefully consider whether the rule should designate a particular entity within the agency. In the rules governing interagency appeals, the agency should generally substitute the entity designated by statute as having final decision-making authority in a contested case for the parenthetical phrase "board, commission, director."

## CHAPTER X
## CONTESTED CASES

**Agency No. — X.1(17A) Scope and applicability.** This chapter applies to contested case proceedings conducted by the (agency name).

**Agency No. — X.2(17A) Definitions.** Except where otherwise specifically defined by law.

*"Contested case"* means a proceeding defined by Iowa Code section 17A.2(2).

*"Issuance"* means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

*"Party"* means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

*"Presiding officer"* means the (designate official).

*"Proposed decision"* means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the (agency name) did not preside.

**Agency No. — X.3(17A) Time requirements.**

**X.3(1)** Time shall be computed as provided in Iowa Code subsection 4.1(22).

**X.3(2)** For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by (specify rule number). Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

**Agency No. — X.4(17A) Requests for contested case proceeding.** Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the agency action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific agency action which is disputed, and where the requester is represented by a lawyer identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

**Agency No. — X.5(17A) Notice of hearing.**

**X.5(1)** *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

*a.* Personal service as provided in the Iowa Rules of Civil Procedure; or

*b.* Certified mail, return receipt requested; or

*c.* First class mail; or

*d.* Publication, as provided in the Iowa Rules of Civil Procedure; or

*e.* (other options).

**X.5(2)** *Contents.* The notice of hearing shall contain the following information:

*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. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

*e.* Identification of all parties including the name, address and telephone number of the person who will act as advocate for the agency or the state and of parties' counsel where known;

*f.* Reference to the procedural rules governing conduct of the contested case proceeding; and

*g.* Reference to the procedural rules governing informal settlement.

**Agency No. — X.6(17A) Waiver of procedures.** Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

**Agency No. — X.7(17A) Telephone proceedings.** The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

**Agency No. — X.8(17A) Disqualification.**

**X.8(1)** A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

*a.* Has a personal bias or prejudice concerning a party or a representative of a party;

*b.* Has personally prosecuted or advocated, in connection with that case, the specific controversy underlying that case, or another pending factually related contested case, or pending factually related controversy that may culminate in a contested case involving the same parties.

*c.* Is subject to the authority, direction or discretion of any person who has personally prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

*d.* Has personally investigated the pending contested case by taking affirmative steps to interview witnesses directly or to obtain documents directly. The term "personally investigated" does not include either direction and supervision of assigned investigators or unsolicited receipt of oral information or documents which are relayed to assigned investigators.

*e.* Has acted as counsel to any person who is a private party to that proceeding within the past two years;

*f.* Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

*g.* Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

*h.* Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

(In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and

shall provide for the record a statement of the reasons for the determination that withdrawal is inappropriate.)

**X.8(2)** If a party asserts disqualification on any appropriate ground, including those listed in subrule X.8(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(4). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule X.24(17A) and seek a stay under rule X.28(17A).

**Agency No. — X.9(17A) Consolidation—severance.**

**X.9(1)** *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

**X.9(2)** *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

**Agency No. — X.10(17A) Pleadings.**

**X.10(1)** Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

**X.10(2)** Petition.

*a.* Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

*b.* A petition shall state in separately numbered paragraphs the following:

(1) The persons or entities on whose behalf the petition is filed;

(2) The particular provisions of statutes and rules involved;

(3) The relief demanded and the facts and law relied upon for such relief; and

(4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

**X.10(3)** Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

**X.10(4)** Amendment. Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

**Agency No. — X.11(17A) Service and filing of pleadings and other papers.**

**X.11(1)** *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

**X.11(2)** *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

**X.11(3)** *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with (specify office and address). All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the (agency name).

**X.11(4)** *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the (designate office), delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

**X.11(5)** *Proof of mailing.* Proof of mailing includes either: a legible United States postal service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mail box with correct postage properly affixed or state interoffice mail).
>
> (Date) (Signature)

**Agency No. — X.12(17A) Discovery.**

**X.12(1)** Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

**X.12(2)** Any motion relating to discovery shall allege that the moving party has previously made a good faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule X.12(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

**X.12(3)** Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

**Agency No. — X.13(17A) Subpoenas.**

**X.13(1)** *Issuance.*

*a.* An agency subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

*b.* Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

**X.13(2)** *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

**Agency No. — X.14(17A) Motions.**

**X.14(1)** No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought. Any motion for summary judgment shall comply with the Iowa Rules of Civil Procedure and is subject to disposition according to the requirement of those rules.

**X.14(2)** Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

**X.14(3)** The presiding officer may schedule oral argument on any motion.

**X.14(4)** Motions pertaining to the hearing, including motions for summary judgment, must be filed and served at least ten days (or other time period designated by the agency) prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

**Agency No. — X.15(17A) Prehearing conference.**

**X.15(1)** Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days (or other time period designated by the agency) prior to the hearing date. A prehearing conference shall be scheduled not less than three business days (or other time period designated by the agency) prior to the hearing date.

Written notice of the prehearing conference shall be given by the (designate office) to all parties. For good cause the presiding officer may permit variances from this rule.

**X.15(2)** Each party shall bring to the prehearing conference:

*a.* A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

*b.* A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

*c.* Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

**X.15(3)** In addition to the requirements of subrule X.15(2), the parties at a prehearing conference may:

*a.* Enter into stipulations of law or fact;

*b.* Enter into stipulations on the admissibility of exhibits;

*c.* Identify matters which the parties intend to request be officially noticed;

*d.* Enter into stipulations for waiver of any provision of law; and

*e.* Consider any additional matters which will expedite the hearing.

**X.15(4)** Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

**Agency No. — X.16(17A) Continuances.** Unless otherwise provided, applications for continuances shall be made to the presiding officer.

**X.16(1)** A written application for a continuance shall:

*a.* Be made at the earliest possible time and no less than seven days (or other time period designated by the agency) before the hearing except in case of unanticipated emergencies;

*b.* State the specific reasons for the request; and

*c.* Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The agency may waive notice of such requests for a particular case or an entire class of cases.

**X.16(2)** In determining whether to grant a continuance, the presiding officer may consider:

*a.* Prior continuances;

*b.* The interests of all parties;

*c.* The likelihood of informal settlement;

*d.* The existence of an emergency;

*e.* Any objection;

*f.* Any applicable time requirements;

*g.* The existence of a conflict in the schedules of counsel, parties, or witnesses;

*h.* The timeliness of the request; and

*i.* Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

**Agency No. — X.17(17A) Withdrawals.** A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with agency rules. Unless otherwise provided, a withdrawal shall be with prejudice.

**Agency No. — X.18(17A) Intervention.**

**X.18(1)** *Motion.* A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

**X.18(2)** *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

**X.18(3)** *Grounds for intervention.* The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

**X.18(4)** *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A

person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

**Agency No. — X.19(17A) Hearing procedures.**

**X.19(1)** The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

**X.19(2)** All objections shall be timely made and stated on the record.

**X.19(3)** Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

**X.19(4)** Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

**X.19(5)** The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

**X.19(6)** Witnesses may be sequestered during the hearing.

**X.19(7)** The presiding officer shall conduct the hearing in the following manner:

*a.* The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

*b.* The parties shall be given an opportunity to present opening statements;

*c.* Parties shall present their cases in the sequence determined by the presiding officer;

*d.* Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

*e.* When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

**Agency No. — X.20(17A) Evidence.**

**X.20(1)** The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

**X.20(2)** Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

**X.20(3)** Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

**X.20(4)** The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

**X.20(5)** Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection,

and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

**X.20(6)** Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

**Agency No. — X.21(17A) Default.**

**X.21(1)** If a party fails to appear in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, proceed with the hearing and render a decision in the absence of the party.

**X.21(2)** Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

**Agency No. — X.22(17A) Ex parte communication.**

**X.22(1)** Prohibited communications. Following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between any party or representative of any party in connection with any issue of fact or law in a case and any person assigned to render a proposed or final decision or to make findings of fact or conclusions of law except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude persons assigned to render a proposed or final decision in a contested case or to make findings of fact or conclusions of law in such a case from seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule X.8(1), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as that advice or help does not violate Iowa Code subsection 17A.12(8).

**X.22(2)** Disclosure of prohibited communications. Any person who receives a communication prohibited by subrule X.22(1) shall disclose that communication to all parties. A copy of any prohibited written communication or a summary of any prohibited oral communication shall be submitted for inclusion in the record.

**X.22(3)** The presiding officer or the agency may impose appropriate sanctions for violations of this rule. Possible sanctions include a decision against the offending party; censure, suspension, or revocation of the privilege to practice before the agency; and censure, suspension, dismissal, or other disciplinary action against agency personnel.

**Agency No. — X.23(17A) Recording costs.** Upon request, the (agency name) shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

**Agency No. — X.24(17A) Interlocutory appeals.** Upon written request of a party or on its own motion, the (board, commission, director) may review an interlocutory order (of the presiding officer). In determining whether to do so, the (board, commission, director) shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days (or other time period designated by the agency) of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

**Agency No. — X.25(17A) Final decision**

**X.25(1)** When (the agency) (or a quorum of the agency) presides over the reception of evidence at the hearing, its decision is a final decision.

**X.25(2)** When the (agency name) does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the (agency name) within the time provided in rule X.26(17A).

DRAFTER'S NOTE: Licensing boards should not adopt rule X.25(17A). A possible substitute would be 653 IAC 12.50(26) to 12.50(29).

**Agency No. — X.26(17A) Appeals and review.**

**X.26(1)** *Appeal by party.* Any adversely affected party may appeal a proposed decision to the (board, commission, director) within 30 days (or other time period designated by the agency) after issuance of the proposed decision.

**X.26(2)** *Review.* The (board, commission, director) may initiate review of a proposed decision on its own motion at any time within 30 days (or other time period designated by the agency) following the issuance of such a decision.

**X.26(3)** *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the (agency name). The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

*a.* The parties initiating the appeal;

*b.* The proposed decision or order appealed from;

*c.* The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

*d.* The relief sought;

*e.* The grounds for relief.

**X.26(4)** *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days (or other time period designated by the agency) of service of the notice of appeal. The (board, commission, director) may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

**X.26(5)** *Scheduling.* The (agency name) shall issue a schedule for consideration of the appeal.

**X.26(6)** *Briefs and arguments.* Unless otherwise ordered, within 20 days (or other time period designated by the agency) of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, (or other time period designated by the agency) any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The (board, commission, director) may resolve the appeal on the briefs or provide an opportunity for oral argument. The (board, commission, director) may shorten or extend the briefing period as appropriate.

**Agency No. — X.27(17A) Applications for rehearing.**

**X.27(1)** *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

**X.27(2)** *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule X.26(4), the applicant requests an opportunity to submit additional evidence.

**X.27(3)** *Time of filing.* The application shall be filed with the (agency name) within 20 days after issuance of the final decision.

**X.27(4)** *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the applicant does not contain a certificate of service, the (agency name) shall serve copies on all parties.

**X.27(5)** *Disposition.* Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

**Agency No. — X.28(17A) Stays of agency actions.**

**X.28(1)** *When available.*

*a.* Any party to a contested case proceeding may petition the (agency name) for a stay of an order issued in that proceeding, pending review by the agency. The petition for a stay shall be filed with the notice of appeal and shall state the reasons justifying a stay. The (board, commission, director) may rule on the stay or authorize the presiding officer to do so.

*b.* Any party to a contested case proceeding may petition the (agency name) for a stay pending judicial review, of all or part of that proceeding. The petition for a stay shall state the reasons justifying a stay.

**X.28(2)** *When granted.* In determining whether to grant a stay, the presiding officer or (board, commission, director), as appropriate, shall consider whether substantial questions exist as to the propriety of the order for which a stay is requested, whether the party will suffer substantial and irreparable injury without the stay, and whether, and the extent to which, the interests of the public and other persons will be adversely affected by such a stay.

**X.28(3)** *Vacation.* A stay may be vacated by the issuing authority upon application of the (agency name) or any other party.

A center may be proposed as unique to a geographic area or the state. In this case, the central program must be either an existing program or a proposed new program that does not exist in the state or specified geographic area.

**21.61(3)** *Opportunity for enhancement.* This section of the proposal shall:

*a.* Provide a brief rationale for the center as a quality instructional center (if a center is proposed for a geographic region or the state, rationale shall be provided and the geographic area shall be clearly defined);

*b.* Identify how Excellence 2000 funds will raise the practice of the program to an exemplary level;

*c.* Delineate changes that will occur with Excellence 2000 funding;

*d.* Explain how these changes will enhance student access, student outcomes and institutional effectiveness;

*e.* Specify center objectives for enhancing program quality and measuring program effectiveness including how the center will meet the needs of members of special populations;

*f.* Address how advisory committee members will be involved in program enhancement; and

*g.* For continuation applications, explain how the institution is reducing its reliance on Excellence 2000 funds for the continuation of the program.

**21.61(4)** *Budget and budget narrative.* For an existing program, the current base budget shall be identified, and the areas to be enhanced shall be identified and explained, including specific expenditures and overall budget activity. For a new program, the proposal shall include a detailed listing and explanation of planned expenditures. Excellence 2000 funds shall be used to supplement, not to supplant, existing institutional resources.

**21.61(5)** *Evaluation.* An evaluation plan shall be included in the proposal. This plan shall include strategies for evaluating:

*a.* The center's effectiveness in enhancing quality by meeting the stated goals and objectives;

*b.* The impact of Excellence 2000 funds on the center; and

*c.* Recommendations for continuing instructional program improvements.

**281—21.62(280A) Funding.** Quality instructional centers shall be funded out of the Community College Excellence 2000 account as specified in Iowa Code section 286A.14A.

**281—21.63(280A) Annual report.** A community college with an approved quality instructional center shall submit by October 1 a report indicating how funds received during the preceding fiscal year were spent and the projections of the next year's funding needs. In addition, the annual report shall include an assessment of the center based on the evaluation plan submitted with the application.

The rules in this division are intended to implement Iowa Code section 280A.45.

## DIVISION VIII
## PROGRAM AND ADMINISTRATIVE SHARING INITIATIVE

Rules 281—21.64(280A) to 21.71(280A) rescinded IAB 2/5/92, effective 1/7/92.

**281—21.64(280A) Purpose.** The purpose of the program and administrative sharing initiative is to establish agreements to be entered into by two or more community colleges or by a community college and a higher education institution under the control of the board of regents. The initiative is designed to increase student access, enhance educational offerings throughout the state, and enhance interinstitutional cooperation.

**281—21.65(280A) Definitions.**

*"Administrative"* refers to management and supervisory activities which support services necessary for direction and control of an institution.

*"Excellence 2000"* refers to the account from which funds will be allocated for the sharing initiative.

*"Program"* refers to a state board-approved program of instruction offering a certificate, diploma or degree at a community college.

*"Sharing agreement"* refers to a 28E Joint Exercise of Governmental Powers entered into by two or more eligible institutions to provide instructional or administrative services jointly, to the mutual advantage of the constituents of each institution.

**281—21.66(280A) Eligibility requirements.** The sharing agreement may be for a program provided by one or both sharing institutions or a new program designed by the sharing institutions. Shared administrative activities shall include existing positions and functions. The proposed sharing agreement shall be designed to increase student access to programs and services, enhance educational offerings throughout the state, enhance interinstitutional cooperation, and reduce unnecessary duplication. In addition, the sharing agreement must be between two or more community colleges, or between one or more community colleges and a higher education institution under the control of the board of regents.

**281—21.67(280A) Timelines.** The department shall solicit and receive proposals by February 1 of the calendar year prior to the fiscal year for which funds are to be appropriated. Successful applications shall be approved and tentative allocations of funds shall be made by April 1. Final allocations shall be determined by June 15. Applications for continuation of approval of a sharing agreement beyond the first year shall be subject to these timelines. Sharing agreement implementation is subject to the appropriation of funds.

**281—21.68(280A) Evaluation and selection criteria.** Proposed sharing agreements submitted for approval shall identify the rationale for using a sharing agreement to increase student access; increase cost-effectiveness for sharing institutions; use educational resources effectively; and reduce unnecessary duplication. Proposals shall include the following criteria:

**21.68(1)** *Background.*

*a.* Program sharing. A brief history of the program(s) to be shared. This section shall include current and projected enrollment, placement data, and involvement of faculty and advisory committee in planning.

*b.* Administrative sharing. A brief history of the administrative position or function to be shared.

**21.68(2)** *Description of existing program(s) or function(s).*

*a.* Program sharing. A brief description of the purpose of the program(s), current faculty, curriculum, equipment, facilities, articulation and business/industry linkages.

*b.* Administrative sharing. A brief description of the administrative position or function, and purpose.

**21.68(3)** *Proposed sharing arrangement.* A brief rationale for the sharing arrangement; description of the sharing arrangement; and identification of how the Excellence 2000 funds will enhance student access, be cost-effective, enhance educational resources, enhance interinstitutional cooperation, and reduce unnecessary duplication.

**21.68(4)** *Budget and budget narrative.* The current base budget for the existing program(s) or administrative activity and the proposed shared program or administrative activity shall be identified, including specific expenditures and overall budget activities. Excellence 2000 funds shall be used to supplement, not supplant, existing institutional resources.

**21.68(5)** *Evaluation.* An evaluation plan which includes strategies for evaluating: effectiveness of the sharing agreement in enhancing student access; cost-effectiveness; enhancement of interinstitutional cooperation; reduction of duplication of programs and services; and the impact of Excellence 2000 funds on the institutions involved in the sharing agreement.

**281—21.69(280A) Funding.** Sharing agreements shall be funded from the Community College Excellence 2000 account as specified in Iowa Code section 286A.14A.

**281—21.70(280A) Annual report.** Institutions involved in a sharing agreement shall submit by October 1 a report indicating how funds received during the preceding fiscal year were spent. In addition, the annual report shall include an assessment of the agreement based on the evaluation plan submitted with the application and recommendations for improvement in the sharing agreement.

**281—21.71(280A) Combining merged areas—election.** An administrative sharing agreement could ultimately result in combining merged areas, as specified in Iowa Code section 280A.39.

The rules in this division are intended to implement Iowa Code section 280A.46.

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# CHAPTER 23
# EMERGENCY COMMUNITY SERVICES HOMELESS GRANT PROGRAM

**427—23.1(PL100-77,PL100-628) Purposes.** The purposes of the program authorized by PL100-77, the Stewart B. McKinney Homeless Assistance Act of 1987, are: (1) to use public resources and programs in a more coordinated manner to meet the critically urgent needs of the homeless of the nation; and (2) to provide funds for programs to assist the homeless, with special emphasis on elderly persons, handicapped persons, families with children, native Americans, and veterans.

The Iowa emergency community services homeless grant program (EHP) is designed recognizing the following elements: (1) the unique role defined for EHP funds within PL100-77, (2) the availability of resources from PL100-77 for other programs serving the homeless, (3) the unique skills and abilities of Iowa's community action agencies, and (4) the differing nature of homeless problems and resources in different parts of Iowa and among homeless individuals and families in Iowa.

**427—23.2(PL100-77,PL100-628) Definitions.**

*"CAA"* means community action agency.

*"Community action agency, community action program or eligible entity"* means any organization which was officially recognized as a community action agency or a community action program under the provisions of Public Law 97-35, Subtitle B, as amended by Public Law 98-558 and Iowa Code section 601K.91.

*"DCAA"* means the division of community action agencies of the state department of human rights.

*"EHP"* means emergency community services homeless grant program.

*"Homeless"* includes an individual who lacks a fixed, regular, and adequate nighttime residence; and an individual who has a primary nighttime residence that is:

1. A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);
2. An institution that provides a temporary residence for individuals intended to be institutionalized; or
3. A public or private sleeping place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

An inadequate nighttime residence shall be limited to those residences exhibiting one or more of the following conditions: overcrowding (1.01 or more persons per room); lack of complete plumbing for exclusive use (indoor flush toilet, piped hot and cold water, and bathtub or shower); lack of heat (during cold weather). The potential for these conditions to exist does not constitute inadequate housing.

*"Near-homeless"* means an individual who has received a notice of foreclosure or eviction.

*"Poverty line"* means the official poverty line established annually by the Secretary of the U.S. Department of Health and Human Services.

*"Suspension"* means temporary withdrawal of the eligible entity's authority to obligate funds pending corrective action by the eligible entity.

*"Termination"* means permanent withdrawal of the eligible entity's authority to obligate funds before that authority would otherwise expire. If an eligible entity's authority to obligate funds is terminated, no funds may be obligated by the eligible entity after the effective date of the termination. It may also mean the voluntary relinquishment of this authority by the eligible entity.

**427—23.3(PL100-77,PL100-628) Apportionment distribution.**

**23.3(1)** *Formula.* Funds shall be awarded on a noncompetitive basis to the existing community action agencies using the following formula: Forty-seven and one-half percent of the total state award will be distributed equally among the CAA areas. Forty-seven and one-half percent of the total state award will be distributed among the CAA areas based on their relative share of the state's poverty population.

**23.3(2)** *State administrative costs.* DCAA shall reserve for its administrative expenses of the program no more than 5 percent of the state's apportioned amount.

**23.3(3)** *Poverty-level population.* The state shall use the most recent decennial census statistics available to determine the poverty-level population in each CAA area. The state may revise the allocation formula as new census figures become available.

**23.3(4)** *Unawarded funds.* Funds remaining unawarded due to the failure of prospective grantees to meet program or fiscal requirements will be reprogrammed by the administrator of the DCAA to further benefit homeless individuals and families within the state of Iowa. The administrator of the DCAA shall give prospective grantees a maximum of 45 days from the receipt by the DCAA of the prospective grantee's application for EHP funds to provide the DCAA with satisfactory evidence of the prospective grantee's willingness and ability to meet program and fiscal requirements prior to reprogramming funds.

**427—23.4(PL100-77,PL100-628) Eligible applicants.** Community action agencies are eligible to receive EHP funds.

**427—23.5(PL100-77,PL100-628) Eligible use of funds.** As defined by PL100-77, as amended by PL100-628, EHP funds may only be used for the following purposes:

**23.5(1)** *Self-sufficiency development.* At least 50 percent of each eligible entity's EHP funds shall be used for the expansion of comprehensive services to homeless individuals to provide follow-up and long-term services to enable homeless individuals and families to make the transition out of poverty. Such programs shall include each of the following components:

*a.* A written description of the priorities and processes used to select the homeless individuals and families to receive these comprehensive services,

*b.* The conduct of a comprehensive assessment with selected individuals/families,

*c.* The development of a written plan toward self-support for each individual/family enrolled,

*d.* The execution of a written agreement between the client and worker which specifies the actions for which each is responsible during the self-sufficiency development process, and

*e.* The coordination of all available resources to support the client's self-sufficiency development.

**23.5(2)** *Obtaining income support.* Funds may be used to provide assistance to homeless individuals and families in obtaining social and maintenance services and income support services.

**23.5(3)** *Promotion/coordination.* Funds may be used to promote private sector and other assistance to homeless individuals and families in the community served. Such activities may include, but are not limited to, assessing homeless needs, performing community planning pertaining to homeless problems and coordinating community level response(s) to the problems of homeless persons.

**23.5(4)** *Administrative costs.* No more than 12 percent of the EHP funds expended by an eligible entity shall be used for administrative costs.

**23.5(5)** *Direct financial assistance.* Funds may be used for the provision of direct financial assistance such as cash or vouchers to meet the emergency housing or shelter needs of qualifying individuals.

*a.* For the near-homeless, this assistance would be limited to mortgage, rental or utility payments (including deposits and reconnect fees) for individuals who have received a notice of foreclosure or eviction. Financial assistance for a near-homeless individual is allowable if:

(1) The inability of the individual to make a mortgage or rental payment is due to a sudden reduction in income;

(2) The assistance is necessary to avoid foreclosure or eviction; and

(3) There is a reasonable prospect that the individual will be able to resume the payments within a reasonable period of time.

*b.* For the homeless, this assistance would be limited to the payment of housing or shelter costs for an individual who is living on the street, in an abandoned building, house, tent, car, etc., living in an emergency shelter, or living in substantially similar conditions. The payment of utility payments, including deposits and reconnect fees, and other housing deposits is an allowable use of funds, provided that other program requirements are met.

**427—23.6(PL100-77,PL100-628) Ineligible use of funds.** Ineligible activities and costs include:

**23.6(1)** Rescinded IAB 5/31/89, effective 7/5/89.

**23.6(2)** *Supplanting.* The use of EHP funds to supplant other programs for homeless individuals administered by the state.

**23.6(3)** *Political activities.* Any political activity defined in Chapter 15, Title 5, United States Code, ("Political Activity by Certain State and Local Employees"). Any nonprofit private organization receiving EHP funds shall be deemed to be a state or local agency. For the purposes of clauses (1) and (2) of section 1502(a) of Title 5, any organization receiving EHP funds shall be deemed to be a state or local agency.

**427—23.7(PL100-77,PL100-628) Eligible individuals.**

**23.7(1)** *Income eligibility.* Rescinded IAB 4/1/92, effective 7/1/92.

**23.7(2)** *Emphasized subgroups.* To the degree practicable, eligible entities shall place special emphasis on assisting homeless who are elderly persons, handicapped persons, families with children, native Americans and veterans.

**23.7(3)** *Degree of need.* Each eligible entity shall maintain and utilize a plan for serving those homeless individuals with the greatest degree of need first. This provision does not pertain to funds set aside to serve the near-homeless per subrule 23.7(4).

**23.7(4)** *Near-homeless set-aside.* Each eligible entity may provide services to income eligible near-homeless individuals. The amount of funds which may be expended for this target group may not exceed 25 percent of the total EHP funds expended by the eligible entity.

These rules are intended to implement Public Law 100-77, Emergency Community Services Homeless Grant Program, Subtitle D, as amended by Public Law 100-628, Stewart B. McKinney Homeless Assistance Amendments Act of 1988.

**427—23.8(PL100-77,PL100-628) Application submission and approval.** All eligible entities shall utilize the EHP combined application and work program packet as provided by DCAA for the purpose of making application for funds.

**23.8(1)** *Timing.* Eligible entities shall be informed in writing of the due date for application by the DCAA.

**23.8(2)** *Application forms.* Application instructions shall be provided along with the application packet which shall be sent to all eligible entities. Further information concerning application requirements and format may be obtained by writing to the Bureau of Community Services, Division of Community Action Agencies, Department of Human Rights, Capitol Complex, Des Moines, Iowa 50319 or by calling 515/281-3951.

**23.8(3)** *Compliance review.* All applications for funding will be reviewed by DCAA personnel for:

*a.* The number of persons to be served and level of service provided;

*b.* Compliance with the requirements outlined in Iowa Administrative Code 427—Chapter 23;

*c.* Inclusion and proper completion of all forms and information required in the application packet; and

*d.* Compliance with the EHP state plan.

**23.8(4)** *Performance review.* Approval of applications is dependent on the satisfactory performance of the applicant in past funding year(s) in related program areas. The minimum standards include: timely and adequate expenditure report submission, program report submission, prudent management of funds, conformance with state and federal laws relative to the restrictions in the use of funds, and adequate recordkeeping: Additionally, available records, audits and determinations from the Office of Community Services — Department of Health and Human Services, department of management, division of community action agencies, Iowa department of public health and other relevant state and federal agencies shall be utilized to the extent possible. Unresolved audit questions and past-due audits shall be a basis for conditional approval or disapproval of an application.

**427—23.9(PL100-77,PL100-628) Program reports.** Grantees shall submit program performance reports to DCAA as prescribed in the program contract.

**427—23.10(PL100-77,PL100-628) Expenditure reports.** Grantees shall submit a quarterly combined expenditure report and request for funds in the manner and on the forms prescribed by DCAA.

**23.10(1)** *Receipt of federal funds.* All payments shall be subject to the receipt of federal grant funds by DCAA. The termination, reduction or delay of federal grant funds to the DCAA shall, at their option, be reflected in a corresponding modification to grants already made.

**23.10(2)** Reserved.

**427—23.11(PL100-77,PL100-628) Amendments.** Following are requirements pertaining to grant amendments.

**23.11(1)** *Budget.* Any expenditure of funds on a line item which will exceed that line item budgeted amount by more than 10 percent must be approved by an amendment to the program contract. At least 50 percent of each program contract's funds must be spent for the purpose defined in subrule 23.5(1). The total amount of the budget shall not be exceeded and any amounts above the budget total shall not be reimbursable by DCAA unless an amendment has been granted to increase the total. All requests for budget amendments must be approved in writing by the governing board and requested by the chairman. Budget amendments requested that would have an impact on the approved work program must be accompanied by a corresponding work program amendment request.

**23.11(2)** *Work program.* Any change in scope or emphasis among the activities funded with EHP funds must be reflected through a work program amendment. All requests for work program amendments must be approved in writing by the governing board and requested by the chairperson. Work program amendment requests shall provide the reason(s) for the proposed change in adequate detail to facilitate review by DCAA. A reduction in scope shall be evaluated by the DCAA to determine what reduction in funds, if any, shall be required.

**23.11(3)** *Recapture of funds.* If at any time during the program year it becomes apparent that the amount allocated to any entity is not being utilized at a rate sufficient to expend their available program funds, the agency may require that the entity amend their grant to release the excess funds. The funds may then be distributed by DCAA to those entities demonstrating the need and ability to appropriately expend the funds or returned to the U.S. Treasury as timing permits.

**23.11(4)** *Other requests.* Requests for amendments other than those addressed in this rule shall be considered on a case-by-case basis in conformance with applicable state and federal laws.

**427—23.12(PL100-77,PL100-628) Audits and records.** Each recipient shall be responsible for the maintenance of appropriate accounting records necessary for the protection of program funds and shall arrange and pay for an annual audit of each grant made under this program, to be submitted within 90 days of the end of the recipient's fiscal year. Audits shall

be performed in accordance with generally accepted auditing standards including the standards published by the general accounting office, "Standards for Audit of Governmental Organizations, Programs, Activities and Functions." Audit procedures shall conform to OMB Circular A-128, "Audits of State and Local Governments." In addition, DCAA may request more frequent audits or examinations of financial records of the recipient in order to ensure adequate financial controls are in place and operating.

**427—23.13(PL100-77,PL100-628) Compliance with applicable federal and state laws and regulations.** Each grantee shall adhere to all applicable federal and state guidelines, laws and regulations pertaining to the EHP program. In addition to other requirements which may apply to grantees, grantees must comply with the following requirements:

**23.13(1)** *OMB circulars.* The requirements of OMB Circulars A-110 and A-122 as they relate to the use of EHP funds by private nonprofit organizations. The requirements of OMB Circulars A-87 and A-102 as they relate to the use of EHP funds by local governments.

**23.13(2)** *Civil rights provisions.* The state and federal requirements pertaining to nondiscrimination and equal opportunity as specified in the program contract.

**23.13(3)** *Coordination.* Grantees shall coordinate all activities with all agencies administering homeless services in their target area.

**23.13(4)** *State plan.* Grantee EHP activities will be conducted in conformance with the approved EHP state plan.

**427—23.14(PL100-77,PL100-628) Suspension of EHP funding.**

**23.14(1)** *Suspension in general.* The division administrator of DCAA may suspend EHP funds to an eligible entity if monitoring, evaluations, or audits reveal significant noncompliance with established state or federal policies, contract requirements, DCAA directives, fiscal procedures, program performance targets, or other willful or negligent failure on the part of the eligible entity to perform its responsibilities. Action to suspend funding will only be taken after less drastic remedies have been tried unless DCAA determines that immediate action is necessary due to the seriousness of the violation or is necessary to protect EHP funds or property. Serious violations would include, but would not necessarily be limited to, evidence of fraud, embezzlement or gross mismanagement.

**23.14(2)** *Written notification of suspension.* DCAA shall provide a written "notification of suspension" by certified mail to the chairperson of the governing board of the eligible entity to effectuate the process of suspension. The "notification of suspension" shall specify the reason(s) for the suspension and the effective date of the suspension. In all but extreme cases, eligible entities will be given a reasonable period of time, but in no case more than 60 days, to make the necessary improvements, whereupon funding may resume. In extreme cases, when the division administrator of DCAA has determined termination of EHP funding is appropriate in accordance with rule 22.14(601K), the "notification of suspension" shall be accompanied by a "notification of intent to terminate" as described in rule 23.15(PL100-77).

**427—23.15(PL100-77,PL100-628) Termination of EHP funding.**

**23.15(1)** *Termination in general.* The division administrator of DCAA may terminate EHP funds to an eligible entity after suspension of EHP funding in any of the following instances:

*a.* The division administrator determines that the governing board of the eligible entity cannot or will not take the necessary action to bring the eligible entity into compliance within the time allowed by DCAA.

*b.* The division administrator determines that the nature or extent of noncompliance is extreme and warrants immediate termination of EHP funding.

*c.* The eligible entity is no longer officially recognized as a CAA by DCAA as a result of termination of affiliation procedures described in rule 427—22.11(601K).

**23.15(2)** *Written notification of intent to terminate.* DCAA shall provide a written "notification of intent to terminate" by certified mail to the chairperson of the governing board of the eligible entity to effectuate the termination of EHP funding. The "notification of intent to terminate" shall include:

*a.* The reason(s) for the termination;

*b.* A notice of a hearing to be held to consider the intended termination including:

(1) A statement of the date, time, place, nature, and manner of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) Reference to the particular sections of the statutes, rules or regulations involved;

(4) A short, plain statement of the matters asserted. If the state is unable to recite the matters in detail at the time the notice is given, the notice may be limited to a statement of the issues involved;

(5) A statement informing all parties of their opportunity at a hearing:

1. To request rescheduling of the hearing for good cause;
2. To be represented by an attorney or other representative of their choice;
3. To introduce into the record documentary evidence and bring witnesses to the hearing;
4. To have records or documents relevant to the issues produced by their custodian when the records or documents are kept by or for the state, contractor or its subcontractor in the ordinary course of business and where prior reasonable notice has been given to the presiding officer;
5. To question any witnesses or parties; and
6. A final written decision provided by the division administrator of DCAA within 30 days of the hearing.

**23.15(3)** *Prehearing subpoena and discovery rights and procedures.* The presiding officer shall, upon request, issue subpoenas in accordance with the provisions of Iowa Code section 17A.13.

**23.15(4)** *Conduct of hearing.*

*a.* The hearing shall be held within 30 days of the date of the "notification of intent to terminate."

*b.* The hearing may be conducted in whole or in part by telephone. When it is impractical for the state to conduct an in-person hearing, unless either party objects, a telephone hearing may be scheduled.

*c.* After the presiding officer has called the hearing to order, the parties may be given an opportunity to present opening statements; thereafter the parties shall present their evidence in sequence determined by the presiding officer.

*d.* When a witness is introduced to provide testimony or evidence in a contested case hearing, the witness shall, prior to testifying, be identified by name and address and shall take an oath or affirmation administered by the presiding officer.

*e.* The rules of evidence and the contents of the record shall be as allowed under Iowa Code sections 17A.12(7) and 17A.14.

**23.15(5)** *Decision.* The decision shall conform to the following requirements:

*a.* The presiding officer shall within 20 days following the hearing provide the division administrator of DCAA with a proposed decision.

*b.* The division administrator of DCAA shall within 30 days following the hearing issue a final decision on behalf of the state.

*c.* A proposed or final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record, and, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. Each conclusion of law shall be supported by cited authority or by reasoned opinion.

These rules are intended to implement Public Law 100-77 as amended by Public Law 100-628.

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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 HCFA 1500, Health Insurance Claim Form.

*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.

*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.* Medicare-certified nursing facilities wishing to receive Medicaid skilled payment 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.

*aa.* Birth centers shall submit claims on Form HCFA-1500, Health Insurance Claim Form.

*ab.* Area education agencies shall submit claims on Form HCFA-1500, Health Insurance Claim Form.

*ac.* Specialized psychiatric hospitals for children and adolescents shall submit claims on Form UB-82-HCFA-1450.

*ad.* Case management providers shall submit claims on Form 470-2486, Claim for Targeted Medical Care.

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

*af.* Certified registered nurse anesthetist providers shall submit claims on Form HCFA-1500, Health Insurance Claim Form.

*ag.* Hospice providers shall submit claims on Form UB-82-HCFA-1450.

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

*ai.* AIDS/HIV waiver service providers, including nursing facilities providing out-of-home respite at the ICF level of care, shall submit claims for a calendar month or less of service on the Claim for Targeted Medical Care, Form 470-2486. Nursing facilities providing out-of-home respite at the SNF level of care and hospitals shall submit their claims on Form UB-82-HCFA-1450.

*aj.* Federally qualified health centers shall submit claims on Form HCFA-1500, Health Insurance Claim Form.

*ak.* Independently practicing family or pediatric nurse practitioners shall submit claims on Form HCFA 1500, Health Insurance Claim Form.

*al.* HCBS/MR and HCBS/MR/OBRA waiver service providers shall submit claims for a calendar month or less of service on the Claim for Targeted Medical Care, Form 470-2486.

**80.2(3)** Providers shall purchase or copy their supplies of forms HCFA-1450 and HCFA-1500 for use in billing.

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

**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 365 days except that payment for claims submitted beyond the 365-day limit shall be considered if retroactive eligibility on newly approved cases is made which exceeds 365 days or if attempts to collect from a third party payer delay 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 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 by the Medicaid program unless the pay and chase provisions defined in rule 441—75.25(249A) are applicable or when otherwise authorized by the department.

**80.5(3)** Rescinded IAB 8/9/89, effective 10/1/89.

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

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**441—130.6(234) Social casework.** 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 case plan for each individual or family based on assessment of strengths and needs. Furnish appropriate sections of the initial plan and of all updated department case plans to the provider agency when services are purchased for an individual. When individual case management services are being provided under 441—Chapter 24 for persons with mental retardation, a developmental disability, or chronic mental illness, the individual case management services provider shall distribute the case plans.

**130.6(3)** Refer the client to other workers or agencies through proper channels, and coordinate all workers involved in the case.

When individual case management services are being provided under 441—Chapter 24 for persons with mental retardation, a developmental disability, or chronic mental illness, the individual case management services provider shall be responsible for making referrals and coordinating workers as specified in the individual program plan.

**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) Case plan.** The department worker shall develop a case plan with or on behalf of persons approved to receive services. However, a case plan is not required for (1) child or adult protective investigation, (2) family planning, (3) foster care cases in which the department does not have custody, guardianship or a voluntary placement agreement, or (4) when child day care is the only service and the child does not meet the need for service under subrule 170.2(3)*"c," "d,"* and *"e."* A case plan shall be developed with or on behalf of every other person approved to receive services unless the person has a case manager as specified in 441—Chapter 24. When department services are provided before an individual program plan in compliance with 441—Chapter 24 is approved, a department case plan must be developed according to the requirements of this rule.

When individual case management services are being provided under 441—Chapter 24 for persons with mental retardation, a developmental disability, or chronic mental illness, the rules in 441—Chapter 24 on time limits, plan format and on who develops the plan shall apply for adults and for children whose services are not under court jurisdiction. The department worker shall determine eligibility for those services provided by the department; however, a separate department case plan need not be developed. If the individual program plan does not include sufficient information to meet department service requirements or the requirements in this chapter, the person providing department social casework shall complete either a case plan or addendum and coordinate distribution to the persons who receive the individual program plan with the case manager.

The case plan shall become part of the client's case record. The client shall participate in the development of this plan to the extent possible. The case plan shall be consistent with other service or program plans. A copy of the case plan shall be provided to the client, or when indicated, to the parent or representative of the client. For adult services the case plan shall be recorded using Form SS-0607-0, Individual Client Case Plan. For children's services the case plan shall be known as the case permanency plan and shall be prepared using Forms 427-1020, Case Permanency Plan Face Sheet, 427-1021, Case Permanency Plan Review, 427-1022, Case Permanency Plan Initial Assessment, and 427-1023, Case Permanency Plan Problem and Responsibility List; or Forms 427-1020, Case Permanency Plan Face Sheet and 470-2921, Emergency Placement Document for Goal of Family Reunification.

**130.7(1)** Services shall be directed toward the social services block grant 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 case 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 goals to meet the needs of the particular client.

*b.* Activities of clients, workers, and others involved in the plan related to specific services. These shall be 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 reevaluation of the case plan based on assessment of need, which shall not exceed six 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.* Rescinded IAB 8/9/89, effective 10/1/89.

**130.7(3)** The case plan shall be developed and filed in the case record before services begin unless:

*a.* The department receives judicial notice that services have been court-ordered. The date of this notice shall be stated on Form 427-1022. The case plan shall be filed within 45 days from the date the notice is received or within 60 days from the date the child entered foster care, whichever is the earlier date. If the service ends before 30 days the minimum case plan requirement for children's services is completion of Form 427-1020, Face Sheet and of Form 470-2921, Emergency Placement Document for Goal of Family Reunification. Assessment shall begin at the time of the notice.

*b.* An unanticipated provision of service is provided for the protection and well-being of a client. Assessment shall begin immediately. The case plan shall be filed within 45 days from the date services are initiated or within 60 days from the date the child entered foster care, whichever is the earlier date. If the service ends before 30 days the minimum case plan requirement for children's services is completion of Form 427-1020, Face Sheet and of Form 470-2921, Emergency Placement Document for Goal of Family Reunification.

**130.7(4)** The reevaluation of the case plan shall include all components listed under 130.7(2) and shall be filed at least every six months, or more often when there are significant changes, when required by the court, or when required according to the rules of the service.

**130.7(5)** The case plan may be amended between evaluation periods. Participants in the plan shall receive a copy of the amendment.

This rule is intended to implement Iowa Code section 234.6 and 1984 Iowa Acts, chapter 1310, section 3.

**130.8 Monitoring and evaluation.** Rescinded IAB 12/13/89, effective 2/1/90.

**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 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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# CHAPTER 168
# CHILD DAY CARE GRANTS PROGRAMS

[Prior to 6/28/89, see 441—Chapter 154]

## PREAMBLE

These rules define and structure the child day care grants programs. The grants shall be available for start-up and expansion for school-age child care programs and for wrap-around child care programs.

**441—168.1(234) Definitions.**

*"Administrator"* means the administrator of the division of adult, children and family services.

*"Applicant"* means any child care facility which makes application for a grant.

*"Child care facility,"* for the purpose of this chapter, means a facility licensed or with licensing in process under Iowa Code chapter 237A or a child day care program established by a school pursuant to Iowa Code section 279.49.

*"Child day care services"* means services for children of low-income parents who are in vocational training; or employed 20 or more hours per week, or are employed an average of 20 or more hours per week during the month; or who are unable to provide adequate and necessary care for a child with special needs, 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).

*"Department"* means the Iowa department of human services.

*"Director"* means the director of the department of human services.

*"Grantee"* means an applicant who has received a grant.

*"Grant review committee"* means a committee appointed by the chief of the bureau of individual and family support and protective services.

*"School-age child care program"* means a program which is serving children who will be five years of age by September 15 to 13 years of age who are enrolled in a public or approved nonpublic school program. School-age child care shall provide basic care for enrolled children before and after school, including summers and other breaks in the regular school schedule.

*"Wrap-around"* means a program which is serving children who are enrolled in core head start programs, department of education at-risk programs, Chapter 1 preschools, or early childhood special education programs. Core services, which include education, social services, parent involvement and family development, health, dental, nutrition, special needs and mental health, are to be provided by the program which is being expanded upon, not the wrap-around program. Wrap-around care shall provide basic care for enrolled children before and after the core program, including summers and other breaks in the core program schedule.

**441—168.2(234) Availability of grants.** In any year in which funds are available for child day care grants, the department shall administer grants to eligible applicants. The maximum amount of a school-age child care grant shall be $10,000. The maximum amount of a wrap-around child care grant shall be $40,000. If sufficient qualified proposals are not received the department reserves the right to not allocate all grant funds.

**441—168.3(234) Grant eligibility.**

**168.3(1)** *School-age child care programs.* Grants shall be awarded for expansion and start-up costs to child care facilities providing a school-age child care program as defined in this chapter. Expansion costs are available for a school-age child care program which has been in operation 24 months or more as of July 1 of the year in which the application is made,

and which will increase the number of school-age children served or will allow participation of school-age special needs children. Start-up costs are available for a school-age child care program which has been in operation less than 24 months as of July 1 of the year in which the application is made.

*a.* Funds shall be available for the following costs: direct care staff costs, training for staff, equipment, transportation for children's activities, materials, books, play equipment, rent and utilities.

*b.* Nonallowable expenditures include construction or modification of the facility (except to serve children with special needs); administrative costs over 10 percent (including nondirect care staff); payment on interest or organizational membership; excessive computer costs; actual food purchases; medical or health services for children; staff travel which includes mileage, food or hotel.

*c.* Programs receiving school-age child care grants shall be allowed to receive child care subsidy moneys for children eligible for child day care services as set forth in 441—Chapter 130.

**168.3(2)** *Wrap-around child care programs.* Grants shall be awarded to child care facilities providing a wrap-around child care program as defined in this chapter.

*a.* Funds for this grant shall cover the total program costs for one calendar year for 16 children.

*b.* Costs for construction or building modification shall not be allowed, except to allow access for special needs children.

*c.* All children enrolled shall meet eligibility guidelines for child care assistance as set forth in 441—Chapter 130. However, no child care assistance subsidy shall be requested since the total costs of the program shall be provided by this grant.

**441—168.4(234) Request for proposals for grant applications.** All applicants shall submit an original and four copies of the application, with all five documents having original signatures, to the Iowa Department of Human Services, Bureau of Individual and Family Support and Protective Services, Hoover State Office Building, Des Moines, Iowa 50319-0114. To be qualified, the applications must have arrived in the above office by 4:30 p.m. on the date specified in the announcement.

**168.4(1)** *School-age child care grants.* The department shall announce through public notice the opening of an application period. Applicants for school-age child care shall request Form 470-2937, Application for School-Age Child Care Grants, and shall submit a grant proposal using this form by the deadline specified in the announcement.

**168.4(2)** *Wrap-around child care grants.* The department shall announce through public notice the opening of an application period. Applicants for wrap-around child care shall request Form 470-2938, Application for Wrap-Around Child Care Grants, and shall submit a grant proposal using this form by the deadline specified in the announcement.

**168.4(3)** *Project proposal requirements.* Requirements for project proposals are specified in each application packet. If a proposal does not contain the information specified in the application packet or if it is late, it shall be disqualified. Proposals shall contain the following information:

*a.* Program narrative.
*b.* Needs assessment.
*c.* Staffing plan.
*d.* Facility.
*e.* Curriculum.
*f.* Behavior management and positive guidance.
*g.* Transportation.
*h.* Linkages and community support.
*i.* Staff training plans.

*j.* Food and nutrition.
*k.* Health and safety plan.
*l.* Parental involvement.
*m.* Program stability and future.
*n.* Organizational charge.
*o.* Budget.
*p.* Overall quality and impact of program.

**441—168.5(234) Selection of proposals.**

**168.5(1)** All qualified proposals received by the department shall be evaluated by the grant review committee, which shall make funding recommendations to the administrator. The administrator shall make the final funding decisions.

**168.5(2)** Facilities serving the following priority areas will be given first priority if sufficient funding is not available for all proposals:

*a.* Communities with high concentrations of poverty (areas in which more than 25 percent of the children receive free or reduced price school lunches, or geographic areas by zip code in which 30 percent or more families receive aid to dependent children or food stamp benefits).

*b.* Areas with very low population density (counties with fewer than 20,000 people, or towns with fewer than 5,000 people).

*c.* Communities with a high incidence of teen pregnancy and teen parenting will have priority for programs established specificially to serve these teens and their children.

*d.* A high proportion of low-income families among all families served by the facility.

*e.* Children with special needs.

**168.5(3)** A weighted scoring criteria shall be used to determine grant awards. The maximum amount of points possible is 165. Determination of final point awards shall be based on the following:

*a.* Program narrative — 10 points
*b.* Needs assessment — 10 points
*c.* Staffing plan — 10 points
*d.* Facility — 10 points
*e.* Curriculum — 10 points
*f.* Behavior management and positive guidance — 10 points
*g.* Transportation — 10 points
*h.* Linkages and community support — 10 points
*i.* Staff training plans — 10 points
*j.* Food and nutrition — 10 points
*k.* Health and safety plan — 10 points
*l.* Parental involvement — 10 points
*m.* Program stability and future — 10 points
*n.* Organizational chart — 10 points
*o.* Budget — 10 points
*p.* Overall quality and impact of program — 15 points

**441—168.6(234) Grant contracts.** The approved "Application for School-Age Child Care Grants," Form 470-2937, or "Application for Wrap-Around Child Care Grants," Form 470-2938, shall serve as the contract between the department and the applicant. The grantee receiving funds under these rules shall:

**168.6(1)** Use the funds only as prescribed in the application and approved in writing by the department.

**168.6(2)** Return any unused funds to the department.

**168.6(3)** Submit a report of actual expenditures per line item of the approved budget six months and one year after the grant is awarded.

**168.6(4)** Keep fiscal records of services provided and any other records as required by the department and specified in the contract. All records pertaining to programs funded by the grant shall be made available to the department upon request.

**441—168.7(234) Evaluation.** The department may evaluate the grantee at least once 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 the program goals as provided in the contract. The grantee shall receive a written report of the evaluation.

**441—168.8(234) Termination of contract.** The contract may be terminated by either party at any time during the contract period by giving 30 days' notice to the other party.

**168.8(1)** The department may terminate a contract upon ten days' notice when the grantee fails to comply with the grant award stipulations, standards, or conditions.

**168.8(2)** Within 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.

**168.8(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.

**441—168.9(234) Appeals.** Applicants dissatisfied with the grant review committee's decision may file an appeal with the Appeals Section, Bureau of Policy Analysis, Hoover State Office Building, Des Moines, Iowa 50319-0114. The letter of appeal must be received within ten working days of the date of the notice of decision; must be based on a contention that the process was conducted outside of statutory authority, violated state or federal law, policy or rule, did not provide adequate public notice, was altered without adequate public notice, or involved conflict of interest by staff or committee members; and must include a request for the director to review the decision and the reasons for dissatisfaction. The amount of the grant is not grounds for appeal. Within ten working days of the receipt of the appeal the director, or the director's designee, shall review the appeal request and issue a final decision.

No disbursements shall be made to any applicant for a period of ten working days following the notice of decision. If an appeal is filed within the ten working days, all disbursements shall be held pending a final decision on the appeal.

These rules are intended to implement Iowa Code subsection 234.6(5).

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## CHAPTER 169
Reserved

CHAPTER 40
FOSTER CARE FACILITY INSPECTIONS



CHAPTER 41
PSYCHIATRIC MEDICAL INSTITUTIONS FOR CHILDREN (PMIC)



CHAPTERS 42 to 49
Reserved

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CHAPTER 51
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CHAPTER 57
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CHAPTER 58
INTERMEDIATE CARE FACILITIES

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CHAPTER 61
MINIMUM PHYSICAL STANDARDS
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CHAPTER 62
RESIDENTIAL CARE FACILITIES FOR
PERSONS WITH MENTAL ILLNESS
(RCF/PMI)



CHAPTER 63
RESIDENTIAL CARE FACILITIES
FOR THE MENTALLY RETARDED

**481—51.33(135B) Psychiatric services.**

**51.33(1)** Any institution operating as a psychiatric hospital or operating a designated psychiatric unit shall:

*a.* Be a hospital or unit primarily engaged in providing, by or under the supervision of a doctor of medicine or osteopathy, psychiatric services for the diagnosis and treatment of persons with psychiatric illnesses/disorders;

*b.* Meet the general and specialized rules of this chapter pertaining to general hospitals. If medical and surgical diagnostic and treatment services are not available within the institution, the institution shall have an agreement with an outside source of these services to ensure they are immediately available;

*c.* Have policies and procedures for informing patients of their rights and responsibilities and for ensuring the availability of a patient advocate; and

*d.* Have sufficient numbers of qualified professionals and support staff to evaluate patients, formulate written individualized comprehensive treatment plans, provide active treatment measures, and engage in discharge planning.

**51.33(2)** Personnel.

*a.* Director of inpatient psychiatric services. The director of inpatient psychiatric services shall be a doctor of medicine or osteopathy qualified to meet the training and experience requirements for examination by the American Board of Psychiatry and Neurology or the American Osteopathic Board of Neurology and Psychiatry. The number and qualifications of doctors of medicine or doctors of osteopathy on staff must be adequate to provide essential psychiatric and medical services.

*b.* Director of psychiatric nursing services. The director of psychiatric nursing services shall:

(1) Be a registered nurse who has a master's degree in psychiatric or mental health nursing; or

(2) Be qualified by education and two years' experience in the care of persons with mental disorders.

*c.* Psychological services. Psychological services shall be provided or available which are in compliance with Iowa Code chapter 154B.

*d.* Social services. Social services shall provide, or have available by contract, at least one staff member who has:

(1) A master's degree from an accredited school of social work; or

(2) A bachelor's degree in social work with two years' experience in the care of persons with mental disorders.

*e.* Therapeutic services. Therapeutic activities shall be provided by qualified therapists. The activities shall be appropriate to the needs and interests of the patients.

**51.33(3)** Individual written plan of care. An individual written plan of care shall be developed by an interdisciplinary team of a physician and other personnel who are employed by, or who provide service under contract to patients in the facility. The plan of care shall:

*a.* Be based on a diagnostic and psychiatric evaluation that includes examination of the medical, psychological, social, behavioral, and developmental aspects of the patient. The initial diagnostic and psychiatric evaluation shall be completed within 60 hours of admission;

*b.* Be developed by an interdisciplinary team in consultation with the patient, the patient's legal guardian, and others who are currently providing services or who will provide care upon discharge;

*c.* State treatment objectives through measurable and obtainable outcomes;

*d.* Prescribe an integrated program of therapies, activities, and experiences designed to meet those objectives;

*e.* Include an appropriate postdischarge plan with coordination of services to provide continuity of care following discharge; and

*f.* Be reviewed as needed or at least every 30 days by the interdisciplinary team for the continued appropriateness of the plan and for a determination of needed changes.

**481—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 Iowa Code chapter 135C, Iowa Code sections 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 Iowa Code chapter 135B.

**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 Iowa Code chapter 135C 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 Iowa Code chapter 135C and the rules promulgated under its authority for the category of health care facility involved. Where a hospital operates a freestanding nursing care facility, it shall be under the administrative authority of a licensed nursing home administrator who 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 Iowa Code chapter 135C 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 Iowa Code chapter 135C and the rules promulgated under its authority for the category of health care facility involved.

**481—51.35(135B) Penalty and enforcement.** See Iowa Code sections 135B.14 to 135B.16.

**481—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.

**481—51.37(135B) Domestic abuse.** Domestic abuse, as defined in Iowa Code section 236.2, means the commission of assault 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 or persons divorced from each other and not residing together at the time of the assault.

Family or household members, as defined in Iowa Code section 236.2, are spouses, persons cohabiting, parents, or other persons related by consanguinity or affinity, except children under the age of 18.

**51.37(1)** Each hospital shall establish and implement protocols with respect to victims of domestic abuse which shall provide for:

*a.* An interview with the victim in a place that ensures privacy;

*b.* Confidentiality of the person's treatment and information;

*c.* Sharing of information regarding the domestic abuse hotline and programs; and

*d.* Education of appropriate emergency department staff to assist in the identification of victims of domestic abuse.

**51.37(2)** The treatment records of victims of domestic abuse shall include:

*a.* An assessment of the extent of abuse to the victim specifically describing the location and extent of the injury and reported pain;

*b.* Evidence that the victim was informed of the telephone numbers for the domestic abuse hotline and domestic abuse programs, and the victim's response;

*c.* A record of the treatment and intervention by health care provider personnel;

*d.* A record of the need for follow-up care and specification of the follow-up care to be given (e.g., X-rays, surgery, consultation, etc.); and

*e.* The victim's statement of how the injury occurred.

**481—51.38(135B) Child abuse and dependent adult abuse.** Each hospital shall provide that the treatment records of victims of child abuse or dependent adult abuse include a statement that the department of human services protective services was contacted.

These rules are intended to implement Iowa Code chapter 135B.

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*Hospital Protocol for Donor Requests as it appeared in IAC 641—Chapter 180 prior to 4/4/90.
◊Three ARCs

**57.5(3)** The posted license shall accurately reflect the current status of the residential care facility. (III)

**57.5(4)** Licenses expire one year after the date of issuance or as indicated on the license.

**57.5(5)** Each citation or a copy of each citation issued by the department for a class I or class II violation shall be prominently posted by the facility in plain view of the residents, visitors, and persons inquiring about placement in the facility. The citation or copy of the citation shall remain posted until the violation is corrected to the satisfaction of the department. (III)

**481—57.6(135C) Notifications required by the department.** The department shall be notified:

**57.6(1)** Within forty-eight hours, by letter, of any reduction or loss of personal care or dietary staff lasting more than seven days which places the staffing ratio below that required for licensing. No additional residents may be admitted until the minimum staffing requirements are achieved; (III)

**57.6(2)** Of any proposed change in the residential care facility's functional operation or addition or deletion of required services; (III)

**57.6(3)** Thirty days before addition, alteration, or new construction is begun in the residential care facility or on the premises; (III)

**57.6(4)** Thirty days in advance of closure of the residential care facility; (III)

**57.6(5)** Within two weeks of any change in administrator; (III)

**57.6(6)** When any change in the category of license is sought; (III)

**57.6(7)** Prior to the purchase, transfer, assignment, or lease of a residential care facility, the licensee shall:

*a.* Inform the department of the pending sale, transfer, assignment, or lease of the facility; (III)

*b.* Inform the department of the name and address of the prospective purchaser, transferee, assignee, or lessee at least thirty days before the sale, transfer, assignment, or lease if completed; (III)

*c.* Submit a written authorization to the department permitting the department to release all information of whatever kind from the department's files concerning the licensee's residential care facility to the named prospective purchaser, transferee, assignee, or lessee; (III)

**57.6(8)** Pursuant to the authorization submitted to the department by the licensee prior to the purchase, transfer, assignment, or lease of a residential care facility, the department shall upon request send or give copies of all recent licensure surveys and of any other pertinent information relating to the facility's licensure status to the prospective purchaser, transferee, assignee, or lessee; costs for such copies shall be paid by the prospective purchaser.

**481—57.7(135C) Witness fees.** The fees of witnesses for attendance and travel shall be the same as the fees for witnesses before the district court and shall be paid by the party to the proceeding at whose request the subpoena is issued.

**481—57.8(135C) Licenses for distinct parts.**

**57.8(1)** Separate licenses may be issued for distinct parts of a health care facility which are clearly identifiable, containing contiguous rooms in a separate wing or building or on a separate floor of the facility and which provide care and services of separate categories.

**57.8(2)** The following requirements shall be met for a separate licensing of a distinct part:

*a.* The distinct part shall serve only residents who require the category of care and services immediately available to them within that part; (III)

*b.* The distinct part shall meet all the standards, rules, and regulations pertaining to the category for which a license is being sought.

*c.* The distinct part must be operationally and financially feasible.

*d.* A separate personal care staff with qualifications appropriate to the care and services being rendered must be regularly assigned and working in the distinct part under responsible management. (III)

*e.* Separately licensed distinct parts may have certain services such as management, building maintenance, laundry and dietary in common with each other.

**57.14(7)** State the terms of agreement concerning the holding and charging for a bed when a resident is hospitalized or leaves the facility temporarily for recreational or therapeutic reasons. The terms shall contain a provision that the bed will be held at the request of the resident or the resident's responsible party.

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

*b.* The facility shall reserve the bed when requested for as long as payments are made in accordance with the contract. (II)

**57.14(8)** State the conditions under which the involuntary discharge or transfer of a resident would be effected; (III)

**57.14(9)** State the conditions of voluntary discharge or transfer; (III)

**57.14(10)** Set forth any other matters deemed appropriate by the parties to the contract. No contract or any provision thereof shall be drawn or construed so as to relieve any health care facility of any requirement or obligation imposed upon it by this chapter or any standards or rules in force pursuant to this chapter; (III)

**57.14(11)** Each party shall receive a copy of the signed contract. (III)

**481—57.15(135C) Physical examinations.**

**57.15(1)** Each resident in a residential care facility shall have a designated licensed physician, who may be called when needed. (III)

**57.15(2)** Each resident admitted to a residential care facility shall have had a physical examination prior to admission. If the resident is admitted directly from a hospital, a copy of the hospital admission physical and discharge summary may be part of the record in lieu of an additional physical examination. A record of the examination, signed by the physician, shall be a part of the resident's record. (III)

*a.** Each resident admitted to a residential care facility shall have had a physician examination prior to admission. If the resident is admitted directly from a hospital, a copy of the hospital admission physical and discharge summary may be a part of the record in lieu of an additional physical examination. A record of the examination, signed by the physician, shall be a part of the resident's record. (III)

*b.* The record of the admission physical examination and medical history shall portray the current medical status of the resident and shall include the resident's name, sex, age, medical history, tuberculosis status, physical examination, diagnosis, statement of chief complaints, and results of any diagnostic procedures. (III)

**57.15(3)** Arrangements shall be made to have a physician available to furnish medical care in case of emergency. (II, III)

**57.15(4)** Rescinded, effective 7/14/82.

**57.15(5)** The person in charge shall immediately notify the physician of any accident, injury, or adverse change in the resident's condition. (I, II, III)

**57.15(6)** Each resident shall be visited by or shall visit his or her physician at least once each year. (III)

*Effective date of 3/5/86 delayed seventy days by the administrative rules review committee, IAB 2/26/86;
Effective date of 3/5/86 delayed until the expiration of forty-five calendar days into the 1987 session of the General Assembly pursuant to Iowa Code section 17A.8(9), IAB 6/4/86.

**57.15(7)** Residents shall be admitted to a residential care facility only on a written order signed by a physician certifying that the individual being admitted requires no more than personal care and supervision but does not require nursing care. (III)

This rule is intended to implement Iowa Code section 135C.23(2).

**481—57.16(135C) Records.**

**57.16(1)** *Resident record.* The licensee shall keep a permanent record on all residents admitted to a residential care facility with all entries current, dated, and signed. (III) The record shall include:

*a.* Name and previous address of resident; (III)

*b.* Birthdate, sex, and marital status of resident; (III)

*c.* Church affiliation; (III)

*d.* Physician's name, telephone number, and address; (III)

*e.* Dentist's name, telephone number, and address; (III)

*f.* Name, address, and telephone number of next of kin or legal representative; (III)

*g.* Name, address, and telephone number of person to be notified in case of emergency; (III)

*h.* Mortician's name, telephone number, and address; (III)

*i.* Pharmacist's name, telephone number, and address; (III)

*j.* Physical examination and medical history; (III)

*k.* Certification by the physician that the resident requires no more than personal care and supervision, but does not require nursing care; (III)

*l.* Physician's orders for medication, treatments, and diet in writing and signed by the physician quarterly; (III)

*m.* A notation of yearly or other visits to physician or other professional services; (III)

*n.* Any change in the resident's condition; (II, III)

*o.* If the physician has certified that the resident is capable of taking his or her prescribed medications, the administrator shall require residents to keep him or her advised of current medications, treatments, and diet. The administrator shall keep a listing of medications, treatments, and diet prescribed by the physician for each resident; (III)

*p.* If the physician has certified that the resident is not capable of taking his or her prescribed medication, it must be administered by a qualified person of the facility. A qualified person shall be defined as either a registered or licensed practical nurse or an individual who has completed the state-approved training course in medication administration; (II)

*q.* Medications administered by an employee of the facility shall be recorded on a medication record by the individual who administers the medication; (II, III)

*r.* A notation describing condition on admission, transfer, and discharge; (III)

*s.* In the event of the death of a resident, a death record shall be completed, including the physician's signature and disposition of the body. A notation shall be made on the resident record of the notification of the family; (III)

*t.* A copy of instructions given to the resident, legal representative, or facility in the event of discharge or transfer; (III)

*u.* Disposition of valuables. (III)

**57.16(2)** *Incident record.*

*a.* Each residential care facility shall maintain an incident record report and shall have available incident report forms. (III)

*b.* Report of incidents shall be in detail on a printed incident report form. (III)

*c.* The person in charge at the time of the incident shall oversee the preparation and sign the incident report. (III)

*d.* The report shall cover all accidents whether there is apparent injury or where hidden injury may have occurred. (III)

**57.37(3)** The facility shall post in a prominent area the name, phone number, and address of the ombudsman, survey agency, local law enforcement agency, care review committee members, the text of section 135C.46, The Code, etc., to provide to residents a further course of redress. (II)

**481—57.38(135C) Financial affairs—management.** Each resident, who has not been assigned a guardian or conservator by the court, may manage his/her personal financial affairs, and to the extent, under written authorization by the resident that the facility assists in management, the management shall be carried out in accordance with section 135C.24, The Code. (II)

**57.38(1)** The facility shall maintain a written account of all residents' funds received by or deposited with the facility. (II)

**57.38(2)** An employee shall be designated in writing to be responsible for resident accounts. (II)

**57.38(3)** The facility, shall keep on deposit personal funds over which the resident has control in accordance with section 135C.24(2). Should the resident request these funds, they shall be given to him/her on request with receipts maintained by the facility and a copy to the resident. In the case of a confused or mentally retarded resident, the resident's responsible party shall designate a method of disbursing their funds. (II)

**57.38(4)** If the facility makes financial transactions on a resident's behalf, the resident must receive or acknowledge that he/she has seen an itemized accounting of disbursements and current balances at least quarterly. A copy of this statement shall be maintained in the resident's financial or business record. (II)

**57.38(5)** A resident's personal funds shall not be used without the written consent of the resident or the resident's guardian. (II)

**57.38(6)** A resident's personal funds shall be returned to the resident when the funds have been used without the written consent of the resident or the resident's guardian. The department may report findings that resident funds have been used without written consent to the audits division or the local law enforcement agency, as appropriate. (II)

**481—57.39(135C) Resident abuse prohibited.** Each resident shall receive kind and considerate care at all times and shall be free from mental and physical abuse. Each resident shall be free from chemical and physical restraints, except in an emergency for the shortest amount of time necessary to protect the resident from injury to himself/herself or to others, pending the immediate transfer to an appropriate facility. The decision to use restraints on an emergency basis shall be made by the designated charge person who shall promptly report the action taken to the physician and the reasons for using restraints shall be documented in the resident's record. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered to be a restraint. (II)

**57.39(1)** Mental abuse includes, but is not limited to, humiliation, harassment, and threats of punishment or deprivation. (II)

**57.39(2)** Physical abuse includes, but is not limited to, corporal punishment and the use of restraints as punishment. (II)

**57.39(3)** Drugs such as tranquilizers may not be used as chemical restraints to limit or control resident behavior for the convenience of staff. (II)

**57.39(4)** Upon a claim of dependent adult abuse of a resident being reported, the administrator of the facility shall separate the victim and accused abuser immediately and maintain that separation until the abuse investigation is completed. (I, II)

**57.39(5)** Suspected abuse reports. The department shall investigate all complaints of dependent adult abuse which are alleged to have happened in a health care facility. The department shall inform the department of human services of the results of all evaluations and dispositions of dependent adult abuse investigations.

**481—57.40(135C) Resident records.** Each resident shall be ensured confidential treatment of all information contained in his/her records, including information contained in an automatic data bank. His/her written consent shall be required for the release of information to persons not otherwise authorized under law to receive it. (II)

**57.40(1)** The facility shall limit access to any medical records to staff and consultants providing professional service to the resident. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

**57.40(2)** Similar procedures shall safeguard the confidentiality of residents' personal records, e.g., financial records and social services records. Only those personnel concerned with the financial affairs of the residents may have access to the financial records. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

**57.40(3)** The resident, or his/her responsible party, shall be entitled to examine all information contained in his/her record and shall have the right to secure full copies of the record at reasonable cost upon request, unless the physician determines the disclosure of the record or section thereof is contraindicated in which case this information will be deleted prior to making the record available to the resident or responsible party. This determination and the reasons for it must be documented in the resident's record. (II)

**481—57.41(135C) Dignity preserved.** The resident shall be treated with consideration, respect, and full recognition of his/her dignity and individuality, including privacy in treatment and in care for his/her personal needs. (II)

**57.41(1)** Staff shall display respect for residents when speaking with, caring for, or talking about them, as constant affirmation of their individuality and dignity as human beings. (II)

**57.41(2)** Schedules of daily activities shall allow maximum flexibility for residents to exercise choice about what they will do and when they will do it. Residents' individual preferences regarding such things as menus, clothing, religious activities, friendships, activity programs, entertainment, sleeping and eating, also times to retire at night and arise in the morning shall be elicited and considered by the facility. (II)

**57.41(3)** Residents shall be examined and treated in a manner that maintains the privacy of their bodies. A closed door or a drawn curtain shall shield the resident from passersby. People not involved in the care of the residents shall not be present without the resident's consent while he/she is being examined or treated. (II)

**57.41(4)** Privacy of a resident's body also shall be maintained during toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance. (II)

**57.41(5)** Staff shall knock and be acknowledged before entering a resident's room unless the resident is not capable of a response. This shall not apply under emergency conditions. (II)

**481—57.42(135C) Resident work.** No resident may be required to perform services for the facility, except as provided by sections 219.14 and 253.5, The Code. (II)

**57.42(1)** Residents may not be used to provide a source of labor for the facility against their will. Physician's approval is required for all work programs. (I, II)

**57.42(2)** Residents who perform work for the facility must receive remuneration unless the work is part of their approved training program. Persons on the resident census performing work shall not be used to replace paid employees in fulfilling staffing requirements. (II)

**481—57.43(135C) Communications.** Each resident may communicate, associate, and meet privately with persons of his/her choice, unless to do so would infringe upon the rights of other residents, and may send and receive his/her personal mail unopened. (II)

**57.43(1)** Subject to reasonable scheduling restrictions, visiting policies and procedures shall permit residents to receive visits from anyone they wish. Visiting hours shall be posted. (II)

*d.* Odors created by the proposed business or activity;

*e.* Use of entrances and exits for the business or activity in regard to safety and disturbance of residents and interference with delivery of services;

*f.* Use of the facility's corridors or rooms as thoroughfares to the business or activity in regard to safety and disturbance of residents and interference with delivery of services;

*g.* Proposed staffing for the business or activity;

*h.* Sharing of services and staff between the proposed business or activity and the facility;

*i.* Facility layout and design; and

*j.* Parking area utilized by the business or activity.

**57.50(2)** Approval of the state fire marshal shall be obtained before approval of the department will be considered.

**57.50(3)** A business or activity conducted in a health care facility or in the same physical structure as a health care facility shall not reduce space, services or staff available to residents below minimums requires in these rules and 481—Chapter 60. (I, II, III)

This rule will become effective July 1, 1992.

These rules are intended to implement Iowa Code sections 10A.202, 10A.402, 135C.6(1), 135C.14, 135C.14(3), 135C.14(5), 135C.14(8), 135C.23(2), 135C.25, 135C.25(3), 135C.36, 227.4, 235B.1(6), and 235B.1(11).

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**See IAB, Inspections and Appeals Department.

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*e.* Submit a photograph of the front and side elevation of the intermediate care facility;

*f.* Submit the statutory fee for an intermediate care facility license;

*g.* Meet the requirements of an intermediate care facility for which licensure application is made;

*h.* Comply with all other local statutes and ordinances in existence at the time of licensure;

*i.* Have a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations.

**58.3(2)** In order to obtain an initial intermediate care facility license for a facility not currently licensed as an intermediate care facility, the applicant must:

*a.* Meet all of the rules, regulations, and standards contained in chapters 58(135C) and 61(135C) of the Iowa Administrative Code. Exceptions noted in subrule 61.1(2) shall not apply;

*b.* Submit a letter of intent and a written resume of the resident care program and other services provided for departmental review and approval;

*c.* Make application at least thirty days prior to the change of ownership of the facility on forms provided by the department;

*d.* Submit a floor plan of each floor of the intermediate care facility, drawn on 8½ x 11 paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms, and designation of the use to which room will be put and window and door locations;

*e.* Submit a photograph of the front and side elevation of the intermediate care facility;

*f.* Submit the statutory fee for an intermediate care facility license;

*g.* Comply with all other local statutes and ordinances in existence at the time of licensure;

*h.* Have a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations.

**58.3(3)** *Renewal application.* In order to obtain a renewal of the intermediate care facility license, the applicant must:

*a.* Submit the completed application form thirty days prior to annual license renewal date of intermediate care facility license;

*b.* Submit the statutory license fee for an intermediate care facility with the application for renewal;

*c.* Have an approved current certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations;

*d.* Submit appropriate changes in the resume to reflect any changes in the resident care program or other services.

**58.3(4)** Licenses are issued to the person or governmental unit which has responsibility for the operation of the facility and authority to comply with all applicable statutes, rules or regulations.

The person or governmental unit must be the owner of the facility or, if the facility is leased, the lessee.

**481—58.4(135C) General requirements.**

**58.4(1)** The license shall be displayed in a conspicuous place in the facility which is viewed by the public. (III)

**58.4(2)** The license shall be valid only in the possession of the licensee to whom it is issued.

**58.4(3)** The posted license shall accurately reflect the current status of the intermediate care facility. (III)

**58.4(4)** Licenses expire one year after the date of issuance or as indicated on the license.

**58.4(5)** No intermediate care facility shall be licensed for more beds than have been approved by the health facilities construction review committee.

**58.4(6)** Each citation or a copy of each citation issued by the department for a class I or

class II violation shall be prominently posted by the facility in plain view of the residents, visitors, and persons inquiring about placement in the facility. The citation or copy of the citation shall remain posted until the violation is corrected to the satisfaction of the department. (III)

**481—58.5(135C) Notifications required by the department.** The department shall be notified:

**58.5(1)** Within forty-eight hours, by letter, of any reduction or loss of nursing and/or dietary staff lasting more than seven days which places the staffing ratio below that

required for licensing. No additional residents shall be admitted until the minimum staffing requirements are achieved; (III)

**58.5(2)** Of any proposed change in the intermediate care facility's functional operation or addition or deletion of required services; (III)

**58.5(3)** Thirty days before addition, alteration, or new construction is begun in the intermediate care facility or on the premises; (III)

**58.5(4)** Thirty days in advance of closure of the intermediate care facility; (III)

**58.5(5)** Within two weeks of any change in administrator; (III)

**58.5(6)** When any change in the category of license is sought; (III)

**58.5(7)** Prior to the purchase, transfer, assignment, or lease of an intermediate care facility, the licensee shall:

*a.* Inform the department of the pending sale, transfer, assignment, or lease of the facility; (III)

*b.* Inform the department of the name and address of the prospective purchaser, transferee, assignee, or lessee at least thirty days before the sale, transfer, assignment, or lease is completed; (III)

*c.* Submit a written authorization to the department permitting the department to release all information of whatever kind from the department's files concerning the licensee's intermediate care facility to the named prospective purchaser, transferee, assignee, or lessee. (III)

**58.5(8)** Pursuant to the authorization submitted to the department by the licensee prior to the purchase, transfer, assignment, or lease of an intermediate care facility, the department shall upon request send or give copies of all recent licensure surveys and of any other pertinent information relating to the facility's licensure status to the prospective purchase, transferee, assignee, or lessee; costs for such copies shall be paid by the prospective purchaser.

**481—58.6(135C) Witness fees.** The fees of witnesses for attendance and travel shall be the same as the fees for witnesses before the district court and shall be paid by the party to the proceeding at whose request the subpoena is issued.

**481—58.7(135C) Licenses for distinct parts.**

**58.7(1)** Separate licenses may be issued for distinct parts of a health care facility which are clearly identifiable, containing contiguous rooms in a separate wing or building or on a separate floor of the facility and which provide care and services of separate categories.

**58.7(2)** The following requirements shall be met for a separate licensing of a distinct part:

*a.* The distinct part shall serve only residents who require the category of care and services immediately available to them within that part; (III)

*b.* The distinct part shall meet all the standards, rules, and regulations pertaining to the category for which a license is being sought;

*c.* A distinct part must be operationally and financially feasible;

*d.* A separate staff with qualifications appropriate to the care and services being rendered must be regularly assigned and working in the distinct part under responsible management; (III)

*e.* Separately licensed distinct parts may have certain services such as management, building maintenance, laundry, and dietary in common with each other.

**481—58.8(135C) Administrator.**

**58.8(1)** Each intermediate care facility shall have one person in charge, duly licensed as a nursing home administrator or acting in a provisional capacity in accordance with the

laws of the state of Iowa and the rules of the Iowa board of examiners for nursing home administrators. (III)

**58.8(2)** A licensed administrator may act as an administrator for not more than two intermediate care facilities.

*a.* The distance between the two facilities shall be no greater than fifty miles. (II)

*b.* The administrator shall spend the equivalent of three full eight-hour days per week in each facility. (II)

*c.* The administrator may be responsible for no more than one hundred fifty beds in total if he or she is an administrator of more than one facility. (II)

**58.8(3)** The licensee may be the licensed nursing home administrator providing he or she meets the requirements as set forth in these regulations and devotes the required time to administrative duties. Residency in the facility does not in itself meet the requirement. (III)

**58.8(4)** A provisional administrator may be appointed on a temporary basis by the intermediate care facility licensee to assume the administrative responsibilities for an intermediate care facility for a period not to exceed six months when, through no fault of its own, the home has lost its administrator and has not been able to replace the administrator provided:

*a.* The department has been notified prior to the date of the administrator's appointment; (III)

*b.* The board of examiners for nursing home administrators has approved the administrator's appointment and has confirmed such appointment in writing to the department. (III)

**58.8(5)** In the absence of the administrator, a responsible person shall be designated in writing to the department to be in charge of the facility. (III) The person designated shall:

*a.* Be knowledgeable of the operation of the facility; (III)

*b.* Have access to records concerned with the operation of the facility; (III)

*c.* Be capable of carrying out administrative duties and of assuming administrative responsibilities; (III)

*d.* Be at least eighteen years of age; (III)

*e.* Be empowered to act on behalf of the licensee during the administrator's absence concerning the health, safety, and welfare of the residents; (III)

*f.* Have had training to carry out assignments and take care of emergencies and sudden illness of residents. (III)

**58.8(6)** A licensed administrator in charge of two facilities shall employ an individual designated as a full-time assistant administrator for each facility. (III)

**58.8(7)** An administrator of only one facility shall be considered as a full-time employee. Full-time employment is defined as forty hours per week. (III)

**481—58.9(135C) Administration.**

**58.9(1)** The licensee shall:

*a.* Assume the responsibility for the overall operation of the intermediate care facility; (III)

*b.* Be responsible for compliance with all applicable laws and with the rules of the department; (III)

*c.* Establish written policies, which shall be available for review, for the operation of the intermediate care facility. (III)

**58.9(2)** The administrator shall:

*a.* Be responsible for the selection and direction of competent personnel to provide services for the resident care program; (III)

*b.* Be responsible for the arrangement for all department heads to annually attend a minimum of ten contact hours of educational programs either approved or provided by the department; (III)

**481—58.13(135C) Contracts.** Each contract shall:

**58.13(1)** State the base rate or scale per day or per month, the services included, and the method of payment; (III)

**58.13(2)** Contain a complete schedule of all offered services for which a fee may be charged in addition to the base rate. Furthermore, the contract shall: (III)

*a.* Stipulate that no further additional fees shall be charged for items not contained in complete schedule of services as set forth in subsection 2; (III)

*b.* State the method of payment of additional charges; (III)

*c.* Contain an explanation of the method of assessment of such additional charges and an explanation of the method of periodic reassessment, if any, resulting in changing such additional charges; (III)

*d.* State that additional fees may be charged to the resident for nonprescription drugs, other personal supplies, and services by a barber, beautician, etc.; (III)

**58.13(3)** Contain an itemized list of those services, with the specific fee the resident will be charged and method of payment, as related to his or her current condition, based on the nursing assessment at the time of admission, which is determined in consultation with the administrator; (III)

**58.13(4)** Include the total fee to be charged initially to the specific resident; (III)

**58.13(5)** State the conditions whereby the facility may make adjustments to their overall fees for resident care as a result of changing costs. (III) Furthermore, the contract shall provide that the facility shall give:

*a.* Written notification to the resident, or responsible party when appropriate, of changes in the overall rates of both base and additional charges at least thirty days prior to effective date of such changes; (III)

*b.* Notification to the resident, or responsible party when appropriate, of changes in additional charges, based on a change in the resident's condition. Notification must occur prior to the date such revised additional charges begin. If notification is given orally, subsequent written notification must also be given within a reasonable time, not to exceed one week, listing specifically the adjustments made; (III)

**58.13(6)** State the terms of agreement in regard to refund of all advance payments in the event of transfer, death, voluntary or involuntary discharge; (III)

**58.13(7)** State the terms of agreement concerning the holding and charging for a bed when a resident is hospitalized or leaves the facility temporarily for recreational or therapeutic reasons. The terms shall contain a provision that the bed will be held at the request of the resident or the resident's responsible party.

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

*b.* The facility shall reserve the bed when requested for as long as payments are made in accordance with the contract. (II)

**58.13(8)** State the conditions under which the involuntary discharge or transfer of a resident would be effected; (III)

**58.13(9)** State the conditions of voluntary discharge or transfer; (III)

**58.13(10)** Set forth any other matters deemed appropriate by the parties to the contract. No contract or any provision thereof shall be drawn or construed so as to relieve any health care facility of any requirement or obligation imposed upon it by this chapter or any standards or rules in force pursuant to this chapter; (III)

**58.13(11)** Each party shall receive a copy of the signed contract. (III)

**481—58.14(135C) Medical services.**

**58.14(1)** Each resident in an intermediate care facility shall designate a licensed physician who may be called when needed. Professional management of a resident's care shall be the responsibility of the hospice program when:

*a.* The resident is terminally ill, and

*b.* The resident has elected to receive hospice services under the federal Medicare program from a Medicare certified hospice program, and

*c.* The facility and the hospice program have entered into a written agreement under which the hospice program takes full responsibility for the professional management of hospice care.

**58.14(2)** Each resident admitted to an intermediate care facility shall have had a physical examination prior to admission. If the resident is admitted directly from a hospital, a copy of the hospital admission physical and discharge summary may be made part of the record in lieu of an additional physical examination. A record of the examination, signed by the physician, shall be a part of the resident's record. (III)

**58.14(3)** Arrangements shall be made to have a physician available to furnish medical care in case of emergency. (II, III)

**58.14(4)** Rescinded, effective 7/14/82.

**58.14(5)** The person in charge shall immediately notify the physician of any accident, injury, or adverse change in the resident's condition. (I, II, III)

**58.14(6)** A schedule listing the names and telephone numbers of the physicians shall be posted in each nursing station. (III)

**58.14(7)** Residents shall be admitted to an intermediate care facility only on a written order signed by a physician certifying that the individual being admitted requires no greater degree of nursing care than the facility is licensed to provide. (III)

of time resident was restrained. The documentation of the use of Type III restraint shall also include the time of position change. (II)

**58.43(7)** Each facility shall implement written policies and procedures governing the use of restraints which clearly delineate at least the following:

*a.* Physicians' orders shall indicate the specific reasons for the use of restraints. (II)

*b.* Their use is temporary and the resident will not be restrained for an indefinite amount of time. (I, II)

*c.* A qualified nurse shall make the decision for the use of a Type II or Type III restraint for which there shall be a physician's order. (II)

*d.* A resident placed in a Type II or III restraint shall be checked at least every thirty minutes by appropriately trained staff. No form of restraint shall be used or applied in such a manner as to cause injury or the potential for injury and provide a minimum of discomfort to resident restrained. (I, II)

*e.* Reorders are issued only after the attending physician reviews the resident's condition. (II)

*f.* Their use is not employed as punishment, for the convenience of the staff, or as a substitute for supervision or program. (I, II)

*g.* The opportunity for motion and exercise shall be provided for a period of not less than ten minutes during each two hours in which Type II and Type III restraints are employed, except when resident is sleeping. However, when resident awakens, this shall be provided. This shall be documented each time. A check sheet may serve this purpose. (I, II)

*h.* Locked restraints or leather restraints shall not be permitted except in life threatening situations. Straight jackets and secluding residents behind locked doors shall not be employed. (I, II)

*i.* Nursing assessment of the resident's need for continued application of a Type III restraint shall be made every twelve hours and documented on the nurse's progress record. Documentation shall include the type of restraint, reason for the restraint and the circumstances. Nursing assessment of the resident's need for continued application of either a Type I or Type II restraint and nursing evaluation of the resident's physical and mental condition shall be made every thirty days and documented on the nurse's progress record. (II)

*j.* A divided door equipped with a securing device that may be readily opened by personnel shall be considered an appropriate means of temporarily confining a resident in his or her room. (II)

*k.* Divided doors shall be of the type that when the upper half is closed the lower section shall close. (II)

*l.* Methods of restraint shall permit rapid removal of the resident in the event of fire or other emergency. (I, II)

*m.* The facility shall provide orientation and ongoing education programs in the proper use of restraints.

**58.43(8)** In the case of a mentally retarded individual who participates in a behavior modification program involving use of restraints or aversive stimuli, the program shall be conducted only with the informed consent of his/her parent or responsible party. Where restraints are employed, an individualized program shall be developed by the interdisciplinary team with specific methodologies for monitoring its progress. (II)

*a.* The resident's responsible party shall receive a written account of the proposed plan of the use of restraints or aversive stimuli and have an opportunity to discuss the proposal with a representative(s) of the treatment team. (II)

*b.* The responsible party must consent in writing prior to the use of the procedure. Consent may also be withdrawn in writing. (II)

**58.43(9)** Upon a claim of dependent adult abuse of a resident being reported, the administrator of the facility shall separate the victim and accused abuser immediately and maintain that separation until the abuse investigation is completed. (I, II)

**58.43(10)** Suspected abuse reports. The department shall investigate all complaints of dependent adult abuse which are alleged to have happened in a health care facility. The department shall inform the department of human services of the results of all evaluations and dispositions of dependent adult abuse investigations.

This rule is intended to implement Iowa Code section 135C.14 and 1987 Iowa Code supplement subsections 235B.1(6) and 235B.1(11).

**481—58.44(135C) Resident records.** Each resident shall be ensured confidential treatment of all information contained in his/her records, including information contained in an automatic data bank. His/her written consent shall be required for the release of information to persons not otherwise authorized under law to receive it. (II)

**58.44(1)** The facility shall limit access to any medical records to staff and consultants providing professional service to the resident. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

**58.44(2)** Similar procedures shall safeguard the confidentiality of residents' personal records, e.g., financial records and social services records. Only those personnel concerned with the financial affairs of the residents may have access to the financial records. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

**58.44(3)** The resident, or his/her responsible party, shall be entitled to examine all information contained in his/her record and shall have the right to secure full copies of the record at reasonable cost upon request, unless the physician determines the disclosure of the record or section thereof is contraindicated in which case this information will be deleted prior to making the record available to the resident or responsible party. This determination and the reasons for it must be documented in the resident's record. (II)

**481—58.45(135C) Dignity preserved.** The resident shall be treated with consideration, respect, and full recognition of his/her dignity and individuality, including privacy in treatment and in care for his/her personal needs. (II)

**58.45(1)** Staff shall display respect for residents when speaking with, caring for, or talking about them, as constant affirmation of their individuality and dignity as human beings. (II)

**58.45(2)** Schedules of daily activities shall allow maximum flexibility for residents to exercise choice about what they will do and when they will do it. Residents' individual preferences regarding such things as menus, clothing, religious activities, friendships, activity programs, entertainment, sleeping and eating, also times to retire at night and arise in the morning shall be elicited and considered by the facility. (II)

**58.45(3)** Residents shall be examined and treated in a manner that maintains the privacy of their bodies. A closed door or a drawn curtain shall shield the resident from passers-by. People not involved in the care of the residents shall not be present without the resident's consent while he/she is being examined or treated. (II)

**58.45(4)** Privacy of a resident's body also shall be maintained during toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance. (II)

**58.45(5)** Staff shall knock and be acknowledged before entering a resident's room unless the resident is not capable of a response. This shall not apply in emergency conditions. (II)

**481—58.46(135C) Resident work.** No resident may be required to perform services for the facility, except as provided by sections 219.14 and 253.5, The Code. (II)

**58.46(1)** Residents may not be used to provide a source of labor for the facility against their will. Physician's approval is required for all work programs. (I, II)

**58.46(2)** If the plan of care requires activities for therapeutic or training reasons, the plan for these activities shall be professionally developed and implemented. Therapeutic or training goals must be clearly stated and measurable and the plan shall be time limited and reviewed at least quarterly. (II)

**58.55(2)** Approval of the state fire marshal shall be obtained before approval of the department will be considered.

**58.55(3)** A business or activity conducted in a health care facility or in the same physical structure as a health care facility shall not reduce space, services or staff available to residents below minimums required in these rules and 481—Chapter 61. (I, II, III)

This rule will become effective July 1, 1992.

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

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**See IAB, Inspections and Appeals Department.

◊Three ARCs

# CHAPTER 59
# SKILLED NURSING FACILITIES
[Prior to 7/15/87, Health Department(470)Ch 59]

**481—59.1(135C) Definitions.** For the purpose of these rules, the following terms shall have the meaning indicated in this chapter. The definitions set out in Iowa Code section 135C.1 shall be considered to be incorporated verbatim in the rules. The use of the words "shall" and "must" indicate those standards are mandatory. The use of the words "should" and "could" indicate those standards are recommended.

**59.1(1)** *"Accommodation"* means the provision of lodging, including sleeping, dining, and living areas.

**59.1(2)** *"Administrator"* means a person licensed pursuant to Iowa Code chapter 147, who administers, manages, supervises, and is in general administrative charge of a skilled nursing facility, whether or not such individual has an ownership interest in such facility, and whether or not the functions and duties are shared with one or more individuals.

**59.1(3)** *"Alcoholic"* means a person in a state of dependency resulting from excessive or prolonged consumption of alcoholic beverages as defined in Iowa Code chapter 125.2.

**59.1(4)** *"Ambulatory"* means the condition of a person who immediately and without aid of another is physically and mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

**59.1(5)** *"Basement"* means that part of a building where the finish floor is more than thirty inches below the finish grade of the building.

**59.1(6)** *"Board"* means the regular provision of meals.

**59.1(7)** *"Chairfast"* means capable of maintaining a sitting position but lacking the capacity of bearing own weight, even with the aid of a mechanical device or another individual.

**59.1(8)** *"Communicable disease"* means a disease caused by the presence of viruses or microbial agents within a person's body, which agents may be transmitted either directly or indirectly to other persons.

**59.1(9)** *"Department"* means the state department of inspections and appeals.

**59.1(10)** *"Distinct part"* means a clearly identifiable area or section within a health care facility, consisting of at least a residential unit, wing, floor, or building containing contiguous rooms.

**59.1(11)** *"Drug addiction"* means a state of dependency, as medically determined, resulting from excessive or prolonged use of drugs as defined in chapter 204 of the Code.

**59.1(12)** *"Medication"* means any drug including over-the-counter substances ordered and administered under the direction of the physician.

**59.1(13)** *"Nonambulatory"* means the condition of a person who immediately and without aid of another is not physically and mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

**59.1(14)** *"Personal care"* means assistance with the activities of daily living which the recipient can provide for himself or herself only with difficulty. Examples are help in getting in and out of bed, assistance with personal hygiene and bathing, help with dressing and feeding, and supervision over medications which can be self-administered.

**59.1(15)** *"Program of care"* means all services being provided for a resident in a health care facility.

**59.1(16)** *"Qualified mental retardation professional"* means a psychologist, physician, registered nurse, educator, social worker, physical or occupational therapist, speech therapist or audiologist who meets the educational requirements for the profession, as required in the State of Iowa, and having one year experience working with the mentally retarded.

**481—59.4(135C) General requirements.**

**59.4(1)** The license shall be displayed in a conspicuous place in the facility which is viewed by the public. (III)

**59.4(2)** The license shall be valid only in the possession of the licensee to whom it is issued.

**59.4(3)** The posted license shall accurately reflect the current status of the skilled nursing facility. (III)

**59.4(4)** Licenses expire one year after the date of issuance or as indicated on the license.

**59.4(5)** No skilled nursing facility shall be licensed for more beds than have been approved by the health facilities construction review committee.

**59.4(6)** Each citation or a copy of each citation issued by the department for a class I or class II violation shall be prominently posted by the facility in plain view of the residents, visitors, and persons inquiring about placement in the facility. The citation or copy of the citation shall remain posted until the violation is corrected to the satisfaction of the department. (III)

**481—59.5(135C) Notifications required by the department.** The department shall be notified:

**59.5(1)** Within forty-eight hours, by letter, of any reduction or loss of nursing or dietary staff lasting more than seven days which places the staffing ratio below that required for licensing. No additional residents shall be admitted until the minimum staffing requirements are achieved; (III)

**59.5(2)** Of any proposed change in the skilled nursing facility's functional operation or addition or deletion of required services; (III)

**59.5(3)** Thirty days before addition, alteration, or new construction is begun in the skilled nursing facility or on the premises; (III)

**59.5(4)** Thirty days in advance of closure of the skilled nursing facility; (III)

**59.5(5)** Within two weeks of any change in administrator; (III)

**59.5(6)** When any change in the category of license is sought; (III)

**59.5(7)** Prior to the purchase, transfer, assignment, or lease of a skilled nursing facility, the licensee shall:

*a.* Inform the department of the pending sale, transfer, assignment, or lease of the facility; (III)

*b.* Inform the department of the name and address of the prospective purchaser, transferee, assignee, or lessee at least thirty days before the sale, transfer, assignment, or lease is completed; (III)

*c.* Submit a written authorization to the department permitting the department to release all information of whatever kind from the department's files concerning the licensee's skilled nursing facility to the named prospective purchaser, transferee, assignee, or lessee. (III)

**59.5(8)** Pursuant to the authorization submitted to the department by the licensee prior to the purchase, transfer, assignment, or lease of a skilled nursing facility, the department shall upon request send or give copies of all recent licensure surveys and of any other pertinent information relating to the facility's licensure status to the prospective purchaser, transferee, assignee, or lessee; costs for such copies shall be paid by the prospective purchaser.

**481—59.6(135C) Witness fees.** The fees of witnesses for attendance and travel shall be the same as the fees for witnesses before the district court and shall be paid by the party to the proceeding at whose request the subpoena is issued.

**481—59.7(135C) Licenses for distinct parts.**

**59.7(1)** Separate licenses may be issued for distinct parts of a health care facility which are clearly identifiable, containing contiguous rooms in a separate wing or building or on a separate floor of the facility and which provide care and services of separate categories.

**59.7(2)** The following requirements shall be met for a separate licensing of a distinct part:

*a.* The distinct part shall serve only residents who require the category of care and services immediately available to them within that part; (III)

*b.* The distinct part shall meet all the standards, rules, and regulations pertaining to the category for which a license is being sought;

*c.* A distinct part must be operationally and financially feasible;

*d.* A separate staff with qualifications appropriate to the care and services being rendered must be regularly assigned and working in the distinct part under responsible management; (III)

*e.* Separately licensed distinct parts may have certain services such as management, building maintenance, laundry, and dietary in common with each other.

**481—59.8(135C) Governing body and management.**

**59.8(1)** There shall be an effective governing body or designated persons so functioning, with full legal authority and responsibility for the operation of the facility.

**59.8(2)** The governing body shall:

*a.* Adopt effective resident care policies;

*b.* Adopt administrative policies and bylaws governing the operation of the facility, in accordance with legal requirements;

*c.* Make available to all members of the governing body written and dated copies of such policies and bylaws;

*d.* Review and revise such policies and bylaws as necessary;

*e.* Adopt policies to ensure that the facility co-operates in an effective program of independent medical evaluation;

*f.* Appoint a qualified administrator;

*g.* Through the administrator, implements and maintains written personnel policies and procedures that support sound resident care and personnel policies.

**481—59.9(135C) Utilization review.** Rescinded IAB 4/1/92, effective 5/6/92.

**481—59.10(135C) Administrator.**

**59.10(1)** Each skilled nursing facility shall have one person in charge, duly licensed as a nursing home administrator or acting in a provisional capacity in accordance with the laws of the state of Iowa and the rules of the Iowa board of examiners for nursing home administrators. (III)

**59.10(2)** A licensed administrator may act as an administrator for not more than two skilled nursing facilities: (II)

*a.* The distance between the two facilities shall be no greater than fifty miles; (II)

*b.* The administrator shall spend the equivalent of three full eight-hour days per week in each facility; (II)

*c.* The administrator may be responsible for no more than one hundred fifty beds in total if he or she is an administrator of more than one facility. (II)

**59.10(3)** The licensee may be the licensed nursing home administrator providing he or she meets the requirements as set forth in these regulations and devotes the required time to administrative duties. Residency in the facility does not in itself meet the requirements. (III)

**59.10(4)** A provisional administrator may be appointed on a temporary basis by the skilled nursing facility licensee to assume the administrative responsibilities for a skilled nursing facility for a period not to exceed six months when, through no fault of its own, the home has lost its administrator and has not been able to replace the administrator provided:

*a.* The department has been notified prior to the date of the administrator's appointment; (III)

*b.* The board of examiners for nursing home administrators has approved the administrator's appointment and has confirmed such appointment in writing to the department. (III)

**59.10(5)** In the absence of the administrator, a responsible person shall be designated in writing to the department to be in charge of the facility. (III) The person designated shall:

*a.* Be knowledgeable of the operation of the facility; (III)

*b.* Have access to records concerned with the operation of the facility; (III)

*c.* Be capable of carrying out administrative duties and of assuming administrative responsibilities; (III)

*d.* Be at least eighteen years of age; (III)

*e.* Be empowered to act on behalf of the licensee during the administrator's absence concerning the health, safety, and welfare of the residents; (III)

*f.* Have had training to carry out assignments and take care of emergencies and sudden illnesses of residents. (III)

**59.10(6)** A licensed administrator in charge of two facilities shall employ an individual designated as a full-time assistant administrator for each facility. (III)

**59.10(7)** An administrator of only one facility shall be considered as a full-time employee. Full-time employment is defined as forty hours per week. (III)

**481—59.11(135C) Administration.**

**59.11(1)** The licensee shall:

*a.* Assume the responsibility for the overall operation of the skilled nursing facility; (III)

*b.* Be responsible for compliance with all applicable laws and with the rules of the department; (III)

*c.* Establish written policies, which shall be available for review, for the operation of the skilled nursing facility. (III)

**59.11(2)** The administrator shall:

*a.* Be responsible for the selection and direction of competent personnel to provide services for the resident care program; (III)

*b.* Be responsible for the arrangement for all department heads to annually attend a minimum of ten contact hours of educational programs either approved or provided by the department; (III)

*c.* Be responsible for a monthly in-service educational program for all employees and to maintain records of programs and participants; (III)

*d.* Make available the skilled nursing facility payroll records for departmental review as needed; (III)

*e.* Be required to maintain a staffing pattern of all departments. These records must be maintained for six months and are to be made available for departmental review. (III)

**481—59.12(135C) General policies.**

**59.12(1)** There shall be written personnel policies in facilities of more than fifteen beds to include hours of work, and attendance at educational programs. (III)

**59.12(2)** There shall be a written job description developed for each category of worker. The job description shall include title of job, job summary, pay range, qualifications (formal education and experience), skills needed, physical requirements and responsibilities. (III)

**59.12(3)** There shall be written personnel policies for each facility. Personnel policies shall include the following requirements:

*a.* Employees shall have a physical examination and tuberculin test before employment, (I, II, III)

*b.* Employees shall have a physical examination at least every four years, including an assessment of tuberculosis status. (I, II, III)

**59.12(4)** Health certificates for all employees shall be available for review. (III)

**59.12(5)** No person with any of the following conditions shall be allowed to provide services in the facility: Boils, infected wounds, rashes, open sores, acute respiratory infections, influenza and influenza type disorders, and intestinal infections. Return to duty by personnel, who have had any of the above conditions and are under physician's orders, shall be with a physician's written approval. (III)

**59.12(6)** There shall be written policies for emergency medical care for employees and residents in case of sudden illness or accident which includes the individual to be contacted in case of emergency. (III)

**59.12(7)** The facility shall have a written agreement with a hospital for the timely admission of a resident who, in the opinion of the attending physician, requires hospitalization. (III)

**59.12(8)** There shall be written policies for resident care programs and services as outlined in these rules. (III)

**59.12(9)** The facility shall establish an infection control committee of representative professional staff with responsibility for overall infection control in the facility. (III)

*a.* The facility shall have established policies concerning the control, investigation, and prevention of infections within the facility. (III)

**59.14(2)** *Discharge planning.*

*a.* The facility shall have in operation an organized discharge planning program.

*b.* The administrator shall designate, in writing, one or more members of the staff to be responsible for discharge planning.

*c.* The facility shall maintain a written discharge planning procedure which describes:

(1) How the discharge co-ordinator will function;

(2) The time period in which each resident's need for discharge planning is determined;

(3) The maximum time period after which a re-evaluation of each resident's discharge plan is made;

(4) Local resources available to the facility;

(5) Provisions for periodic review and re-evaluation of the discharge planning program.

*d.* The facility shall, at the time of discharge, provide those responsible for the resident's post discharge care with an appropriate summary of information to ensure the optimal continuity of care.

*e.* The discharge summary shall include at least:

(1) Current information relative to diagnosis;

(2) Rehabilitation potential;

(3) A summary of the course of prior treatment;

(4) Physician's orders for the immediate care of the resident;

(5) Pertinent social information.

**59.14(3)** *Discharge or transfer.*

*a.* Prior notification shall be made to the next of kin, legal representative, attending physician, and sponsoring agency, if any, prior to transfer or discharge of any resident. (III)

*b.* Proper arrangements shall be made by the skilled nursing facility for the welfare of the resident prior to the transfer or discharge in the event of an emergency or inability to reach the next of kin or legal representative. (III)

*c.* The licensee shall not refuse to discharge or transfer a resident when the physician, family, resident, or legal representative requests such a discharge or transfer. (II, III)

*d.* Advance notification by telephone will be made to the receiving facility prior to the transfer of any resident. (III)

*e.* When a resident is transferred or discharged, the appropriate record as set forth in 59.19(2)"*k*" of these rules will accompany the resident. (II, III)

**481—59.15(135C) Contracts.** Each contract shall:

**59.15(1)** State the base rate or scale per day or per month, the services included, and the method of payment; (III)

**59.15(2)** Contain a complete schedule of all offered services for which a fee may be charged in addition to the base rate. (III) Furthermore, the contract shall:

*a.* Stipulate that no further additional fees shall be charged for items not contained in complete schedule of services as set forth in subsection 2; (III)

*b.* State the method of payment of additional charges; (III)

*c.* Contain an explanation of the method of assessment of such additional charges and an explanation of the method of periodic reassessment, if any, resulting in changing such additional charges; (III)

*d.* State that additional fees may be charged to the resident for nonprescription drugs, other personal supplies, and services by a barber, beautician, etc.; (III)

**59.15(3)** Contain an itemized list of those services, with the specific fee the resident will be charged and method of payment, as related to his or her current condition, based on the nursing assessment at the time of admission, which is determined in consultation with the administrator; (III)

**59.15(4)** Include the total fee to be charged initially to the specific resident; (III)

**59.15(5)** State the conditions whereby the facility may make adjustments to their overall fees for resident care as a result of changing costs. (III) Furthermore, the contract shall provide that the facility shall give:

*a.* Written notification to the resident, or responsible party when appropriate, of changes in the overall rates of both base and additional charges at least thirty days prior to effective date of such changes: (III)

*b.* Notification to the resident, or responsible party when appropriate, of changes in additional charges, based on a change in the resident's condition. Notification must occur prior to the date such revised additional charges begin. If notification is given orally, subsequent written notification must also be given within a reasonable time, not to exceed one week, listing specifically the adjustments made; (III)

**59.15(6)** State the terms of agreement in regard to refund of all advance payments in the event of transfer, death, voluntary, or involuntary discharge; (III)

**59.15(7)** State the terms of agreement concerning the holding and charging for a bed when a resident is hospitalized or leaves the facility temporarily for recreational or therapeutic reasons. The terms shall contain a provision that the bed will be held at the request of the resident or the resident's responsible party.

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

*b.* The facility shall reserve the bed when requested for as long as payments are made in accordance with the contract. (II)

**59.15(8)** State the conditions under which the involuntary discharge or transfer of a resident would be affected; (III)

**59.15(9)** State the conditions of voluntary discharge or transfer; (III)

**59.15(10)** Set forth any other matters deemed appropriate by the parties to the contract. No contract or any provision thereof shall be drawn or construed so as to relieve any health care facility of any requirement or obligation imposed upon it by this chapter or any standards or rules in force pursuant to this chapter; (III)

**59.15(11)** Each party shall receive a copy of the signed contract. (III)

**481—59.48(135C) Resident abuse prohibited.** Each resident shall receive kind and considerate care at all times and shall be free from mental and physical abuse. Each resident shall be 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 to himself/herself or to others, in which case restraints may be authorized by designated professional personnel who promptly report the action taken to the physician; and in the case of a mentally retarded individual when ordered in writing by a physician and authorized by a designated qualified mental retardation professional for use during behavior modification sessions. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered to be a restraint. (II)

**59.48(1)** Mental abuse includes, but is not limited to, humiliation, harassment, and threats of punishment or deprivation. (II)

**59.48(2)** Physical abuse includes, but is not limited to, corporal punishment and the use of restraints as punishment. (II)

**59.48(3)** Drugs such as tranquilizers may not be used as chemical restraints to limit or control resident behavior for the convenience of staff. (II)

**59.48(4)** Physicians' orders are required to utilize all types of physical restraints and shall be renewed at least quarterly. (II) Physical restraints are defined as the following:

Type I—the equipment used to promote the safety of the individual but is not applied directly to their person. Examples: Divided doors and totally enclosed cribs.

Type II—the application of a device to the body to promote safety of the individual. Examples: Vest devices, soft-tie devices, hand socks, geriatric chairs.

Type III—the application of a device to any part of the body which will inhibit the movement of that part of the body only. Examples: Wrist, ankle or leg restraints and waist straps.

**59.48(5)** Physical restraints are not to be used to limit resident mobility for the convenience of staff and must comply with life safety requirements. If a resident's behavior is such that it may result in injury to himself/herself or others and any form of physical restraint is utilized, it should be in conjunction with a treatment procedure(s) designed to modify the behavioral problems for which the resident is restrained or, as a last resort, after failure of attempted therapy. (I, II)

**59.48(6)** Each time a Type II or III restraint is used documentation on the nurse's progress record shall be made which includes type of restraint and reasons for the restraint and length of time resident was restrained. The documentation of the use of Type III restraint shall also include the time of position change. (II)

**59.48(7)** Each facility shall implement written policies and procedures governing the use of restraints which clearly delineate at least the following:

*a.* Physicians' orders shall indicate the specific reasons for the use of restraints. (II)

*b.* Their use is temporary and the resident will not be restrained for an indefinite amount of time. (I, II)

*c.* A qualified nurse shall make the decision for the use of a Type II or Type III restraint for which there shall be a physician's order. (II)

*d.* A resident placed in a Type II or III restraint shall be checked at least every thirty minutes by appropriately trained staff. No form of restraint shall be used or applied in such a manner as to cause injury or the potential for injury and provide a minimum of discomfort to resident restrained. (I, II)

*e.* Reorders are issued only after the attending physician reviews the resident's condition. (II)

*f.* Their use is not employed as punishment, for the convenience of the staff, or as a substitute for supervision or program. (I, II)

*g.* The opportunity for motion and exercise shall be provided for a period of not less than ten minutes during each two hours in which Type II and Type III restraints are employed,

except when resident is sleeping. However, when resident awakens, this shall be provided. This shall be documented each time. A check sheet may serve this purpose. (I, II)

*h.* Locked restraints or leather restraints shall not be permitted except in life threatening situations. Straight jackets and secluding residents behind locked doors shall not be employed. (I, II)

*i.* Nursing assessment of the resident's need for continued application of a Type III restraint shall be made every twelve hours and documented on the nurse's progress record. Documentation shall include the type of restraint, reason for the restraint and the circumstances. Nursing assessment of the resident's need for continued application of either a Type I or Type II restraint and nursing evaluation of the resident's physical and mental condition shall be made every thirty days and documented on the nurse's progress record. (II)

*j.* A divided door equipped with a securing device that may be readily opened by personnel shall be considered an appropriate means of temporarily confining resident in his or her room. (II)

*k.* Divided doors shall be of the type that when the upper half is closed the lower section shall close. (II)

*l.* Methods of restraint shall permit rapid removal of the resident in the event of fire or other emergency. (I, II)

*m.* The facility shall provide orientation and ongoing education programs in the proper use of restraints. (II)

**59.48(8)** In the case of a mentally retarded individual who participates in a behavior modificaiton program involving use of restraints or aversive stimuli, the program shall be conducted only with the informed consent of his/her parent or responsible party. Where restraints are employed, an individualized program shall be developed by the interdisciplinary team with specific methodoligies for monitoring its progress. (II)

*a.* The resident's responsible party shall receive a written account of the proposed plan of the use of restraints or aversive stimuli and have an opportunity to discuss the proposal with a representative(s) of the treatment team. (II)

*b.* The responsible party must consent in writing prior to the use of the procedure. Consent may also be withdrawn in writing. (II)

**59.48(9)** Upon a claim of dependent adult abuse of a resident being reported, the administrator of the facility shall separate the victim and accused abuser immediately and maintain that separation until the abuse investigation is completed. (I, II)

**59.48(10)** Suspected abuse reports. The department shall investigate all complaints of dependent adult abuse which are alleged to have happened in a health care facility. The department shall inform the department of human services of the results of all evaluations and dispositions of dependent adult abuse investigations.

This rule is intended to implement 1987 Iowa Code supplement subsections 235B.1(6) and 235B.1(11).

**481—59.49(135C) Resident records.** Each resident shall be ensured confidential treatment of all information contained in his/her records, including information contained in an automatic data bank. His/her written consent shall be required for the release of information to persons not otherwise authorized under law to receive it. (II)

**59.49(1)** The facility shall limit access to any medical records to staff and consultants providing professional service to the resident. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

**59.49(2)** Similar procedures shall safeguard the confidentiality of residents' personal records, e.g., financial records and social services records. Only those personnel concerned with the financial affairs of the residents may have access to the financial records. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

**59.49(3)** The resident, or his/her responsible party, shall be entitled to examine all information contained in his/her record and shall have the right to secure full copies of the record

**59.58(7)** There shall be at least one nursing staff person on a CCDI unit at all times. (I, II, III)

**59.58(8)** The CCDI unit or facility license may be revoked, suspended or denied pursuant to Iowa Code chapter 135C and Iowa Administrative Code 481—Chapter 50.

This rule is intended to implement 1990 Iowa Acts, chapter 1016.

**481—59.59(135C) Another business or activity in a facility.** Another business or activity shall not be carried on in a health care facility or in the same physical structure with a health care facility unless:

1. The business or activity is under the control of and is directly related to and incidental to the operation of the health care facility; or

2. The business or activity is approved by the department and the state fire marshal. (I, II, III)

**59.59(1)** The following factors will be considered by the department in determining whether a business or activity will interfere with the use of the facility by residents, interfere with services provided to residents, or be disturbing to residents:

*a.* Health and safety risks for residents;

*b.* Compatibility of the proposed business or activity with the facility program;

*c.* Noise created by the proposed business or activity;

*d.* Odors created by the proposed business or activity;

*e.* Use of entrances and exits for the business or activity in regard to safety and disturbance of residents and interference with delivery of services;

*f.* Use of the facility's corridors or rooms as thoroughfares to the business or activity in regard to safety and disturbance of residents and interference with delivery of services;

*g.* Proposed staffing for the business or activity;

*h.* Sharing of services and staff between the proposed business or activity and the facility;

*i.* Facility layout and design; and

*j.* Parking area utilized by the business or activity.

**59.59(2)** Approval of the state fire marshal shall be obtained before approval of the department will be considered.

**59.59(3)** A business or activity conducted in a health care facility or in the same physical structure as a health care facility shall not reduce space, services or staff available to residents below minimums required in these rules and 481—Chapter 61. (I, II, III)

This rule will become effective July 1, 1992.

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

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**See IAB, Inspections and Appeals Department.
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†Two ARCs

# CHAPTER 60
# MINIMUM PHYSICAL STANDARDS FOR RESIDENTIAL CARE FACILITIES

[Prior to 7/15/87, Health Department(470)Ch60]

**481—60.1(135C) Definitions.** Definitions in 481—57.1(135C) and 481—63.1(135C) of the rules of this department are hereby incorporated by reference as part of this chapter.

**481—60.2(135C) Variances.** Procedures for variances in 481—57.2(135C) or 63.2(135C) of the rules of this department are hereby incorporated by reference as part of this chapter. Certain occupancies, conditions in the area, or the site may make compliance with the rules impractical or impossible. Certain conditions may justify minor modification of the rules. In specific cases, variances to the rules may be permitted by the reviewing authority.

**481—60.3(135C) General requirements.**

**60.3(1)** Residential care facilities shall contain the elements described herein and shall be built in accordance with construction requirements outlined. (III)

**60.3(2)** This chapter covers both new and existing construction. In various sections of the rules specific provisions for existing structures, differing from those for new construction, are provided by a notation at the end of the rule as follows:

*a.* Exception 1: Rule does not pertain to facilities licensed for less than 16 beds; or units housing fewer than 16 beds which are in distinctly separate buildings, located on a contiguous parcel of land, separated only by a public or private street (Refer to 1987 Iowa Code chapter 414, municipal zoning, section 22 — zoning for family homes, for additional information.)

*b.* Exception 2: Rule does not pertain to facilities licensed before May 1, 1972.

*c.* Exception 3: Rule does not pertain to facilities with construction plans approved by the department before May 1, 1977.

*d.* Exception 4: Rule does not pertain to facilities licensed before March 30, 1988.

*e.* Exception 5: Rule does not pertain to facilities licensed as residential care facilities for eight or fewer beds.

*f.* Exception 6: Rule does not pertain to facilities built according to plans approved by the department prior to May 6, 1992.

**60.3(3)** The rules and regulations apply to all residential care facilities and the renovations, additions, functional alterations, or change of space utilization to existing residential care facilities construction after the effective date of these rules. Conversion of a building or any of the parts not currently licensed as a residential care facility must meet the rules governing construction of new residential care facilities. (III)

**60.3(4)** Building site is subject to departmental approval as based upon the following criteria:

*a.* Submit a vicinity map indicating the site location and address on an 8½- by 11-inch sheet. If possible, include a city map. (III)

*b.* Neighborhood environment shall be free from excessive noise, dirt, polluted or odorous air. (III)

*c.* There shall be an area available for outdoor activities calculated at 40 square feet per licensed bed. (III) (Exception 4) Open air porches may be included in meeting requirements.

*d.* Each facility shall have on-site parking space to satisfy the needs of residents, employees, staff, and visitors. (III)

The following shall be provided:

(1) In facilities of 16 beds or greater, provide one space for each five beds, plus one space for each shift staff member and employee. (Exception 4)

(2) In facilities of 15 beds or less, provide one space for each three beds, plus one space for each shift staff member and employee. (Exception 4)

(3) Handicapped parking as appropriate, or a minimum of one space. (Exception 4)

*e.* Accessibility shall be provided for emergency and delivery vehicles. (III)

**60.3(5)** When construction is contemplated, whether for a new building, an addition to an existing building, functional alteration to an existing building, or conversion of an existing building, the licensee or applicant for license shall:

*a.* File a detailed and comprehensive program of care as set forth in rules 481—57.3 or 481—63.3, Iowa Administrative Code, for departmental review and approval, including a description of the specific needs of the residents to be served and any other information the department may require. (III)

*b.* Submit a preliminary site plan and floor plan for departmental review. The design must meet the requirements of all applicable state statutes, state fire codes, federal standards, and local ordinances. The most stringent rules of the above regulations apply in resolving conflicts. (III)

*c.* Submit legible working drawings and specifications showing all elements of construction, fixed equipment, and mechanical and electrical systems to the department and to the state fire marshal for review. Such construction documents shall be prepared by or under the direct supervision of a registered architect or engineer, working within the appropriate field of registration, licensed to practice in Iowa. All construction documents shall be certified by and bear the seal of the architect or engineer responsible for the project. Each project shall be evaluated for its impact on the facility. Projects not affecting primary structural elements may, at the discretion of the department, be excluded from this rule. (III)

*d.* Receive written approval from the department and the state fire marshal's office before start of construction. If on-site construction above the foundation is not started within 12 months of the date of final approval of the working drawings and specifications, this approval shall be void and the plans and specifications shall be resubmitted for reconsideration of approval. (III)

*e.* All changes to the approved plans and specifications shall be approved in writing by the department and the state fire marshal's office prior to making the change. Applicant is responsible for assuring that construction proceeds as per approved plans and specifications. (III)

*f.* It shall be the responsibility of the owner or agent to notify the department at the following intervals:

(1) At least 30 days prior to commencement of construction on the premises. (III)

(2) At least 14 days prior to the pouring of the concrete floor slab. (III)

(3) After completion of the mechanical or electrical rough-in and prior to enclosing walls. (III)

(4) Fourteen days prior to the final completion of the project. (III)

*g.* Certain occupancies, conditions in the area, or the site may make compliance with the rules impractical or impossible. Certain conditions may justify minor modifications of the rules. In specific cases, variations to the rules may be permitted by the reviewing authority after the following conditions are considered:

(1) The design and planning for the specific property offer improved or compensating features providing equivalent desirability and utility;

(2) Alternate or special construction methods, techniques, and mechanical equipment, if proposed, offer equivalent durability, utility, safety, structural strength and rigidity, sanitation, odor control, protection from corrosion, decay and insect attack, and quality of workmanship;

(3) Variations permitted by the department do not individually or in combination with other variations endanger the health, safety, or welfare of any resident;

(4) Variations are limited to the specific project under consideration and are not construed as establishing a precedent for similar acceptance in other cases;

(5) Occupancy and function of the building shall be considered;

(6) Type of licensing shall be considered.

**60.3(6)** Except as provided in subrule 60.3(8), the facility shall be made accessible to and usable by the physically handicapped in accordance with the requirements of division 7 of the state building code, 680—16.704(103A) and 680—16.705(103A). (III) (Exception 3)

*c.* All air supply and air exhaust systems shall be mechanically operated and ducted from a central system to and from each room. All fans serving exhaust systems shall be located at the discharge end of the system. The ventilation rates shown in Table 2 shall be considered as minimum acceptable rates, and shall not be construed as precluding the use of higher ventilation rates. (III)

*d.* The bottoms of ventilation openings shall be not less than 3 inches above the floor of any room. (III)

*e.* All central systems designed to heat and cool the building with recirculation of air shall be equipped with a minimum 2-inch deep, 8- to 11-pleat per foot, class 2 Underwriters' Laboratories, self-extinguishing, nonwoven, cotton, downstream, or final filter with a minimum efficiency of 25 to 30 percent and average arrestance of 90 percent, tested in accordance with ASHRAE Standard 52–76. This does not preclude the additional use of a prefilter upstream of the air handling equipment to extend the service life of the downstream, or final filter. (III) (Exception 6)

*f.* Any alternate ventilation system designed to attain an equivalent degree of odor control and purity of air to resident areas shall be considered for approval under conditions in 481—Chapters 57 and 63, rules 57.2(135C) and 63.2(135C). (III)

*g.* Rooms containing fuel-fired heating units shall be provided with sufficient outdoor air to maintain combustion rates of equipment and reasonable temperatures in the room and adjoining areas. (III)

*h.* Appropriate ventilation shall be provided in food storerooms to maintain temperature and humidity for the type of food being stored. (III)

*i.* Outdoor ventilation air intakes shall be located as far away as practicable, but not less than 25 feet from the exhaust outlets of any ventilating systems, combustion equipment stacks or noxious fumes. The bottom of outdoor intakes serving central air systems shall be located as high as practical, but not less than 6 feet above grade level, or, if installed through the roof, 3 feet above roof opening. (III)

*j.* The ventilation system shall be designed and balanced to provide the general pressure relationship to adjacent areas shown in the Pressure Relationship and Ventilation Table 2. Through-the-wall air conditioning units will not be used to calculate make up air. (III) (Exception 4)

*k.* Corridors, attics, or crawl spaces shall not be used as a plenum to supply air to or exhaust air from any rooms. (III)

*l.* The air system for resident rooms between smoke stop partitions shall be operated with common switches. (III)

*m.* Actuation of the fire alarm system shall shut down the air distribution system. (III)

*n.* Air handling duct systems shall meet the requirements of NFPA Standard 90A and 90B. Supply and return registers shall not be at the same level and shall be designed to inhibit stratification. (III)

*o.* Fire and smoke dampers shall be constructed, located and installed in accordance with the requirements of NFPA Standards 90A, 90B, and 101. (III)

*p.* Range and dishwasher exhaust hood in food preparation centers shall have a minimum exhaust rate of 60 cubic feet per minute, per square feet of hood face area. Face area is defined for this purpose as the open area from the exposed perimeter of the hood to the average perimeter of the cooking surfaces. All hoods over cooking ranges shall be equipped with grease filters, a fire extinguishing system, and heat actuated fan controls. Cleanout openings shall be provided every 20 feet in horizontal exhaust duct systems serving hoods. Tempered air shall be supplied to balance the exhausted air. Special hood designs shall be evaluated. (III) (Exceptions 1 and 4)

*q.* Mechanical ventilation over cooking equipment and dishwashing equipment shall be properly designed to take hot air out and not bring cold air down on hot food or dishes. (III)

*r.* Filter beds shall be located upstream of the air conditioning equipment, unless a prefilter is employed. In this case the prefilter shall be upstream of the equipment and the main filter bed may be located further downstream. Filter frames shall be durable and carefully dimensioned and shall provide an airtight fit within enclosing duct work. All joints between filter segments and the enclosing duct work shall be gasketed or sealed to provide a positive seal against air leakage. (III)

*s.* All under-the-slab perimeter duct work shall be encased in lightweight or insulating concrete and sloped to a plenum low point. (III)

*t.* Laundry rooms shall be supplied with sufficient tempered outside air to balance the amounts exhausted and for combustion. (III)

*u.* The amounts of air and pressure relationship as set forth in Table 2 shall be provided. (III)

*v.* Condensate piping from cooling coils should be a minimum of ¾ inch IPS and provided with cleanouts every 10 feet. (III)

*w.* Attics or crawl spaces shall not be used to house heating or cooling equipment.

*x.* All such areas must be accessible through a swinging door.

Table No. 2
PRESSURE RELATIONSHIPS AND VENTILATION OF CERTAIN AREAS OF RESIDENTIAL CARE FACILITIES

| Area Designation | Minimum Total Air Changes Per Hour Supplied to Room | All Air Exhausted Directly to Outdoors | Room Pressure in Relation to Adjacent Space |
|---|---|---|---|
| Resident Room | 2 | Optional | Equal |
| Resident Area Corridor | 2 | Optional | Equal |
| Lounge and Designated Smoking Area | 6 | Optional | Negative |
| Soiled Workroom or Soiled Holding | 10 | Yes | Negative |
| Toilet Room | 10 | Yes | Negative |
| Bathroom | 10 | Yes | Negative |
| Janitor's Closet | 10 | Yes | Negative |
| Food Preparation Center | 10 | Yes | Equal |
| Dishwashing Room | 10 | Yes | Negative |
| Laundry, General | 10 | Yes | Equal |
| Soiled Linen Sorting and Storage | 10 | Yes | Negative |

**60.11(4)** Plumbing and other piping systems.

*a.* Every facility shall have a complete interior plumbing system. (III)

*b.* All plumbing and other piping systems shall be installed in accordance with the requirements of the Iowa state plumbing code and applicable provisions of local ordinances. (III) (Exception 3)

*c.* All water supply systems pipes below grade or in concrete slabs shall be type K, soft copper. No joints will be allowed below the slab.

*d.* No plastic piping shall be used in any hot or cold water system in a licensed health facility. (III)

*e.* Water supply systems. Water supply systems shall meet the following requirements:

(1) All facilities shall have a potable water source from a city water system or a private source which complies with the regulations and is approved by the department of natural resources. (III)

(2) Systems shall be designed to supply water to the fixtures and equipment at a minimum pressure of 15 pounds per square inch during maximum demand periods. (III)

(3) The temperature of the hot water to the resident lavatories, bath, and showers shall range between 110° Fahrenheit and 120° Fahrenheit. (III)

(4) Plumbing fixtures in janitor's rooms and soiled workrooms shall be provided with hot water. (III)

(5) Each water service main, branch main, riser and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture. (III) (Exception 4)

Except as noted in the list, copies of government publications can be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

These rules are intended to implement Iowa Code sections 10A.502(4) and 135C.2(1)*"b."*

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# CHAPTER 61
# MINIMUM PHYSICAL STANDARDS FOR NURSING FACILITIES

[Prior to 7/15/87, Health Department(470) Ch 61]

**481—61.1(135C) Definitions.** Definitions in rules 481—58.1(135C) and 481—59.1(135C) are incorporated by reference as part of this chapter.

**481—61.2(135C) Variances.** Procedures for requesting a variance in rules 481—58.2(135C) and 481—59.2(135C) are incorporated by reference as part of this chapter. Certain resident populations, conditions in the area, or the site may justify variances. In specific cases, variances to the rules may be granted by the director after the following conditions are met:

1. The design and planning for the specific property shall offer improved or compensating features which provide equivalent desirability and utility;
2. Alternate or special construction methods, techniques, and mechanical equipment shall offer equivalent durability, utility, safety, structural strength and rigidity, sanitation, odor control, protection from corrosion, decay and insect attack, and quality of workmanship;
3. The health, safety or welfare of any resident shall not be endangered;
4. Variations are limited to the specific project under consideration and shall not be construed as establishing a precedent for similar acceptance in other cases;
5. Occupancy and function of the building shall be considered; and
6. Type of licensing shall be considered.

**481—61.3(135C) General requirements.** Nursing facilities shall contain the elements described in this chapter and shall be built in accordance with these construction requirements. Elements available through affiliation with a connected hospital need not be duplicated. (III)

**61.3(1)** This chapter covers both new and existing construction. In various sections of the rules specific provisions for existing structures which differ from those for new construction are indicated by a notation at the end of the rule as follows:

*a.* (Exception 1): Rule does not pertain to facilities built before 1957;

*b.* (Exception 2): Rule does not pertain to facilities built before 1972;

*c.* (Exception 3): Rule does not pertain to facilities built according to plans approved by the department prior to January 1, 1977;

*d.* (Exception 4): Rule does not pertain to facilities built according to plans approved by the department prior to November 21, 1990.

*e.* (Exception 5): Rule does not pertain to facilities built according to plans approved by the department prior to May 6, 1992.

**61.3(2)** The rules apply to renovations, additions, functional alterations, or change of space utilization to existing facilities which are completed after November 21, 1990. Conversion of a building or any of the parts not currently licensed as a nursing facility must meet the rules governing construction of new facilities. (III)

**61.3(3)** The building site is subject to departmental approval.

*a.* An 8½- by 11-inch vicinity map shall be submitted which indicates the site location and address. If possible, a city map should also be included. (III)

*b.* The neighborhood environment shall be free from excessive noise, dirt, polluted or odorous air. (III)

*c.* There shall be an area available for outdoor activities. Open air porches and decks may be included in meeting this requirement. (III)

*d.* The outdoor area shall be 40 square feet per licensed bed. (III) (Exception 4)

*e.* Each facility shall have on-site parking space for residents, employees, staff and visitors. (III)

The following minimum parking spaces shall be provided:

(1) In facilities of 20 or more beds, one space for each five beds, plus one space for each day shift employee. (III) (Exception 4)

(2) In facilities of 19 or fewer beds, one space for each three beds, plus one space for each day shift employee. (III) (Exception 4)

(3) Handicapped parking as appropriate, or a minimum of one space. (III) (Exception 4)

*f.* Accessibility shall be provided for emergency and delivery vehicles. (III) (Exception 3)

**61.3(4)** When new construction, an addition, functional alteration, or conversion of an existing building is contemplated, the licensee or applicant for license shall:

*a.* File a detailed and comprehensive program of care as set forth in rules 481—58.3(135C) and 481—59.3(135C) which includes a description of the specific needs of the residents to be served, and any other information the department may require. (III)

*b.* Submit a preliminary site plan and floor plan. The design shall meet the requirements of all applicable state statutes, fire codes, federal regulations and local ordinances. The most stringent standards shall apply in resolving conflicts. (III)

*c.* Submit legible working drawings and specifications showing all elements of construction, fixed equipment, and mechanical and electrical systems to the department and to the state fire marshal. These construction documents shall be prepared by or under the direct supervision of a registered architect or engineer. The architects or engineers shall be working within their field of registration and shall be licensed to practice in Iowa. All construction documents shall be certified by and bear the seal of the architect or engineer responsible for the project. Each project shall be evaluated for its impact on the facility. Projects not affecting primary structural elements may, at the discretion of the department, be excluded from this rule. (III)

*d.* Receive written approval from the department and the state fire marshal's office before starting construction. If on-site construction above the foundation is not started within 12 months of the date of final approval of the working drawings and specifications, the approval shall be void and the plans and specifications shall be resubmitted. (III)

*e.* Have plans and specifications approved in writing by the department and the state fire marshal's office before a change in the building is made. The applicant is responsible for ensuring that construction proceeds according to approved plans and specifications. (III)

**61.3(5)** It is the responsibility of the owner or an agent to notify the department at the following intervals:

*a.* At least 30 days prior to commencement of construction on the premises; (III)

*b.* At least 14 days prior to pouring the concrete floor slab; (III)

*c.* After completion of the mechanical or electrical rough-in and prior to enclosing walls; and (III)

*d.* Fourteen days prior to the completion of the project. (III)

**61.3(6)** No other business shall be carried on in a health care facility except as provided in Iowa Code section 135C.5. No business or activity which is operated within the limitations of this Code section shall interfere in any manner with the use of the facility by the residents, nor be disturbing to them. (III)

**61.3(7)** The facility shall be made accessible to and usable by persons with physical handicaps in accordance with the requirements of the American National Standards Institute (ANSI) document A117.1-1986 except where more stringent requirements are specified in these rules. (II, III) (Exception 3)

**61.3(8)** No room in a basement shall be occupied for living purposes unless the room meets all the requirements of the department and is approved by the department as fit for human habitation. (III)

**61.3(9)** A foundation drainage system shall be installed around any portion of a building containing a basement. (III) (Exception 4)

*a.* The foundation drainage system shall be installed at a slope so the water will run to a low point and then run into a sump pit in the basement, into a storm sewer system, or out to surface drainage. (III) (Exception 4)

In facilities of 15 or fewer beds, an office shall be provided which may substitute for a nurses' station, administrator's office and business office. This area shall contain work space for charting and records and medication storage. (III)

**481—61.9(135C) Public area.** In each facility there shall be an entry area equipped with a coatrack and a shelf. (III).

**61.9(1)** Every facility shall provide a separate toilet for the public with a lavatory and water-closet. (III)

*a.* Public toilets shall be accessible to and usable by people who have a physical handicap. Equipment shall meet the ANSI document A117.1-1986. (III) (Exception 3)

*b.* In facilities over 15 beds, there shall be public toilet rooms for both men and women. (III) (Exception 4)

*c.* Public toilets shall contain a 60-inch by 60-inch clear floor area, free from obstructions. (III) (Exception 3)

**61.9(2)** A telephone shall be accessible to residents within the facility to make personal calls. The telphone shall be accessible to and functional for people who have a physical handicap. (III).

**481—61.10(135C) Elevator requirements.** (All provisions in this rule are subject to Exception 2) All facilities where either resident beds or other facilities for residents are not located on the first floor shall have electric or electrohydraulic elevators as specified in this rule. Facilities for residents include, but are not limited to, diagnostic, recreation, resident dining or therapy rooms. The first floor is the floor first reached from the main front entrance. Elevators shall comply with division of labor services regulations as promulgated under Iowa Code chapter 89A and 347—Chapters 71 to 78, Iowa Administrative Code. (III)

**61.10(1)** At least one elevator which complies with subrule 61.10(5), paragraph *"b,"* shall be installed where 1 to 59 resident beds are located on any floor other than the first, or where any facilities for residents are located on a floor other than the first. (III)

**61.10(2)** At least two elevators, one of which complies with subrule 61.10(5), paragraph *"b,"* shall be installed where 60 to 200 resident beds are located on a floor other than the first, or where any facilities for residents are located on a floor other than the first. (III)

**61.10(3)** At least three elevators, one of which complies with subrule 61.10(5), paragraph *"b,"* shall be installed where 201 to 350 resident beds are located on a floor other than the first, or where any facilities for residents are located on a floor other than the first. (III)

**61.10(4)** For facilities with more than 350 beds, the number of elevators shall be determined from a study of the facility plan and the estimated vertical transportation requirements. (III)

**61.10(5)** The following rules apply to cars and platforms:

*a.* Elevator cars and platform shall be constructed of noncombustible material, except that fire-retardant-treated material may be used if all exterior surfaces of the car are covered with metal; (II, III)

*b.* Elevators used to transport a resident in a bed shall have inside dimensions that will accommodate the resident's bed and attendants. The dimensions shall be at least five feet wide by seven feet six inches deep. Car doors shall have a clear opening of at least three feet eight inches. (II, III)

**481—61.11(135C) Mechanical requirements.**

**61.11(1)** Steam and hot water heating and domestic water heating systems shall comply with the following:

*a.* Boilers shall be installed to comply with the bureau of labor regulations promulgated under Iowa Code chapter 89 and 347—Chapters 41 to 49, Iowa Administrative Code. (III)

*b.* Boiler feed pumps, condensate return pumps, fuel oil pumps and hot water heating pumps shall be connected and installed to provide standby service if any pump malfunctions. (III)

*c.* Supply and return mains and risers of cooling, heating, and steam systems shall have valves which isolate various sections of each system. Each piece of equipment shall have a valve at the supply and return ends. (III) (Exception 2)

**61.11(2)** Insulation shall be provided for the following within the building: (Exception 3)

*a.* Steam supply and condensate return pipe; (III)

*b.* Pipe above 125° F, if it is exposed to contact by residents; (II, III)

*c.* Chilled water, refrigerant, and other process pipe and equipment operating with fluid temperatures below ambient dew point; (III)

*d.* Water supply and roof drainage pipe on which condensation may occur; (III)

*e.* Boilers, smoke-breaching and stacks; (III)

*f.* Hot water pipe above 180° F, and all hot water boilers, heaters, and pipe; and (III)

*g.* Other pipes, ducts, and equipment as necessary to maintain the efficiency of the system. (III)

Insulation including finishes and adhesives on the interior surface of ducts, pipes, and equipment, shall have a flame-spread rating of 25 or less, and a smoke-develop rating of 50 or less. This shall be determined by an independent testing laboratory in accordance with National Fire Protection Association (NFPA) Standard 255, 1984 edition. (III) (Exception 3)

Insulation on cold surfaces shall include an exterior vapor barrier. (III)

**61.11(3)** The heating system shall be capable of maintaining a temperature of 78° F in all occupied areas at a winter-design temperature of 10° F. (II, III)

The cooling system shall be designed to maintain all living spaces within the comfort zone. The comfort zone is defined in the ANSI/American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) Standard 55-1981 or the 1985 ASHRAE Fundamentals Handbook. (III) (Exception 4)

*a.* All air-supply and air-exhaust systems shall be mechanically operated and shall have ducts from a central system to and from each room. All fans serving exhaust systems shall be located at the discharge end of the system. The ventilation rates shown in Table 2 are minimum acceptable rates, and shall not preclude higher ventilation rates. (III) (Exception 2)

*b.* The bottoms of ventilation openings shall be not less than three inches above the floor of any room. (III) (Exception 3)

*c.* All central systems designed to heat and cool the building with recirculation of air shall be equipped with a minimum 2-inch deep, 8- to 11-pleat per foot, class 2 Underwriters' Laboratories, self-extinguishing, nonwoven, cotton, downstream, or final filter with a minimum efficiency of 25 to 30 percent and average arrestance of 90 percent, tested in accordance with ASHRAE Standard 52-76. This does not preclude the additional use of a prefilter upstream of the air handling equipment to extend the service life of the downstream, or final filter. (III) (Exception 5)

*d.* Evaporative cooling shall not be substituted for direct expansion refrigeration in the air conditioning system. (III) (Exception 4)

*e.* Any alternate ventilation system designed to attain an equivalent degree of odor control and purity of air to resident areas shall be considered for approval under conditions in rules 481—58.2(135C) and 481—59.2(135C). (III)

*f.* Mechanical ventilation over cooking equipment and dishwashing equipment shall be designed to remove hot air and inhibit cold air above hot food or dishes. (III) (Exception 3)

*g.* Mechanical ventilation shall be provided in food storerooms to maintain temperature and humidity for the type of food being stored. (III) (Exception 4) Facilities built before November 21, 1990, shall provide mechanical ventilation if freezers, refrigerators or compressors are located in the storeroom.

*h.* Outdoor ventilation air intakes shall be at least 25 feet from the exhaust outlets of any ventilating system, combustion equipment stacks, or noxious fumes. The bottom of outdoor intakes serving central air systems shall be located as high as practical, but not less than six feet above grade level, or, if installed through the roof, three feet above roof opening. (III) (Exception 3)

*i.* Storage-battery-powered lights, provided to augment emergency light or for continuity of light during the interim of transfer switches, shall not be used as a substitute for the requirements of a generator. (III)

**481—61.13(135C) Specialized unit or facility for persons with chronic confusion or a dementing illness (CCDI unit or facility).** This unit or facility shall be designed so that residents, staff and visitors will not pass through the unit in order to reach exits or other areas of the facility. (III)

**61.13(1)** If the unit or facility is to be a locked unit or facility, all locking devices shall meet the life safety code and any requirements of the state fire marshal. If the unit or facility is to be unlocked, a system of security monitoring is required. (I, II, III)

**61.13(2)** The outdoor activity area as required by rule 61.5(135C) shall be secure for the unit or facility. Nontoxic plants shall be used in the secured outdoor activity area. (I, II)

**61.13(3)** Within the unit or facility there shall be no steps or slopes. (III)

**61.13(4)** Dining and activity areas for the unit or facility required by rule 61.6(135C) shall be located within the unit or facility and shall not be used by other facility residents. (III)

**61.13(5)** A private area shall be provided to allow nurses to prepare daily resident reports. (III)

**61.13(6)** If the lounge and activity areas are not adjacent to resident rooms, there shall be one unisex resident toilet room for each ten residents in clear view of the lounge and activity area. (III)

**61.13(7)** The area shall be designed to minimize breakable objects within the unit or facility. (III)

**481—61.14(135C) Codes and standards.** Nothing in the rules shall relieve anyone from compliance with building codes, ordinances and regulations which are enforced by city, county or state jurisdictions. Where codes, ordinances and regulations are not in effect, the sponsor shall consult one of the national building codes, provided the requirements of the code are not less stringent than the minimum standards set in this chapter. (III)

Any alterations, or any installation of new equipment, shall be accomplished as nearly as practical in conformance with all applicable codes, ordinances, regulations and standards required for new construction. Alterations shall not diminish the level of compliance with any codes, ordinances, regulations or standards below that which existed prior to the alterations. Any feature which does not meet the requirement for new buildings but exceeds the requirement for existing buildings shall not be further diminished. Features which exceed requirements for new construction need not be maintained. In no case shall any feature be less than that required for existing buildings. (III)

NOTE: The following codes and standards have been used in whole or in part in these rules:

American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) Handbooks.

American Society for Testing and Materials (ASTM) Standard E 84, Method of Test for Surface Burning Characteristics of Building Material.

International Conference of Building Officials (ICBO) Uniform Building Code.

Iowa State Building Code.

Iowa State Plumbing Code.

Labor Services Division, Department of Employment Services.

National Fire Protection Association (NFPA) Standard 70, National Electrical Code.

National Fire Protection Association (NFPA) Standard 90A & 90B, Installation of Air Conditioning and Ventilating Systems.

National Fire Protection Association (NFPA) Standard 101, Life Safety Code.

Food Service Sanitation Manual (DHEW Publication (FDA) 8-2081).

Underwriters' Laboratories, Inc. lists.

American National Standards Institute (ANSI) Standard A117.1-1986, American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped.

Copies of nongovernment publications can be obtained from the various agencies at the addresses listed:

American Society for Testing and Materials
1916 Race Street
Philadelphia, Pennsylvania 19103

Iowa State Building Code
Department of Public Safety
Wallace State Office Building
Des Moines, Iowa 50319

Iowa State Plumbing Code
Department of Public Health
Lucas State Office Building
Des Moines, Iowa 50319

National Fire Protection Association
Batterymarch Park
Quincy, Massachusetts 02269

Underwriters' Laboratories, Inc.
33 Pfingsten Road
Northbrook, Illinois 66062

American National Standards Institute
1430 Broadway
New York, New York 10018

International Conference of Building Officials (ICBO)
Uniform Building Code
5360 South Workman Mill Road
Whittier, California 90601

American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE)
1791 Tullie Circle N.E.
Atlanta, Georgia 30329

Except as noted in the list, copies of government publications can be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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**62.5(3)** The posted license shall accurately reflect the current status of the residential care facility for persons with mental illness. (III)

**62.5(4)** Licenses expire one year after the date of issuance or as indicated on the license.

**62.5(5)** There shall be no more beds erected than are stipulated on the license. (II, III)

**62.5(6)** Each citation or a copy of each citation issued by the department for a class I or class II violation shall be prominently posted by the facility in plain view of the residents, visitors, and persons inquiring about placement in the facility. The citation or copy of the citation shall remain posted until the violation is corrected to the satisfaction of the department. (III)

This rule is intended to implement Iowa Code section 135C.8.

**62.15(7)** Each facility shall have policies and procedures established to govern the administration of prescribed medications to residents on leave from the facility. (III)

*a.* Medication may be issued to residents who will be on leave from a facility for less than 24 hours. Non-child-resistant containers may be used. Each container may hold only one medication. A label on each container shall indicate the date, the resident's name, the facility, the medication, its strength, dose, and time of administration.

*b.* Medication for residents on leave from a facility longer than 24 hours shall be obtained in accordance with requirements established by the Iowa board of pharmacy examiners.

*c.* Medication distributed as above may be issued only by facility personnel responsible for administering medication.

**62.15(8)** Each RCF/PMI that administers controlled substances shall obtain annually a registration issued by the board of pharmacy pursuant to Iowa Code section 204.302(1). (III)

This rule is intended to implement Iowa Code section 135C.14.

**481—62.16(135C) Resident property.**

**62.16(1)** The admission of a resident does not give the facility or any employee of the facility the right to manage, use, or dispose of any property of the resident except with the written authorization of the resident or the resident's legal guardian. (II, III)

**62.16(2)** The admission of a resident shall not grant the RCF/PMI the authority or responsibility to manage the personal affairs of the resident except as may be necessary for the resident's safety and for safe and orderly management of the residential care facility as required by these rules and in accordance with the IPP. (III)

**62.16(3)** An RCF/PMI shall provide for the safekeeping of personal effects, funds, and other property of its residents. The facility may require that items of exceptional value or which would convey unreasonable responsibilities to the licensee be removed from the premises of the facility for safekeeping. (III)

**62.16(4)** Resident's funds held by the RCF/PMI shall be in a trust account and kept separate from funds of the facility. (III)

**62.16(5)** No administrator, employee or their representative shall act as guardian, trustee, or conservator for any resident or the resident's property, unless the resident is related to the person acting as guardian within the third degree of consanguinity. (III)

**62.16(6)** If a facility is a country care facility and upon the verified petition of the county board of supervisors, the district court may appoint the administrator of a county care facility as conservator or guardian or both of a resident of that county care facility without fee. The administrator may establish either separate or common bank accounts for cash funds of these residents. (III)

This rule is intended to implement Iowa Code section 135C.24.

**481—62.17(135C) Financial affairs.** Each resident who has not been assigned a guardian or conservator by the court may manage his or her personal financial affairs, and to the extent, under written authorization by the resident that the facility assists in management, the management shall be carried out in accordance with Iowa Code section 135C.24. (II)

**62.17(1)** The facility shall maintain a written account of all resident's funds received by or deposited with the facility. (II)

*a.* An employee shall be designated in writing to be responsible for resident accounts. (II)

*b.* The facility shall keep on deposit personal funds over which the resident has control.

*c.* If the resident requests these funds, they shall be given to him or her with a receipt maintained by the facility and a copy to the resident. If a conservator or guardian has been appointed for the resident, the conservator or guardian shall designate the method of disbursing the resident's funds. (II)

*d.* If the facility makes a financial transaction on a resident's behalf, the resident or the resident's legal guardian or conservator must receive or acknowledge that he or she has seen an itemized accounting of disbursements and current balances at least quarterly. A copy of this statement shall be maintained in the resident's financial or business record. (II)

*e.* A resident's personal funds shall not be used without the written consent of the resident or the resident's guardian. (II)

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

**62.17(2)** Contracts. There shall be a written contract between the facility and each resident which meets the following requirements:

*a.* State the base rate or scale per day or per month, the services included, and the method of payment; (III)

*b.* Contain a complete schedule of all offered services for which a fee may be charged in addition to the base rate; (III)

*c.* Stipulate that no further additional fees shall be charged for items not contained in complete schedule of services as set forth in subrule 62.17(2); (III)

*d.* State the method of payment of additional charges; (III)

*e.* Contain an explanation of the method of assessment of additional charges and an explanation of the method of periodic reassessment, if any, resulting in charging the additional charges; (III)

*f.* State that additional fees may be charged to the resident for nonprescription drugs, other personal supplies, and services by a barber, beautician, etc. (III)

*g.* Contain an itemized list of those services, with the specific fee the resident will be charged and method of payment, as related to his or her current condition, based on the program assessment at the time of admission, which is determined in consultation with the administrator. (III)

*h.* Include the total fee to be charged initially to the specific resident. (III)

*i.* State the conditions whereby the facility may make adjustments to its overall fees for residential care as a result of changing costs. (III) Furthermore, the contract shall provide that the facility shall give:

(1) Written notification to the resident and responsible party, when appropriate, of changes in the overall rates of both base and additional charges at least 30 days prior to the effective date of changes; (III)

(2) Notification to the resident and payor when appropriate, of changes in additional charges based on a change in the resident's condition. Notification must occur prior to the date the revised additional charges begin. If notification is given orally, subsequent written notification must be also given within a reasonable time, not to exceed one week, listing specifically the adjustments made; (III)

(3) State the terms of agreement in regard to refund of all advance payments, in the event of transfer, death, or voluntary or involuntary discharge. (III)

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

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

(2) The facility shall reserve the bed when requested for as long as payments are made in accordance with the contract. (II)

*k.* State the conditions under which the involuntary discharge or transfer of a resident would be effected; (III)

*l.* State the conditions of voluntary discharge or transfer; (III)

*m.* Set forth any other matters deemed appropriate by the parties to the contract. No contract or any provision shall be drawn or construed so as to relieve any health care facility of any requirement or obligation imposed upon it by this chapter or any standards or rules in force pursuant to this chapter; (III)

**62.17(3)** Each party shall receive a copy of the signed contract. (III)

This rule is intended to implement Iowa Code sections 135C.24 and 135C.23(1).

**481—62.18(135C) Records.**

**62.18(1)** *Resident record.* The licensee shall keep a permanent record about each resident with all entries current, dated, and signed. (II) The record shall include:

*a.* Name and previous address of resident; (III)

*b.* Birthdate, sex, and marital status of resident; (III)

*c.* Church affiliation; (III)

*d.* Physician's name, telephone number, and address; (III)

*e.* Dentist's name, telephone number, and address; (III)

*f.* Name, address and telephone number of next of kin or legal representative; (III)

*g.* Name, address and telephone number of the person to be notified in case of emergency; (III)

*h.* Funeral director, telephone number, and address; (III)

*i.* Pharmacy name, telephone number, and address; (III)

*j.* Results of evaluation pursuant to 62.11; (III)

*k.* Certification by the physician that the resident requires no more than personal care and supervision, but does not require nursing care; (III)

*l.* Physician's orders for medication and treatments shall be in writing and signed by the physician quarterly; diet orders shall be renewed yearly; (III)

*m.* A notation of yearly or other visits to physician or other professionals, all consultation reports and progress notes; (III)

*n.* Any change in the resident's condition; (II, III)

*o.* A notation describing the resident's condition on admission, transfer, and discharge; (III)

*p.* In the event of the death of a resident, a death record shall be completed, including the physician's signature and disposition of the body. A notation shall be made on the resident's record of the notification of the family; (III)

*q.* A copy of instructions given to the resident, legal representative, or facility in the event of discharge or transfer; (III)

*r.* Disposition of personal property; (III)

*s.* Copy of IPP pursuant to 62.12(1); (III)

*t.* Progress notes pursuant to 62.12(4) and 62.12(5). (III)

**62.18(2)** *Confidentiality of resident records.* The facility shall have policies and procedures providing that each resident shall be ensured confidential treatment of all information,

including information contained in an automatic data bank. The resident's or the resident's legal guardian's written informed consent shall be required for the release of information to persons not otherwise authorized under law to receive it. (II)

A release of information form shall be used which includes to whom the information shall be released, the reason for the information being released, how the information is to be used, and the period of time for which the release is in effect. A third party, not requesting the release, shall witness the release of information form. (II)

*a.* The facility shall limit access to any resident records to staff and consultants providing professional service to the resident. Information shall be made available to staff only to the extent that the information is relevant to the staff person's responsibilities and duties. (II)

Only those personnel concerned with financial affairs of the residents may have access to the financial information. This is not meant to preclude access by representatives of state or federal regulatory agencies. (II)

*b.* The resident, or the resident's legal guardian, shall be entitled to examine all information and shall have the right to secure full copies of the record at reasonable cost upon request, unless the physician or QMHP determines the disclosure of the record or section is contraindicated in which case this information will be deleted prior to making the record available to the resident. This determination and the reasons for it must be documented in the resident's record by the physician or qualified mental health professional in collaboration with the resident's interdisciplinary team. (II)

**62.18(3)** *Incident records.*

*a.* Each RCF/PMI shall maintain an incident record report and shall have available incident report forms. (II, III)

*b.* The report of every incident shall be in detail on a printed incident report form. (II, III)

*c.* The person in charge at the time of the incident shall oversee the preparation and sign the report. (III)

*d.* A copy of the incident report shall be kept on file in the facility available for review and a part of administrative records. (III)

**62.18(4)** *Retention of records.*

*a.* Records shall be retained in the facility for five years following termination of services to the resident even when there is a change of ownership. (III)

*b.* When the facility ceases to operate, the resident's record shall be released to the facility to which the resident is transferred. If no transfer occurs, the record shall be released to the individual's physician. (III)

This rule is intended to implement Iowa Code section 135C.24.

**481—62.19(135C) Health and safety.**

**62.19(1)** *Physician.* Each resident shall have a designated licensed physician who may be called when needed. (III)

**62.19(2)** *Emergency care.* The facility shall have written policies and procedures for emergency medical or psychiatric care to include:

*a.* A written agreement with a hospital or psychiatric facility or documentation of attempt to obtain a written agreement for the timely admission of a resident who, in the opinion of the attending physician, requires inpatient services; (II, III)

*b.* Provisions consistent with Iowa Code chapter 229; (II, III)

*c.* Immediate notification by the person in charge to the physician or QMHP, as appropriate, of any accident, injury or adverse change in the resident's condition. (I, II)

**62.19(3)** *First-aid kit.* A first-aid emergency kit shall be available on each floor in every facility. (II, III)

**62.19(4)** Each facility shall have a written and implemented infection control program addressing the following:

*a.* Techniques for hand washing consistent with 1985 Center for Disease Control (CDC) Guidelines; (I, II, III)

**62.23(8)** Encouragement to exercise rights. Each resident shall be encouraged and assisted throughout his or her period of stay, to exercise resident and citizen rights and may voice grievances and recommend changes in policies and services to administrative staff or to outside representatives of his or her choice, free from interference, coercion, discrimination, or reprisal. (II)

**62.23(9)** Posting of names. The facility shall post in a prominent area the name, phone number, and address of the long-term care resident's advocate/ombudsman, survey agency, local law enforcement agency, care review committee members, Iowa Protection and Advocacy Services, Inc., and text of Iowa Code section 135C.46, to provide to residents another course of redress. (II)

**62.23(10)** Dignity preserved. Each resident shall be treated with consideration, respect, and full recognition of his or her dignity and individuality, including privacy in treatment and in care of personal needs. (II)

*a.* Staff shall display respect for residents when speaking with, caring for, or talking about them, as constant affirmation of the individuality and dignity of human beings. (II)

*b.* Schedules of daily activities shall allow maximum flexibility for residents to exercise choice about what they will do and when they will do it. Residents' individual preferences regarding such things as menus, clothing, religious activities, friendships, activity programs, entertainment, sleeping, eating, and times to retire at night and arise in the morning shall be elicited and considered by the facility. The facility shall make every effort to match nonsmokers with other nonsmokers. (II)

*c.* Residents shall be examined and treated in a manner that maintains the privacy of their bodies. A closed door shall shield the resident from passers-by. People not involved in the care of the residents shall not be present without the resident's consent while he or she is being examined or treated. (II)

*d.* Privacy for each person shall be maintained when residents are being taken to the toilet or being bathed and while they are being helped with other types of personal hygiene, except as needed for resident safety or assistance. (II)

*e.* Staff shall knock and be acknowledged before entering a resident's room unless the resident is not capable of a response. This does not apply under emergency conditions. (II)

**62.23(11)** Communications. Each resident may communicate, associate, and meet privately with persons of his or her choice, unless to do so would infringe upon the rights of other residents. Each resident may send and receive personal mail unopened unless prohibited in the IPP which has explicit approval of the resident or legal guardian. (II)

**62.23(12)** Visiting hours. Subject to reasonable scheduling restrictions, visiting policies and procedures shall permit residents to receive visits from anyone they wish. Visiting hours shall be posted. (II)

*a.* Reasonable, regular visiting hours shall not be less than 12 hours per day and shall take into consideration the special circumstances of each visitor. A particular visitor(s) may be restricted by the facility for one of the following reasons:

(1) The resident refuses to see the visitors(s). (II)

(2) The visit would not be in accordance with the IPP. (II)

(3) The visitor's behavior is unreasonably disruptive to the functioning of the facility.

Reasons for denial of visitation shall be documented in the residents' records. (II)

*b.* Decisions to restrict a visitor are reevaluated at least quarterly by the QMHP or at the resident's request. (II)

**62.23(13)** Privacy. Space shall be provided for residents to receive visitors in comfort and privacy. (II)

**62.23(14)** Telephone calls. Telephones consistent with ANSI standards 42CFR 405.1134(c) (10-1-86) shall be available and accessible for residents to make and receive calls with privacy. Residents who need help shall be assisted in using the phone. (II)

**62.23(15)** Arrangements shall be made to provide assistance to residents who require help in reading or sending mail. (II)

**62.23(16)** Residents shall be permitted to leave the facility and environs at reasonable times unless there are justifiable reasons established in writing by the attending physician, QMHP, or facility administrator for refusing permission. (II)

**62.23(17)** Residents shall not have their personal lives regulated beyond reasonable adherence to meal schedules, bedtime hours, and other written policies which may be necessary for the orderly management of the facility and as required by these rules; however, residents shall be encouraged to participate in recreational programs. (II)

**62.23(18)** Resident activities. Each resident may participate in activities of social, religious, and community groups as desired unless contraindicated for reasons documented by the attending physician or qualified mental health professional, as appropriate, in the resident's record. (II)

Residents who wish to meet with or participate in activities of social, religious or community groups in or outside the facility shall be informed, encouraged, and assisted to do so. (II)

**62.23(19)** Resident property. Each resident may retain and use personal clothing and possessions as space permits and provided use is not otherwise prohibited in these rules. (II)

*a.* Residents shall be permitted to keep reasonable amounts of personal clothing and possessions for their use while in the facility. The personal property shall be kept in a secure location which is convenient to the resident. (II)

*b.* Residents shall be advised, prior to or at the time of admission, of the kinds and amounts of clothing and possessions permitted for personal use, and whether the facility will accept responsibility for maintaining these items, e.g., cleaning and laundry. (II)

*c.* Any personal clothing or possessions retained by the facility for the resident shall be identified and recorded on admission and the record placed on the resident's chart. The facility shall be responsible for secure storage of items, and they shall be returned to the resident promptly upon request or upon discharge from the facility. (II)

*d.* A resident's personal property shall not be used without the written consent of the resident or the resident's guardian. (II)

*e.* A resident's personal property shall be returned to the resident when it has been used without the written consent of the resident or the resident's guardian. The department may report findings that a resident's property has been used without written consent to the local law enforcement agency, as appropriate. (II)

**62.23(20)** Sharing rooms. Residents, including spouses staying in the same facility, shall be permitted to share a room, if available, if requested by both parties, unless contraindicated in the IPP and when the reasons for denial are documented in the resident's record. (II)

**62.23(21)** Choice of physician and pharmacy. Each resident shall be permitted free choice of a physician and a pharmacy. The facility may require the pharmacy selected to use a drug distribution system compatible with the system currently used by the facility. (II)

**62.23(22)** Incompetent residents.

*a.* Each facility shall provide that all rights and responsibilities of the resident devolve to the resident's legal guardian when a resident is adjudicated incompetent in accordance with state law. (II)

*b.* The fact that a resident has been adjudicated incompetent does not absolve the facilty from advising the resident of these rights to the extent the resident is able to understand them. The facility shall also advise the legal guardian, if any, and acquire a statement indicating an understanding of resident's rights. (II)

**62.23(23)** Resident abuse prohibited. Each resident shall receive kind and considerate care at all times and shall be free from physical, sexual, mental and verbal abuse, exploitation, and physical injury. (I, II)

**62.23(24)** Upon a claim of dependent adult abuse of a resident being reported, the administrator of the facility shall separate the victim and accused abuser immediately and maintain the separation until the abuse investigation is completed. (I, II)

This rule is intended to implement Iowa Code sections 135C.14(8) and 135C.24.

**481—62.24(135C) County care facilities.** In addition to Chapter 62 licensing rules, county care facilities licensed as residential care facilities for persons with mental illness must also comply with department of human services rules, Iowa Administrative Code 441—Chapter 37. Violation of any standard established by the department of human services is a class II violation pursuant to Iowa Administrative Code 481—56.2(135C).

This rule is intended to implement Iowa Code section 227.4.

**481—62.25(135C) Another business or activity in a facility.** Another business or activity shall not be carried on in a health care facility or in the same physical structure with a health care facility unless:

1. The business or activity is under the control of and is directly related to and incidental to the operation of the health care facility; or

2. The business or activity is approved by the department and the state fire marshal. (I, II, III)

**62.25(1)** The following factors will be considered by the department in determining whether a business or activity will interfere with the use of the facility by residents, interfere with services provided to residents, or be disturbing to residents:

*a.* Health and safety risks for residents;

*b.* Compatibility of the proposed business or activity with the facility program;

*c.* Noise created by the proposed business or activity;

*d.* Odors created by the proposed business or activity;

*e.* Use of entrances and exits for the business or activity in regard to safety and disturbance of residents and interference with delivery of services;

*f.* Use of the facility's corridors or rooms as thoroughfares to the business or activity in regard to safety and disturbance of residents and interference with delivery of services;

*g.* Proposed staffing for the business or activity;

*h.* Sharing of services and staff between the proposed business or activity and the facility;

*i.* Facility layout and design; and

*j.* Parking area utilized by the business or activity.

**62.25(2)** Approval of the state fire marshal shall be obtained before approval of the department will be considered.

**62.25(3)** A business or activity conducted in a health care facility or in the same physical structure as a health care facility shall not reduce space, services or staff available to residents below minimums required in these rules and 481—Chapter 60. (I, II, III)

This rule will become effective July 1, 1992.

These rules are intended to implement Iowa Code sections 135C.4, 135C.6(1) to 135C.6(3), 135C.7, 135C.8, 135C.14, 135C.14(2), 135C.14(3), 135C.14(5), 135C.14(8), 135C.16(2), 135C.23, 135C.24, 135C.25, 135C.31, 135C.36 and 227.4.

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*e.* Submit a photograph of the front and side elevation of the facility;

*f.* Submit the statutory fee for a residential care facility for the mentally retarded for which licensure application is made;

*g.* Comply with all other local statutes and ordinances in existence at the time of licensure;

*h.* Have a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations.

**63.3(2)** In order to obtain an initial residential care facility for the mentally retarded license for a facility not currently licensed as a residential care facility for the mentally retarded, the applicant must:

*a.* Meet all of the rules, regulations, and standards contained in chapters 63(135C) and 60(135C) of the Iowa Administrative Code; Exceptions noted in 60.3(2) shall not apply;

*b.* Submit a letter of intent and a written resume of the resident care program and other services provided for departmental review and approval;

*c.* Make application at least thirty days prior to the proposed opening date of the facility on forms provided by the department;

*d.* Submit a floor plan of each floor of the residential care facility for the mentally retarded, drawn on 8½ x 11 inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms, and designation of the use to which the room will be put and window and door locations;

*e.* Submit a photograph of the front and side elevation of the residential care facility for the mentally retarded;

*f.* Submit the statutory fee for a residential care facility for the mentally retarded;

*g.* Comply with all other local statutes and ordinances in existence at the time of licensure;

*h.* Have a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations.

**63.3(3)** *Renewal application.* In order to obtain a renewal of the residential care facility for the mentally retarded license, the applicant must:

*a.* Submit the completed application form thirty days prior to annual license renewal date of residential care facility for the mentally retarded license;

*b.* Submit the statutory license fee for a residential care facility for the mentally retarded with the application for renewal;

*c.* Have an approved current certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations;

*d.* Submit appropriate changes in the resume to reflect any changes in the resident care program and other services.

**63.3(4)** *Deemed status.*

*a.* The department shall recognize, in lieu of its own inspection, the comparable inspection and inspection findings of the Accreditation Council for Service for Mentally Retarded and Other Developmentally Disabled Persons (AC—MR/DD), if the department is given copies of all requested materials relating to the comparable inspection process, is notified of the scheduled comparable inspection not less than thirty days in advance of the inspection, and is given the opportunity to monitor the comparable inspection. The department may verify the findings of ten percent of the comparable inspections, selected annually on a random basis, in order to assure compliance with minimum residential care standards established pursuant to this chapter.

*b.* The above accreditation will be accepted in lieu of the department's yearly licensure inspection for each year of the AC—MR/DD accreditation period up to two years.

**63.3(5)** Licenses are issued to the person or governmental unit which has responsibility for the operation of the facility and authority to comply with all applicable statutes, rules or regulations.

The person or governmental unit must be the owner of the facility or, if the facility is leased, the lessee.

This rule is intended to implement Iowa Code sections 135C.6(1) and 135C.9.

**481—63.4(135C) General requirements.**

**63.4(1)** The license shall be displayed in a conspicuous place in the facility which is viewed by the public. (III)

**63.4(2)** The license shall be valid only in the possession of the licensee to whom it is issued.

**63.4(3)** The posted license shall accurately reflect the current status of the residential care facility for the mentally retarded. (III)

**63.4(4)** Licenses expire one year after the date of issuance, or as indicated on the license.

**63.4(5)** Each citation or a copy of each citation issued by the department for a class I or class II violation shall be prominently posted by the facility in plain view of the residents, visitors, and persons inquiring about placement in the facility. The citation or copy of the citation shall remain posted until the violation is corrected to the satisfaction of the department. (III)

**481—63.5(135C) Notifications required by the department.** The department shall be notified:

**63.5(1)** Within forty-eight hours, by letter, of any reduction or loss of personal care or dietary staff lasting more than seven days which places the staffing ratio below that required for licensing. No additional residents shall be admitted until the minimum staffing requirements are achieved; (III)

**63.5(2)** Of any proposed change in the residential care facility for the mentally retarded's functional operation or addition or deletion of required services; (III)

**63.5(3)** Thirty days before addition, alteration, or new construction is begun in the residential care facility for the mentally retarded, or on the premises; (III)

**63.5(4)** Thirty days in advance of closure of the residential care facility for the mentally retarded; (III)

**63.5(5)** Within two weeks of any change in administrator; (III)

**63.5(6)** When any change in the category of license is sought; (III)

**63.5(7)** Prior to the purchase, transfer, assignment, or lease of a residential care facility for the mentally retarded the licensee shall:

*a.* Inform the department of the pending sale, transfer, assignment, or lease of the facility; (III)

*b.* Inform the department of the name and address of the prospective purchaser, transferee, assignee, or lessee at least thirty days before the sale, transfer, assignment, or lease is completed; (III)

*c.* Submit a written authorization to the department permitting the department to release all information of whatever kind from the department's files concerning the licensee's residential care facility for the mentally retarded to the named prospective purchaser, transferee, assignee, or lessee; (III)

**63.5(8)** Pursuant to the authorization submitted to the department by the licensee prior to the purchase, transfer, assignment, or lease of a residential care facility for the mentally retarded, the department shall upon request, send or give copies of all recent licensure surveys and of any other pertinent information relating to the facility's licensure status to the prospective purchaser, transferee, assignee, or lessee; costs for such copies shall be paid by the prospective purchaser.

**481—63.6(135C) Witness fees.** The fees of witnesses for attendance and travel shall be the same as the fees for witnesses before the district court and shall be paid by the party to the proceeding at whose request the subpoena is issued.

**481—63.7(135C) Licenses for distinct parts.**

**63.7(1)** Separate licenses may be issued for distinct parts of a health care facility which are clearly identifiable, containing contiguous rooms in a separate wing or building or on a separate floor of the facility and which provide care and services of separate categories.

**63.7(2)** The following requirements shall be met for a separate licensing of a distinct part:

*a.* The distinct part shall serve only residents who require the category of care and services immediately available to them within that part; (III)

*b.* The distinct part shall meet all the standards, rules, and regulations pertaining to the category for which a license is being sought;

*c.* A distinct part must be operationally and financially feasible;

ment may report findings that resident funds have been used without written consent to the audits division or the local law enforcement agency, as appropriate. (II)

**481—63.37(135C) Resident abuse prohibited.** Each resident shall receive kind and considerate care at all times and shall be free from mental and physical abuse. Each resident shall be free from chemical and physical restraints, except in an emergency for the shortest amount of time necessary to protect the resident from injury to himself/herself or to others, pending the immediate transfer to an appropriate facility. The decision to use restraints on an emergency basis shall be made by the designated charge person who shall promptly report the action taken to the physician and the reasons for using restraints shall be documented in the resident's record. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered to be a restraint. (II)

**63.37(1)** Mental abuse includes, but is not limited to, humiliation, harassment, and threats of punishment or deprivation. (II)

**63.37(2)** Physical abuse includes, but is not limited to, corporal punishment and the use of restraints as punishment. (II)

**63.37(3)** Drugs such as tranquilizers may not be used as chemical restraints to limit or control resident behavior for the convenience of staff or as a substitute for program. (II)

**63.37(4)** Upon a claim of dependent adult abuse of a resident being reported, the administrator of the facility shall separate the victim and accused abuser immediately and maintain that separation until the abuse investigation is completed. (I,II)

**63.37(5)** Suspected abuse reports. The department shall investigate all complaints of dependent adult abuse which are alleged to have happened in a health care facility. The department shall inform the department of human services of the results of all evaluations and dispositions of dependent adult abuse investigations.

This rule is intended to implement 1987 Iowa Code supplement subsections 235B.1(6) and 235B.1(11).

**481—63.38(135C) Resident records.** Each resident shall be ensured confidential treatment of all information contained in his/her records, including information contained in an automatic data bank. His/her written consent shall be required for the release of information to persons not otherwise authorized under law to receive it. (II)

**63.38(1)** The facility shall limit access to any medical records to staff and consultants providing professional service to the resident. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

**63.38(2)** Similar procedures shall safeguard the confidentiality of residents' personal records, e.g., financial records and social services records. Only those personnel concerned with the financial affairs of the residents may have access to the financial records. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

**63.38(3)** The resident, or his/her responsible party, shall be entitled to examine all information contained in his/her record and shall have the right to secure full copies of the record at reasonable cost upon request, unless the physician determines the disclosure of the record or section thereof is contraindicated in which case this information will be deleted prior to making the record available to the resident or responsible party. This determination and the reasons for it must be documented in the resident's record. (II)

**481—63.39(135C) Dignity preserved.** The resident shall be treated with consideration, respect, and full recognition of his/her dignity and individuality, including privacy in treatment and in care for his/her personal needs. (II)

**63.39(1)** Staff shall display respect for residents when speaking with, caring for, or talking about them, as constant affirmation of their individuality and dignity as human beings. (II)

**63.39(2)** Schedules of daily activities shall allow maximum flexibility for residents to exercise choice about what they will do and when they will do it. Residents' individual preferences regarding such things as menus, clothing, religious activities, friendships, activity programs, entertainment, sleeping and eating, also times to retire at night and arise in the morning shall be elicited and considered by the facility. (II)

**63.39(3)** Residents shall be examined and treated in a manner that maintains the privacy of their bodies. A closed door or a drawn curtain shall shield the resident from passers-by. People not involved in the care of the residents shall not be present without the resident's consent while he/she is being examined or treated. (II)

**63.39(4)** Privacy of a resident's body also shall be maintained during toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance. (II)

**63.39(5)** Staff shall knock and be acknowledged before entering a resident's room unless the resident is not capable of a response. This shall not apply under emergency conditions. (II)

**481—63.40(135C) Resident work.** No resident may be required to perform services for the facility, except as provided by sections 219.14 and 253.5, The Code. (II)

**63.40(1)** Residents may not be used to provide a source of labor for the facility against their will. Physician's approval is required for all work programs. (I, II)

**63.40(2)** If the plan of care requires activities for therapeutic or training reasons, the plan for these activities shall be professionally developed and implemented. Therapeutic or training goals must be clearly stated and measurable and the plan shall be time limited and reviewed at least quarterly. (II)

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◊Three ARC's
†Two ARC's
***Rule 481—63.49(135C), effective 7/1/92.

**64.4(3)** The posted license shall accurately reflect the current status of the intermediate care facility for the mentally retarded. (III)

**64.4(4)** Licenses expire one year after the date of issuance or as indicated on the license.

**64.4(5)** Each citation or a copy of each citation issued by the department for a class I or class II violation shall be prominently posted by the facility in plain view of the residents, visitors, and persons inquiring about placement in the facility. The citation or copy of the citation shall remain posted until the violation is corrected to the satisfaction of the department. (III)

**64.4(6)** 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. (III) Any facility which does not have such an agreement in effect but has attempted in good faith to enter into such an agreement with a hospital shall be considered to have such an agreement so long as it is in the public interest and essential to assuring intermediate care facility for the mentally retarded services for eligible persons in the community.

**64.4(7)** A resident's personal funds and property shall not be used without the written consent of the resident or the resident's guardian. (II)

**64.4(8)** A resident's personal funds and property shall be returned to the resident when the funds or property have been used without the written consent of the resident or the resident's guardian. The department may report findings that funds or property have been used without written consent to the audits division or the local law enforcement agency, as appropriate. (II)

**481—64.5(135C) Notifications required by the department.** The department shall be notified:

**64.5(1)** Within forty-eight hours, by letter, any reduction or loss of direct care professional or dietary staff lasting more than seven days which places the staffing ratio of the intermediate care facility for the mentally retarded below that required for licensing. No additional residents shall be admitted until the minimum staffing requirements are achieved; (III)

**64.5(2)** Of any proposed change in the intermediate care facility for the mentally retarded's functional operation or addition or deletion of required services; (III)

**64.5(3)** Thirty days before addition, alteration, or new construction is begun in the intermediate care facility for the mentally retarded, or on the premises; (III)

**64.5(4)** Thirty days in advance of closure of the intermediate care facility for the mentally retarded; (III)

**64.5(5)** Within two weeks of any change in administrator; (III)

**64.5(6)** When any change in the category of license is sought; (III)

**64.5(7)** Prior to the purchase, transfer, assignment, or lease of an intermediate care facility for the mentally retarded, the licensee shall:

*a.* Inform the department of the pending sale, transfer, assignment, or lease of the facility; (III)

*b.* Inform the department of the name and address of the prospective purchaser, transferee, assignee, or lessee at least thirty days before the sale, transfer, assignment, or lease is completed; (III)

*c.* Submit a written authorization to the department permitting the department to release all information of whatever kind from the department's files concerning the licensee's intermediate care facility for the mentally retarded to the named prospective purchaser, transferee, assignee, or lessee. (III)

**64.5(8)** Pursuant to the authorization submitted to the department by the licensee prior to the purchase, transfer, assignment, or lease of an intermediate care facility for the mentally retarded, the department shall upon request, send or give copies of all recent licensure surveys and of any other pertinent information relating to the facility's licensure status to the prospective purchaser, transferee, assignee, or lessee; costs for such copies shall be paid by the prospective purchaser.

**64.6** Rescinded IAB 7/26/89, effective 7/7/89.

**481—64.7(135C) Licenses for distinct parts.**

**64.7(1)** Separate licenses may be issued for distinct parts of a health care facility which are clearly identifiable, containing contiguous rooms in a separate wing or building or on a separate floor of the facility and which provide care and services of separate categories.

**64.7(2)** The following requirements shall be met for a separate licensing of a distinct part:

*a.* The distinct part shall serve only residents who require the category of care and services immediately available to them within that part; (III)

for dietetic work assignments. Personnel recovering from a diagnosed intestinal infection shall submit a report from their physician showing freedom from infection before returning to work in the food service department. (II, III)

*b.* Employees shall wear clean, washable uniforms that are not used for duties outside the food service area. (III)

*c.* Hairnets shall be worn by all food service personnel. Hairnets shall cover all hair. Individuals with beards shall provide for total enclosure of facial hairs. (III)

*d.* Clean aprons and hairnets shall be available for use by other personnel in emergency situation. (III)

*e.* Persons handling food shall be knowledgeable of good handwashing techniques. A hand wash sink shall be provided in or adjacent to the food service area. Continuous on-the-job training on sanitation shall be encouraged. (III)

*f.* The use of tobacco shall be prohibited in the kitchen. (III)

**64.32(9)** Rescinded IAB 7/26/89, effective 7/7/89.

**481—64.33(135B) Separation of accused abuser and victim.** Upon a claim of dependent adult abuse of a resident being reported, the administrator of the facility shall separate the victim and accused abuser immediately and maintain the separation until the abuse investigation is completed. (I, II)

**481—64.34** Rescinded IAB 7/26/89, effective 7/7/89.

**481—64.35(135C) Care review committee.** Each facility shall have a care review committee in accordance with Iowa Code section 135C.25, which shall operate within the scope of the rules for care review committees promulgated by the department of elder affairs. (II)

**64.35(1)** Role of committee in complaint investigations.

*a.* The department shall notify the facility's care review committee of a complaint from the public. The department shall not disclose the name of a complainant.

*b.* The department may refer complaints to the care review committee for initial evaluation or investigation by the committee pursuant to rules promulgated by the department of elder affairs. Within ten days of completion of the investigation, the committee shall report to the department in writing the results of the evaluation of the investigation.

*c.* When the department investigates a complaint, upon conclusion of its investigation, it shall notify the care review committee and the department of elder affairs of its findings, including any citations and fines issued.

*d.* Results of all complaint investigations addressed by the care review committee shall be forwarded to the department within ten days of completion of the investigation.

**64.35(2)** The care review committee shall, upon department request, be responsible for monitoring correction of substantiated complaints.

**64.35(3)** When requested, names, addresses and phone numbers of family members shall be given to the care review committee, unless the family refuses. The facility shall provide a form on which a family member may refuse to have their name, address or phone number given to the care review committee.

This rule is intended to implement Iowa Code section 135C.25.

**481—64.36(135C) Involuntary discharge or transfer.**

**64.36(1)** A facility shall not involuntarily discharge or transfer a resident from a facility except: for medical reasons; for the resident's welfare or that of other residents; for nonpayment for the resident's stay (as contained in the contract for the resident's stay), except as prohibited by Title XIX of the Social Security Act, 42 U.S.C. 1396 to 1396k by reason of action pursuant to Iowa Code chapter 229; by reason of negative action by the Iowa department of human services; and by reason of negative action by the professional review organization. A resident shall not be transferred or discharged solely because the cost of the resident's care is being paid under Iowa Code chapter 249A, or because the resident's source of payment is changing from private support to payment under chapter 249A. (I,II)

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

*b.* "Welfare" of a resident or that of other residents refers to their social, emotional, or physical well-being. A resident might be transferred or discharged because his/her behavior poses a continuing threat to himself/herself (e.g., suicidal) or to the well-being of other residents or staff (e.g., his/her behavior is incompatible with their needs and rights). Evidence that the resident's continued presence in the facility would adversely affect the welfare of the resident or that of other residents shall be made by the administrator or designee and shall be in writing and shall include specific information to support this determination. (II)

*c.* Involuntary transfer or discharge of a resident from a facility shall be preceded by a written notice to the resident or responsible party at least 30 days in advance of the proposed transfer or discharge. The 30-day requirement shall not apply in any of the following instances:

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

(2) If the transfer or discharge is subsequently agreed to by the resident or the resident's responsible party, and notification is given to the responsible party, physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility. (II)

(3) If the discharge or transfer is the result of a final, nonappealable decision by the department of human services or the professional review organization.

**481—64.61(135C) Federal regulations adopted—rights.** Regulations in 42CFR Part 483, Subpart B, sections 10, 12, 13, and 15 effective August 1, 1989, are adopted by reference and incorporated as part of these rules. Section 10 governs resident rights; section 12, admission, transfer or discharge rights; section 13, resident behavior and facility practices; and section 15, quality of life. Classification of violations for all of these regulations is I and II. A copy is available on request from the Health Facilities Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319.

NOTE: The federal interpretive guidelines are printed immediately following 481—Chapter 64.

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

**481—64.62(135C) Another business or activity in a facility.** Another business or activity shall not be carried on in a health care facility or in the same physical structure with a health care facility unless:

1. The business or activity is under the control of and is directly related to and incidental to the operation of the health care facility; or

2. The business or activity is approved by the department and the state fire marshal. (I, II, III)

**64.62(1)** The following factors will be considered by the department in determining whether a business or activity will interfere with the use of the facility by residents, interfere with services provided to residents, or be disturbing to residents:

*a.* Health and safety risks for residents;

*b.* Compatibility of the proposed business or activity with the facility program;

*c.* Noise created by the proposed business or activity;

*d.* Odors created by the proposed business or activity;

*e.* Use of entrances and exits for the business or activity in regard to safety and disturbance of residents and interference with delivery of services;

*f.* Use of the facility's corridors or rooms as thoroughfares to the business or activity in regard to safety and disturbance of residents and interference with delivery of services;

*g.* Proposed staffing for the business or activity;

*h.* Sharing of services and staff between the proposed business or activity and the facility;

*i.* Facility layout and design; and

*j.* Parking area utilized by the business or activity.

**64.62(2)** Approval of the state fire marshal shall be obtained before approval of the department will be considered.

**64.62(3)** A business or activity conducted in a health care facility or in the same physical structure as a health care facility shall not reduce space, services or staff available to residents below minimums requires in these rules. (I, II, III)

This rule will become effective July 1, 1992.

These rules are intended to implement Iowa Code sections 10A.202, 10A.402, 135C.6(1), 135C.14, 135C.14(8), 135C.25, 135C.25(3), 135C.32, 135C.36, 227.4, 235B.1(6) and 235B.1(11).

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*See IAB, Inspections and Appeals Department.
†Two ARCs
◊Three ARCs

designation of the use to which room will be put and window and door location;

*b.* A photograph of the front and side elevation of the facility;

*c.* The statutory fee for an intermediate care facility license;

*d.* Evidence of a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules.

**65.2(2)** A resumé of care with a narrative which includes the following information shall be submitted:

*a.* The purpose of the facility;

*b.* A description of the target population and limitations on resident eligibility;

*c.* An identification and description of the services the facility will provide. This shall include at least specific and measurable goals and objectives for each service available in the facility and a description of the resources needed to provide each service including staff, physical facilities and funds;

*d.* A description of the human service system available in the area, including, but not limited to, social, public health, visiting nurse, vocational training, employment services, sheltered living arrangements, and services of private agencies;

*e.* A description of working relationships with the human service agencies when applicable which shall include at least how the facility will coordinate with:

(1) The department of human services to facilitate continuity of care and coordination of services to residents; and

(2) Other agencies to identify unnecessary duplication of services and plan for development and coordination of needed services;

*f.* A list of members of the care review committee; and

*g.* A description of a program of training for the care review committee concerning their role in the ongoing care and treatment of residents.

**65.2(3)** In order to obtain a renewal or change of ownership license of the ICF/PMI the applicant must:

*a.* Submit to the department the completed application form 30 days prior to annual license renewal or change of ownership date of the ICF/PMI license;

*b.* Submit the statutory license fee for an ICF/PMI with the application for renewal or change of ownership;

*c.* Have an approved current certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules; and

*d.* Submit documentation of review of resumé of care pursuant to subrule 65.2(1), paragraph *"a,"* and a copy of any revisions to the plan.

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

**481—65.3(135C) Licenses for distinct parts.** Separate licenses may be issued for distinct parts which are clearly identifiable parts of a health care facility, containing contiguous rooms in a separate wing or building or on a separate floor of the facility, which provide care and services of separate categories.

The following requirements shall be met for a separate licensing of a distinct part:

1. The distinct part shall serve only residents who require the category of care and services immediately available to them within that part. (III)

2. The distinct part shall meet all the standards, rules and regulations pertaining to the category for which a license is being sought.

3. The distinct part must be operationally and financially feasible.

4. A separate personal care staff with qualifications appropriate to the care and services being rendered must be regularly assigned and working in the distinct part under responsible management. (III)

5. Separately licensed distinct parts may have certain services such as management, building maintenance, laundry and dietary in common with each other.

This rule is intended to implement Iowa Code section 135C.6(2).

**481—65.4(135C) Variances.** Variances from these rules may be granted by the director of the department when:

1. The need for a variance has been established consistent with the resumé of care or the resident's individual program plan.

2. There is no danger to the health, safety, welfare or rights of any resident.

3. The variance will apply only to a specific intermediate care facility for the mentally ill.

Variances shall be reviewed at least at the time of each licensure survey and any other time by the department to see if the need for the variance is still acceptable.

**65.4(1)** To request a variance, the licensee must:

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

*b.* Cite the rule or rules from which a variance is desired;

*c.* State why compliance with the rule or rules cannot be accomplished;

*d.* Explain how the variance is consistent with the resumé of case or the individual program plan; and

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

**65.4(2)** Upon receipt of a request for variance, the director will:

*a.* Examine the rule from which the variance is requested;

*b.* Evaluate the requested variance against the requirement of the rule to determine whether the request is necessary to meet the needs of the residents;

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

*d.* Consult with the applicant to obtain additional written information if required; and

*e.* Obtain approval of the Iowa mental health and mental retardation commission, when the request is for a variance from the requirement for qualification of a mental health professional.

**65.4(3)** Based upon this information, approval of the variance will be either granted or denied within 45 days of receipt.

**481—65.5(135C) General requirements.**

**65.5(1)** A valid license shall be posted in each facility so the public can easily see it. (III)

**65.5(2)** Each license is valid only for the premises and person named on the license and is not transferable.

**65.5(3)** The posted license shall accurately reflect the current status of the facility. (III)

**65.5(4)** Each citation or a copy of each citation issued by the department for a class I or class II violation shall be prominently posted by the facility in plain view of the residents, visitors, and persons inquiring about placement in the facility. The citation or copy of the citation shall remain posted until the violation is corrected to the satisfaction of the department. (III)

**65.5(5)** Licenses expire one year after the date of issuance or as indicated on the license.

**65.5(6)** There shall be no more beds erected than are stipulated on the license. (II, III)

This rule is intended to implement Iowa Code section 135C.8.

**481—65.6(135C) Notification required by the department.** The department shall be notified within 48 hours, by letter, of any reduction or loss of personal care or dietary staff lasting more than seven days which places the staff ratio below that required for licensing. No additional residents shall be admitted until the minimum staff requirements are achieved. (II, III)

**65.6(1)** Other required notification and time periods are:

*a.* Within 30 days of any proposed change in the resumé of care for the ICF/PMI; (II, III)

*b.* Thirty days before addition, alteration, or new construction is begun in the ICF/PMI or on the premises; (III)

*c.* Thirty days before the ICF/PMI closes; (III)

*d.* Within two weeks of any change of administrator; (II, III) and

*e.* Within 30 days when any change in the category of license is sought. (III)

**65.6(2)** Prior to the purchase, transfer, assignment, or lease of an ICF/PMI the licensee shall:

*a.* Inform the department in writing of the pending sale, transfer, asisgnment, or lease of the facility; (III)

**65.17(7)** Each ICF/PMI that administers controlled substances shall annually obtain a registration from the Iowa board of pharmacy examiners pursuant to Iowa Code section 204.302(1). (III)

This rule is intended to implement Iowa Code section 135C.14.

**481—65.18(135C) Resident property and personal affairs.** The admission of a resident does not give the facility or any employee of the facility the right to manage, use, or dispose of any property of the resident except with the written authorization of the resident or the resident's legal guardian. (II, III)

**65.18(1)** The admission of a resident shall not grant the ICF/PMI the authority or responsibility to manage the personal affairs of the resident except as may be necessary for the resident's safety and for safe and orderly management of the facility as required by these rules and in accordance with the IPP. (III)

**65.18(2)** An ICF/PMI shall provide for the safekeeping of personal effects, funds, and other property of its residents. The facility may require that items of exceptional value or which would convey unreasonable responsibilities to the licensee be removed from the premises of the facility for safekeeping. (III)

**65.18(3)** Residents' funds held by the ICF/PMI shall be in a trust account and kept separate from funds of the facility. (III)

**65.18(4)** No administrator, employee or their representative shall act as guardian, trustee, or conservator for any resident or the resident's property, unless the resident is related to the person acting as guardian within the third degree of consanguinity. (III)

**65.18(5)** If a facility is a county care facility, upon the verified petition of the county board of supervisors, the district court may appoint, without fee, the administrator of a county care facility as conservator or guardian, or both, of a resident of such a county care facility. The administrator may establish either separate or common bank accounts for cash funds of these residents. (III)

This rule is intended to implement Iowa Code sections 135C.24.

**481—65.19(135C) Financial affairs.** Residents who have not been assigned a guardian or conservator by the court may manage their personal financial affairs, and to the extent, under written authorization by the residents that the facility assists in management, the management shall be carried out in accordance with Iowa Code section 135C.24. (II)

**65.19(1)** *Written account of resident funds.* The facility shall maintain a written account of all residents' funds received by or deposited with the facility. (II)

*a.* An employee shall be designated in writing to be responsible for resident accounts. (II)

*b.* The facility shall keep on deposit personal funds over which the resident has control when requested by the resident. (II)

*c.* If the resident requests these funds, they shall be given to the resident with a receipt maintained by the facility and a copy to the resident. If a conservator or guardian has been appointed for the resident, the conservator or guardian shall designate the method of disbursing the resident's funds. (II)

*d.* If the facility makes a financial transaction on a resident's behalf, the resident or the resident's legal guardian or conservator must receive or acknowledge having seen an itemized accounting of disbursements and current balances at least quarterly. A copy of this statement shall be maintained in the resident's financial or business record. (II)

**65.19(2)** *Contracts.* There shall be a written contract between the facility and each resident which meets the following requirements:

*a.* States the base rate or scale per day or per month, the services included, and the method of payment; (III)

*b.* Contains a complete schedule of all offered services for which a fee may be charged in addition to the base rate; (III)

*c.* Stipulates that no further additional fees shall be charged for items not contained in complete schedule of services listed in this subrule; (III)

*d.* States the method of payment of additional charges; (III)

*e.* Contains an explanation of the method of assessment of additional charges and an explanation of the method of periodic reassessment, if any, resulting in changing such additional charges; (III)

*f.* States that additional fees may be charged to the resident for nonprescription drugs, other personal supplies, and services by a barber, beautician, etc.; (III)

*g.* Contains an itemized list of those services, with the specific fee the resident will be charged and method of payment, as related to the resident's current condition, based on the program assessment at the time of admission, which is determined in consultation with the administrator; (III)

*h.* Includes the total fee to be charged initially to the specific resident; (III)

*i.* States the conditions whereby the facility may make adjustments to its overall fees for residential care as a result of changing costs. (III) Furthermore, the contract shall provide that the facility shall give:

(1) Written notification to the resident and responsible party, when appropriate, of changes in the overall rates of both base and additional charges at least 30 days prior to the effective date of changes; (III)

(2) Notification to the resident and payer, when appropriate, of changes in additional charges based on a change in the resident's condition. Notification must occur prior to the date the revised additional charges begin. If notification is given orally, subsequent written notification must also be given within a reasonable time, not to exceed one week, listing specifically the adjustments made; (III) and

(3) The terms of agreement in regard to refund of all advance payments, in the event of transfer, death, or voluntary or involuntary discharge; (III)

*j.* States the terms of agreement concerning holding and charging for a bed in the event of temporary absence of the resident, which terms shall include, at a minimum, the following provisions:

(1) If a resident has a temporary absence from a facility for medical treatment, the facility shall hold the bed open and shall receive payment for the absent period in accordance with provisions of the contract between the resident or the legal guardian and the facility. (II)

(2) If a resident has a temporary absence from a facility in accordance with the IPP, the facility shall ask the resident and payer if they wish the bed held open. This shall be documented in the resident's record including the response. The bed shall be held open and the facility shall receive payment for the absent periods in accordance with the provisions of the contract between the resident or the legal guardian and the facility. (II)

*k.* States the conditions under which the involuntary discharge or transfer of a resident would be affected; (III)

*l.* States the conditions of voluntary discharge or transfer; (III) and

*m.* Sets forth any other matters deemed appropriate by the parties to the contract. No contract or any provision shall be drawn or construed so as to relieve any health care facility of any requirement or obligation imposed upon it by this chapter or any standards or rules in force pursuant to this chapter. (III).

**65.19(3)** *Contract—copy to party.* Each party shall receive a copy of the signed contract. (III)

**65.19(4)** The contract shall state the terms of agreement concerning the holding and charging for a bed when a resident is hospitalized or leaves the facility temporarily for recreational or therapeutic reasons. The terms shall contain a provision that the bed will be held at the request of the resident or the resident's legal representative.

*a.* The facility shall ask the resident or legal representative if they want the bed held. This request shall be made before the resident leaves or within 48 hours after the resident leaves.

The inquiry and the response shall be documented. (II)

*b.* The facility shall reserve the bed when requested for as long as payments are made in accordance with the contract. (II)

This rule is intended to implement Iowa Code sections 135C.23(1) and 135C.24.

**481—65.20(135C) Records.**

**65.20(1)** *Resident record.* The licensee shall keep a permanent record about each resident with all entries current, dated, and signed. (II) The record shall include:

*a.* Name and previous address of resident; (III)

**65.23(6)** *Family and employee accommodations.* Resident bedrooms shall not be occupied by employees, family members of employees, or family members of the licensee. (III)

*a.* In facilities where the total occupancy of family, employees, and residents is five or less, one toilet and one tub or shower is the minimum requirement. (III)

*b.* In all health care facilities, if the family or employees live within the facility, living quarters shall be required for the family or employees separate from areas provided for residents. (III)

**65.23(7)** *Pets—policies.* Any facility in which a pet is living shall implement written policise and procedures addressing the following:

*a.* Vaccination schedule; (III)

*b.* Veterinary visit schedule; (III)

*c.* Housing or sleeping quarters; (III) and

*d.* Assignment of responsibility for feeding, bathing and cleanup. (III)

**65.23(8)** *Maintenance.* Each facility shall establish a program to ensure continued maintenance of the facility, to promote good housekeeping procedures, and to ensure sanitary practices throughout. In facilities over 15 beds, this program shall be in writing and be available for review by the department. (III)

*a.* The buildings, furnishings and grounds shall be maintained in a clean, orderly condition and be in good repair. (III)

*b.* The buildings and grounds shall be kept free of flies, other insects, rodents, and their breeding areas. (III)

**65.23(9)** *Buildings, furnishings, and equipment.*

*a.* Battery operated, portable emergency lights in good working condition shall be available at all times, at a ratio of one light per employee on duty from 6 p.m. to 6 a.m. (III)

*b.* All windows shall be supplied with curtains and shades or drapes which are kept in good repair. (III)

*c.* Wherever glass sliding doors or transparent panels are used, they shall be marked conspicuously and decoratively. (III)

**65.23(10)** *Water supply.* Every facility shall have an adequate water supply from an approved source. A municipal source of water shall be considered as meeting this requirement. Private sources of water to a facility shall be tested annually and the report submitted with the annual application for license. (III)

*a.* A bacterially unsafe source of water shall be grounds for denial, suspension, or revocation of license. (III)

*b.* The department may require testing of private sources of water to a facility at its discretion in addition to the annual test. The facility shall supply reports of tests as directed by the department. (III)

This rule is intended to implement Iowa Code section 135C.14.

**481—65.24(135C) Care review committee.** Each facility shall have a care review committee in accordance with Iowa Code section 135C.25, which shall operate within the scope of the rules for care review committees promulgated by the department of elder affairs. (III)

**65.24(1)** *Role of committee in complaint investigations.*

*a.* The department shall notify the facility's care review committee of a complaint from the public. The department shall not disclose the name of a complainant.

*b.* The department may refer complaints to the care review committee for initial evaluation or investigation by the committee pursuant to rules promulgated by the department of elder affairs. Within ten days of completion of the investigation, the committee shall report to the department in writing the results of the evaluation of the investigation.

*c.* When the department investigates a complaint, upon conclusion of its investigation, it shall notify the care review committee and the department of elder affairs of its findings, including any citations and fines issued.

*d.* Results of all complaint investigations addressed by the care review committee shall be forwarded to the department within ten days of completion of the investigation.

**65.24(2)** *Complaints monitored.* The care review committee shall, upon department request, be responsible for monitoring correction of substantiated complaints.

**65.24(3)** *Family member information.* When requested, names, addresses and telephone numbers of family members shall be given to the care review committee, unless the family refuses. The facility shall provide a form on which a family member may refuse to have their name, address or telephone number given to the care review committee.

This rule is intended to implement Iowa Code section 135C.25.

**481—65.25(135C) Residents' rights in general.** Each facility shall ensure that policies and procedures are written and implemented which include at least provisions in subrules 65.25(1) to 65.25(21). These shall govern all services provided to staff, residents, their families or legal representatives. The policies and procedures shall be available to the public and shall be reviewed annually. (II)

**65.25(1)** *Grievances.* Written policies and procedures shall include a method for submitting grievances and recommendations by residents or their legal representatives and for ensuring a response and disposition by the facility. The written procedure shall ensure protection of the resident from any form of reprisal or intimidation and shall include:

*a.* An employee or an alternate designated to be responsible for handling grievances and recommendations; (II)

*b.* Methods to investigate and assess the validity of a grievance or recommendation; (II) and

*c.* Methods to resolve grievances and take action. (II)

**65.25(2)** *Informed of rights.* Policies and procedures shall include a provision that residents be fully informed of their rights and responsibilities as residents and of all rules governing resident conduct and responsibilities. This information must be provided upon admission, or when the facility adopts or amends residents' rights policies. It shall be posted in locations accessible to all residents. (II)

*a.* The facility shall make known to residents what they may expect from the facility and its staff, and what is expected from residents. The facility shall communicate these expectations during a period not more than two weeks before or later than five days after admission. The communication shall be in writing in a separate handout or brochure describing the facility. It shall be interpreted verbally, as part of a preadmission interview, resident counseling, or in individual or group orientation sessions after admission. (II)

*b.* Residents' rights and responsibilities shall be presented in language understandable to residents. If the facility serves residents who do not speak English or are deaf, steps shall be taken to translate the information into a foreign or sign language. Blind residents shall be provided either braille or a recording. Residents shall be encouraged to ask questions about their rights and responsibilities. Their questions shall be answered. (II)

*c.* A statement shall be signed by the resident and legal guardian, if applicable, to indicate the resident understands these rights and responsibilities. The statement shall be maintained in the record. The statement shall be signed no later than five days after admission. A copy of the signed statement shall be given to the resident or legal guardian. (II)

*d.* All residents, next of kin, or legal guardian shall be advised within 30 days of changes made in the statement of residents' rights and responsibilities. Appropriate means shall be used to inform non-English speaking, deaf or blind residents of changes. (II)

**65.25(3)** Resident abuse prohibited. Each resident shall receive kind and considerate care at all times and shall be free from physical, sexual, mental and verbal abuse, exploitation, and physical injury. (I, II)

**65.25(4)** Upon a claim of dependent adult abuse of a resident being reported, the administrator of the facility shall separate the victim and accused abuser immediately and maintain the separation until the abuse investigation is completed. (I, II)

**65.25(5)** *Informed of health condition.* Each resident or legal guardian shall be fully

informed by a physician of the health and medical condition of the resident unless a physician documents reasons not to in the resident's record. (II)

**65.25(6)** *Research.* The resident or legal guardian shall decide whether a resident participates in experimental research. Participation shall occur only when the resident or guardian is fully informed and signs a consent form. (II, III)

Any clinical investigation involving residents must be sponsored by an institution with a human subjects review board functioning in accordance with the requirement of Public Law 93-348, as implemented by part 46 of Title 45 of the Code of Federal Regulations, as amended December 1, 1981 (45CFR 46). (III)

**65.25(7)** *Resident work.* Services performed by the resident for the facility shall be in accordance with the IPP. (II)

*a.* Residents shall not be used to provide a source of labor for the facility against the resident's will. Physician's approval is required for all work programs and must be renewed yearly. (II, III)

*b.* If the individual program plan requires activities for therapeutic or training reasons, the plan for these activities must be professionally developed and implemented. Therapeutic or training goals must be clearly stated and measurable and the plan shall be time limited and reviewed at least quarterly. (II, III)

*c.* A resident engaged in work programs in the ICF/PMI shall be paid wages commensurate with wage and hour regulations for comparable work and productivity. (II)

*d.* The resident shall have the right to employment options commensurate with training and skills. (II)

*e.* Residents performing work shall not be used to replace paid employees to fulfill staff requirements. (II)

**65.25(8)** *Encouragement to exercise rights.* Residents shall be encouraged and assisted throughout their period of stay to exercise resident and citizen rights. Residents may voice grievances and recommend changes in policies and services to administrative staff or to an outside representative of their choice free from interference, coercion, discrimination, or reprisal. (II)

**65.25(9)** *Posting names.* The facility shall post the name, telephone number, and address of the:

*a.* Long-term care resident's advocate/ombudsman; (II)

*b.* Survey agency; (II)

*c.* Local law enforcement agency; (II)

*d.* Care review committee members; (II)

*e.* Administrator; (II)

*f.* Members of the board of directors; (II)

*g.* Corporate headquarters; (II) and the

*h.* Iowa Protection and Advocacy Services, Inc. (II)

The text of Iowa Code section 135C.46 shall also be available to provide residents another course of redress. These items shall be posted in an area where residents and visitors can read them. (II)

**65.25(10)** *Dignity preserved.* Residents shall be treated with consideration, respect, and full recognition of their dignity and individuality, including privacy in treatment and in care of personal needs. (II)

*a.* Staff shall display respect for residents when speaking with, caring for, or talking about them as constant affirmation of the individuality and dignity of human beings. (II)

*b.* Schedules of daily activities shall allow maximum flexibility for residents to exercise choice about what they will do and when they will do it. Residents' individual preferences regarding such things as menus, clothing, religious activities, friendships, activity programs, entertainment, sleeping, eating, and times to retire at night and arise in the morning shall be elicited and considered by the facility. The facility shall make every effort to match nonsmokers with other nonsmokers. (II)

*c.* Residents shall not have their personal lives regulated beyond reasonable adherence to meal schedules, bedtime hours, and other written policies which may be necessary for the orderly management of the facility and as required by these rules; however, residents shall be encouraged to participate in recreational programs. (II)

*d.* Residents shall be examined and treated in a manner that maintains the privacy of their bodies. A closed door shall shield the resident from passers-by. People not involved in the care of a resident shall not be present without the resident's consent during examination or treatment. (II)

*e.* Privacy for each person shall be maintained when residents are being taken to the toilet or being bathed and while they are being helped with other types of personal hygiene, except as needed for resident safety or assistance. (II)

*f.* Staff shall knock and be acknowledged before entering a resident's room unless the resident is not capable of response. This does not apply under emergency conditions. (II)

**65.25(11)** *Communications.* Each resident may communicate, associate, and meet privately with persons of the resident's choice, unless to do so would infringe upon the rights of other residents. Each resident may send and receive personal mail unopened unless prohibited in the IPP which has explicit approval of the resident or legal guardian. Telephones consistent with ANSI standards 42CFR 405.1134(c) (10-1-86) shall be available and accessible for residents to make and receive calls with privacy. Residents who need help shall be assisted in using the telephone. (II)

Arrangements shall be made to provide assistance to residents who require help in reading or sending mail. (II)

**65.25(12)** *Visiting policies and procedures.* Subject to reasonable scheduling restrictions, visiting policies and procedures shall permit residents to receive visits from anyone they wish. Visiting hours shall be posted. (II)

*a.* Reasonable, regular visiting hours shall not be less than 12 hours per day and shall take into consideration the special circumstances of each visitor. A particular visitor(s) may be restricted by the facility for one of the following reasons:

(1) The resident refuses to see the visitor(s). (II)

(2) The visit would not be in accordance with the IPP. (II)

(3) The visitor's behavior is unreasonably disruptive to the functioning of the facility. (II)

Reasons for denial of visitation shall be documented in resident records. (II)

*b.* Decisions to restrict a visitor shall be reevaluated at least quarterly by the QMHP or at the resident's request. (II)

*c.* Space shall be provided for residents to receive visitors in comfort and privacy. (II)

**65.25(13)** *Resident activities.* Each resident may participate in activities of social, religious, and community groups as desired unless contraindicated for reasons documented by the attending physician or qualified mental health professional, as appropriate, in the resident's record. (II)

Residents who wish to meet with or participate in activities of social, religious or community groups in or outside the facility shall be informed, encouraged, and assisted to do so. (II)

Residents shall be permitted to leave the facility and environs at reasonable times unless there are justifiable reasons established in writing by the attending physician, QMHP, or facility administrator for refusing permission. (II)

**65.25(14)** *Resident property.* Each resident may retain and use personal clothing and possessions as space permits and provided use is not otherwise prohibited in these rules. (II)

*a.* Residents shall be permitted to keep reasonable amounts of personal clothing and possessions for their use while in the facility. The personal property shall be kept in a secure location which is convenient to the resident. (II)

*b.* Residents shall be advised, prior to or at the time of admission, of the kinds and amounts of clothing and possessions permitted for personal use, and whether the facility will accept responsibility for maintaining these items, e.g., cleaning and laundry. (II)

*c.* Any personal clothing or possession retained by the facility for the resident shall be identified and recorded on admission and the record placed on the resident's chart. The facility shall be responsible for secure storage of items. They shall be returned to the resident promptly upon request or upon discharge from the facility. (II)

**65.25(15)** *Sharing rooms.* Residents, including spouses staying in the same facility, shall be permitted to share a room, if available, if requested by both parties, unless reasons to the contrary are in the IPP. Reasons for denial shall be documented in the resident's record. (II)

**65.25(16)** *Choice of physician and pharmacy.* Each resident shall be permitted free choice of a physician and a pharmacy. The facility may require the pharmacy selected to use a drug distribution system compatible with the system currently used by the facility. (II)

**481—65.26(135C) Incompetent residents.** Each facility shall provide that all rights and responsibilities of incompetent residents devolve to the legal guardian when a hearing has been held and the resident is judged incompetent in accordance with state law. (II)

A facility is not absolved from advising incompetent residents of their rights to the extent the resident is able to understand them. The facility shall also advise the legal guardian, if any, and acquire a statement indicating an understanding of resident's rights. (II)

This rule is intended to implement Iowa Code sections 135C.14(8) and 135C.24.

**481—65.27(135C) County care facilities.** In addition to these rules, county care facilities licensed as intermediate care facilities for persons with mental illness must also comply with department of human services rules, 441—Chapter 37. Violation of any standard established by the department of human services is a Class II violation pursuant to Iowa Administrative Code 481—56.2(135C).

This rule is intended to implement Iowa Code section 227.4.

**481—65.28(135C) Violations.** Classification of violations is I, II and III, determined by the division using the provisions in Chapter 56, "Fining and Citations," to enforce a fine to cite a facility.

**481—65.29(135C) Another business or activity in a facility.** Another business or activity shall not be carried on in a health care facility or in the same physical structure with a health care facility unless:

1. The business or activity is under the control of and is directly related to and incidental to the operation of the health care facility; or
2. The business or activity is approved by the department and the state fire marshal. (I, II, III)

**65.29(1)** The following factors will be considered by the department in determining whether a business or activity will interfere with the use of the facility by residents, interfere with services provided to residents, or be disturbing to residents:

*a.* Health and safety risks for residents;

*b.* Compatibility of the proposed business or activity with the facility program;

*c.* Noise created by the proposed business or activity;

*d.* Odors created by the proposed business or activity;

*e.* Use of entrances and exits for the business or activity in regard to safety and disturbance of residents and interference with delivery of services;

*f.* Use of the facility's corridors or rooms as thoroughfares to the business or activity in regard to safety and disturbance of residents and interference with delivery of services;

*g.* Proposed staffing for the business or activity;

*h.* Sharing of services and staff between the proposed business or activity and the facility;

*i.* Facility layout and design; and

*j.* Parking area utilized by the business or activity.

**65.29(2)** Approval of the state fire marshal shall be obtained before approval of the department will be considered.

**65.29(3)** A business or activity conducted in a health care facility or in the same physical structure as a health care facility shall not reduce space, services or staff available to residents below minimums required in these rules and Chapter 61. (I, II, III)

These rules are intended to implement Iowa Code sections 135C.4, 135C.6(2), 135C.6(3), 135C.7, 135C.8, 135C.14, 135C.14(2), 135C.14(8), 135C.16(2), 135C.23, 135C.24, 135C.25, 135C.31, and 227.4.

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## CHAPTERS 66 to 69
Reserved

**61.4(2)** *Lodge, cabin, open shelter and group camp reservations and rental.*

*a.* Reservations for the above-mentioned facilities are to be made only for the current calendar year. No reservations will be accepted for subsequent years.

*b.* Telephone and walk-in reservations will not be accepted until the second business day after January 1 of each year.

*c.* Mail-in reservations for the subsequent calendar year received prior to January 1 will be placed in a box and processed through a random drawing system on the first business day following January 1.

*d.* Walk-in and telephone requests on and after the second business day in January will be handled on a first-come, first-served basis.

*e.* All mail-in requests will be handled on a random drawing basis daily throughout the calendar year.

*f.* All reservations must be accompanied by a $25 deposit which will be refunded only if a cancellation notice is received at least ten days prior to the date of reservation.

*g.* Reservations made by telephone will be tentatively scheduled and held for five working days. If written confirmation and deposit are not received by the end of the five working days the reservation will be canceled.

*h.* Cabin and group camp reservations must be for a minimum of one week (Saturday p.m. to Saturday a.m.). These facilities, if not reserved, may be rented for a minimum of two days on a walk-in, first-come, first-served basis.

*i.* Persons renting cabins or group camp facilities must check in at or after 4 p.m. on Saturday and pay the entire rental fee at that time. Check-out time is 2 p.m. or earlier on Saturday. The $25 deposit will be refunded only after inspection by park personnel to assure the facility and furnishings are in satisfactory condition.

*j.* No cabin or group camp reservation will be held past 6 p.m. on the first day of the reservation period if the person reserving the facility does not appear or make arrangements with the park ranger for late arrival. The facility may then be rented to another person or group on a first-come, first-served basis.

*k.* Except by arrangement with the park ranger in charge of the area, persons renting lodge facilities and all guests shall vacate the facility by 10 p.m.

*l.* The deposit for lodge rental will be refunded only after the facility is inspected by park personnel and found to be in satisfactory condition.

*m.* Open shelters may be reserved using the procedures outlined in paragraphs *"a," "b," "c," "d," "e,"* and *"g."* Shelters which are not reserved are available on a first-come, first-served basis.

**571—61.5(111) Restrictions—area and use.** This rule sets forth conditions of public use which apply to all state parks and recreation areas. These general conditions are subject to exceptions for specific areas as listed in 571—61.6(111) and 61.22(111). The conditions in this rule are in addition to specific conditions and restrictions set forth in Iowa Code chapter 111.

**61.5(1)** *Rock climbing or rappelling.* Climbing or rappelling activity which utilizes bolts, pitons, or similar permanent anchoring equipment or ropes, harness, or slings is prohibited in state parks and recreation areas, except by persons or groups registered with the person in charge of the area. Individuals participating with groups must each sign a registration. Climbing or rappelling will not be permitted at the Ledges State Park, Boone County; Dolliver State Park, Webster County; Wildcat Den State Park, Muscatine County; or Mines of Spain Area, Dubuque County. Other sites may be closed to climbing or rappelling if environmental damage or safety problems occur or if an endangered or threatened species is present.

**61.5(2)** *Bottles.* Possession or use of breakable containers, the fragmented parts of which can injure a person, is prohibited in beach areas of state parks and recreation areas.

**61.5(3)** *Opening time.* Except by arrangement or permission granted by the director or the director's authorized representative or as otherwise stated in this chapter, the following

rules shall apply: All persons shall vacate all state parks before 10:30 p.m., each day, except authorized campers in accordance with Iowa Code section 111.46, and no person or persons shall enter into such parks and preserves until 4:00 a.m. the following day.

**61.5(4)** *Garbage.* Using government refuse receptacles for dumping household, commercial, or industrial refuse brought as such from private property is prohibited.

**61.5(5)** *Chainsaws.* Except by written permission of the director of the department of natural resources, chainsaw use is prohibited in state parks and recreation areas. This provision is not applicable to employees of the department of natural resources in the conduct of their official duties.

**61.5(6)** *Noise.* Creating or sustaining any unreasonable noise in any portion of all state parks and recreation areas is prohibited at all times. The nature and purpose of a person's conduct, the impact on other area users, time of day, location, and other factors which would govern the conduct of a reasonable, prudent person under the circumstances shall be used to determine whether the noise is unreasonable. This shall include the operation or utilization of motorized equipment or machinery such as an electric generating plant, motor vehicle, motorized toy, or audio device such as a radio, television set, tape deck, public address system, or musical instrument or other device causing unreasonable noise. Between the hours of 10:30 p.m. and 6:00 a.m., noise which can be heard at a distance of 120 feet or three campsites shall be considered unreasonable.

**61.5(7)** *Animals.*

*a.* The use of equine animals is limited to roadways or to trails designated for such use.

*b.* Animals are prohibited within designated beach areas.

*c.* Livestock is not permitted to graze or roam within state parks and recreation areas. The owner of the livestock shall remove it immediately upon notification by the department of natural resources personnel in charge of the area.

*d.* Pets such as dogs or cats shall not be allowed to run at large within the designated camping area in recreation areas. Such animals shall be deemed running at large unless under the direct voice control of the owner or the owner carries the animal or leads it by a leash or chain not exceeding six feet in length or keeps it confined in or attached to a vehicle. Chains or other restraints used at campsites ensure that the animal is confined to the designated campsite.

**61.5(8)** *Beach use/swimming.*

*a.* Except as provided in paragraph *"b"* of this subrule, all swimming and scuba diving shall take place in the beach area within the boundaries marked by ropes, buoys, or signs within state park and recreation areas. Inner tubes, air mattresses and other beach-type items shall be used only in designated beach areas.

*b.* Persons may scuba dive in areas other than the designated beach area and shall display the diver's flag as specified in rule 571—41.10(106).

*c.* The provisions of paragraph *"a"* of this subrule shall not be construed as prohibiting wading in areas other than the beach by persons actively engaged in shoreline fishing.

**61.5(9)** *Campsite use restrictions.*

*a.* Camping is restricted to one basic unit per site except that a small tent or other type camping unit may be placed on a site with the basic unit so long as the persons occupying the second unit are under eighteen years of age and dependent members of the immediate family occupying the larger unit.

*b.* Each camping unit shall utilize only the electrical outlet fixture designated for its particular campsite. No extension cords or other means of hookup shall be used to furnish electricity from one designated campsite to another.

*c.* Each camping unit will be permitted to park one motor vehicle not being used for camping purposes at their campsite. One additional vehicle may be parked at the campsite provided the fee given in subrule 61.3(1)*"f"* has been paid.

*d.* All motor vehicles, excluding motorcycles, not covered by the provision in 61.5(9)*"c"* shall be parked in designated extra vehicle parking areas.

*e.* Campers shall register as provided in subrule 61.4(1) within one-half hour of entering the campground.

*f.* Campers shall vacate the campground or register for the night prior to 4:00 p.m. daily. Registration can be for more than one day at a time but not for more than 14 consecutive days. Campers must vacate the state park campground on the fourteenth day and may not return to that same area until a minimum of three days has passed.

This rule is intended to implement Iowa Code section 111.35.

**571—61.6(111) Certain conditions of public use applicable to specific parks and recreation areas.** Notwithstanding the general conditions of public use set forth in 571—61.5(111), special conditions shall apply to specific areas listed as follows:

**61.6(1)** *Pleasant Creek Recreation Area, Linn County.* Swimming is limited by the provisions of 61.5(8); also, swimming is prohibited at the beach from 10:30 p.m. to 6 a.m. daily.

**61.6(2)** *Mines of Spain Recreation Area, Dubuque County.* All persons except campers shall vacate all portions of the Mines of Spain Recreation Area prior to 10:30 p.m. each day and no person or persons shall enter into the area until 4 a.m. the following day. Campers must remain in the campground between 10:30 p.m. and 4 a.m.

**61.6(3)** *Lake Darling Recreation Area, Washington County.* Except for use of firearms for the taking of deer as provided in 571—Chapter 105, all conditions and limitations on use, hours, and prohibited acts set forth in Iowa Code chapter 111 and elsewhere in this chapter shall apply to Lake Darling Recreation Area. During the dates of deer hunting provided for in 105.4(1)*"c,"* only persons engaged in deer hunting shall use the area.

**61.6(4)** *Brushy Creek Recreation Area, Webster County.*

*a.* When the campsites in the designated camping area are filled, the day-use area located south of the designated campground may be used as an overflow camping area. The maximum number of camping units permitted in this overflow is 30.

*b.* In the designated campground, the maximum number of equine animals to be hitched to the new, larger hitching rails is six and the maximum number for the older, smaller rails is four. Persons with a number of equine animals in excess of the number permitted on the hitching rail at their campsite shall be allowed to stable their additional animals in a trailer or at a nearby, unrented campsite.

*c.* In the designated campground, equine animals may be hitched to trailers for short periods of time to allow grooming or saddling; however, the hitching of equine animals to the exterior of trailers for extended periods of time or stabling is not permitted.

**571—61.7(111) Mines of Spain hunting, trapping and firearms use.**

**61.7(1)** The following described portions of the Mines of Spain Recreation Area are established and will be posted as wildlife refuges:

*a.* That portion within the city limits of the city of Dubuque located west of U.S. Highway 61 and north of Mar Jo Hills Road.

*b.* The tract leased by the department of natural resources from the city of Dubuque upon which the E.B. Lyons Interpretive Center is located.

*c.* That portion located south of the north line of Section 8, Township 88 North, Range 3 East of the 5th P.M. between the west property boundary and the east line of said Section 8.

**61.7(2)** Archery hunting for all legal species and trapping are permitted in compliance with all open season, license and possession limits on all of the Mines of Spain Recreation Area except those designated as refuge by subrule 61.7(1).

**61.7(3)** Firearm use is prohibited in the following described areas:

*a.* The areas described in subrule 61.7(1).

*b.* The area north and west of Catfish Creek and west of Granger Creek.

**61.7(4)** Deer hunting with guns and muzzleloading rifles and hunting for all other species is permitted only during the regular gun season and with shotguns only as established by 571 IAC 106. Areas not described in 61.7(3) are open for hunting. Hunting shall be in compliance with all other regulations.

**61.7(5)** During the regular gun season established by 571 IAC 106 only persons engaged in hunting or trapping shall use the Mines of Spain Recreation Area in the areas where firearms are allowed.

**61.7(6)** Turkey hunting with shotguns is allowed only in compliance with the following regulations:

*a.* Only during the first shotgun hunting season established in 571 IAC 98 which is typically four days in mid-April.

*b.* Only that area of the Mines of Spain Recreation Area located east of the newly established roadway and south of the Horseshoe Bluff Quarry.

*c.* During the season described in paragraph *"a"* of this subrule, only persons engaged in turkey hunting shall use the area described in paragraph *"b"* of this subrule.

**61.7(7)** The use or possession of handguns and all types of rifles is prohibited on the entire Mines of Spain Recreation Area except as provided in 61.7(4). Target and practice shooting with any type of firearm is prohibited.

**61.7(8)** All forms of hunting, trapping and firearm use not specifically permitted by 571—61.7(111) are prohibited on the Mines of Spain Recreation Area.

**571—61.8 to 61.20** Reserved.

**571—61.21(111) After hours fishing, exception to closing time.**

**61.21(1)** *Conditions.* Persons shall be allowed access to the areas designated in 571—61.22(111) between the hours of 10:30 p.m. and 4 a.m. under the following conditions:

*a.* The person is to be actively engaged in fishing.

*b.* The person shall behave in a quiet, courteous manner so as to not disturb other users of the park such as campers.

*c.* Access to the fishing site shall be by the shortest and most direct trail or access facility from the parking area.

*d.* Vehicle parking shall be in the lots designated by signs posted in the area.

*e.* Activities other than fishing are allowed with permission of the director or an employee designated by the director.

**61.21(2)** Reserved.

**571—61.22(111) Designated areas for after-hours fishing.** Areas which are open from 10:30 p.m. to 4 a.m. are shown on maps available from the department of natural resources. The areas are described as follows:

**61.22(1)** *Lower Pine Lake, Hardin County.* West shoreline along Highway 118 from the beach southerly to the boat ramp access.

**61.22(2)** *Upper Pine Lake, Hardin County.* Southwest shoreline extending from the boat launch ramp to the dam.

**61.22(3)** *Pikes Point State Park, Dickinson County.* The shoreline areas of Pikes Point State Park on the east side of West Okoboji Lake.

**61.22(4)** *Black Hawk Lake, Sac County.* The area of state park between the road and the lake running from the marina at Drillings Point on the northeast end of the lake approximately three-fourths of a mile in a southwesterly direction to a point where the park boundary decreases to include only the roadway.

**61.22(5)** *North Twin Lake State Park, Calhoun County.* The shoreline of the large day use area containing the swimming beach on the east shore of the lake.

**61.22(6)** *Lake Geode State Park, Des Moines County portion.* The area of the dam embankment between the county road and the lake as shown on the map.

**61.22(7)** *Lake McBride State Park, Johnson County.* The shoreline of the south arm of

the lake adjacent to the county road commencing at the "T" intersection of the roads at the north end of the north-south causeway proceeding across the causeway thence southeasterly along a foot trail to the east-west causeway, across the causeway to the parking area on the east end of that causeway.

**61.22(8)** *Union Grove State Park, Tama County.*

*a.* The dam embankment from the spillway to a line parallel with the west end of the parking lot adjacent to the dam.

*b.* The area of state park between the county road and the lake along the west shoreline from the causeway on the north end of the lake to the southerly end of the arm of the lake that extends southwesterly of the main water body.

**61.22(9)** *Bob White State Park, Wayne County.* Both sides of the east-west causeway embankment on County Road J46 from the parking lot on the west end of the causeway to a point approximately 300 feet east of the causeway bridge.

**61.22(10)** *Lake Keomah State Park, Mahaska County.*

*a.* The embankment of the dam between the crest of the dam and the lake.

*b.* The shoreline between the road and the lake from the south boat launch area west and north to the junction with the road leading to the group camp shelter.

**61.22(11)** *Prairie Rose State Park, Shelby County.* The west side of the embankment of the causeway across the southeast arm of the lake including the shoreline west of the parking area to its junction with the road leading toward the park ranger residence.

**61.22(12)** *Green Valley Lake, Union County.*

*a.* The embankment of the road from the small parking area east of the park ranger's residence east to the "T" intersection and south to the westerly end of a point of land jutting into the lake directly south of the parking lot mentioned above.

*b.* From the east side of the spillway easterly across the dam to the west edge of the parking lot.

**61.22(13)** *Rock Creek Lake, Jasper County.* Both sides of the County Road F27 causeway across the main north portion of the lake.

**61.22(14)** *Honey Creek State Park, Appanoose County.* The boat ramp area located north of the park office, access to which is the first road to the left upon entering the park.

**571—61.23(111) Vessels prohibited.** Rule 571—61.22(111) does not permit the use of vessels on the artificial lakes within state parks after the 10:30 p.m. park closing time. All fishing is to be done from the bank or shoreline of the permitted area.

**571—61.24(111) Campground fishing.** Rule 571—61.22(111) of these rules is not intended to prohibit fishing by registered campers from the shoreline within the camping area.

These rules are intended to implement Iowa Code sections 111.3, 111.35, 111.38, 111.43 and 111.45 to 111.51.

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◊Two ARC's

CHAPTER 23
EMPLOYEE ORGANIZATION DUES



CHAPTER 24
PEACE OFFICERS' RETIREMENT, ACCIDENT AND DISABILITY SYSTEM



CHAPTER 25
COMBINED CHARITABLE CAMPAIGN



CHAPTERS 26 to 30
Reserved

CHAPTER 31
DEPARTMENT PROCEDURE FOR RULE MAKING

# CHAPTER 18
# CONDUCT OF EMPLOYEES
[Prior to 11/5/86, Merit Employment Department (570)]

**581—18.1(19A) General.** Employees shall fulfill to the best of their ability the duties and responsibilities of the positions to which appointed. In carrying out their official job duties, employees shall work for the appointing authority's efficient and effective delivery of services. Employees shall perform assigned responsibilities in such a manner as neither to endanger their impartiality nor to give occasion for distrust or question of their impartiality.

**581—18.2(68B) Selling of goods or services.** Employees in state regulatory agencies shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations that are subject to the regulatory authority of the agency of employment except as authorized by the appointing authority in accordance with Iowa Code Supplement section 68B.4 and provisions of this rule.

**18.2(1)** *Definitions.*

*"Agency"* means one of the state executive branch regulatory agencies as defined in Iowa Code sections 68B.2(1) and 68B.2(13).

*"Compensation"* means remuneration for the sale of goods or services, including cash or other forms of payment.

*"Employee"* means a nontemporary employee of an executive branch regulatory agency of state government. The provisions of this rule shall also apply to the spouse and minor children of an employee, a firm in which the employee is a partner, and any corporation in which the employee, either directly or indirectly, holds 10 percent or more of the stock. Employee, as used in this rule, shall not mean an independent contractor, or an official in a regulatory agency who is (1) elected or appointed to serve on a board, commission, or elective office; (2) a department head; or (3) any other individual who by law is appointed by the governor.

*"Sale of goods or services"* means the receipt of compensation by an employee for providing goods or services. For purposes of this rule, the sale of goods or services shall not apply to outside employment activities that constitute an employer-employee relationship.

**18.2(2)** *Requests for agency consent.* Requests for the sale of goods or services shall be subject to the following:

*a.* A written request for the sale of goods or services shall be filed with the appointing authority at least 20 calendar days in advance of the proposed sale of goods or services. A request shall not be considered filed until all information specified below is received.

*b.* The request shall include, but not be limited to, the following:

(1) The prospective recipient(s) of the goods or services and the recipient's relationship to the agency's regulatory authority;

(2) Anticipated date(s) of delivery of the goods or services;

(3) Description of the goods or services;

(4) Approximate amount and form of compensation; and

(5) Statement by the employee explaining why the proposed sale of goods or services will not create a conflict of interest.

*c.* Consent or denial of the request shall be issued in writing by the appointing authority within 14 calendar days following the date the request was filed. If the request is denied, the appointing authority shall state the reason(s) for the denial and the employee's right to grieve the decision in accordance with rule 581—12.1(19A).

*d.* If the decision is grieved, the employee shall be required to substantiate, as part of the grievance, why the proposed sale of goods or services will not create a conflict of interest within the meaning of Iowa Code Supplement section 68B.4.

*e.* Approved requests are valid only to the extent that all relevant facts have been disclosed and the relevant facts under which consent was granted remain unchanged.

*f.* Approved requests are subject to immediate revocation at any time with written notice by the appointing authority to the requester.

*g.* Requests and responses are public records within the meaning of Iowa Code section 22.1 and are open for public examination.

**18.2(3)** *Agency guidelines.* Agencies that are subject to this rule shall develop written guidelines concerning the selling of goods or services by their employees. The guidelines shall be consistent with the provisions of this rule and shall include, but not be limited to, the following:

1. A description of the regulatory authority of the agency and the types of individuals, associations, or corporations that are subject to this authority;
2. The conditions for granting consent as provided in Iowa Code section 68B.4.
3. A procedure for submitting requests to sell goods or services consistent with subrule 18.2(2); and
4. The name or position of the appointing authority who will review and approve or deny such requests.

The guidelines shall be made known and available to employees throughout the agency through well-publicized means.

**18.2(4)** *Expressly prohibiting or permitting classes of sales.* An agency may adopt rules which identify sales of goods or services that are expressly prohibited (or permitted) by the agency, based on the agency's conclusion that the sales do (or do not), as a class, constitute a conflict of interest. Classes of sales that are expressly permitted by the agency shall not require individual requests and approval as provided in subrule 18.2(2) unless there are unique factors that otherwise present a conflict of interest.

**18.2(5)** *Effect of other laws.* Neither this rule nor any consent provided under this rule constitutes consent for any activity which would constitute a conflict of interest at common law or which would violate any applicable statute or rule. Despite consent under this rule, the sale of goods or services to someone subject to the jurisdiction of the agency may violate the gift, bribery, or corruption laws of the state of Iowa. It is the responsibility of the employee to assure compliance with all applicable laws and to avoid both impropriety and the appearance of impropriety.

This rule is intended to implement Iowa Code Supplement section 68B.4.

**581—18.3(19A) Other employment or activity.** Employees shall not engage in any outside employment or activity which has been reasonably determined and made known in writing by the appointing authority to be inconsistent, incompatible, or in conflict with employees' job duties and responsibilities.

In making that determination appointing authorities shall give consideration to, but are not limited to, activities which:

**18.3(1)** Involve private gain or advantage by the use of the state's time, facilities, equipment and supplies; or, the use of the badge, uniform, prestige, or influence of the employee's job.

**18.3(2)** Involve the receipt of, promise of or acceptance by an employee of any money or other consideration from anyone, other than the state, for the performance of any act that the employee would be required or expected to perform as a part of regular duties or during hours of state employment.

**18.3(3)** Involve the performance of an act or work, in other than the employee's job as a state employee, which may later be subject, directly or indirectly, to control, inspection, review, audit, or enforcement by the employee or the appointing authority for which the employee works.

**581—18.4(19A) Performance of duty.** Employees shall, during scheduled hours of work, devote their full time, attention and efforts to assigned duties and responsibilities subject to the Iowa Code and the Iowa Administrative Code. Tenure of employment is dependent upon the satisfactory performance of assigned duties and responsibilities as well as appropriate conduct as provided for in these rules. This rule shall not be interpreted to prevent the separation or reduction of employees because of the lack of funds, curtailment of work, or reorganization done in accordance with these rules, the Iowa Code, or the provisions of a collective bargaining agreement.

**581—18.5(19A) Prohibitions relating to certain actions by state employees.**

**18.5(1)** Employees shall not be prohibited from disclosing any information to members or employees of the general assembly, or to any other public official or law enforcement agency if the employee believes the information is evidence of a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

*a.* This subrule does not apply to the disclosure of information prohibited by statute.

*b.* Agencies are prohibited from making reprisals in the form of a disciplinary action or failure to appoint or promote an employee who discloses information or who declines to contribute to a charity or organization. Reprisals for disclosing information shall be subject to civil action.

**18.5(2)** Employees may contact the office of the Iowa citizens' aide at 1-800-358-5510 to report violations of this rule.

These rules are intended to implement Iowa Code section 19A.9 and Iowa Code Supplement section 68B.4.

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# PUBLIC HEALTH DEPARTMENT[641]

Created by 1986 Iowa Acts, chapter 1245.

Rules of divisions under this Department "umbrella" include Substance Abuse[643], Professional Licensure[645], Dental Examiners[650], Medical Examiners[653], Nursing Examiners[655] and Pharmacy Examiners[657].

CHAPTER 40
STANDARDS FOR PROTECTION AGAINST RADIATION

## CHAPTER 131
## BASIC EMERGENCY MEDICAL CARE
### TRAINING AND CERTIFICATION OF FIRST RESPONDERS, EMERGENCY RESCUE TECHNICIANS AND EMERGENCY MEDICAL TECHNICIANS-AMBULANCE



## CHAPTER 132
## ADVANCED EMERGENCY MEDICAL CARE



## CHAPTER 133
## WHITE FLASHING LIGHT AUTHORIZATION



## CHAPTERS 134 to 169
Reserved

CHAPTER 190
CONSENT FOR THE SALE OF GOODS AND SERVICES



CHAPTERS 191 to 200
Reserved

CHAPTER 201
Reserved

CHAPTER 202
CERTIFICATE OF NEED PROGRAM



CHAPTER 203
STANDARDS FOR CERTIFICATE OF NEED REVIEW



CHAPTER 204
UNIFORM REPORTING REQUIREMENTS

## CHAPTER 10
## DEFINITIONS
[Prior to 7/29/87, Health Department(470)]

**641—10.1(135) Definitions.**

*Department.* Department as hereinafter used shall refer to the Iowa department of public health.

*Dwelling.* A dwelling is any house or building or portion thereof which is occupied in whole or in part as the home or residence of one or more human beings, either permanently or transiently.

*Health officer.* Health officer shall mean the health officer of a local board of health as defined in section 135.1(3).

*Local board.* Local board shall refer to a local board of health in cities and towns and in townships, as defined in section 137.2.

*Public swimming pool.* Public swimming pool shall mean any swimming pool open to the public either publicly or privately owned.

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## CHAPTER 11
## ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)
### FINANCIAL ASSISTANCE TO ELIGIBLE HIV-INFECTED PATIENTS

**641—11.1(135) Definitions.** For the purpose of rules 641—11.1(135) to 11.12(135), the following definitions shall apply:

*"AIDS"* means acquired immune deficiency syndrome.

*"Applicant"* means a person who applies to the department for financial assistance and is HIV positive. An application from or on behalf of an unemancipated minor under 18 years of age, or any disabled person who is 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.

*"Approved medications"* means those drugs approved by the Food and Drug Administration (FDA) for the treatment of HIV infection and opportunistic infections.

*"Department"* means the Iowa department of public health.

*"Director"* means the director of public health.

*"Exempt financial resources"* means:

1. A homestead as defined herein,
2. Personal property as defined herein,
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 11.5(3).

*"Family member"* means the applicant, the applicant's spouse, any children under 18 years of age, and any disabled persons 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 18 years of age, and any disabled siblings under 18 years of age or older who are still dependent and living in the home.

*"FDA"* means Food and Drug Administration.

*"Financial assistance"* means the program funds provided to or on behalf of patients for approved medications.

*"Financial resources"* means personal, public or private assets available to applicants to offset the expenses of approved medications.

*"Financial status"* means the level of income into which applicants are categorized.

*"Gross income"* means money derived from any source (excluding borrowed money or loans obtained for specific uses) available to applicants to offset the expenses of approved medications for patients 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 (including farm property rental),
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 comprehensive health insurance expense reimbursement policies, but specifically excludes all hospital and surgical indemnity policies.

*"HIV"* means "human immunodeficiency virus."

*"HIV positive"* means the positive results of a laboratory analysis for the presence of antibodies to the AIDS virus.

*"Homestead"* means the dwelling occupied or intended to be occupied by the applicant as a home during all or part of an approved period of eligibility. 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.

*"Laboratory analysis"* means blood test analysis by a public, private, or hospital clinical laboratory confirming antibodies to the human immunodeficiency virus by confirmatory western blot.

*"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.

*"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 11.5(3).
7. Equity value of properties used for rental income.

*"Patient"* means a person who applies to the department for financial assistance and who is approved to receive the assistance.

*"Period of eligibility"* means the 12-month maximum time frame for which financial assistance may be approved.

*"Personal property"* means property of any kind, except real property as defined herein, 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 HIV drug reimbursement program conducted by the department.

*"Provider"* means a pharmacy which provides approved medications to patients.

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

**641—11.2(135) Program purpose.** The purpose of the program is to provide financial assistance to HIV positive persons who are eligible and who require approved medications for HIV-related conditions but are unable to pay for those medications.

**641—11.3(135) Residency requirements.**

**11.3(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.

**11.3(2)** Temporary absence is the absence of a person during which time there is intent to return. A temporary absence from the state of Iowa shall not be deemed to have interrupted residency requirements.

**641—11.4(135) Application procedures.**

**11.4(1)** Persons seeking financial assistance shall apply on forms provided by the department. The address is: Iowa Department of Public Health, Division of Health Protection, Bureau of Infectious Disease, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**11.4(2)** The date of application shall be the date the application is received by the department.

**11.4(3)** The department shall approve or deny the application or request additional information within 60 days from the date the application is received. Applicants shall be notified by mail of the department's decision.

**11.4(4)** Approved applicants will receive financial assistance for time periods not to exceed 12 months. If during an approved period the patient experiences a change in financial status, the patient shall notify the department in writing within 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 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 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 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 11.5(6).

**11.4(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 annually on forms provided by the department.

**11.4(6)** Rescinded IAB 2/8/89, effective 1/11/89.

**641—11.5(135) Consideration of gross income and other financial and medical resources.**

**11.5(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.

**11.5(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(s) or custodian of the minor shall be considered available to the applicant.

**11.5(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(s) 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.

**11.5(4)** Financial assistance shall be limited to approved medications or that part of the cost 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.

**11.5(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.

**11.5(6)** Program staff may, for purposes of verification, contact any person or agency in order to ensure 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.

**641—11.6(135) Financial assistance and limitations.**

**11.6(1)** Financial assistance shall be limited to the retail price of the approved medications. Reimbursement shall be provided according to the financial status category and the corresponding percentage rate as shown below:

Financial Status Category and Corresponding Percentage Rate of Reimbursement for Approved Medications

| Financial status category | 1 | 2 | 3 | 4 |
|---|---|---|---|---|
| Rate of reimbursement | 100% | 90% | 80% | 70% |

**11.6(2)** Income guidelines published by the U.S. Department of Health and Human Services (DHHS) will be adjusted following any change in Department of Health and Human Services poverty income guidelines.

**11.6(3)** For patients with other third-party payer resources, reimbursement shall not exceed the average retail price not paid in full by those resources. Any charges that exceed the retail reimbursed amount shall be the responsibility of the patient.

**11.6(4)** Should program funds be insufficient to meet all eligible requests for financial assistance, it shall be the responsibility of the department to take appropriate and necessary action to ensure that program expenses do not exceed program funds. This action may include, but need not be limited to:

*a.* Reducing the amount 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.

**11.6(5)** Reimbursement for FDA-approved medications as referenced in subrule 11.9(8) to treat HIV-related conditions shall not exceed an average of $500 per month per recipient and shall be based on availability of funds.

**641—11.7(135) Procedures for determining eligibility.**

**11.7(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.

**11.7(2)** If the applicant is a minor, necessary information shall be provided by the responsible parent, guardian or custodian of the minor.

**11.7(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.

**11.7(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.

**11.7(5)** Based on the evaluation of each application, financial assistance shall be determined and made known to the applicant by mail. Financial assistance shall be available for approved medications from the date the application is approved by the department.

**11.7(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.

*b.* The financial status categories shall be used as set forth in Appendix 1. These categories are presented in dollar ranges based on percentage increases of the 1991 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 is placed for eligibility purposes is determined upon evaluation of the applicant's gross income and other financial and medical resources.

*c.* The applicant's financial status category determines the level of financial assistance as shown in subrule 11.6(1).

**11.7(7)** Rescinded IAB 4/1/92, effective 4/1/92.

**641—11.8(135) Transfer or disposal of resources at less than fair market value.**

**11.8(1)** In determining eligibility for financial assistance, resources that have been given away or otherwise transferred or disposed of within six months prior to the month of application at less than fair market value for the purpose of establishing eligibility for financial assistance shall be counted as if those resources were still available.

**11.8(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 the 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.

**11.8(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.

**641—11.9(135) Payment procedures.**

**11.9(1)** Patients shall submit claims for approved financial assistance on forms provided by the department with sufficient documentation to clearly support the amount(s) claimed.

**11.9(2)** Providers of service, on behalf of patients, may submit claims on forms other than the department's provided those forms contain equivalent information.

**11.9(3)** Program staff shall review claims submitted for appropriateness and accuracy based upon the patient's 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).

**11.9(4)** Reimbursement of approved expenses incurred by patients may be made directly to the patient when the patient possesses the necessary expense documentation.

**11.9(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.

**11.9(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 90 days prior to the month the claim is received by the program.

**11.9(7)** The date of the claim is the date of receipt of a completed claim in the department's drug reimbursement program.

**11.9(8)** Reimbursement of approved expenses shall be for FDA-approved medication and based on a formulary established by the department.

**641—11.10(135) Denial, suspension, revocation or reduction of financial assistance.**

**11.10(1)** The department may deny, suspend, revoke or reduce financial assistance based upon eligibility and financial criteria. Applicants or patients so affected shall be notified by certified mail, return receipt requested, or by personal service.

**11.10(2)** Provided that rule changes affecting financial assistance are made in accordance with the rule-making process pursuant to Iowa Code chapter 17A, the appeal provisions of this rule shall not apply to any action taken pursuant to subrule 11.6(2).

**11.10(3)** Notwithstanding subrule 11.10(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 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: Iowa Department of Public Health, Division of Health Protection, Bureau of Infectious Diseases, Lucas State Office Building, Des Moines, IA 50319-0075. If such a request is made within the 30-day time period, the notice shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, suspension, revocation or reduction of financial assistance has been or will be removed. After the hearing, or upon default of the aggrieved party, the administrative law judge shall affirm, modify or set aside the denial, suspension, revocation or reduction of financial assistance. If no request for appeal is received within the 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.

**11.10(4)** Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the 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.

**11.10(5)** The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code.

**11.10(6)** When the administrative law judge 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 days after it is received by the aggrieved party unless an appeal to the director is taken as provided in subrule 11.10(7).

**11.10(7)** Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

**11.10(8)** Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

*a.* All pleadings, motions, and rules.

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

*c.* A statement of all matters officially noticed.

*d.* All questions and offers of proof, objections and ruling thereon.

*e.* All proposed findings and exceptions.

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

**11.10(9)** The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

**11.10(10)** It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

**11.10(11)** Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Iowa Department of Public Health, Division of Health Protection, Bureau of Infectious Diseases, Lucas State Office Building, Des Moines, IA 50319-0075.

**11.10(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.

**641—11.11(135) Confidential records.** The department shall maintain the confidential nature of the information collected in a manner which prevents the identification of persons who are requesting and have received financial assistance. Access to the information shall be limited to departmental personnel having a need for such information in connection with their official duties. Pursuant to Iowa Code section 22.9, the requirements of Iowa Code section 22.2 must be waived in order to prevent denial of federal funds.

**641—11.12(135) Contingency of program.** The continuation of this reimbursement program depends on the availability of federal funds or on the appropriation of state general funds.

**APPENDIX I**
**HIV DRUG REIMBURSEMENT**
**FINANCIAL STATUS CATEGORIES**

| NUMBER IN FAMILY | (1) 250% OF BASE | (2) 300% OF BASE | (3) 350% OF BASE | (4) 400% OF BASE |
|---|---|---|---|---|
| Reimbursement Rate | 100% | 90% | 80% | 70% |
| 1 | -0- - 16,550 | 16,551 - 19,860 | 19,861 - 23,170 | 23,171 - 26,480 |
| 2 | -0- - 22,200 | 22,201 - 26,640 | 26,641 - 31,080 | 31,081 - 35,520 |
| 3 | -0- - 27,850 | 27,851 - 33,420 | 33,421 - 38,990 | 38,991 - 44,560 |
| 4 | -0- - 33,500 | 33,501 - 40,200 | 40,201 - 46,900 | 46,901 - 53,600 |

BASE = FEDERAL POVERTY INCOME GUIDELINES.

ADD $2,260 TO BASE FOR EACH ADDITIONAL FAMILY MEMBER.

**11.13** to **11.15** Reserved.

*a.* The infected person's name and address.

*b.* The third party's name, address, telephone number and any other locating information known to the physician.

NOTE: A copy of the letter provided to the infected person pursuant to this subrule shall accompany the physician's request for third party notification by the department.

**11.40(7)** A physician's request to the department to notify a third party shall be made by certified mail, return receipt requested. The department's address for this purpose is: Iowa Department of Public Health, Division of Disease Prevention, AIDS Prevention Program, Lucas State Office Building, Des Moines, Iowa 50319-0075. The request shall include:

*a.* The infected person's name and address.

*b.* The third party's name, address, telephone number and any other locating information known to the physician.

*c.* A statement of the facts and circumstances which satisfy the requirements of subrule 11.40(1).

**11.40(8)** It shall be the department's responsibility prior to making a third-party notification, when reasonably possible, to provide, in writing, the following information to the person who has tested positive for the human immunodeficiency virus infection:

*a.* The nature of the disclosure and the reason for the disclosure.

*b.* The anticipated date of disclosure.

*c.* The name of the third party or parties to whom disclosure is to be made.

NOTE: Reasonable efforts to inform, in writing, the person who has tested positive for the human immunodeficiency virus infection shall be deemed satisfied when the department directs a written notice to the person's last known address by restricted certified mail, return receipt requested, at least five days prior to the anticipated date of disclosure to the third party.

**11.40(9)** When performed by the department, notification of the third party and any disclosure concerning the purpose of that notification shall be made in person. The third party may be requested by telephone or by restricted certified mail, return receipt requested, to arrange to meet with a department representative at the earliest opportunity to discuss an important health matter. The nature of the matter to be discussed shall not be revealed in the telephone call or letter.

**11.40(10)** Confidentiality. The infected person's physician and the department shall protect the confidentiality of the third party and the infected person. The identity of the infected person shall remain confidential unless it is necessary to reveal it to the third party so that the third party may avoid exposure to the human immunodeficiency virus infection. If the identity of the infected person is revealed, the third party shall be presented with a statement in writing at the time of disclosure which includes the following or substantially similar language: "Confidential information revealing the identity of a person infected with the human immunodeficiency virus has been disclosed to you. The confidentiality of this information is protected by state law. State law prohibits you from making any further disclosure of the information without the specific written consent of the person to whom it pertains. Any breach of the required confidential treatment of this information subjects you to legal action and civil liability for monetary damages. A general authorization for the release of medical or other information is not sufficient for this purpose."

**641—11.41** to **11.44** Reserved.

These rules are intended to implement Iowa Code sections 135.11, 135.39, 139B.1(2)*"f,"* 141.1 to 141.10 and 141.22A(17).

EMERGENCY CARE PROVIDERS
EXPOSED TO CONTAGIOUS OR
INFECTIOUS DISEASES

**641—11.45(139B,141) Purpose.** The purpose of these rules is to implement Iowa Code Supplement sections 139B.1(2)*"f"* and 141.22A(17), relating to emergency care providers who are exposed to contagious or infectious diseases.

**641—11.46(139B,141) Definitions.** For the purpose of rules 641—11.45(139B,141) to 11.53(139B,141) the following definitions shall apply:

*"AIDS"* means acquired immunodeficiency syndrome.

*"Contagious or infectious disease"* means blood-borne viral hepatitis, meningococcal disease, tuberculosis, and any other disease with the exception of AIDS or HIV infection as defined in Iowa Code section 141.21, determined to be life-threatening to a person exposed to the disease as established by the department based upon a determination by the state epidemiologist and in accordance with guidelines of the Centers for Disease Control of the U.S. Department of Health and Human Services.

*"Department"* means the Iowa deparment of public health.

*"Designated officer"* means a person who is designated by a department, agency, division, or service organization to act as an infection control liaison officer.

*"Emergency care provider"* means a person who renders direct emergency aid without compensation or a person who is trained and authorized by federal or state law to provide emergency medical assistance or treatment, for compensation or in a voluntary capacity including, but not limited to, all of the following:

1. A basic emergency medical care provider as defined in Iowa Code section 147.1.
2. An advanced emergency medical care provider as defined in Iowa Code section 147A.1.
3. A health care provider as defined in this rule.
4. A fire fighter.
5. A peace officer.
6. Any other person who is not part of an emergency care provider service who renders direct emergency aid without compensation.

*"Exposure"* means the risk of contracting disease.

*"Health care provider"* means a person licensed or certified under Iowa Code chapter 148, 148C, 150, 150A, 152, or 153 to provide professional health care services to a person during the person's medical care, treatment or confinement.

*"HIV infection"* means human immunodeficiency virus infection as defined in Iowa Code section 141.21.

*"Infectious body fluids"* means body fluids capable of transmitting HIV infection as listed in "Guidelines for Prevention of Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Health-Care and Public-Safety Workers," found in Morbidity and Mortality Weekly Report, dated June 23, 1989, Volume 38, Number S-6, published by the U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333, or subsequent Centers for Disease Control statements on this topic. To prevent HIV and blood-borne viral hepatitis B disease transmission, this reference indicates that universal precautions should be followed for exposure to the following infectious body fluids: blood, amniotic fluid, pericardial fluid, peritoneal fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen, vaginal secretions, and saliva contaminated with blood. HIV and hepatitis B disease transmission has not occurred from feces, nasal secretions, sputum, sweat, tears, urine, vomitus, and saliva when it is not contaminated with blood.

*"Report of exposure to infectious disease"* means the report form provided by the department and is the only form authorized for the reporting of an exposure to blood-borne hepatitis B or the reporting of a significant exposure to HIV. The report form may be incorporated

into the Iowa prehospital care report, the Iowa prehospital advanced care report, or a similar report used by an ambulance, rescue, or first responder service or law enforcement agency.

*"Significant exposure"* means the risk of contracting HIV infection by means of exposure to a person's infectious body fluids in a manner capable of transmitting HIV infection as determined by the Centers for Disease Control of the U.S. Department of Health and Human Services. Exposure includes contact with blood or other infectious body fluids to which universal precautions apply through percutaneous inoculation or contact with an open wound, nonintact skin, or mucous membranes during the performance of normal job duties. Significant exposures for HIV reportable to the hospital, or to the office or clinic of a health care provider to initiate the notification procedure regarding an exposure to an infectious body fluid are:

1. Transmission of blood or bloody fluids of the patient onto a mucous membrane (mouth, nose, or eyes) of the emergency care provider.

2. Transmission of blood or bloody fluids onto an open wound or lesion with significant breakdown in the skin barrier, including a needle puncture with a needle contaminated with blood.

**641—11.47(139B,141) General provisions.**

**11.47(1)** A hospital licensed under Iowa Code chapter 135B shall have written policies and procedures for notification of an emergency care provider who renders assistance or treatment to a patient when in the course of admission, care, or treatment of that patient, the patient is diagnosed or is confirmed as having a contagious or infectious disease.

**11.47(2)** If a patient is diagnosed or confirmed as having a contagious or infectious disease, the hospital shall notify the designated officer of an emergency care provider service who shall notify persons involved in attending or transporting the patient. For blood-borne contagious or infectious diseases, notification shall only take place upon the filing of a report form with the hospital.

**11.47(3)** The person who renders direct emergency aid without compensation as identified in rule 11.46(139B,141), "emergency care provider," paragraph "6," who is exposed to a patient who has a contagious or infectious disease shall also receive notification from the hospital when the hospital has received a report form.

**11.47(4)** The notification shall advise the emergency care provider of possible exposure to a particular contagious or infectious disease and recommend that the provider seek medical attention. The notification shall be provided as soon as reasonably possible following determination that the patient has a contagious or infectious disease.

**11.47(5)** The emergency care provider shall file exposure and significant exposure reports with the hospital or health care provider as soon as reasonably possible following the exposure.

**11.47(6)** The hospital shall maintain a record of all exposure or significant exposure reports it receives and shall retain each report for a period of five years.

**11.47(7)** The report form "Report of Exposure to Infectious Disease" is a confidential record pursuant to Iowa Code section 141.22A.

**11.47(8)** The employer of an emergency care provider who submits a report form pursuant to these rules shall pay the cost of HIV counseling and testing for the emergency care provider and testing of the patient pursuant to subrule 11.50(1) or 11.51(2). The department shall provide HIV counseling and testing at alternate testing sites for an emergency care provider who has rendered direct emergency aid without compensation as identified in rule 11.46(139B,141), "emergency care provider," paragraph "6."

**641—11.48(139B,141) Contagious or infectious diseases, not including HIV—hospitals.**

**11.48(1)** Notification for blood-borne viral hepatitis shall take place only upon the filing of an exposure report form with the hospital.

**11.48(2)** Notification shall take place whether or not an exposure report form has been filed for the following contagious or infectious diseases if the identity of the emergency care provider or the designated officer is known:

*a.* Meningococcal meningitis.

*b.* Tuberculosis (communicable). Tuberculosis may require six to ten weeks for disease confirmation.

**11.48(3)** These rules do not require a hospital to administer a test for the express purpose of determining the presence of a contagious or infectious disease.

**11.48(4)** The notification shall not include the name of the patient with the contagious or infectious disease unless the patient gives written consent.

**11.48(5)** These rules do not preclude a hospital from providing notification to an emergency care provider or health care provider under circumstances in which the hospital's policy provides for notification of the hospital's own employees of an exposure to a disease that is not life-threatening. The exposure report shall not reveal the patient's name unless the patient gives written consent.

**11.48(6)** A hospital's duty of notification under these rules is not continuing. It is limited to a diagnosis of a contagious or infectious disease made in the course of admission, care, and treatment following the rendering of emergency assistance or treatment for which the notification requirements of these rules apply.

**641—11.49(139B,141) Contagious or infectious diseases, not including HIV—health care providers.**

**11.49(1)** A health care provider may provide the notification required of hospitals in these rules to emergency care providers if a patient who has a contagious or infectious disease is transported by an emergency care provider to the office or clinic of a health care provider.

**11.49(2)** These rules do not require a health care provider to administer a test for the express purpose of determining the presence of a contagious or infectious disease.

**11.49(3)** Notification shall not include the name of the patient who has the contagious or infectious disease unless the patient gives written consent.

**11.49(4)** A health care provider's duty of notification under these rules is not continuing, but is limited to a diagnosis of a contagious or infectious disease made in the course of care and treatment following the rendering of emergency assistance or treatment for which the notification requirements of these rules apply.

**641—11.50(139B,141) HIV infection—hospitals.**

**11.50(1)** These rules do not require or permit a hospital to administer a test for the express purpose of determining the presence of HIV infection except that testing may be performed if the patient consents and if the requirements of Iowa Code section 141.22 are satisfied.

**11.50(2)** Following submission of a significant exposure report by the emergency care provider to the hospital and a determination that the exposure reported was a significant exposure as defined in rule 11.46(139B,141), and a diagnosis or confirmation by the attending physician that the patient has HIV infection, a hospital shall provide notification of possible exposure to HIV pursuant to subrule 11.50(3) to the designated officer of the emergency care provider who provided assistance or treatment to the patient.

**11.50(3)** Notification to the emergency care provider of exposure to HIV infection shall be made in accordance with both of the following:

*a.* The hospital shall inform the patient, when the patient's condition permits, that a significant exposure occurred to an emergency care provider and that a significant exposure report has been filed.

*b.* The patient may provide consent for HIV testing or voluntarily disclose HIV status to the hospital and consent to the provision of notification.

**11.50(4)** Notwithstanding subrule 11.50(3), notification shall be made when the patient denies consent for or consent is not reasonably obtainable for serological testing, and in the course of admission, care, and treatment of the patient, the patient is diagnosed or is confirmed as having HIV infection.

**11.50(5)** The hospital shall notify the designated officer of the emergency care provider service. The designated officer shall notify those emergency care providers who submitted a significant exposure report and attended or transported the patient. The identity of the designated officer shall not be revealed to the patient.

**11.50(6)** The designated officer shall advise the emergency care providers who are notified to seek immediate medical attention and of the provisions of confidentiality under rule 11.53(139B,141).

**11.50(7)** The designated officer shall inform the hospital of the names of the emergency care providers to whom notification was made.

**11.50(8)** Hospitals shall inform the patient that they have a record of the names of the emergency care providers to whom notification was provided and, if requested by the patient, the hospital shall inform the patient of those names.

**11.50(9)** A person who renders direct emergency aid without compensation as identified in rule 11.46(139B,141), "emergency care provider," paragraph "6," who is exposed to a patient who has HIV infection, shall receive notification directly from the hospital in accordance with the procedures established in subrules 11.50(1) to 11.50(4).

**11.50(10)** The process for notification under these rules shall be initiated as soon as reasonably possible consistent with protocols for postexposure prophylaxis, according to "Public Health Service Statement on Management of Occupational Exposure to Human Immunodeficiency Virus, Including Considerations Regarding Zidovudine Postexposure Use," found in the Morbidity and Mortality Weekly Report, dated January 26, 1990, Volume 39, Number RR-1, published by the U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333, or subsequent Centers for Disease Control statements on this topic.

**11.50(11)** A hospital's duty of notification under these rules is not continuing. It is limited to the diagnosis of HIV infection made in the course of admission, care, and treatment following the rendering of emergency assistance or treatment of the patient with the disease.

**11.50(12)** Notwithstanding subrule 11.50(11), if, following discharge or completion of care or treatment, a patient, for whom a report form was submitted that did not result in notification, wishes to provide information regarding their HIV infection status to the emergency care provider, the hospital shall provide a procedure for notifying the emergency care provider.

**641—11.51(139B,141) HIV infection—health care providers.**

**11.51(1)** A health care provider, with written consent of the patient, may provide the notification required of hospitals in these rules to emergency care providers if a patient who has HIV infection is transported by an emergency care provider to the office or clinic of the health care provider. Notification shall take place only upon submission of a significant exposure report by the emergency care provider to the health care provider and after determination by the health care provider that a significant exposure has occurred.

**11.51(2)** These rules do not require or permit a health care provider to administer a test for the express purpose of determining the presence of HIV infection except that testing may be performed if the patient consents and if the requirements of Iowa Code section 141.22 are satisfied.

**641—11.52(139B,141) Immunity.** Hospitals, health care providers, or other persons participating in good faith in making a report under these rules, upon filing of a report form or a report under similar procedures to notify their own employees or in failing to make a report under these rules are immune from any liability, civil or criminal, which may otherwise be incurred or imposed.

**641—11.53(139B,141) Confidentiality.**

**11.53(1)** Notifications made pursuant to these rules shall not disclose the identity of the patient who is diagnosed or confirmed as having HIV infection unless the patient provides a specific written release as provided in Iowa Code section 141.23, subsection 1, paragraph *"a."*

**11.53(2)** If during these notification procedures an emergency care provider determines the identity of a patient with confirmed HIV infection, the identity of the patient shall be confidential information and shall not be disclosed by the emergency care provider to any other person unless a specific written release is obtained from the patient.

**11.53(3)** The procedures followed under rules 11.50(139B,141) to 11.51(139B,141) shall provide for the anonymity of the patient and all documentation shall be maintained in a confidential manner.

**641—11.54** to **11.69** Reserved.

These rules are intended to implement Iowa Code Supplement sections 139B.1(2)*"f"* and 141.22A(17).

HOME- AND COMMUNITY-BASED SERVICES

**641—11.70(135) Program explanation.** Home- and community-based HIV health services grant will provide home- and community-based health service for low-income HIV-positive individuals who are certified by a physician to be medically or chronically dependent. The services will be provided by Medicare-certified public and private hospices or home health agencies.

The purpose of the program is to provide financial assistance for home care services in order to avoid long-term or repeated inpatient or resident care to eligible persons who are HIV-positive and are considered to be medically or chronically dependent.

**641—11.71(135) Definitions.** For the purpose of rules 641—11.70(135) to 11.78(135), the following definitions shall apply:

*"Applicant"* means a person who applies to the certified agency providing service. An application from or on behalf of an unemancipated minor under 18 years of age, or any disabled person who is 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.

*"Approved medications"* means those drugs approved by FDA for the treatment of HIV infection and opportunistic infections.

*"Certified agency"* means Medicare-certified by the health care financing administration as hospice or home health agency.

*"Chronically dependent"* means that the individual has been certified by a physician as being unable to perform, without substantial assistance from another individual, because of physical or cognitive impairment arising from infection with the etiologic agent for acquired immune deficiency syndrome, at least two of the following activities of daily living: bathing, dressing, toileting, transferring, and eating, or having a similar level of disability due to cognitive impairment.

*"Department"* means the Iowa department of public health.

*"Durable medical equipment"* means items allowed by the Medicare and Medicaid Guide as published in the 1989 Commerce Clearing House, Inc.

*"Family members"* means members that include grandparents, parents, siblings, spouses, children, or significant others.

*"HIV"* means human immunodeficiency virus.

*"HIV-positive"* means the positive results of a laboratory analysis for the presence of antibodies to the human immunodeficiency virus.

*"Home care services"* means provision by trained and supervised persons of assistance with activities of daily living, essential housekeeping, meal preparation (which includes shopping for food), transportation for medical appointments, and personal laundry.

*"Laboratory analysis"* means blood test analysis by a public, private, or hospital clinical laboratory confirming antibodies to the human immunodeficiency virus by confirmatory western blot.

*"Medically dependent"* means that the individual has been certified by a physician as:

1. Requiring the routine use of appropriate medical services which may include home intravenous drug therapy to prevent or compensate for the individual's serious deterioration, arising from infection with the etiologic agent for acquired immunodeficiency syndrome, of physical health or cognitive function, and

2. Being able to avoid long-term or repeated care as an inpatient or resident in a hospital, nursing facility, or other institution if home- and community-based health services are provided to the individual.

*"Patient"* means a person who applies to the certified agency for financial assistance and who is approved to receive the assistance.

*"Period of eligibility"* means the 12-month maximum time frame for which financial assistance may be approved.

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

*"Program"* means the HIV reimbursement program conducted by the department as payor of last resort.

**641—11.72(135) Covered services.**

**11.72(1)** Services will be allowed that follow a physician's written plan of treatment and include the following:

*a.* Homemaker/home health aide services and personal care services furnished in the individual's home,

*b.* Durable medical equipment,

*c.* Day treatment or other hospitalization services,

*d.* Home intravenous drug therapy including prescription drugs administered intravenously as part of such therapy,

*e.* Routine diagnostic tests that can be performed at the patient's residence.

**11.72(2)** The following services will not be allowed:

*a.* Drawing blood in home for laboratory testing,

*b.* In-patient hospital services,

*c.* Nursing facility services,

*d.* Treatment with drugs not administered in the home,

*e.* Property purchase/major remodeling,

*f.* Major medical equipment.

**641—11.73(135) Reimbursement.** The certified agency will submit all claims to the division of family and community health for reimbursement. The department will reimburse for services/equipment to each provider.

Patients will not be eligible to receive services/equipment that exceed 65 percent of the estimated national average monthly payments for extended care services. The estimated national average monthly payment of $2,930 was specified in the Federal Register Volume 55, No. 41, dated March 1, 1990. The certified agency will receive up to $1,904.50 per month for services provided for each eligible patient. The department will reimburse for services/equipment to each provider assuring patient confidentiality. Transportation expense will be reimbursed at existing state rates. Reimbursement for services will not be made to family members.

**641—11.74(135) Eligibility criteria.** The certification process to determine eligibility for services under the program will include the following requirements:

**11.74(1)** *Residency.* 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. Temporary absence is the absence of a person during which time there is intent to return, or because of a change in intent, the person does return. A temporary absence from the state of Iowa shall not be deemed to have interrupted residency requirements.

**11.74(2)** *Certification.* Individuals will be considered eligible if they are HIV-positive and certified to be medically or chronically dependent by a physician. This means positive results of a laboratory analysis for the presence of antibodies to the human immunodeficiency virus. Confirmatory test shall be analysis by a clinical laboratory currently approved to do HIV testing by the department.

**11.74(3)** *Income.* Income guidelines shall be set at 300 percent of the most recent poverty income guidelines published by the U.S. Department of Health and Human Services (DHHS). Income guidelines will be adjusted following any change in Department of Health and Human Services guidelines.

**11.74(4)** *Eligibility.* Determinations must be done at least once annually. Income determination will include monthly income and resources minus monthly expenses.

*a.* Income will include, but not be limited to, the following:

(1) Salary money or wages

(2) Social security

(3) Business/property income
(4) Pensions
(5) Dividends
(6) SSI/ADC
(7) Net income from nonfarm self-employment
(8) Net income from farm self-employment
(9) Income from estates or trusts

*b.* Resources will include, but not be limited to, the following:
(1) Savings account
(2) Checking account
(3) Stocks, bonds, CDs

*c.* Monthly expense will include, but not be limited to, the following:
(1) Medical insurance premiums
(2) Pharmacy bills
(3) Medical bills above and beyond insurance
(4) Housing
(5) Utilities
(6) Other

**641—11.75(135) Application procedures.** Persons seeking assistance shall apply to the certified agency providing service by completing a financial data form supplied by the Iowa department of public health to the certified agency. It will be the responsibility of the certified agency to verify the individual's eligibility.

Individuals must complete a medical status form provided by the Iowa department of public health to the certified agency prior to determining eligibility.

The date of application shall be the date the application is received by the certified agency. The certified agency shall notify the department of eligible clients within ten working days. The department will approve or deny eligibility for reimbursement within ten working days based on the availability of funds.

Approved applicants will receive financial assistance for time periods not to exceed 12 months. If during an approved period the patient experiences a change in medical or financial status, the patient shall notify the certified agency providing services in writing within 30 days of the date and nature of the change. Upon receipt of this information, the agency shall evaluate the patient in accordance with the eligibility criteria; 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 certified mail of any change in financial assistance. Failure of the patient to notify the certified agency 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. Failure of the patient to notify the certified agency 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.

**641—11.76(135) Confidentiality.** Confidentiality as set out in Iowa Code section 141.23 will be maintained by the certified agency per the agency and department policies.

**641—11.77(135) Right to appeal.** The appeal process will adhere to rules as found in the Iowa Code chapter 17A and the rules adopted by the department in 641 IAC 173.

**641—11.78(135) Continuation of program.** The continuation of this reimbursement program depends on the availability of federal funds.

These rules are intended to implement Iowa Code section 135.11.

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# CHAPTER 51
# HOSPITALS

[Prior to 12/14/88, see Health Department(470), Ch 51]
[Transferred to Inspections and Appeals Department(481), Ch 51, IAC 8/8/90]

# CHAPTERS 52 to 70
Reserved

# CHAPTER 71
# EMERGENCY INFORMATION SYSTEM ON PESTICIDES FOR USE BY HEALTH CARE PROVIDERS DURING MEDICAL EMERGENCIES

**641—71.1(139) Scope.** Except as otherwise specifically provided, these rules apply to requirements for the operation of an emergency information system operated by providers of pesticides in Iowa who register with the Iowa department of agriculture and land stewardship (IDALS). These rules do not pertain to registrants who do not operate their own emergency information system.

**641—71.2(139) Definitions.** As used in this chapter, these terms have the definition set forth below.

*"Department"* means the Iowa department of public health.

*"Emergency information system (EIS)"* means a system developed by a registrant that is accessible by Iowa health care providers and poison control centers 24 hours per day, every day of the year. The system must provide ready access to pesticide product profiles of the registrants to include but not be limited to characterization of inert ingredient(s) and their general proportion whether openly defined or confidentially maintained as a trade secret.

*"Registrant"* means the person registering any pesticide or device or who has obtained a certificate of license from IDALS pursuant to the provisions of Iowa Code chapter 206.

**641—71.3(139) Operation of EIS.**

**71.3(1)** *Registrants operating their own EIS shall:*

*a.* Provide emergency treatment information to health care providers engaged in the emergency care of a real-time human exposure to a registrant's product(s) upon request 24 hours per day, every day of the year. These services shall identify the appropriate inert ingredients, even if they are considered trade secret, for the sole purpose of assisting in the medical management of persons exposed to pesticides;

*b.* Ensure that information response time to provide appropriate pesticide ingredient information, which may be responsible for the medical emergency, to a health care provider or poison control center, as defined in Iowa Code section 206.2, does not exceed 15 minutes. All inert ingredients not previously provided and required for the sole purpose of treating a specific patient shall be provided upon request;

*c.* Have in operation a toll-free number (800 number, reverse charges number, etc.) which can be accessed anywhere in Iowa;

*d.* Have qualified responders on duty at all times. A qualified responder who provides the information to the inquiring health care provider shall:

(1) Have a college degree in one of the life sciences or its equivalent and have a minimum of two years' experience in the hazardous chemical (pesticide) field. This experience shall be in the routine handling and working with hazardous substances of the type that would, in the normal course of events, require emergency response; or

(2) Be an individual who is under the direct supervision of an individual who meets the requirements of 71.3(1)*"d"*(1); and

(3) Have comprehensive emergency response and accident mitigation training.

*e.* Have an adequate contingency plan to continue operation in the event of equipment or power failure;

*f.* Have facsimile (FAX) capabilities;

*g.* Provide at a minimum:

(1) The immediate health hazards posed by internal or external exposure to a given pesticide,

(2) Risks of fire or explosion of a material,

(3) Immediate precautions to take in the event of an accident or incident,

(4) Preliminary first-aid measures, and

(5) A comprehensive list of compounds in a given product including identification, when necessary, of the inert ingredients only upon request from the health care provider who is treating a real-time human exposure to a registrant's product.

*h.* Provide to poison control centers, defined in Iowa Code Supplement subsection 206.2(22), the telephone number(s) to be used to obtain treatment information for a person exposed to a registrant's product.

**71.3(2)** Reserved.

These rules are intended to implement Iowa Code Supplement subsection 139.35(7).

[Filed emergency 1/8/92—published 2/5/92, effective 1/8/92]
[Filed emergency 3/11/92—published 4/1/92, effective 3/13/92]

# CHAPTER 73
# SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

[Prior to 7/29/87, Health Department(470), ch 73]

**641—73.1(135) Program explanation.** The Special Supplemental Food Program for Women, Infants and Children (WIC) is a federal program operated pursuant to agreement with the states. The purpose of the program is to provide supplemental foods and nutrition education to eligible pregnant, postpartum, and breastfeeding women, infants, and young children from families with inadequate incomes. The WIC program is administered on the federal level by the U.S. Department of Agriculture, Food and Nutrition Service (FNS). The Iowa department of public health serves as the administering agency for the state of Iowa. The Iowa department of public health enters into contracts with selected local agencies on an annual basis for the provision of WIC services to eligible participants.

***641—73.2(135) Adoption by reference.** Federal regulations found at 7 CFR Part 246 (effective as of February 13, 1985, and amended on April 18, 1986, June 4, 1987, and September 13, 1988) shall be the authority for rules governing the Iowa WIC program and are incorporated by reference herein. The WIC state plan provides policy and procedural guidance in the implementation of these regulations to local agencies administering WIC programs under contract with the department. The WIC state plan as approved by the United States Department of Agriculture is incorporated here by reference.

***641—73.3(135) Availability of rules.** Copies of the federal rules and the WIC state plan adopted by reference in 73.2(135) are available from: Director, Iowa WIC Program, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, (515) 281-6650.

**641—73.4(135) Certain rules exempted from public participation.** The Iowa department of public health 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 are unnecessary as provided in Iowa Code section 17A.4(2). Such rules shall be those that are mandated by federal law and regulation governing the Iowa WIC program where the department has no option but to adopt such rules as specified and where federal funding for the WIC program is contingent upon the adoption of the rules.

**641—73.5(135) Staffing of local agencies.**

**73.5(1)** A competent professional authority (CPA), as referred to in these rules, is the individual who, using standardized WIC screening tools and eligibility criteria provided by the department, determines whether an applicant for WIC services is eligible to receive those services. A CPA shall be a member of one of the following three categories:

*a.* A dietitian licensed by the Iowa board of dietetic examiners, with the exception that an individual who has qualified to take the licensing examination may act as a licensed dietitian until the next regularly scheduled date for the examination. These individuals must successfully complete the licensing examination at the first opportunity in order to continue in the capacity of a dietitian.

*b.* A nutrition educator, which is defined as an individual who possesses any of the following qualifications: a certified home economist; an R.D. or registration-eligible dietitian, a Plan IV or V dietetics graduate who has not completed an internship; an individual with a B.S., master's, or Ph.D. in nutrition, an individual who has taken, but not passed, the Iowa board of dietetic examiners' licensing examination, or an individual who is eligible for, but has not yet taken, the certified home economist examination.

*Effective date delayed seventy days by the Administrative Rules Review Committee at its March 8, 1988 meeting.

*c.* A physician or registered nurse.

**73.5(2)** The competent professional authority shall conduct either the diet history or the health history part of the certification process and shall sign the certification form attesting to the applicant's eligibility for services after the certification process is completed.

**73.5(3)** Local agencies shall maintain on file documentation of qualifications for any individual employed or under contract as a licensed dietitian or nutrition educator.

**73.5(4)** All local agencies shall employ at least one licensed dietitian to provide services for participants determined to be at high risk. Nutrition educators employed by a local agency shall be supervised by a licensed dietitian.

**641—73.6(135) Certification of participants.** The certification process to determine eligibility for WIC services, as defined in 7 CFR 246.7, shall include the following procedures and definitions:

**73.6(1)** *Application.* The combined Health Services Application Form (Form #470-2927) and the WIC Certification Form shall be completed by every family at the initial certification. The Health Services Application is not completed at subsequent certifications. Certification forms are signed and dated by the applicant or parent/custodian. Health Services Applications are signed and dated by the participant or parent/legal guardian. A copy of both forms shall be maintained in the participant's file.

If the applicant indicates on the Health Services Application that the applicant wishes to also apply for MCH or Medicaid, the contract agency shall forward the appropriate copy to the indicated agency within two working days.

**73.6(2)** *Income.*

*a.* The income guidelines used shall be the same as the National School Lunch Program guidelines for reduced price school lunches, which are equal to 185 percent of the current federal poverty guidelines. Definitions of income are mandated by federal regulation and are described in the WIC state plan. Revised dollar figures for the 185 percent poverty level are published annually in the federal register and become effective for WIC no later than July 1 following their publication. Copies of the income definitions and monetary guidelines are available from the department.

*b.* Applicants must show the local agency written documentation of their income as part of each certification process, in accord with procedures identified in the WIC state plan.

**73.6(3)** *Time frame for services.*

*a.* The date of initial visit shall be the day on which an applicant first appears in person at any of the contracted agency's offices. A visit to an MCH or Medicaid office to complete a common application form does not constitute an initial visit.

*b.* Pregnant women shall be certified for the duration of their pregnancy and for up to six weeks postpartum.

*c.* Medical data used for determining nutritional risk shall be collected no more than 60 days prior to the date the certification period begins. Data on infants shall not be more than one month old on the date that certification begins.

**73.6(4)** *Medical equipment.*

*a.* Medical equipment used in conducting WIC clinics shall be subject to approval by the state office.

*b.* Standards for conducting the medical and nutritional assessments on program applicants shall be as described in the Iowa WIC Policy and Procedure Manual.

*c.* Medical equipment shall be recalibrated in accord with procedures outlined in the Iowa WIC Policy and Procedure Manual.

**73.6(5)** *Documentation of medical information.* Medical documentation in individual participant records shall be as described in the Iowa WIC Policy and Procedure Manual.

**73.6(6)** *Documentation of nonmedical information.* Documentation of nonmedical information in individual participant and collective program records shall be as described in the Iowa WIC Policy and Procedure Manual.

**73.6(7)** *Transfer of participant information.* All medical and nonmedical information collected on a program participant, if transferred to other local agencies, to the state, or retained as confidential shall be handled in accord with procedures described in the Iowa WIC Policy and Procedure Manual.

**641—73.7(135) Food delivery.** Food delivery refers to all aspects of the method by which WIC participants receive food benefits, i.e., printing, distribution, and processing of computerized personal food checks redeemable through retail food markets and the statewide banking system. Food delivery shall be uniform throughout the state as provided for by these rules.

**73.7(1)** *Responsibilities of WIC participants.*

*a. Prompt redemption of food checks.* A WIC participant has 30 days from the date of issue in which to cash any WIC check through a vendor. The check becomes invalid after this time.

*b. Attendance at monthly distribution clinics.* Enrolled participants are required to appear in person and as scheduled to pick up monthly benefit of food checks. Missed attendance may entitle local agencies to deny that month's benefit. If a written statement is provided to the local agency, a proxy may pick up checks not more than twice in every six month certification period.

*c. Adherence to standards for use of the food instrument.* The WIC participant in using the WIC check to obtain the specified foods shall:

(1) Sign each check at the time of receipt in the clinic.

(2) Present the blue ID folder to the vendor at point of purchase.

(3) Sign each check a second time in the appropriate box in the presence of the vendor.

(4) Write in the total amount of the purchase in the designated space.

(5) Write in the vendor's name in the designated "pay to the order of" column.

(6) Not accept money in exchange for unused checks or portions of the food allotment.

(7) Attempt to redeem checks only with a WIC-contracted vendor.

**73.7(2)** *Responsibilities of local agencies.*

*a. Loss or theft of checks.* The local agency is responsible for any financial loss due to theft or other loss of food checks from clinics. Steps for minimizing the chances of theft or loss are followed in accord with the Iowa WIC Policy and Procedure Manual.

*b. Mailing of WIC checks.* Checks may be mailed on an occasional, individual basis without prior approval of the state due to inclement weather or health conditions which prevent participants from coming to a distribution clinic. The reason for mailing of a WIC check to a participant must be documented in the participant's file and shall be discontinued once the participant's initial difficulty has ceased. Any mailing of WIC checks on a clinic-wide basis must have prior approval from the state.

*c. Use of manual checks.* Manually written checks shall be issued only when:

(1) Due to recent certification computer printed checks have not been printed.

(2) Computer checks arrive damaged or mutilated, or are lost or stolen after being issued to client.

(3) Computer checks are not available due to error on INPUT form, loss in transit, or a need for special formula.

(4) Computer checks contain incorrect data.

*d. Training/monitoring of WIC vendors.* The local agency shall communicate information regarding the Iowa WIC program to vendors, as instructed by the state office. Monitoring and training of vendors and annual securement of contracts shall be carried out in accord with state office directives outlined in the WIC Policy and Procedure Manual.

*e. Check distribution on nonclinic days.* It is the policy of the Iowa WIC program to ensure maximum accessibility to program benefits by establishing alternate procedures for distributing WIC checks to participants on days other than regularly scheduled clinic days when the participant notified the local agency on or before the clinic day of the participant's inability to appear at the clinic. Each local agency shall establish written guidelines for assessing the adequacy of reasons presented for inability to appear and shall establish written procedures for alternate means of check distribution when a participant timely presents adequate reasons for inability to appear on a regularly scheduled clinic day. These written guidelines and procedures shall be subject to review and approval by the state.

***73.7(3)** *Responsibilities of state agency.* Provision of foods through retail grocers is an integral part of the WIC program's function. It is the responsibility of the department to ensure that there are a sufficient number of stores authorized to provide reasonable access for program participants. The department also has an obligation to ensure that both food and administrative funds are expended in the most efficient manner possible. As with all other purchases made by state government, this means that the number of suppliers (retail grocers) may be limited and that all suppliers must meet minimum criteria for approval. The department shall be responsible for the following:

*a.* Approving or denying vendor applications. The department shall determine if applications meet the mandatory specifications in 73.7(4) and meet the minimum review points in 73.7(4) for a subsequent agreement.

*b.* Compiling the statewide or local area composite data against which vendor applications are reviewed, determining if applications meet the selection criteria which require use of that data, providing training, and signing the initial authorization agreement if a vendor is determined to be eligible.

*c.* Developing procedures, forms, and standards for agencies to use in conducting on-site review of vendor applications, monitoring, high risk vendor monitoring, or educational buy monitoring as defined in 73.7(5).

*d.* Determining when compliance buying activities are necessary to detect program violations, developing or approving standards and procedures to be used in conducting the activities, and arranging for an appropriate state or private agency to conduct the compliance buying investigation.

*e.* Providing written notice to vendors of program violations and sanctions.

**73.7(4)** *Responsibilities of WIC vendors.* A potential vendor shall make application to the Iowa department of public health WIC program and shall accept the obligations imposed by signing of a WIC Vendor Agreement prior to acceptance of any WIC check. The two categories for which any potential vendor may apply are grocery vendors and special purpose vendors.

*a.* To qualify for a Grocery Vendor Agreement with the Iowa WIC program, an applicant shall meet all of the following criteria:

(1) The vendor must be primarily a retailer of groceries rather than of other merchandise such as gasoline, beverages, or snack foods. A grocery retailer is defined as a business which stocks at least four of the following categories of items: fresh produce (e.g., raw fruits and vegetables) fresh or frozen meats and poultry (prepackaged luncheon meats do not qualify), canned and frozen vegetables, dairy products, cereals and breadstuffs.

(2) The vendor must maintain regular business hours. This shall include a minimum of two four-hour blocks of time on each of five days per week. Daily operating hours shall be consistent from week to week, and shall be posted.

*Effective date of subrules 73.7(4) and 73.7(5) delayed seventy days by the Administrative Rules Review Committee at its March 8, 1988 meeting. Subrule 73.7(4) renumbered as 73.7(3), IAB 5/30/90.

Local agencies are responsible for providing training regarding all changes in program regulations and determining that all of the selection criteria are still met prior to signing a new agreement. If the local agency denies a new agreement, the vendor has the right to appeal without first submitting an application.

*d.* Training. Vendors shall accept training in program policies and procedures at the on-site review prior to becoming an authorized vendor and shall be responsible for training all employees who will be handling WIC checks. The manager and person responsible for staff training must allow time at this visit for training; the agreement will not be signed until training is completed. Vendors shall be responsible for all actions of their employees in conducting WIC transactions.

If violations of program policies and procedures are documented, either through on-site monitoring or other indirect means, the vendor shall implement a corrective action training plan developed jointly by the vendor and the state or local WIC agency.

*e. Validity of checks.* The WIC vendor shall be responsible for ensuring that:

(1) The participant counter signature required on the food check is completed in the vendor's presence, and that both signatures on the food instrument match;

(2) The participant presents a WIC identification card prior to redeeming checks for food;

(3) The type and quantity of food to be purchased is as indicated on the check;

(4) The amount of money written onto the check for repayment does not exceed the maximum amount as designated by the state office and printed on the check;

(5) The expiration date is present on the check and is equal to or no later than the date of usage;

(6) WIC checks are never exchanged for cash or credit;

(7) Substitutions of foods different from those listed on the check in type or amount are not made;

(8) Checks are presented to the state's agent (bank) for payment within 45 days of the issue date;

(9) The costs of foods purchased by WIC participants does not exceed charges to other customers for the same foods;

(10) The vendors authorizing number is stamped on the face of the check prior to its being presented for payment.

*f. Cooperation during monitorings.* Contracted WIC vendors shall cooperate with state and local staff who are present on-site to monitor the store's WIC activities.

*g. Reimbursement to the program.* Vendors determined by the state office to have collected more moneys than the true value of food items received shall make reimbursement to the state WIC program upon request.

**73.7(5)** *Vendor monitoring.* To maintain program integrity and accountability for federal or state program funds, the department and local WIC agencies shall conduct ongoing monitoring of authorized WIC vendors, both through on-site visits and through indirect means. On-site monitoring of each authorized vendor is performed at least once every two years in accord with procedures established by the state WIC office. On-site monitoring is not required for vendors who close during the two-year period or terminate their participation. Vendors that change ownership during the year or apply midyear, receive an on-site visit prior to signing an agreement and do not receive a subsequent monitoring visit. The types of on-site monitoring are defined as follows:

*a.* Routine or representative monitoring is used for vendors for which there is no record of violations or complaints or other indication of problems. It may include any or all of the following: use of a check or observation of a participant, educational buys, review of inventory levels, examination of redeemed WIC food checks on hand, review of store policies on return items, and review of employee training procedures. The results of the monitoring are reviewed with the owner or manager on duty, and a follow-up letter confirming the findings is sent from the department. Routine monitoring may be performed by the department or

by local WIC agency staff under the direction of the department. Depending on the nature and severity of violations noted, the state agency may schedule additional visits, initiate a compliance investigation, or apply sanctions.

Educational buy monitoring is a specialized type of routine monitoring, and may include gathering the same information. In addition, state or local agency staff attempt to use a WIC check to purchase unauthorized types or brands of foods to test the level of training of store employees. At the conclusion of the transaction, the results of the buy are discussed with the store owner or manager on duty. The transaction is then voided, and the merchandise returned to the shelves. Educational buys are used on authorized vendors, selected by the department. If unauthorized items are allowed to be purchased, the vendor shall agree to a corrective action training plan. A follow-up educational buy is scheduled within 30 to 60 days. A letter is sent from the department documenting the violation. By signing a WIC agreement a vendor gives consent for educational buys by the state or local agency. Vendors are not notified in advance that an educational buy is scheduled. The protocol for educational buys, including procedures, appropriate items to purchase, and forms to be used, is specified in the WIC State Plan, Policy and Procedure Manual.

*b.* High risk monitoring is used for vendors that have a documented record of problems such as previous violations, participant complaints, or high volume of WIC food check redemption. It includes, but is not limited to, any or all of the following: review of inventory levels, examination of redeemed WIC food checks on hand, review of store policies on returned items, and review of emloyee training procedures. High risk monitoring may be performed by the department or by local agency staff under the direction of the department. Educational buying shall be included whenever possible.

*c.* Compliance investigations may be used for any vendors and vendors suspected of being engaged in fraudulent activities. Compliance buying includes covert activities used to document grounds for suspension from the program and may include purchase of unauthorized items. Compliance investigations may be performed by the department or another state agency or private company under contract with the department. The department is responsible for identifying the vendors to be investigated and for approving the protocol to be used by the other agency or company. Upon completion of a compliance investigation documenting program violations, the department shall issue the vendor a notice of suspension.

The department also monitors vendor performance through in-office review of information. Such information, specifically the total amount of WIC redemptions, total food stamp program redemption volume, and total sales volume, is confidential as provided for in Iowa Code section 22.7(6). This business information could provide an advantage to competitors and would serve no public purpose if made available.

**641—73.8(135) Food package.** The authorized supplemental foods shall be prescribed for participants by a licensed dietitian in the local agency from food packages outlined in 7 CFR 246.10 and in accord with the following rules.

**73.8(1)** *Prescription of foods.* Food packages shall maintain a balance between cost and nutrition integrity. There are two components to this balance: (1) administrative adjustments by the department; and (2) nutrition tailoring by both the department and the licensed dietitians in the local agencies.

*a.* Administrative adjustments include restrictions in the packaging methods, brands, sizes, types, and forms (but not quantities) of the federally allowable foods in order to establish the approved food list for the state. Administrative adjustments include decisions to eliminate more expensive brands or prohibit more convenient and costly food items allowed by regulations. Criteria for considering foods for inclusion in the approved food list are found in 73.8(3).

*b.* Nutrition tailoring includes changes or substitutions to food types, forms, and quantities in order to prescribe food packages that better meet the nutritional needs of participants. Tailoring is done to reduce quantities of foods based on nutritional needs, to accommodate

*a. Contract for services.* Local WIC agencies shall maintain an annual written, contractural agreement with any health agency performing WIC health assessments, whether for fee or exchange of service.

*b. Memorandum of understanding.* Local WIC agencies shall maintain an annual memorandum of understanding with any health agency designated to provide ongoing health services to WIC participants.

**73.10(2)** *Referral procedures.* The local WIC agency shall be responsible for referral of WIC participants to appropriate health care providers, as determined by the WIC health professional's assessment of their condition.

*a. Authorization for release of information.* Except as indicated below, before referring medical or other personal information, including name, to an outside agency, the local WIC agency shall secure the participant's or parent/legal guardian's written authorization to release such information. A separate statement shall be signed for each specific provider to which information is being sent. The information contained in individual participant records shall be confidential pursuant to 7 CFR 246.26.

Referrals to the department of human services' child protective services for investigation of potential child abuse or to a law enforcement agency conducting an active criminal investigation may be made without obtaining a written release of information.

*b. The referral form.* A standard referral form, as provided by the state WIC office, shall be completed and sent to the referral agency. Documentation and follow-up are made in accord with the Iowa WIC Policy and Procedure Manual.

**641—73.11(135) Appeals and fair hearings—local agencies and food vendors.**

**73.11(1)** *Right of appeal.* A local agency or a food vendor shall have a right to appeal when a local agency's or food vendor's application to participate is denied. For participating vendors, a minimum of 30 days advance notice will be given before the effective date of the action. For participating local agencies, a minimum of 60 days advance notice will be given before the effective date of the action.

**73.11(2)** *Request for hearing.* An appeal is brought by filing a written request for a fair hearing with the Division Director, Division of Family and Community Health, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075 within 30 days of the date on which the adverse action is taken against the local agency or food vendor. The written request for hearing shall state the adverse action being appealed.

**73.11(3)** *Contested cases.* Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the 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.

**73.11(4)** *Notice of hearing.* The administrative law judge (ALJ) shall schedule the time, place and date of the hearing as expeditiously as possible. Hearings shall be conducted by telephone or in person in Des Moines at the Lucas State Office Building or other suitable location. Parties shall receive the notice of hearing at least 20 days in advance of the scheduled hearing. If necessary, parties will be provided at least two opportunities to have the hearing rescheduled.

**73.11(5)** *Conduct of hearing.* The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code, and federal regulations found at 7 CFR 246.24. Copies of these regulations are available from the department of inspections and appeals upon request.

**73.11(6)** *Decision.* A written decision of the ALJ shall be issued, where possible, within 60 days from the date of the request for a hearing unless the parties agree to a longer period of time.

**73.11(7)** *Decision of ALJ.* When the ALJ 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 fur-

conducted according to the procedural rules of the department of inspections and appeals found in 481—chapter 10, Iowa Administrative Code.

**73.12(11)** *Decision of hearing officer.* 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 days after it is received by the aggrieved party unless an appeal to the director is taken as provided in subrule 73.12(12).

**73.12(12)** *Appeal to director.* Any appeal to the director for review of the proposed decision and order of the hearing officer shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the 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.

**73.12(13)** *Record of hearing.* Upon receipt of an appeal request, the hearing officer shall prepare the record of the hearing for submission to the director. The record shall include the following:

*a.* All pleadings, motions, and rules.

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

*c.* A statement of all matters officially noticed.

*d.* All questions and offers of proof, objections and rulings thereon.

*e.* All proposed findings and exceptions.

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

**73.12(14)** *Decision of director.* The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

**73.12(15)** *Exhausting administrative remedies.* It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

**73.12(16)** *Petition for judicial review.* Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Division Director, Division of Family and Community Health, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**73.12(17)** *Benefits after decision.* If a final decision is in favor of the person requesting a hearing and benefits were denied or discontinued, benefits shall begin immediately. If a decision is in favor of the agency, benefits shall be terminated, if still being received, as soon as administratively possible after the issuance of a final decision. Benefits denied during any administrative appeal period may not be awarded retroactively following a final decision in favor of an applicant.

**641—73.13(135) State monitoring of local agencies.** The state agency shall review local agency operations through use of reports and documents submitted, state-generated data processing reports, on-site visits for evaluation and technical assistance.

**73.13(1)** *On-site visits.* State office staff shall visit local agencies whenever necessary, to review operations and assure compliance with state and federal regulations.

**73.13(2)** *Request for written reports.* The state office may request written progress reports from local agencies within specified time.

**73.13(3)** *Qualifications of state reviewers.* At minimum, one of the persons from the state office responsible for reviewing a local WIC agency shall be a licensed dietitian.

**641—73.14(135) Migrant services.** To meet the WIC needs of migrant workers within the state, a contract or work agreement shall be maintained with at least one local migrant service agency within the state to provide or assist in the provision of service to this population.

**641—73.15(135) Civil rights.** The Iowa WIC program shall operate in compliance with the Equal Employment Opportunity Act of 1973, the Civil Rights Act of 1964, amended 1972, the State of Iowa Civil Rights Act of 1965, the Age Discrimination Act of 1967, Section 504 of Rehabilitation Act of 1973, Iowa Executive Order #15 of 1973, and Executive Order #11246 of 1965 as amended by Executive Order #11375 of 1967, to ensure the rights of all individuals under this program.

**641—73.16(135) Audits.** Each local agency shall ensure an audit of the WIC program within their agency at least every two years, to be conducted by a private certified public accountant or in accord with applicable OMB Circulars. Each audit shall cover all unaudited periods through the end of the previous grant year. The Iowa department of public health's audit guide shall be followed to ensure an audit which meets federal and state requirements.

**641—73.17(135) Reporting.** Completion of grant applications, budgets, expenditure reports and written responses to the state's monitoring for the WIC program shall be conducted by local agencies in compliance with the formats and procedures outlined by the Iowa department of public health in the Iowa WIC Policy and Procedure Manual.

**641—73.18(135) Program violation.** Individuals or vendors are subject to the sanctions outlined below if determined by local or state staff to be guility of abusing the program or its regulations.

**73.18(1)** *Individual participant violation.* Violations may be detected by local agency staff, by vendors, or by state staff. Information obtained by the state WIC office is forwarded to the local agency for appropriate action.

*a.* Whenever possible, the participant is counseled in person concerning the violation. Documentation is maintained through the use of the Notice of Program Violation. The original is given to the participant and the carbon is maintained on file. The violation number and the point value from the schedule must be entered in the blanks of the form. The blank lines are used to write an explanation of the violation. The bottom section of the form is used only if the participant is to be suspended from the program. To avoid confusion, this part should be crossed out when not applicable. The form must be signed by the WIC coordinator or other designated staff person. If presented to the participant at a clinic, the participant is asked to sign to acknowledge receipt of the notice. If the participant refuses or the form is mailed, notation to that effect is made on the form.

*b.* Participants who violate program regulations are subject to sanction in accord with the schedule below:

| Violation | Points Per Event |
|---|---|
| 1. Attempting to purchase unauthorized brands/types of foods (i.e., incorrect brands of cereal, juices, etc.). | 3 |
| 2. Attempting to cash check for more than the possible value of the foods listed. | 3 |
| 3. Not countersigning the check at the time of purchase. | 3 |
| 4. Attempting to cash checks after the last valid date. | 4 |
| 5. Redeeming WIC checks at an unauthorized vendor. | 4 |
| 6. Attempting to countersign a check signed by spouse or proxy, or allowing a proxy to countersign a check signed by the authorized person. | 5 |

| | |
|---|---|
| 7. Attempting to cash checks that were countersigned prior to redemption at the vendor. | 5 |
| 8. Redeeming WIC checks that were reported as lost or stolen. | 5 |
| 9. Attempting to purchase more than the quantity of foods specified on the check. | 5 |
| 10. Verbal abuse or harassment of WIC or vendor employees. | 5 |
| 11. Threat of physical abuse of WIC or vendor employees. | 10 |
| 12. Attempting to sell, return, or exchange foods for cash or credit. | 10 |
| 13. Attempting to purchase unauthorized (non-WIC) foods, such as meat, canned goods, etc. | 10 |
| 14. Attempting to purchase items that are not food. | 10 |
| 15. Sale or exchange of WIC checks for cash or credit. | 10 |
| 16. Altering the food items or quantities of food on a check. | 10 |
| 17. Attempting to redeem check issued to another participant. | 10 |
| 18. Receiving more than one set of benefits for the same time period. | 10 |
| 19. Knowing and deliberate misrepresentation of circumstances to obtain benefits (resulting in a false determination of eligibility). | 10 |
| 20. Attempting to steal WIC checks from a local agency or participant. | 10 |
| 21. Physical abuse of WIC or vendor employees. | 10 |
| 22. Attempting to pick up checks for a child that is not currently in their care. | 10 |

*c.* The accumulation of 10 violation points within a 12-month period will result in a 2-month suspension. The accumulation of 10 additional violation points within a 12-month period following the suspension will result in a 3-month suspension. The participant must then reapply for the program and be scheduled for a certification.

*d.* Fifteen days' notice must be given prior to all suspensions. If notice is mailed, it should be received prior to the start of the cycle in which the participant would receive the next set of checks in order to comply with the 15-day provision. In all cases, the participant must be informed of the reason for the suspension and of the right to appeal the decision through the fair hearing process. A participant who appeals within 15 days is entitled to continue receiving benefits until the appeal is settled.

*e.* A suspension generally applies to all members of a family who are on the program. The competent professional authority may waive the suspension for one or more members of the family if it is determined that a serious health risk may result from program suspension. The reason for this waiver must be documented in the participant's file.

*f.* One or more checks cashed at the same time constitutes a single violation. Participants will not be charged with a second violation for minor violations worth 5 or less points for subsequent checks cashed between the first instance and the receipt of the violation notice if the violation is the same. If a major violation greater than 5 points occurs during this period, the participant will be suspended. Violations are cumulative.

*g.* When a participant improperly received benefits as a result of intentionally making a false or misleading statement, or intentionally misrepresenting, concealing, or withholding facts, the department shall collect the cash value of the improperly used food checks. Collection of overpayment is not required when the department determines it is not cost-effective to do so. It is not cost-effective unless the participant received at least two months' benefits for a woman or child, one month's benefits for two or more women or children, or one month's benefits for infant.

The local WIC agency shall issue a Statement of Restitution along with the suspension notice. The statement lists the serial numbers and dollar value of the checks for which payment is required. The participant is required to surrender any unspent checks and send payment to the department in check or money order for those checks that have been cashed.

*h.* Each local agency shall maintain a master list of all participant violation notices, suspension, and statements of restitution. The participant's notice of violation must also indicate when it is a second offense.

**73.18(2)** *Vendor violations.* There are three types of sanctions which are applied to vendors for violations of program regulations: nonpayment of checks, issuance of violation points, and suspensions.

*a.* Nonpayment of checks.

(1) As a result of prepayment reviews conducted by the state's bank, improperly completed food items are refused payment and returned to the vendor. Items screened during prepayment are authorized vendor stamp not present or legible in the "Pay to the Order of:" box on face of check, missing or mismatched signature and countersignature, price exceeds maximum established by department.

(2) If the violation can be corrected by applying the authorized stamp, obtaining the proper countersignature, or reducing the price, the item may be resubmitted for payment. Federal banking regulations prohibit a financial instrument from being sent through the federal reserve system more than twice. If an improperly completed WIC check is received by the state's bank a second time, it is voided and may not be redeposited.

*b.* Administrative and procedural violation points. Administrative and procedural violations are offenses to the provisions of the WIC vendor agreement which are not usually representative of intentional efforts to abuse or defraud the program or its participants.

These violations are an indication of a vendor's inattention to or disregard of the requirements of a WIC vendor agreement. It is in the state's interest to record and consider these violations when considering whether to continue its contractual relationship with the vendor.

Vendors are assessed violation points, which are applied as demerits against the vendor's score in the subsequent procurement for WIC vendor agreements in the vendor's area.

In addition, the accumulation of 35 or more violation points within an agreement period is a major violation subject to a one-year suspension of the WIC agreement for that store.

The assignment of violation points does not limit the state's right to effect stronger penalties and sanctions, in cases in which there is evidence of an intentional or systematic practice of abusing or defrauding the Iowa WIC program.

| Violation | Points Per Event |
|---|---|
| 1. Accepting five checks over 30 days old within the agreement period. | 3 |
| 2. Redeeming five checks over 45 days old within the agreement period. | 3 |
| 3. Accepting five checks with no date stamp within the agreement period. | 3 |
| 4. Refusal to accept valid WIC checks from participants. | 7 |
| 5. Abusive or discriminatory treatment of WIC participants, such as requiring WIC participants to use special checkout lanes or provide extra identification. | 7 |
| 6. Insufficient number of brands or types in a single food group. | 3 |
| 7. Insufficient quantity of a single food group. | 4 |
| 8. No stock in a single food group. | 5 |
| 9. Insufficient number of brands or types in two food groups. | 6 |
| 10. Insufficient quantity in two food groups. | 8 |
| 11. No stock in two or more food groups. | 10 |
| 12. Insufficient number of brands or types in three or more food groups. | 9 |
| 13. Insufficient quantity in three or more food groups | 12 |
| 14. No stock in three or more food groups (For 6 to 14, food groups are as defined in 73.7(3)*"a"*(3). | 15 |
| 15. Failure to carry out corrective action plan developed as a result of monitoring visit. | 10 |
| 16. Allowing the purchase of similar but not approved foods. | 10 |
| 17. Failure to reimburse state for potentially overpaid check or provide reasonable explanation for the cost of the check. | 5 |
| 18. Accepting the return of food purchased with WIC checks for cash or credit toward other purchases. | 10 |
| 19. Using a WIC vendor stamp other than the one issued by the Iowa WIC program. | 5 |
| 20. Providing a brand of formula other than the one specified on the face of the check. | 6 |
| 21. Issuing "rain checks" or credit in exchange for WIC checks. | 7 |
| 22. Stocking out of date, stale, or moldy WIC foods, per type. | 10 |

and to: public health nurse offices, physician offices, maternal and child health programs, head start programs, dental programs, family planning programs, nutrition professional groups, nursing professional groups, extension services, parent-teacher and other community organizations.

**73.20(2)** Reserved.

**641—73.21(135) Caseload management.** The statewide caseload (number of participants) shall be managed by the state office in accord with funding limitations and federal regulations or directives. The federally established priority categories of participant shall be followed when limitation of services is necessary in accord with 7 CFR 246.7(d)3. In addition the following rules shall apply:

**73.21(1)** A local agency shall maintain a waiting list only when the state office determines that sufficient funds are not available to meet demand.

**73.21(2)** When a waiting list has been authorized, local agencies shall certify applicants of potential highest priority first (e.g., women and infants) and potential lower priority second (children). Within these priority groups, applicants shall be offered certification appointments in the order of placement on the list.

**73.21(3)** When insufficient funds are available to serve all priority categories, the state shall provide instructions to local agencies regarding which priority categories may continue to be certified.

**73.21(4)** When necessitated by federal funding restrictions, the state agency reserves the right to terminate or temporarily suspend benefits for categories of participants prior to the end of their certification perod. Each participant shall be advised in writing 15 days before the effective date of the reasons for the action and of the right to a fair hearing.

**641—73.22(135) Grant application procedures for local agencies.** Local agencies wishing to provide WIC services shall make application to the Iowa department of public health. A pre-application procedure shall be required with the first application. All local agencies currently administering the WIC program shall reapply to administer it on an annual basis. In the event that competing applications are submitted to serve the same area, the criteria used to compare the applications shall be:

1. The priority system for new agencies as described in 7 CFR 246.
2. Other division of family and community health programs administered by the agency. Preference will be given to agencies which administer other division programs.
3. Proposed service area and its relationship to service area of agencies administering other division programs. Preference will be given to agencies with service areas similar to service areas for other division programs.
4. Content of grant application. Specific review criteria are developed for each year's grant. At a minimum, agencies must demonstrate an ability to provide routine, ongoing health services, ability to provide nutrition education to participants, and administrative capability to administer the program consistent with state policies and procedures and within available administrative funds.
5. Previous experience administering the WIC program. Other factors being equal, preference will be given to an agency that has successfully administered the program previously.

The contract period shall be from October 1 to September 30 annually.

**641—73.23(135) Integration of services with other health programs.** WIC local agencies shall be subject to the Iowa department of public health's recommendations and negotiations regarding integration of services with other health programs.

**641—73.24(135) Participant rights.** The special supplemental food program for women, infants and children shall be open to all eligible persons regardless of race, color, sex, creed, age, mental/physical handicap or national origin. An applicant or participant may appeal any decision made by the local or state agency regarding their eligibility for the program.

These rules are intended to implement federal law 42 U.S.C. section 1786, Iowa Code sections 10A.202(1)*"h"* and 135.11, subsections 1 and 15.

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*See IAB, Inspections and Appeals Department.
**Effective date delayed seventy days by the Administrative Rules Review Committee at its March 8, 1988 meeting.

**75.8(4)** *Contested use.* Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the 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.

**75.8(5)** *Hearing.* The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code.

**75.8(6)** *Decision.* A written decision of the hearing officer shall be issued, where possible, within 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 10 days after it is received by the aggrieved party unless an appeal to the director of public health is taken as provided in subrule 75.8(7).

**75.8(7)** *Appeal to director.* Any appeal to the director of public health for review of the proposed decision and order of the hearing officer shall be filed in writing and mailed to the director of public health by certified mail, return receipt requested, or delivered by personal service within 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.

**75.8(8)** *Record of hearing.* Upon receipt of an appeal request, the hearing officer shall prepare the record of the hearing for submission to the director of public health. 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.

**75.8(9)** *Decision of director.* The decision and order of the director of public health 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.

**75.8(10)** *Exhausting administrative remedies.* It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director of public health 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.

**75.8(11)** *Petition for judicial review.* Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: 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 1987 Iowa Acts, Senate File 511, sections 435 to 447.

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# CHAPTER 76
# MATERNAL AND CHILD HEALTH PROGRAM

**641—76.1(135) Program explanation.** The maternal and child health (MCH) programs are operated by the Iowa department of public health as the designated state agency pursuant to an agreement with the federal government. The majority of the funding available is from the maternal and child health block grant, administered by the United States Department of Health and Human Services.

The purpose of the program is to promote the health of mothers and children by providing preventative, well-child care services to low-income children and prenatal and postpartum care for low-income women.

The department of public health, bureau of maternal and child health, enters into contracts with selected local agencies on an annual basis for the provision of prenatal and well-child services to eligible participants.

**641—76.2(135) Adoption by reference.** Federal requirements contained in the Omnibus Reconciliation Act of 1989 (P.L. 101-239), Title V, maternal and child health services block grant shall be the rules governing the Iowa MCH program and are incorporated by reference herein.

The Iowa department of public health finds that certain rules should be exempted from notice and public participation as being a very narrowly tailored category of rules for which notice and public participation are unnecessary as provided in Iowa Code section 17A.4(2). Such rules shall be those that are mandated by federal law governing the Iowa MCH program where the department has no option but to adopt such rules as specified and where federal funding for the MCH programs is contingent upon the adoption of the rules.

Copies of the federal legislation adopted by reference are available from: Bureau Chief, Iowa MCH Bureau, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319, (515) 281-4911.

**641—76.3(135) Rule coverage.** These rules cover the prenatal and well-child portions of the maternal and child health block grant and related state-funded programs administered by the maternal and child health bureau of the department of public health. Other programs funded by the Iowa legislature from the maternal and child health block grant are not included in these rules.

**641—76.4(135) Definitions.**

*"Case management"* means services provided by a registered nurse or person with at least a bachelor's degree in social work, counseling, sociology, or psychology to include outreach and community education, ensuring a client receives all components of care, risk tracking, assistance with referrals and arrangements for further care.

*"Contracting agency"* means a private, nonprofit or public agency that has a contract with the department to provide maternal/child health services and receives funds from the department for that purpose.

*"Dental health education"* means services provided by a dental hygienist or registered nurse to include education about dental care and oral hygiene, and referral if indicated.

*"Family"* means a group of two or more persons related by birth, marriage or adoption who reside together or a unit of one is an unrelated individual who is not living with any relatives. An unborn fetus will be counted as a family member.

*"Health education"* means services provided by a registered nurse or other health professional to include normal anatomy and physiology of pregnancy, relief measures for common discomforts, signs or symptoms indicating need to contact physician, signs of labor, postpartum self-care, and infant care.

*"Nutrition counseling"* means services provided by a licensed dietitian to include assessment and education appropriate to the needs of the client.

*"Parenting education"* means services provided by a registered nurse or other health professional to include care of infants and children, normal development, discipline and other topics as appropriate.

*"Performance standards"* means criteria or indicators of the quality of service provided or the capability of an agency to provide services in a cost-effective or efficient manner.

*"Prenatal and postpartum care"* means those types of services as recognized by the latest edition of the American College of Obstetricians and Gynecologists, Standards for Obstetric Gynecologic Services.

*"Psychosocial counseling"* means services provided by a person with at least a bachelor's degree in social work, counseling, sociology or psychology to include social assessment, short-term crisis intervention, and referral.

*"Well-child care"* means those types of services as recognized by the latest edition of the American Academy of Pediatrics, Guidelines for Health Supervision.

**641—76.5(135) Covered services.** The following services shall be provided by contracting agencies:

**76.5(1)** Well-child services

*a.* Routine, ambulatory well-child care

*b.* Nutrition counseling

*c.* Dental health education

*d.* Psychosocial counseling

*e.* Parenting education

*f.* Case management

**76.5(2)** Prenatal/postpartum services

*a.* Routine, ambulatory prenatal care

*b.* Postpartum exams

*c.* Nutrition counseling

*d.* Dental health education

*e.* Psychosocial counseling

*f.* Health education

*g.* Case management

**76.5(3)** Contracting agencies may provide maternal health diagnosis and dental services and child health dental services if those services are in the approved contract.

**76.5(4)** Covered diagnosis and treatment services for children are:

*a.* Physician services provided in the office for treatment of acute illness.

*b.* Physician services provided in the office for diagnosis.

*c.* Diagnostic tests ordered by a physician to include laboratory tests and X rays.

*d.* Prescription drugs necessary to treat an acute condition.

**76.5(5)** Coverage for diagnosis and treatment services for children is restricted:

*a.* To patients approved by contracting agencies,

*b.* By the amount of funds available to the department.

**76.5(6)** Coverage is not available for the following:

*a.* Services covered by another private/public funding source,

*b.* Services provided as a result of an injury or accident,

*c.* Treatment or follow-up of a chronic disease or condition.

**641—76.6(135) Eligibility criteria.** The certification process to determine eligibility for services under the program will include the following requirements:

**76.6(1)** *Age:*

*a.* Prenatal program—no age restrictions

*b.* Well-child—birth through 20 years of age

**76.6(2)** *Income.*

*a.* Income guidelines will be set at 185 percent of the poverty income guidelines published by the U.S. Department of Health and Human Services (DHHS). 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 in the application.

*c.* Proof of Title XIX eligibility will automatically serve in lieu of an application.

*d.* 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.

*e.* Income will be estimated as follows:

(1) Annual income will be estimated based on the applicant's income for the past three 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 (adjusted gross) will be used in estimating annual income unless a substantial change has occurred.

(3) Terminated income will not be considered.

*f.* Applicants will be screened for eligibility for Title XIX. If an applicant's income falls within the eligibility guidelines for Title XIX, the applicant must be referred to the department of human services to apply for coverage. Pregnant women shall be considered for presumptive eligibility.

*g.* An applicant whose income falls between 185 percent and 300 percent will qualify for services on a sliding fee scale. An applicant whose income falls over 300 percent will qualify for services at full fee.

*h.* Eligibility determinations must be done at least once annually. Should the applicant's circumstances change in a manner to affect third-party coverage or Title XIX eligibility, eligibility determinations shall be completed more frequently.

*i.* Only clients who are at or below 185 percent of poverty and who are not covered by Title XIX or other third-party coverage are eligible for diagnosis, treatment and dental services.

**76.6(3)** *Residency.* Applicant must be currently residing in Iowa to be eligible.

**76.6(4)** *Pregnancy.* An applicant for the prenatal program shall have verification of pregnancy either by an independent provider or by the maternal health agency.

**641—76.7(135) Application procedures.**

**76.7(1)** A person desiring services under this program or the parent or guardian of a minor desiring such care may apply to the contract agency approved to cover the person's county of residence, using Health Services Application, Form 470-2927.

**76.7(2)** The applicant shall provide the following information to be considered for eligibility under this program:

*a.* The information requested on the application form under "Household Information."

*b.* Income information for all family members or proof of eligibility for Title XIX (Medicaid).

*c.* Information about health insurance coverage.

*d.* The signature of the applicant or responsible adult, dated and witnessed.

*e.* For pregnant women, denial of benefits under Title XIX (Medicaid) due to economic or categorical ineligibility.

**76.7(3)** If an applicant has completed a Health Services Application, Form 470-2927, at another program site, the maternal or child health agency shall accept a copy of that application and determine eligibility without requiring the completion of any other application form.

**76.7(4)** If an applicant indicates on the Health Services Application, Form 470-2927, that the applicant wishes to also apply for WIC or Medicaid, the contract agency shall forward the appropriate copy to the indicated agency within two working days.

**76.7(5)** The contract agency shall determine the eligibility of the applicant and the percent of the cost of care that is the applicant's responsibility. The applicant shall be informed in writing of eligibility status prior to incurring costs for care.

**76.7(6)** Once an applicant has been determined to be eligible, the applicant shall report any changes in income, family composition, or residency to the contract agency within 30 days from the date the change occurred.

**641—76.8(135) Grant application procedures for local agencies.** Local agencies wishing to provide maternal or child health services shall make application to the Iowa department of public health not less than 120 days prior to the beginning of the contract period. Agencies shall apply to administer MCH programs on an annual basis. The contract period shall be from October 1 to September 30 annually. All materials submitted as part of the grant application are public records.

Contract agencies are selected on the basis of the grant applications submitted to the Iowa department of public health. The department will only consider applications from private nonprofit or public agencies. In the case of competing applications, the contract will be awarded to the agency that scores the highest number of points in the review. Copies of review criteria are available from: Bureau Chief, Iowa Maternal/Child Health Bureau, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319, (515) 281-4911.

**641—76.9(135) Funding levels for continuing projects.** The amount of funds available to each contract agency on an annual basis shall be determined by the Iowa department of public health using a methodology based upon dollars available, number of clients, and selected need criteria. An agency will receive four dollars of the available grant amount for each one dollar of matching funds up to but not to exceed the total available funds for that agency.

**641—76.10(135) Agency performance.** Contract agencies are required to provide services in accordance with these rules.

**76.10(1)** *Performance standards.* The state agency shall establish performance standards that contract agencies shall meet in the provision of services. The performance standards were published in the document "Quality Assurance Program," August 1991. They are included in the grant application packet each year. Copies of the performance criteria are available from the chief, maternal and child health bureau. Contract agencies that do not meet minimum performance shall not be eligible for continued funding as an MCH agency.

**76.10(2)** *Local agency review.* The state agency shall review local agency operations through use of reports and documents submitted, state-generated data reports, chart audits, on-site visits for evaluation and technical assistance.

**76.10(3)** *Waivers.* An agency that does not meet a performance standard may be granted a waiver for up to one year in order to improve performance. Such a waiver must be requested in writing. If granted, the waiver approval will include the conditions necessary for the successful completion of the standard, a time frame, and additional reporting requirements.

**641—76.11(135) Reporting.** Completion of grant applications, budgets, expenditure reports, and computer forms shall be done by local agencies in compliance with the contract with the Iowa department of public health.

**641—76.12(135) Fiscal management.** All contract agencies are required to meet certain fiscal management policies.

**76.12(1)** *Last pay.* MCH grant funds are considered last pay. Title XIX, other third party, are to be billed first if the client is covered by those sources.

**76.12(2)** *Program income.* Program income means gross income earned by the contractor from activities part or all of the cost of which is either borne as a direct cost by a grant or counted as a direct cost toward meeting cost-sharing or matching requirements of the grant. It includes but is not limited to such income in the form of fees for services, third-party reimbursements, proceeds from sales of tangible, personal or real property.

Program income shall be used for allowable costs of the project. Program income shall be used before grant funds. Program income shall be used during the current fiscal year or the following fiscal year. Five percent of unobligated program income may be used by the contract agency for special purposes or projects provided such use furthers the mission of the grant and does not violate state or federal rules governing the program.

**76.12(3)** *Advances.* An agency may request an advance up to one-sixth of its contract at the beginning of a contract year.

**76.12(4)** *Match.* Contract agencies are required to match grant funds at a minimum rate of one dollar of local match for every four dollars from the grant. Sources that may be used for match are reimbursement for service from third parties such as insurance and Title XIX, patient fees, local funds from nonfederal sources, or in-kind contributions. In-kind contributions must be documented in accordance with standard accounting practice.

**76.12(5)** *Subcontracts.* Contract agencies may subcontract a portion of the project activity to another entity provided such subcontract is approved by the state agency. Subcontracting entities must follow the same rules, procedures, and policies as required of the contract agency by these rules and contract with the state agency. The contract agency is responsible for ensuring the compliance of the subcontract.

**641—76.13(135) Audits.** Each local agency shall ensure an audit of the MCH program within their agency at least every two years, to be conducted to comply with OMB Circular A-128 Audits of State and Local Governments. Each audit shall cover all unaudited periods through the end of the previous grant year. The department of public health's audit guide should be followed to ensure an audit which meets federal and state requirements.

**641—76.14(135) Diagnosis and treatment services for children.** Diagnosis and treatment services for children are paid for directly by the department in conjunction with authorizations by the contracting agencies.

**76.14(1)** *Distribution of funds.* Funds will be reserved for each contract agency based upon percentage of children eligible for the service and availability of other payment sources for the service. The dollars available for distribution will not be less than 90 percent of the appropriation. The remaining percentage will be reserved at the department to cover services that exceed expected costs.

**76.14(2)** *Restriction on expenditure.* If the funds reserved to a contract agency are expended or encumbered before the end of a contract year, further authorizations for payment cannot be made.

**76.14(3)** *Redistribution of funds.* Funds may be redistributed among agencies based upon utilization at the end of the second quarter of the state fiscal year.

**76.14(4)** *Authorization for coverage.* Prior authorization is required before providers submit bills to the department for payment. Contracting agencies establish authorization to the providers using the following criteria:

*a.* Child's eligibility, the service meets the definitions for coverage, availability of funds.

*b.* Contracting agencies may directly authorize services, including diagnostic tests ordered by a physician, that represent one visit, diagnosis, or treatment. One follow-up visit is included. Notice of authorization must be received by the department within three working days.

*c.* Contracting agencies must receive prior approval from the department before authorizing coverage for services that would constitute care provided in three or more visits or with extended treatment. The provider's plan of care must be submitted by the contracting agency to the department for review and approval.

**76.14(5)** *Payment to providers.* Payments to providers will be made by the department under the following conditions:

*a.* Authorization by the contracting agency has been received by the department.

*b.* A bill for services has been submitted within 60 days of the date of service on an HCFA 1500. When other financial or medical resources are available to the patient, the department will consider for payment any eligible expense claim or portion thereof provided the claim is for approved expenses incurred no more than 12 months prior to the month the claim is received by the department.

*c.* Payment shall be based upon Title XIX rates.

**641—76.15(135) Denial, suspension, revocation or reduction of contracts with local agencies.** The department may deny, suspend, revoke or reduce contracts with local agencies in accord with applicable federal regulations or contractual relationships. Notice of such action shall be in writing.

**641—76.16(135) Right to appeal.** Agencies may appeal denial of a contract or the suspension, revocation or reduction of an existing contract. Participants may appeal a denial of service.

**76.16(1)** *Appeal.* The appeal shall be made in writing to the Iowa department of public health within 30 days of receipt of notification of the adverse action. Notice is to be addressed to the Division Director, Family and Community Health Division, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319.

**76.16(2)** *Contested case.* Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the 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.

**76.16(3)** *Hearing.* The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code.

**76.16(4)** *Decision of administrative law judge.* When the administrative law judge 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 days after it is received by the aggrieved party unless an appeal to the director of public health is taken as provided in subrule 76.16(5).

**76.16(5)** *Appeal to the director of public health.* Any appeal to the director of public health for review of the proposed decision and order of the law judge shall be filed in writing and mailed to the director of public health by certified mail, return receipt requested, or delivered

by personal service within ten days after the receipt of the law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the law judge. Any request for an appeal shall state the reason for appeal.

**76.16(6)** *Record of hearing.* Upon receipt of an appeal request, the law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

*a.* All pleadings, motions and rules.

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

*c.* A statement of all matters officially noticed.

*d.* All questions and offers of proof, objections and rulings thereon.

*e.* All proposed findings and exceptions.

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

**76.16(7)** *Decision of director of public health.* The decision and order of the director of public health 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.

**76.16(8)** *Exhausting administrative remedies.* It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director of public health 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.

These rules are intended to implement Iowa Code section 135.11 and 1990 Iowa Acts, chapter 1259.

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## APPENDIX 1
## TYPES OF FINANCIAL ASSISTANCE AVAILABLE

| 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 at 50% | AP at 50% |
| Medical Charges | NA | AP | AP | AP at 50% | AP at 50% |
| Home Dialysis Supply Charges | NA | AP | AP | AP at 50% | AP at 50% |
| Home Hemodialysis Assistants | NA | AP | AP | AP at 50% | AP at 50% |
| Pharmaceuticals | Nonlegend and Coinsurance | AP | AP | AP at 50% | NA |
| Travel for outpatient dialysis home dialysis, transplantation and three months post-transplant period only | In-city only | AP | AP | AP at 50% | NA |
| Lodging for home dialysis training, transportation and three months post-transplant period only | NA | AP | AP | 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

All reimbursement for assistance will be paid at 85%

For example:
A hospital claim for $100 to a category 3 recipient would be reimbursed as follows:
Step 1: $100 × 50% = $50
Step 2: $ 50 × 85% = $42.50
$42.50 would be the total reimbursement for that claim.

These rules are intended to implement Iowa Code sections 135.45 to 135.48.

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*See IAB, Inspections and Appeals Department.

# CHAPTER 132
# ADVANCED EMERGENCY MEDICAL CARE

(Joint Rules pursuant to 147A.4)
[Prior to 7/29/87, Health Department(470), Ch 132]

**641—132.1(147A) Definitions.** For the purpose of these rules, the following definitions shall apply:

*"ACLS"* or *"advanced cardiac life support"* means training and successful course completion in advanced cardiac life support according to American Heart Association standards.

*"Advanced emergency medical care"* means such medical procedures as:

1. Administration of intravenous solutions.
2. Intubation.
3. Performance of cardiac defibrillation and synchronized cardioversion.
4. Administration of emergency drugs as provided by rule by the board.
5. Any other medical procedure approved by the board, by rule, as appropriate to be performed by advanced emergency medical care providers who have been trained in that procedure.

*"Advanced emergency medical care personnel"* or *"provider"* means any FR-D, EMT-D, EMT-I, or EMT-P currently certified by the board.

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

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

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

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

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

*"Board"* means the state board of medical examiners appointed pursuant to Iowa Code section 147.14, subsection 2.

*"CEHs"* means "continuing education hours" which are based upon a minimum of 50 minutes of training per hour.

*"Continuing education"* means training approved by the board which is obtained by a certified advanced emergency medical care provider to maintain, improve, or expand relevant skills and knowledge and to satisfy renewal of certification requirements.

*"Course completion date"* means the date of the final classroom session of an advanced emergency medical care provider course.

*"Course coordinator"* means an individual who has been assigned by the training program to coordinate the activities of an advanced emergency medical care provider course.

*"CPR"* means training and successful course completion in cardiopulmonary resuscitation and obstructed airway procedures according to American Heart Association or American Red Cross standards. This includes one rescuer, two rescuer, and child/infant cardiopulmonary resuscitation and adult and child/infant obstructed airway procedures.

*"Department"* means the Iowa department of public health.

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

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

*"Emergency medical technician-intermediate"* means an individual who has successfully completed the United States Department of Transportation's EMT-intermediate curriculum (excluding endotracheal intubation), passed the board's approved written and practical examinations, and is currently certified by the board as an EMT-I.

*"Emergency medical technician-paramedic"* means an individual who has successfully completed the United States Department of Transportation's EMT-paramedic curriculum, passed the board's approved written and practical examinations, and is currently certified by the board as an EMT-P.

*"Emergency medical transportation"* means the transportation, by ambulance, of sick, injured or otherwise incapacitated persons who require emergency medical care.

*"EMS"* means emergency medical services.

*"EMS-I"* means emergency medical services-instructor.

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

*"EMT-A"* means emergency medical technician-ambulance.

*"EMT-D"* means emergency medical technician-defibrillation.

*"EMT-I"* means emergency medical technician-intermediate.

*"EMT-P"* means emergency medical technician-paramedic.

*"First responder"* means an individual who has successfully completed the United States Department of Transportation's First Responder curriculum, passed the department's approved written and practical examinations, and is currently certified by the department as an FR.

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

*"First response vehicle"* means any privately or publicly owned vehicle which is used solely for the transportation of emergency medical care personnel and equipment to and from the scene of a medical or nonmedical emergency.

*"FR"* means first responder.

*"FR-D"* means first responder-defibrillation.

*"Hospital"* means any hospital licensed under the provisions of Iowa Code chapter 135B.

*"Intermediate"* means an emergency medical technician-intermediate.

*"Medical direction"* means direction, advice, or orders provided by a medical director, supervising physician, or physician designee (in accordance with written parameters and protocols) to advanced emergency medical care personnel.

*"Medical director"* means any physician licensed under Iowa Code chapter 148, 150, or 150A who shall be responsible for overall medical direction of the service program and is currently certified in ACLS.

*"Mutual aid"* means an agreement, preferably in writing, between two or more services that addresses how and under what circumstances each service will respond to a request for assistance.

*"Nonemergency transportation"* means transportation that may be provided for those persons determined to need transportation only.

*"Off-line medical direction"* means the monitoring of EMS providers through retroactive field assessments and treatment documentation review, critiques of selected cases with the EMS personnel, and statistical review of the system.

*"On-line medical direction"* means immediate medical advice via radio or phone communications between the EMS provider and the medical director, supervising physician or physician designee.

*"Outreach course coordinator"* means an individual who has been assigned by the training program to coordinate the activities of an advanced emergency medical care provider course held outside the training program facilities.

*"Paramedic"* means an emergency medical technician-paramedic.

*"Patient"* means any individual who is sick, injured, or otherwise incapacitated.

*"Physician"* means any individual licensed under Iowa Code chapter 148, 150, or 150A.

*"Physician designee"* means any registered nurse licensed under Iowa Code chapter 152, or any physician assistant licensed under Iowa Code chapter 148C and approved by the board of physician assistant examiners, who holds a current course completion card in ACLS. The physician designee may act as an intermediary for a supervising physician in directing the actions of advanced emergency medical care personnel in accordance with written policies and protocols.

*"Preceptor"* means an individual who has been assigned by the training program, clinical facility or service program to supervise students while the students are completing their clinical or field experience. A preceptor must be an advanced emergency medical care provider certified at the level being supervised or higher, or must be licensed as a registered nurse, physician's assistant or physician.

*"Primary response vehicle"* means any ambulance, rescue vehicle or first response vehicle which is utilized by a service program and is normally dispatched as the initial vehicle to respond to an emergency call.

*"Protocols"* means written directions and guidelines established and approved by the service program's medical director that address the procedures to be followed by emergency medical care providers in emergency and nonemergency situations.

*"Rescue service"* means any privately or publicly owned service program which does not provide patient transportation and utilizes only rescue or first response vehicles to provide emergency medical care at the scene of an emergency.

*"Rescue vehicle"* means any privately or publicly owned vehicle which is specifically designed, modified, constructed, equipped, staffed and used regularly for rescue or extrication purposes at the scene of a medical or nonmedical emergency.

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

*"Secondary response vehicle"* means any ambulance, rescue vehicle or first response vehicle which is utilized by a service program when dispatched for routine or convalescent transfers, when the service program's primary response vehicle would have a longer response time, is already in service or is otherwise unavailable or when a mutual aid request requires a different type of response vehicle. Secondary response vehicles may be staffed and equipped at any level up to and including the service program's level of authorization.

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

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

*"Student"* means any individual enrolled in a training program and participating in the didactic, clinical, or field experience portions.

*"Supervising physician"* means any physician licensed under Iowa Code chapter 148, 150, or 150A who holds a current course completion card in ACLS. The supervising physician is responsible for medical direction of advanced emergency medical care personnel when such personnel are providing advanced emergency medical care.

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

*"Training program director"* means an appropriate health care professional (full-time educator or practitioner of emergency or critical care) assigned by the training program to direct the operation of the training program.

*"Training program medical director"* means any physician licensed under Iowa Code chapter 148, 150, or 150A who is responsible for directing an advanced emergency medical care training program and who holds a current course completion card in ACLS.

**641—132.2(147A) Authority of advanced emergency medical care personnel.**

**132.2(1)** Advanced emergency medical care personnel shall perform under the supervision of a physician in accordance with Iowa Code chapter 147A and these rules.

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

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

(1) At the scene of an emergency;

(2) During transportation to a hospital;

(3) While in the hospital emergency department; and

(4) Until patient care is directly assumed by a physician or by authorized hospital personnel.

*b.* Function in any hospital when:

(1) Enrolled as a student or participating as a preceptor in a training program approved by the board;

(2) Fulfilling continuing education requirements;

(3) Employed by or assigned to a hospital as a member of an authorized advanced care service program, by rendering lifesaving services in the facility in which employed or assigned pursuant to the advanced emergency medical care provider's certification and under direct supervision of a physician or registered nurse. An advanced emergency medical care provider shall not routinely function without the direct supervision of a physician or registered nurse. However, when the physician or registered nurse cannot directly assume emergency care of the patient, the advanced emergency medical care personnel may perform, without direct supervision, emergency medical care procedures for which certified, if the life of the patient is in immediate danger and such care is required to preserve the patient's life;

(4) Employed by or assigned to a hospital as a member of an authorized advanced care service program to perform nonlifesaving procedures for which trained and designated in a written job description. Such procedures may be performed after the patient is observed by and when the advanced emergency medical care provider is under the supervision of the physician or registered nurse and where the procedure may be immediately abandoned without risk to the patient.

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

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

*a.* At the FR-D level:

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

*b.* At the EMT-D level:

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

*c.* At the EMT-I level:

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

(2) Esophageal intubation.

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

(4) Gastric tube insertion.

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

*d.* At the EMT-P level:

(1) Defibrillation, cardioversion and external cardiac pacing.

(2) Endotracheal and esophageal intubation and suctioning.

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

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

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

(6) Direct laryngoscopy.

(7) Gastric tube insertion.

(8) Nasogastric tube insertion.

(9) Rotating tourniquets.

(10) Urinary catheterization.

(11) Cricothyrotomy and transtracheal jet insufflation.

(12) Tension pneumothorax decompression.

**132.2(5)** The board may approve other advanced emergency medical care skills on a limited pilot project basis. Requests for pilot projects shall be submitted in writing to the executive director of the board at least 30 days prior to the board meeting.

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

**641—132.3(147A) Advanced emergency medical care providers—requirements for enrollment in training programs.**

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

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

*b.* Have a high school diploma or its equivalent.

*c.* Be able to speak, write and read English.

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

*e.* Hold a current course completion card in CPR.

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

*g.* Be currently certified as an EMT-A if enrolling in an advanced EMT or paramedic course.

**132.3(2)** Audits.

*a.* With training program approval, persons who are not enrolled in an advanced emergency medical care provider course may audit those courses. They shall not be eligible to take the practical and written certification examinations.

*b.* Students enrolled in an out-of-state training program may participate in clinical or field experience in Iowa provided:

(1) The out-of-state training program has been approved by that state to conduct advanced emergency medical care training, and

(2) A written agreement exists between the out-of-state training program and the clinical or field experience provider.

**641—132.4(147A) Advanced emergency medical care providers—certification, renewal standards and procedures, and fees.**

**132.4(1)** Application and examination.

*a.* Applicants shall complete an "EMS Student Registration" form at the beginning of the course. Courses which are completed within two weeks are exempt from this requirement. "EMS Student Registration" forms are provided by the board.

*b.* "EMS Student Registration" forms shall be forwarded to the board by the training program no later than two weeks after the beginning of the course.

An individual who completes the required continuing education during the certification period, but fails to submit the "Application for Renewal of Certification" within 90 days after the expiration date, shall be required to submit a late fee of $30 (in addition to the renewal fee) to obtain renewal of certification.

*d.* An individual who has not completed the required continuing education during the certification period and is seeking to reinstate a lapsed certificate shall:

(1) Complete continuing education courses equivalent to the renewal requirements for that particular level of certification within six years following the certificate's expiration date. Refer to Table 1 for total number of hours required.

(2) Meet all applicable eligibility requirements.

(3) Submit an "EMS Reinstatement Application" and the applicable fees to the board.

(4) Pass the appropriate practical and written certification examinations.

TABLE 1

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

*e.* If certification has been expired for more than six years, the individual shall repeat the entire course, pass the practical and written certification examinations, meet all applicable eligibility requirements and submit the applicable fees and forms to again become certified.

*f.* If an individual is unable to complete the required continuing education during the certification period due to an illness or injury, a one-year extension of certification may be issued upon submission of a signed statement from a physician and approval by the board.

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

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

*b.* Have a current CPR course completion card or a signed and dated statement from a recognized CPR instructor that documents current course completion in CPR. Paramedics shall also have a current ACLS course completion card or a signed and dated statement from a recognized ACLS instructor that documents current course completion in ACLS.

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

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

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

(3) EMT-I—48 hours of approved continuing education including at least one hour in each of the required topic areas listed in subparagraph (5).

(4) EMT-P—60 hours of approved continuing education including at least one hour in each of the required topic areas listed in subparagraph (5).

(5) Required topics for all levels include the following:

Infectious diseases

Abuse (child and dependent adult)

Trauma emergencies (should include skills practice)

Medical emergencies (should include skills practice)

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

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

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

*c.* Disaster drills (4 hours maximum).

*d.* Continuing education course instructors will be granted the appropriate number of CEHs for the courses taught.

*e.* EMS course instructors will be granted the appropriate number of CEHs for the courses taught. When identical courses are taught, CEHs will be granted for the first course only.

*f.* Practical certification examination evaluation (6 hours maximum).

*g.* EMS course attendance (or audit) will qualify as continuing education based upon the number of hours attended (or audited).

*h.* ACLS training and successful course completion (6 hours maximum).

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

**132.4(6)** Out-of-state continuing education. Out-of-state continuing education courses will be accepted for CEHs if they meet the criteria in subrule 132.4(5) and have been approved for emergency medical care personnel in the state in which the courses were held. A copy of course completion certificates (or other verifying documentation) shall be submitted to the board with the "Application for Renewal of Certification."

**132.4(7)** CEHs shall not be approved for:

*a.* CPR course attendance, CPR course instruction or CPR instructor training.

*b.* Courses or portions of courses which are beyond the scope of training and authority for emergency medical care personnel.

**132.4(8)** Certification and renewal fees. The following fees shall be collected by the board and shall be nonrefundable:

*a.* EMT-I and EMT-P written examination/certification fee—$20.

*b.* FR-D and EMT-D certification fee—$10.

*c.* Renewal of certification(s) fee—$10.

*d.* Endorsement certification fee—$30.

*e.* Reinstatement fee—$30.

*f.* Late fee—$30.

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

*a.* Complete and submit the "EMS Endorsement Application" available from the board.

*b.* Provide verification of current certification in another state or with the National Registry of EMTs.

*c.* Provide verification of current course completion in CPR. Applicants for paramedic endorsement shall also provide verification of current course completion in ACLS.

*d.* Pass the appropriate Iowa practical and written certification examinations in accordance with subrule 132.4(1).

*e.* Meet all other applicable eligibility requirements necessary for Iowa certification pursuant to these rules.

*f.* Submit all applicable fees to the board.

*g.* An individual certified through endorsement must satisfy the renewal and continuing education requirements set forth in subrule 132.4(4) to renew Iowa certification.

**132.4(10)** Temporary certification through endorsement. Upon written request, the endorsement applicant may be issued temporary certification by the board. Justification for issuance of the temporary certification must accompany the request. Temporary certification shall not exceed six months.

**641—132.5(147A) Training programs—standards, application, inspection and approval.**

**132.5(1)** *Curricula.*

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

(1) Defibrillation course:

1. Four hours of classroom instruction for automated defibrillators.
2. Sixteen hours of classroom instruction for manual defibrillators.
3. Clinical experience as may be required by the training program.
4. Ambulance field experience as may be required by the training program.

(2) Emergency medical technician-intermediate (EMT-I) course:

1. Sixty hours of classroom instruction.
2. Fifty hours of clinical experience.
3. Fifty hours of ambulance/rescue field experience.

(3) Emergency medical technician-paramedic (EMT-P) course:

1. Three hundred hours of classroom instruction.
2. One hundred fifty hours of clinical experience.
3. One hundred fifty hours of ambulance/rescue field experience.

*b.* The training program may waive portions of the required training by documenting equivalent training and what portions of the course have been waived for equivalency.

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

*a.* A written agreement between the service program medical director and the training program exists to ensure responsibility for the review of cardiac arrest tapes and the maintenance of statistical information; and

*b.* The training program has the necessary equipment and staff available to perform cardiac arrest tape review and to report statistical information; and

*c.* The training program provides a written review of the cardiac arrest tape to the service program, the service program medical director and the department; and

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

**132.5(3)** *Clinical or field experience resources.* If clinical or field experience resources are located outside the framework of the training program, written agreements for such resources shall be obtained by the training program.

**132.5(4)** *Facilities.*

*a.* There shall be adequate classroom, laboratory, and practice space to conduct the training program. A library with reference materials on emergency and critical care shall also be available.

*b.* Opportunities for the student to accomplish the appropriate advanced skill competencies in the clinical environment shall be ensured. The following hospital units should be available for clinical experience for each training program as required in subrule 132.5(1):

(1) Emergency department;
(2) Intensive care unit or coronary care unit or both;
(3) Operating room and recovery room;
(4) Intravenous or phlebotomy team, or other method to obtain IV experience;
(5) Pediatric unit;
(6) Labor and delivery suite, and newborn nursery; and
(7) Psychiatric unit.

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

*d.* The training program shall have liability insurance and shall offer liability insurance to students while enrolled in a training program.

**132.5(5)** *Staff.*

*a.* The training program medical director shall be a physician who holds a current course completion card in ACLS.

*b.* A training program director shall be appointed who is an appropriate health care professional. This individual shall be a full-time educator or a practitioner in emergency or critical care. Current EMS instructor certification is also recommended, but not mandatory.

*c.* Effective January 1, 1992, the course coordinators and the outreach course coordinators used by the training program shall be currently certified as EMS instructors.

*d.* The instructional staff shall be comprised of physicians, nurses, pharmacists, advanced emergency medical care personnel, or other health care professionals who have appropriate education and experience in emergency and critical care. Current EMS instructor certification is also recommended, but not mandatory.

*e.* Preceptors shall be assigned in each of the clinical units in which advanced emergency medical care students are obtaining clinical experience and field experience. The preceptors shall supervise student activities to ensure the quality and relevance of the experience. Student activity records shall be kept and reviewed by the immediate supervisor(s) and by the program director and course coordinator.

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

*g.* The training program shall maintain records for each instructor used which include, as a minimum, the instructor's qualifications.

*h.* The training program is responsible for ensuring that each course instructor is experienced in the area being taught and adheres to the course curricula.

*i.* The training program shall ensure that each practical examination evaluator and mock patient is familiar with the practical examination requirements and procedures.

**132.5(6)** *Advisory committee.* There shall be an advisory committee which includes training program representatives and other groups such as affiliated medical facilities, local medical establishments, and ambulance, rescue and first response service programs.

**132.5(7)** *Student records.* The training program shall maintain an individual record for each student. Training program policy and board requirements will determine contents. These requirements may include:

*a.* Application;

*b.* Current certifications;

*c.* Student record or transcript of hours and performance (including examinations) in classroom, clinical, and field experience settings.

**132.5(8)** *Selection of students.* There may be a selection committee to select students using, as a minimum, the prerequisites outlined in subrule 132.3(1).

**132.5(9)** *Students.*

*a.* Students may perform any procedures and skills that certified advanced emergency medical care personnel may perform, if they are under the direct supervision of a physician or physician designee, or under the remote supervision of a physician or physician designee, with direct field supervision by an appropriately certified advanced emergency medical care provider.

*b.* Students shall not be substituted for personnel of any affiliated medical facility or service program, but may be employed while enrolled in the training program.

**132.5(10)** *Financing and administration.*

*a.* There shall be sufficient funding available to the training program to ensure that each class started can be completed.

*b.* Tuition charged to students shall be accurately stated.

*c.* Advertising for training programs shall be appropriate.

*d.* The training program shall provide to each student, within two weeks of the course starting date, a guide which outlines as a minimum:

(1) Course objectives.

(2) Minimum acceptable scores on interim testing.

(3) Attendance requirements.

(4) Disciplinary actions that may be invoked and the reasons for them.

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

*a.* An applicant seeking initial or renewal training program approval shall use the "EMS Training Program Application" provided by the board. The application shall be submitted at least two months prior to a regular board meeting for board action. The application shall include, as a minimum:

(1) Appropriate officials of the applicant;

(2) Evidence of availability of clinical resources;

(3) Evidence of availability of physical facilities;

(4) Evidence of qualified faculty;

(5) Qualifications and major responsibilities of each faculty member;

(6) Policies used for selection, promotion, and graduation of trainees; and

(7) Practices followed in safeguarding the health and well-being of trainees, and patients receiving emergency medical care within the scope of the training program.

*b.* New training programs shall submit a needs assessment which justifies the need for the training program.

*c.* Applications shall be reviewed in accordance with the current "Essentials and Guidelines of an Accredited Educational Program for the Emergency Medical Technician-Paramedic," published by the American Medical Association.

*d.* An on-site inspection of the applicant's facilities and clinical resources will be performed. The purpose of the inspection is to examine educational objectives, patient care practices, facilities and administrative practices, and to prepare a written report for review and action by the board.

*e.* No person shall interfere with the inspection activities of the board or its agents. Interference with or failure to allow an inspection may be cause for disciplinary action regarding training program approval.

*f.* Representatives of the applicant may be required by the board to meet with the board at the time the application and inspection report are discussed.

*g.* A written report of board action accompanied by the board inspection reports shall be sent to the applicant.

*h.* Training program approval shall not exceed five years.

*i.* The training program shall notify the board, in writing, of any change in ownership or control within 30 days.

**641—132.6(147A) Continuing education providers—approval, record keeping and inspection.**

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

**132.6(2)** A training program may conduct continuing education courses (utilizing appropriate instructors) which are within the scope of training and authority for emergency medical care personnel.

*a.* Each training program shall assign a sponsor number to each continuing education course using an assignment system approved by the board.

*b.* Each training program shall maintain a student record that includes, as a minimum:

| | |
|---|---|
| Name | Address |
| Certification number | Social security number |

*c.* Each training program shall submit to the board the "Approved EMS Continuing Education" form on a quarterly basis.

**132.6(3)** Record keeping and record inspection.

*a.* The board may request additional information or inspect the records of any continuing education provider currently approved or who is seeking approval to ensure compliance or to verify the validity of any training program application.

*b.* No person shall interfere with the inspection activities of the board or its agents. Interference with or failure to allow an inspection may be cause for disciplinary action regarding training program approval.

**641—132.7(147A) Service program—authorization and renewal procedures, inspections and transfer or assignment of certificates of authorization.**

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

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

*b.* To renew service program authorization, the service program shall continue to meet the requirements of Iowa Code chapter 147A and these rules. The renewal application shall be completed and submitted to the department at least 30 days before the current authorization expires.

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

*d.* The department shall approve an application when the department is satisfied that the program proposed by the application will be operated in compliance with Iowa Code chapter 147A and these administrative rules.

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

*f.* Service programs shall be fully operational upon the effective date and at the level specified on their certificate of authorization and shall meet all applicable requirements of Iowa Code chapter 147A and these rules.

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

*h.* Any service program owner in possession of a certificate of authorization as a result of transfer or assignment shall continue to meet all applicable requirements of Iowa Code chapter 147A and these rules. In addition, the new owner shall apply to the department for a new certificate of authorization within 30 days following the effective date of the transfer or assignment.

**132.7(2)** *Out-of-state service programs.*

*a.* Service programs located in other states which wish to provide advanced emergency medical care in Iowa must meet all requirements of Iowa Code chapter 147A and these rules and must be authorized by the department except when:

(1) Transporting patients from locations within Iowa to destinations outside of Iowa;

(2) Transporting patients from locations outside of Iowa to destinations within Iowa;

(3) Transporting patients to or from locations outside of Iowa that requires travel through Iowa; or

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

*a.* Reviewing the patient care provided by service program personnel and remedying any deficiencies or potential deficiencies that may be identified regarding medical knowledge or skill performance.

*b.* Time spent at the scene.

**132.9(5)** The medical director shall approve written protocols for each drug carried by the service program which describe when and how each drug may be administered.

**132.9(6)** On-line medical direction when provided through a hospital.

*a.* The medical director shall designate in writing at least one hospital which has established a written on-line medical direction agreement with the department. It shall be the medical director's responsibility to notify the department in writing of changes regarding this designation.

*b.* Hospitals signing an on-line medical direction agreement shall:

(1) Ensure that the supervising physicians or physician designees who are trained and hold a current course completion card in ACLS will be available to provide on-line medical direction via radio communications on a 24-hour-per-day basis.

(2) Identify the service programs for which on-line medical direction will be provided.

(3) Establish written protocols for use by supervising physicians and physician designees who provide on-line medical direction.

(4) Administer a quality assurance program to review orders given. The program shall include a mechanism for the hospital and service program medical directors to discuss and resolve any identified problems.

*c.* A hospital which has a written medical direction agreement with the department may provide medical direction for any or all service program authorization levels and may also agree to provide backup on-line medical direction for any other service program when that service program is unable to contact its primary source of on-line medical direction.

*d.* Only supervising physicians or physician designees shall provide on-line medical direction via radio communications. However, a physician, registered nurse or EMT (of equal or higher level) may relay orders to advanced emergency medical care personnel, without modification, from a supervising physician or physician designee.

*e.* On an annual basis, the hospital shall notify the department in writing of any changes in the supervising physicians and physicians providing on-line medical direction.

*f.* Supervising physicians and physician designees shall be trained in the proper use of radio protocols and equipment.

*g.* The department may verify a hospital's communications system to ensure compliance with the on-line medical direction agreement.

*h.* A supervising physician or physician designee who gives orders (directly or via communications equipment from some other point) to an advanced emergency medical care provider is not subject to criminal liability by reason of having issued the orders and is not liable for civil damages for acts or omissions relating to the issuance of the orders unless the acts or omissions constitute recklessness.

*i.* Nothing in these rules requires or obligates a hospital, supervising physician or physician designee to approve requests for orders received from advanced emergency medical care personnel.

NOTE: Hospitals in other states may participate provided the applicable requirements of this subrule are met.

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

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

**132.10(2)** Complaints and the investigative process will be treated as confidential in accordance with Iowa Code chapter 22.

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

*a.* Failure or repeated failure of the applicant or alleged violator to meet the requirements or standards established pursuant to Iowa Code chapter 147A or the rules adopted pursuant to that chapter.

*b.* Obtaining or attempting to obtain or renew or retain service program authorization by fraudulent means, misrepresentation or by submitting false information.

*c.* Engaging in conduct detrimental to the well-being or safety of the patients receiving or who may be receiving emergency medical care.

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

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

**132.10(6)** Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the 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.

**132.10(7)** The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code.

**132.10(8)** When the administrative law judge makes a proposed decision and order, it shall be served by restricted certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in subrule 132.10(9).

**132.10(9)** Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of

thirty days of the mailing of a notice of intended action by the board. The address is: Iowa State Board of Medical Examiners, State Capitol Complex, Executive Hills West, Des Moines, Iowa 50319.

**132.12(4)** The executive director shall prepare the notice of hearing and transmit same to the aggrieved party by certified mail, return receipt requested, at least ten days before the date of the hearing.

**132.12(5)** The board adopts the rules of the department found in 641—Chapter 173, Iowa Administrative Code, as the procedure for hearings before the board. The board may authorize an administrative law judge to conduct hearings, administer oaths, issue subpoenas, and prepare written findings of fact, conclusions of law, and decisions at the direction of the board. The members of the committee which make the initial decision to deny, suspend, or revoke authorization or renewal shall not take part in the hearing panel but may appear as witnesses.

**132.12(6)** The decision of the board shall be mailed to the aggrieved party by certified mail, return receipt requested, or by personal service.

**132.12(7)** Any appeal to the district court from denial, suspension, or revocation of such training program authorization or renewal shall be taken within 30 days from the issuance of the decision of the board. Notice of appeal shall be sent to the board by certified mail, return receipt requested, or by personal service. It is not necessary to request a rehearing before the board to appeal to the district court.

**132.12(8)** The party who appeals a decision of the board to the district court shall pay the cost of the preparation of a transcript of the administrative hearing for the district court.

**132.13** Rescinded, effective July 23, 1986.

**641—132.14(147A) Temporary variances.**

**132.14(1)** If during a period of authorization there is some occurrence that temporarily causes a service program to be in noncompliance with these rules, the department may grant a temporary variance. Temporary variances to these rules (not to exceed six months in length per any approved request) may be granted by the department to a currently authorized service program. Requests for temporary variances shall comply only to the service program requesting the variance and shall apply only to those requirements and standards for which the department is responsible.

**132.14(2)** To request a variance, the service program shall:

*a.* Notify the department verbally (as soon as possible) of the need to request a temporary variance.

*b.* Cite the rule from which the variance is requested.

*c.* State why compliance with the rule cannot be maintained.

*d.* Explain the alternative arrangements that have been or will be made regarding the variance request.

*e.* Estimate the period of time for which the variance will be needed.

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

**132.14(3)** Upon notification of a request for variance, the department shall take into consideration, but shall not be limited to:

*a.* Examining the rule from which the temporary variance is requested to determine if the request is appropriate and reasonable.

*b.* Evaluating the alternative arrangements that have been or will be made regarding the variance request.

*c.* Examining the effect of the requested variance upon the level of care provided to the general populace served.

*d.* Requesting additional information if necessary.

**132.14(4)** Preliminary approval or denial shall be provided verbally within 24 hours. Final approval or denial shall be issued in writing within ten days after having received the written explanation for the temporary variance request and shall include the reason for approval or denial. If approval is granted, the effective date and the duration of the temporary variance shall be clearly stated.

**132.14(5)** Rescinded, effective July 10, 1987.

**132.14(6)** Any request for appeal concerning the denial of a request for temporary variance shall be in accordance with the procedures outlined in rule 132.10(147A).

**132.14(7)** EMT-I service programs authorized prior to January 1, 1990, may request a variance to subrule 132.8(2), paragraph *"b,"* and the defibrillator requirement in subrule 132.8(4), paragraph *"i."* The variance shall expire on January 1, 1992. An individual certified as an EMT-I but who has not completed defibrillation training shall complete automated defibrillation training prior to January 1, 1992.

**641—132.15(147A) Transport options for fully authorized paramedic service programs.**

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

*a.* Primary assessment,

*b.* Secondary assessment (including vital signs and history),

*c.* Chief complaint,

*d.* Name, address and age, and

*e.* Nature of the call for assistance.

Emergency medical transportation shall be provided whenever any of the above criteria indicate that treatment should be initiated.

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

These rules are intended to implement Iowa Code chapter 147A.

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*See IAB, Inspections and Appeals Department.

# CHAPTER 176
# CRITERIA FOR AWARDS OR GRANTS

**641—176.1(135,17A) Purpose.** The department provides funds to a variety of entities throughout the state for the support of public health programs. The department considers that all funds, unless proscribed by appropriation language, the Iowa Code, Iowa Administrative Code or federal regulations, are subject to competition. To ensure equal access and objective evaluation of applicants for these funds, grant application materials shall contain, at a minimum, specific content. Competitive grant application packets shall contain the review criteria to be used, including the number of points allocated per required component.

**641—176.2(135,17A) Definitions.** For the purpose of these rules, the following terms shall have the meaning indicated in this rule:

*"Competitive grant"* means the competitive grant application process to determine the grant award for a project period.

*"Continuous grant"* means the subsequent grant years within a project period following a competitive grant process.

*"Department"* means the Iowa department of public health.

*"Project"* means the activities or program(s) funded by the department.

*"Project period"* means the period of time which the department intends to support the project without requiring the recompetition for funds. The project period is specified within the grant application period and may extend to three years. Exceptions to this definition are as follows:

1. New funds (including pilot studies and demonstration grants) that become available for new services.
2. An organization failed to meet conditions and performance standards specified in the contract awards.
3. Mutual agreement among department and contract organizations.
4. Federal or private funding source to the department has specified a sole source.

*"Service delivery area"* means the defined geographic area for delivery of project services. Competitive applications shall not fragment existing integrated service delivery within the defined geographic area.

**641—176.3(135,17A) Requirements.** The following shall be included in all grant application materials made available by the department:

1. Funding source.
2. Project period.
3. Services to be delivered.
4. Service delivery area.
5. Funding purpose.
6. Funding restrictions.
7. Funding formula (if any).
8. Matching requirements (if any).
9. Reporting requirements.
10. Performance criteria (experience of applicant in administering grants).
11. Description of eligible applicants.
12. Need for letters of support or other materials (if applicable).
13. Application due date.
14. Anticipated date of award.
15. Eligibility guidelines for those receiving the service or product and the source of those guidelines, including fees or sliding fee scales (if applicable).
16. Target population to be served (if applicable).
17. Appeal process in the event an application is denied.

**641—176.4(135,17A) Review process (competitive applications only).** The review process to be followed in determining amount of funds to be approved for award of contract shall be described in the application. The review criteria and point allocation for each shall also be described in the grant application material. Program advisory committees (if applicable) shall be provided with an opportunity to review and comment upon the criteria and point allocation prior to implementation.

The competitive grant application review committee shall be determined by the bureau chief, with oversight from the respective division director. Staff of the bureau administering the program shall allocate points per review criteria in conducting the review.

In the event competitive applications for a service delivery area receive an equal number of points, a second review shall be conducted by two division directors and the respective bureau chief administering the program.

**641—176.5(135,17A) Public notice of available grants.** The program making funds available through a competitive grant application process shall, at least 60 days prior to the application due date, issue a public notice that identifies the availability of funds and how to request the application packet. A written request for the packet shall serve as the letter of intent. Services, delivery areas and eligible applicants shall also be described in the public notice.

These rules are intended to implement Iowa Code chapters 17A and 135.

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CHAPTERS 177 to 179
Reserved

## CHAPTER 180
## HOSPITAL PROTOCOL FOR DONOR REQUESTS
Rescinded IAB 4/4/90, effective 5/9/90; see 641—51.4(5) to 641—51.4(11)

## CHAPTERS 181 to 189
Reserved

## CHAPTER 190
## CONSENT FOR THE SALE OF GOODS AND SERVICES

**641—190.1(68B) General prohibition.** An official shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations subject to the regulatory authority of the department without obtaining written consent as provided in this chapter.

**641—190.2(68B) Definitions.**

*"Department"* shall mean the Iowa department of public health.

*"Official"* means an officer of the state of Iowa receiving a salary or per diem whether elected or appointed or whether serving full-time or part-time. Official includes, but is not limited to, supervisory personnel and members of state agencies and does not include members of the general assembly or legislative employees.

Where the term "official" is used in this chapter, it includes a firm of which any of those persons is a partner and a corporation of which any of those persons hold 10 percent or more of the stock, either directly or indirectly, and the spouse and minor children of any of those persons.

**641—190.3(68B) Conditions of consent for officials.**

**190.3(1)** Consent shall not be given to an official unless all of the following conditions are met:

*a.* The official's job duties or functions are not related to the department's regulatory authority over the individual, association or corporation, or the selling of the good or service does not affect the official's job duties or functions.

*b.* The selling of the good or service does not include acting as an advocate on behalf of the individual, association or corporation to the department.

*c.* The selling of the good or service does not result in the official selling a good or service to the department on behalf of the individual, association or corporation.

**190.3(2)** The department concludes that the following sales of goods or services do not, as a class, constitute the sale of a good or service which affects an official's job duties or functions. Individual application and approval are not required for the sale of goods or services meeting the requirements set forth below unless there are unique facts surrounding a particular sale which would cause that sale to affect the official's duties or functions, would give the buyer an advantage in its dealing with the agency, or otherwise present a conflict of interest.

*a.* Medical treatment of a patient within the official's regular practice at standard fee.

*b.* Sale of goods or services for which the official receives only reimbursement of expenses and costs.

c. Employment as a regular, salaried employee of a business and not as an independent contractor. However, sales by the business will be considered sales by the official and, therefore, subject to these rules if the official is a partner in the firm or holds 10 percent or more of the stock of a corporation either directly or indirectly.

**641—190.4(68B) Conditions of consent for employees.** Rescinded IAB 2/5/92, effective 3/11/92.

**641—190.5(68B) Application for consent.** An application for consent must be in writing and signed by the official requesting consent. The application must:

1. Provide a clear statement of all relevant facts concerning the sale.
2. State why the official or employee should be permitted to engage in the sale.
3. State the amount of compensation.
4. Explain how compensation is to be determined and why the sale would not create a conflict of interest or provide financial gain by virtue of one's position within the agency.

**641—190.6(68B) Who may consent.** The board of health is authorized to consent to sales by the director where permitted by these rules. The department of management is authorized to consent to sales by board members where permitted by these rules.

**641—190.7(68B) Effect of consent.** The consent must be in writing. The consent is valid only for the activities and period described in it and only to the extent that material facts have been disclosed and the actual facts are consistent with those described in the application. Consent can be revoked at any time by notice to the official.

**641—190.8(68B) Public information.** The application and consent are public records, open for public examination, except to the extent that disclosure of details would constitute a clearly unwarranted invasion of personal privacy or trade secrets and the record is exempt from disclosure under Iowa law.

**641—190.9(68B) Effect of other laws.** Neither these rules nor any consent provided under them constitutes consent for any activity which would constitute a conflict of interest at common law or which violates any applicable statute or rule. Despite agency consent under these rules, a sale of goods or services to someone subject to the jurisdiction of the agency may violate the gift law, bribery and corruption laws, etc. It is the responsibility of the official to ensure compliance with all applicable laws and to avoid both impropriety and the appearance of impropriety.

These rules are intended to implement Iowa Code Supplement section 68B.4.

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## CHAPTERS 191 to 199
Reserved

## CHAPTER 200
## STANDARDS COMMITTEE PROCEDURES—CHANGES IN STANDARDS FOR THE STATE HEALTH PLAN
Rescinded IAB 5/30/90, effective 7/4/90

## CHAPTER 201
## HEALTH FACILITIES CONSTRUCTION REVIEW PROGRAM
Rescinded IAB 8/10/88, effective 9/14/88

*PODIATRY*

# CHAPTER 220
# PODIATRY EXAMINERS

[Prior to 5/18/88, see Health Department(470), Ch 139]

**645—220.1(147,149) Examination and licensure requirements.**

**220.1(1)** All applications for examination must be made upon the official forms supplied by the Board of Podiatry Examiners, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**220.1(2)** The application forms fully completed per instructions on forms shall be filed with the board of podiatry examiners, with all required supporting documents and fee at least 30 days before the date of examination. Application requirements are as follows:

*a.* Submit a completed application form with official supporting documents and the accompanied fee of $100;

*b.* Present with the application an official copy (8" × 11") of diploma and official transcript proving graduation from a college of podiatric medicine approved by the American Association of Colleges of Podiatric Medicine;

*c.* Pass all of Part 1 and Part 2 of the National Board of Podiatry Examiners Examination with substantiating documentation;

*d.* For any applicant who graduates from podiatric college on or after January 1, 1995, present documentation of successful completion of a one-year residency or preceptorship approved by the American Podiatric Medical Association's Council on Podiatric Medical Education or a college of podiatric medicine approved by the American Association of Colleges of Podiatric Medicine;

*e.* Pass a board administered oral examination unless the examination is waived by the board;

*f.* If licensed in another state, also present with the application an official copy of license and current renewal of license to practice podiatry issued by another state, and an official statement issued by a licensing board or department that no disciplinary action is pending against the applicant and the applicant does not have a suspended or revoked podiatry license in any other state.

**220.1(3)** Applicants who file incomplete applications will not be allowed to take the examination.

**220.1(4)** Applicants who graduated from podiatric college in 1961 or before that year are currently licensed in another state and have practiced for the immediate 24 months prior to application may be exempted from the application requirement listed in 220.1(2)"*c*" based on their credentials and the discretion of the board.

**220.1(5)** The statements made on the application form and supporting documents shall be subscribed and sworn to by the applicant and attested under seal by a notary public.

**220.1(6)** A senior student expecting to graduate from an accredited podiatry college at the end of the spring term may be admitted to the state examinations held in June upon a presentation of a certificate from the dean of the college stating that the applicant has conformed to all the college requirements and will be granted a diploma at commencement. The examination papers will not be rated until the diploma has been received and verified by the board of podiatry examiners, department of public health.

**220.1(7)** No candidate shall under any circumstances enter the examination late unless excused by the examiners and no candidates shall leave the room after the distribution of the examination. Candidates shall not be permitted to leave the room during the examination unless accompanied by one of the examiners or a clerk endorsed by the board.

**220.1(8)** The candidates will not be permitted to communicate with each other during the

examination, nor to have in their possession assistance of any kind. Any applicant detected in seeking or giving assistance during the examination will be dismissed and the candidate's examination canceled.

**220.1(9)** Applicants passing the PMLexis (Virginia) written examination given by Iowa within three years prior to making application in Iowa shall not be required to pay examination fees or take the examination. However, these applicants shall meet all other requirements for licensure, as outlined in subrule 220.1(2) and shall show official certification of grades and passing score as stated in subrule 220.1(5).

**220.1(10)** to **220.1(12)** Rescinded IAB 7/12/89, effective 8/16/89.

**220.1(13)** An oral examination will be required which will consist of personal history, ethics, theory in practice, laws, and rules and regulations.

**220.1(14)** Rescinded, IAB 7/12/89, effective 8/16/89.

**220.1(15)** A passing score as recommended by the administrators of the PMLexis (Virginia) examination will be required to pass the state issued examination. This is not to be confused with requirements for passage of national boards.

**220.1(16)** Rescinded, effective 5/19/82.

**220.1(17)** At the conclusion of the examination each candidate will be required to sign the following:

Declaration of Honorable Conduct in Taking Examination:

We, the undersigned, each delcare that we are applicants for certificates from the Iowa Department of Public Health as certified to it by the State Board of Podiatry Examiners authorizing us to practice Podiatry in Iowa, and that we were present and took the examination held at ....., Iowa, on ....., 19.....

We further declare we neither received nor extended any aid to others nor resorted to any means whatsoever to secure the required ratings to enable us to pass.

We further declare that we did not see any of the sets of questions used at this examination until they were distributed by the examiners.

**220.1(18)** Rescinded IAB 7/12/89, effective 8/16/89.

This rule is intended to implement Iowa Code sections 147.36 and 147.80.

**220.2** Rescinded IAB 7/12/89, effective 8/16/89.

**645—220.3(147) Fees.** All fees are nonrefundable. Checks should be made payable to the Iowa Board of Podiatry Examiners.

**220.3(1)** Application fee or reinstatement fee for a license to practice podiatry is $100.

**220.3(2)** Examination fee for a license to practice podiatry is $250.

**220.3(3)** Fee for renewal of license to practice podiatry for a biennial period is $140.

**220.3(4)** Fee for a certified statement that a licensee is licensed in this state is $10.

**220.3(5)** Fee for a replacement license is $10.

**220.3(6)** Application for a temporary license is $100. The annual renewal fee for a temporary license is $70.

**220.3(7)** Penalty fee for failure to renew at required time is $50.

**220.3(8)** Penalty fee for failure to complete continuing education requirements as provided in rule 220.101(258A) is $50.

**220.3(9)** Penalty fee for failure to file the Report of Continuing Education Hours for License Renewal at the required time is $25.

This rule is intended to implement Iowa Code sections 147.34 and 147.80.

**645—220.4(147,149) Temporary license.**

**220.4(1)** A temporary license may be issued for one year and at the discretion of the board may be annually renewed not to exceed two additional years.

**220.4(2)** Each applicant shall:

*a.* Submit a completed application form with official supporting documents and the accompanied fee of $100;

*b.* Present with the application an official copy (8" × 11") of diploma and official transcript proving graduation from a college of podiatric medicine approved by the Council on Podiatric Medical Education (CPME) of the American Podiatric Medical Association.

*c.* Pass all of Part 1 and Part 2 of the National Board of Podiatry Examiners' examination with substantiating documentation.

*d.* Show good reason why a temporary podiatric license should be issued, by furnishing an affidavit by a licensed podiatrist, institution director, or dean of an approved podiatric college from this state, setting forth the facts supporting the need for issuance of said license, of which the following reasons shall qualify:

(1) Purchase or assumption of a podiatric practice.

(2) Aiding a licensed podiatrist, in the state of Iowa, because of the licensee's disability.

(3) Association with an Iowa licensed podiatrist.

(4) Faculty member of a podiatry school in Iowa.

(5) Acceptance in a residency program approved by the Council on Podiatric Medical Education (CPME) of the American Podiatric Medical Association or a preceptorship program approved by a sponsoring accredited podiatry college.

*e.* Pass a board administered oral examination unless the examination is waived by the board.

*f.* If licensed in another state, also present with the application an official copy of license and current renewal of license to practice podiatry issued by another state, and an official statement issued by a licensing board or department that no disciplinary action is pending against the applicant and the applicant does not have a suspended or revoked podiatry license in any other state.

Applicants must realize that the ultimate decision to issue a temporary license resides with the board, and a temporary license shall be surrendered if reason for issuance ceases to exist.

**220.4(3)** Applicants who graduated from podiatric college in 1961 or before that year, are currently licensed in another state and have practiced for the immediate 24 months prior to application may be exempted from the application requirement listed in 220.4(2)*"c"* based on their credentials and the discretion of the board.

**220.4(4)** The chairperson of the board of examiners may administer the oral examination and may authorize the issuance of a temporary certificate following conferral with and approval by a majority of the board members. Conferral and approval may be given by mail or telephone as well as by formal meeting of the board.

This rule is intended to implement Iowa Code sections 149.4 and 149.7.

**645—220.5(514F) Utilization and cost control review.**

**220.5(1)** The board shall establish U.C.C.R. (Utilization and Cost Control Review) committee(s). The name(s) of the committee(s) shall be on file with the board and available to the public. The designation of the committee(s) shall be reviewed annually.

**220.5(2)** Members of the U.C.C.R. committee shall:

*a.* Hold a current license.

*b.* Practice podiatry in the state of Iowa for a minimum of five years.

*c.* Be actively involved in a podiatric practice during the term of appointment as a U.C.C.R. committee member.

*d.* Not assist in the review or adjudication of claims in which the committee member may reasonably be presumed to have a conflict of interest.

**220.5(3)** Procedures for utilization and cost control review. A request for review may be made to the board by any person governed by the various chapters of Title XX of the Iowa Code, self-insurers for health care benefits to employees, other third-party payors, podiatry patients or licensees.

*a.* The fee for service shall be $100, which will be made payable directly to the U.C.C.R. committee. The committee shall make a yearly accounting to the board.

*b.* A request for service shall be submitted to the executive director of the U.C.C.R. committee on an approved submission form and shall be accompanied by four copies of all information. All references to identification and location of patient and doctor shall be deleted and prepared for blind review by the executive director of the U.C.C.R. committee. The information shall be forwarded to the U.C.C.R. committee.

*c.* The U.C.C.R. committee shall respond in writing to the parties involved with its findings and recommendations within 90 days. The committee shall review the appropriateness of levels of treatment and give an opinion as to the reasonableness of charges for diagnostic or treatment services rendered as requested. The U.C.C.R. committee shall submit a quarterly report of their activities to the board.

**220.5(4)** Types of cases reviewed shall include:

*a.* Utilization.

(1) Frequency of treatment.

(2) Amount of treatment.

(3) Necessity of service.

(4) Appropriateness of treatment.

*b.* Usual and customary service.

**220.5(5)** Criteria for review may include, but are not limited to:

*a.* Was diagnosis compatible and consistent with information?

*b.* Were X-ray and other examination procedures adequate, or were they insufficient or nonrelated to history or diagnosis?

*c.* Were clinical records adequate, complete, and of sufficient frequency?

*d.* Was treatment consistent with diagnosis?

*e.* Was treatment program consistent with scientific knowledge and academic and clinical training in accredited podiatric colleges?

*f.* Were charges reasonable and customary for the service?

**220.5(6)** Members of the U.C.C.R. committee shall observe the requirements of confidentiality imposed by Iowa Code chapter 258A.

**220.5(7)** Action of the U.C.C.R. committee does not constitute an action of the board.

This rule is intended to implement Iowa Code chapter 514F.

**220.6** to **220.99** Reserved.

## PODIATRIST CONTINUING EDUCATION AND DISCIPLINARY PROCEDURES

**645—220.100(258A) Definitions.** For the purpose of these rules, the following definitions shall apply:

*"Accredited sponsor"* means a person or an organization sponsoring continuing education activities which has been approved by the board as a sponsor pursuant to these rules. During the time an organization, educational institution, or person is an accredited sponsor, all continuing education activities of such person or organization may be deemed automatically approved.

*"Approved program or activity"* means a continuing education program activity meeting the standards set forth in these rules which has received advance approval by the board pursuant to these rules.

*"Board"* means the board of podiatry examiners.

*"Hour"* of continuing education means a clock-hour spent after December 31, 1978, by a licensee in actual attendance at and completion of an approved continuing education activity.

*"License"* means a license to practice podiatry.

*"Licensee"* means any person licensed to practice podiatry in the state of Iowa.

**645—220.101(258A) Continuing education requirements.**

**220.101(1)** Rescinded IAB 7/12/89, effective 8/16/89.

**220.101(2)** Beginning January 1, 1982, the continuing education compliance period shall extend from January 1, 1982, to December 31, 1983, and each biennium thereafter, during which period attendance at approved continuing education programs may be used as evidence of fulfilling continuing education requirements for the subsequent biennial license renewal period beginning July 1 of each even-numbered year.

**220.101(3)** Rescinded IAB 7/12/89, effective 8/16/89.

**220.101(4)** Continuing education requirements relating to licensees are as follows:

*a.* Each licensee will be required to maintain a file of certificates of attendance for continuing education hours accrued during each biennium, and retain this record of proof for four years from the end of each biennium.

*b.* Each licensee will file the Report of Continuing Education Hours for License Renewal by April 1 of even-numbered years. Failure to do so will result in a penalty fee as described in subrule 220.3(9) and a possible audit of the licensee's reports.

*c.* A group of licensees will be audited each biennium and will be required to submit to the board copies of certificates of attendance and a description of program content that will indicate the integral relationship of the program to the practice of podiatry. If audited, this certificate of attendance will contain the following information: date of program, program

**220.212(6)** Negligence by the licensee in the practice of the profession, which is a failure to exercise due care including negligent delegation to or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

**220.212(7)** Prohibited acts consisting of the following:

*a.* Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

*b.* Permitting another person to use the licensee's license for any purpose.

*c.* Practice outside the scope of a license.

*d.* Obtaining, possessing, or attempting to obtain or possess a controlled substance without lawful authority; or selling prescribing, giving away, or administering controlled substances for other than lawful therapeutic purposes.

*e.* Verbally or physically abusing patients.

**220.212(8)** Unethical business practices, consisting of any of the following:

*a.* False or misleading advertising.

*b.* Betrayal of a professional confidence.

*c.* Falsifying patients' records.

**220.212(9)** Failure to report a change of name or address within 30 days after it occurs.

**220.212(10)** Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

**220.212(11)** Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

**220.212(12)** Failure to comply with a subpoena issued by the board.

**220.212(13)** Failure to report to the board as provided in rule 645—220.201(258A) any violation by another licensee of the reasons for disciplinary action as listed in this rule.

**645—220.213(258A) Peer review committees.**

**220.213(1)** Each peer review committee for the profession, if established, may register with the board of examiners within 30 days after the effective date of these rules or within 30 days after formation.

**220.213(2)** Each peer review committee shall report in writing within 30 days of the action, any disciplinary action taken against a licensee by the peer review committee.

**220.213(3)** The board may appoint peer review committees as needed consisting of not more than five persons who are licensed to practice podiatry to advise the board on standards of practice and other matters relating to specific complaints as requested by the board. The members of the peer review committees shall serve at the pleasure of the board. The peer review committees shall observe the requirements of confidentiality provided in Iowa Code chapter 258A.

These rules are intended to implement Iowa Code sections 258A.4 to 258A.6.

**220.214** to **220.299** Reserved.

PROCEDURES FOR USE OF CAMERAS AND RECORDING DEVICES AT OPEN MEETINGS

**645—220.300(28A) Conduct of persons attending meetings.**

**220.300(1)** The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

**220.300(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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# CHAPTER 8
# MINIMUM STANDARDS FOR THE PRACTICE OF PHARMACY

[Prior to 2/10/88, see Pharmacy Examiners[620], Ch 6]

**657—8.1(155A) Authorized person.** For the purpose of Iowa Code section 147.107, judgmental functions which cannot be delegated to staff assistants shall include, but not be limited to, the following:

**8.1(1)** Read and interpret the prescription of a duly licensed medical practitioner, whether transmitted to the pharmacist by writing or orally.

**8.1(2)** Ensure the accuracy of the ingredients when measured or compounded as specified by the medical practitioner.

**8.1(3)** Ensure adequate label directions as are necessary to assure the patient's understanding of the prescriber's intentions.

**8.1(4)** Ensure the validity of written or oral prescriptions as to their source of origin.

This rule is intended to implement Iowa Code sections 147.107, 155A.13 and 155A.15.

**657—8.2(155A,204) Prescription information and transfer.**

**8.2(1)** All prescriptions shall be dated and numbered at the time of initial filling and dated and initialed at the time of each refilling.

**8.2(2)** The original prescription, whether transmitted orally or in writing, must be retained by the pharmacy filling the prescription.

**8.2(3)** A pharmacist may refill a copy of a prescription for drug products other than those classified as controlled substances according to the following procedure:

*a.* The pharmacist issuing a written or oral copy of a prescription shall cancel the original prescription by recording on its face the date the copy is issued, the name of the pharmacy to whom issued, and the signature of the pharmacist issuing the copy.

*b.* The written or oral copy issued shall be an exact duplicate of the original prescription except that it shall also include the issuing pharmacy's prescription or serial number, the name of the pharmacy issuing the copy and the number of authorized refills remaining available to the patient.

*c.* The pharmacist receiving the oral copy of a prescription must exercise reasonable diligence in determining the validity of the copy.

*d.* The pharmacist receiving the written copy of a prescription must contact the issuing pharmacy to determine the validity of the copy.

*e.* A prescription meeting all the requirements of 8.2(3)*"b"* shall be treated by the receiving pharmacy as a new prescription.

*f.* Copies of nonrefillable prescriptions shall be marked "For Information Purposes Only" and shall not be filled without prescriber authorization.

**8.2(4)** The transfer of original prescription information for a controlled substance listed in schedules III, IV or V of the Iowa uniform controlled substances Act, Iowa Code chapter 204, for the purpose of refill dispensing is permissible between pharmacies on a one-time basis subject to the following procedures:

*a.* Transfer is communicated directly between two licensed pharmacists and the transferring pharmacist records the following information:

(1) Write the word "VOID" on the face of the invalidated prescription.

(2) Record on the reverse side of the invalidated prescription the name, address and Drug Enforcement Administration registration number of the pharmacy to which it was transferred and the name of the pharmacist receiving the prescription information.

(3) Record the date of the transfer and the name of the pharmacist transferring the information.

*b.* The pharmacist receiving the transferred prescription information shall reduce to writing the following:

(1) Write the word "transfer" on the face of the transferred prescription.
(2) Provide all information required to be on a prescription pursuant to Iowa Code section 155A.27.
(3) Date of issuance of the original prescription.
(4) Original number of refills authorized on original prescription.
(5) Date of original dispensing.
(6) Number of valid refills remaining and date of last refill.
(7) Pharmacy's name, address, DEA registration number and original prescription or serial number from which the prescription information was transferred.
(8) DEA registration number of the prescriber.
(9) Name of transferor pharmacist.

*c.* Both the original and transferred prescription must be maintained for a period of two years from the date of the last refill.

*d.* Pharmacies electronically accessing the same prescription record must satisfy all information requirements of a manual mode for prescription transferral, however, if those systems that access the same prescription records have the capability of canceling the original prescription, then all of the requirements of this rule are deemed to have been met.

**657—8.3(203B) Prepackaging.**

**8.3(1)** *Control record.* Pharmacies may prepackage and label drugs in convenient quantities for subsequent prescription labeling and dispensing. Such drugs shall be prepackaged by or under the direct supervision of a pharmacist. The supervising pharmacist shall prepare and maintain a packaging control record containing the following information:

*a.* Date.
*b.* Identification of drug.
(1) Name.
(2) Dosage form.
(3) Manufacturer.
(4) Manufacturer's lot number.
(5) Strength.
(6) Expiration date (if any).
*c.* Container specification.
*d.* Copy of a sample label.
*e.* Initials of the packager.
*f.* Initials of the supervising pharmacist.
*g.* Quantity per container.
*h.* Internal control number or date.

**8.3(2)** *Label information.* Each prepackaged container shall bear a label containing the following information:

*a.* Name.
*b.* Strength.
*c.* Internal control number or date.
*d.* Expiration date (if any).
*e.* Auxiliary labels, as needed.

**657—8.4(203B) Bulk compounding.**

**8.4(1)** *Control record.* Pharmacies may compound drugs in bulk quantities for subsequent prescription labeling and dispensing. Such drugs shall be compounded by or under the direct supervision of a pharmacist. For each drug product compounded in bulk quantities, a master formula record shall be prepared containing the following information:

*a.* Name of the product.
*b.* Specimen or copy of label.

**657—8.14(155A) Prescription label requirements.**

**8.14(1)** The label affixed to or on the dispensing container of any prescription dispensed by a pharmacy pursuant to a prescription drug order shall bear the following:

*a.* Serial number (a unique identification number of the prescription);

*b.* The name and address of the pharmacy;

*c.* The name of the patient, or if such drug is prescribed for an animal, the species of the animal and the name of its owner;

*d.* The name of the prescribing practitioner;

*e.* The date the prescription is dispensed;

*f.* The directions or instructions for use, including precautions to be observed;

*g.* Unless otherwise directed by the prescriber, the label shall bear the brand name, or if there is no brand name, the generic name of the drug dispensed, the strength of the drug, and the quantity dispensed. Under no circumstances shall the label bear the name of any product other than the one dispensed.

*h.* The initials of the dispensing pharmacist.

**8.14(2)** The requirements of subrule 8.14(1) do not apply to unit dose dispensing systems, rule 8.9(155A,203B), IV infusion products, rule 8.12(155A,203B), and patient med paks, rule 8.13(155A,203B).

**657—8.15(155A) Records.** When a pharmacist exercises the drug product selection prerogative pursuant to Iowa Code section 155A.32, the following information shall be noted:

**8.15(1)** Dispensing instructions by the prescriber or prescriber's agent shall be noted on the file copy of a prescription drug order which is orally communicated to the pharmacist.

**8.15(2)** The name, strength, and either the manufacturer's or distributor's name or the National Drug Code (NDC) of the actual drug product dispensed shall be placed on the file copy of the prescription drug order whether it is issued orally or in writing by the prescriber. This information shall also be indicated on the prescription in those instances where a generically equivalent drug is dispensed from a different manufacturer or distributor than was previously dispensed. This information may be placed upon patient medication records if such records are used to record refill information.

**657—8.16(155A) Patient medication record system.**

**8.16(1)** After January 1, 1988, a patient medication record system shall be maintained in all pharmacies. The record system shall be devised to contain the information which the pharmacist in charge believes necessary to counsel the patient with the best professional advice and drug information.

**8.16(2)** Information in the patient medication record shall be deemed to be confidential and may be released to other than the patient or prescribers only on written release of the patient.

**8.16(3)** Effective January 1, 1993, pharmacists shall counsel or offer to counsel patients with each new prescription.

Rules 8.14(155A) to 8.16(155A) are intended to implement Iowa Code sections 155A.28, 155A.32, and 155A.35.

**657—8.17(155A) Pharmacist temporary absence.** In the case of the temporary absence of the pharmacist, hospital pharmacies excepted, the pharmacy must display a card or sign, in letters not less than 1¾ inches high, which reads "PHARMACIST TEMPORARILY ABSENT. NO PRESCRIPTIONS WILL BE FILLED UNTIL THE PHARMACIST RETURNS."

This rule is intended to implement Iowa Code section 155A.13.

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**10.13(10)** *Requirement of prescription.* A pharmacist may dispense a controlled substance listed in Schedule V pursuant to a prescription as required for controlled substances listed in Schedules III and IV. A prescription for a controlled substance listed in Schedule V may be refilled only as expressly authorized by the prescribing individual practitioner on the prescription; if no such authorization is given, the prescription may not be refilled. A pharmacist dispensing such substance pursuant to a prescription shall label the substance in accordance with these rules and fill the prescription.

**10.13(11)** An individual practitioner may administer or dispense a controlled substance listed in Schedule V in the course of professional practice without a prescription, subject to these rules.

**10.13(12)** An institutional practitioner may administer or dispense directly (but not prescribe) a controlled substance listed in Schedule V only pursuant to a written prescription signed by the prescribing individual practitioner, or pursuant to an oral prescription made by a prescribing individual practitioner and promptly reduced to writing by the pharmacist or pursuant to an order for medication made by an individual practitioner which is dispensed for immediate administration to the ultimate user.

**10.13(13)** *Dispensing without prescription.* A controlled substance listed in Schedule V which is not a prescription drug as determined under the Federal Food, Drug and Cosmetic Act, may be dispensed by a pharmacist without a prescription to a purchaser at retail, provided that:

*a.* Dispensing is made only by a licensed Iowa pharmacist and not by a nonpharmacist employee even if under the direct supervision of a pharmacist. (Although after the pharmacist has fulfilled the professional and legal responsibilities set forth in this subrule, the actual cash, credit transaction or delivery may be completed by a nonpharmacist.)

*b.* Not more than 240cc. (8 ounces) of any controlled substance containing opium, nor more than 120cc, (4 ounces) of any other controlled substance, nor more than 48 dosage units of any controlled substance containing opium, nor more than 24 dosage units of any other controlled substance may be distributed at retail to the same purchaser in any given 48-hour period.

*c.* The purchaser is at least 18 years of age.

*d.* The pharmacist requires every purchaser of a controlled substance under this rule not known by the pharmacist to furnish suitable identification (including proof of age where appropriate).

*e.* A bound record book for dispensing of controlled substances (other than by prescription) is maintained by the pharmacist, which book shall contain the name and address of the purchaser, the name and quantity of controlled substance purchased, the date of each purchase and the name or initials of the pharmacist who dispensed the substance to the purchaser.

*f.* A prescription is not required for distribution or dispensing of the substance pursuant to any other federal, state or local law.

This rule is intended to implement Iowa Code section 204.308.

**10.14** Reserved.

**657—10.15(204) Records form—complimentary packages.** The records form for the distribution of complimentary packages of controlled substances shall contain the name, address, Iowa wholesale drug license number, and DEA registration number of the supplier; the name, address, Iowa controlled substance registration number, and DEA registration number of the practitioner; the name and quantity of the specific controlled substances delivered; and the date of that delivery.

This rule is intended to implement Iowa Code section 204.306.

**657—10.16(204) Who can administer.**

**10.16(1)** Only the following are designated by the board as qualified individuals to whom a physician can delegate the administration of controlled substances:

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

*b.* Advanced emergency medical technicians and paramedics.

*c.* Licensed physician assistants.

*d.* Licensed pharmacists.

**10.16(2)** A podiatrist may delegate the administration of controlled substances to a nurse or intern.

**10.16(3)** A dentist may delegate the administration of controlled substances to a dental assistant.

**10.16(4)** A veterinarian may delegate the administration of controlled substances to a veterinary assistant.

This rule is intended to implement Iowa Code sections 147.107, 155A.4(2)*"c,"* and 204.101(1)*"b."*

**657—10.17(204) Imitation controlled substance.** The following substance is designated as an imitation controlled substance:

Co-Caine. A product which, as of September 1982, was being marketed in Iowa by S. A. Importers, Suite 110, 2200 West 66th Street, Richfield, MN 55423.

**657—10.18(204) Controlled substance inventory.** It shall be the responsibility of the pharmacy owner to take an inventory of all controlled substances whenever there is a change in ownership or a change in pharmacist in charge of any establishment licensed by the board as defined in Iowa Code section 155A.13(1).

**657—10.19(204) Excluded substances.** The following substances are classified as products exempted from classification as controlled substances:

| Company | Trade name | NDC code | Form | Controlled substance | (mg or mg/ml) |
|---|---|---|---|---|---|
| Bioline Laboratories | Theophed | 00719-1945 | TB | Phenobarbital | 8.00 |
| Goldline Laboratories | Guiaphed Elixir | 00182-1377 | EL | Phenobarbital | 4.00 |
| Goldline Laboratories | Tedrigen Tablets | 00182-0134 | TB | Phenobarbital | 8.00 |
| Hawthorne Products Inc | Choate's Leg Freeze | | LQ | Chloral hydrate | 246.67 |
| Parke-Davis & Co | Tedral | 00071-0230 | TB | Phenobarbital | 8.00 |
| Parke-Davis & Co | Tedral Elixir | 00071-0242 | EX | Phenobarbital | 40.00 |
| Parke-Davis & Co | Tedral S.A. | 00071-0231 | TB | Phenobarbital | 8.00 |
| Parke-Davis & Co | Tedral Suspension | 00071-0237 | SU | Phenobarbital | 80.00 |
| Parmed Pharmacy | Asma-Ese | 00349-2018 | TB | Phenobarbital | 8.10 |
| Rondex Labs | Azma-Aids | 00367-3153 | TB | Phenobarbital | 8.00 |
| Smith Kline Consumer | Benzedrex | 49692-0928 | IN | Propylhexedrine | 250.00 |
| Sterling Drug, Inc | Bronkolbir | 00057-1004 | EL | Phenobarbital | 0.80 |
| Sterling Drug, Inc | Bronkotabs | 00057-1005 | TB | Phenobarbital | 8.00 |
| Vicks Chemical Co | Vicks Inhaler | 23900-0010 | IN | l-Desoxyephedrine | 113.00 |
| White Hall Labs | Primatene (P-tablets) | 00573-2940 | TB | Phenobarbital | 8.00 |

This rule is intended to implement Iowa Code sections 204.210(4) and 204.211.

**657—10.20(204) Temporary designation of controlled substances.**

**10.20(1)** Amend Iowa Code section 204.208 by adding the following new subsection:

7. Anabolic steroids as defined in Iowa Code section 203B.2(2) and board rules adopted pursuant to Iowa Code chapter 17A.

**10.20(2)** Reserved.

This rule is intended to implement Iowa Code sections 204.201 and 204.208.

**657—10.21(205) Purpose of issue of prescription.** Any order purporting to be a prescription for a Schedule II Dronabinol product not issued for indications approved by the Food and Drug Administration is not a prescription within the meaning and intent of the federal law (21 USC 829) or of Iowa Code section 205.3. Any person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances. Nothing in this rule shall be deemed to prohibit the prescribing of Dronabinol products approved by the Food and Drug Administration for other than indications for use approved by the Food and Drug Administration by a researcher or registered practitioner conducting research, provided that the research is conducted in accordance with research protocol provisions approved by the board or federal law (21 CFR 1301.33 as of December 29, 1979).

This rule is intended to implement Iowa Code section 205.3.

**657—10.22(205) Requirement of prescription.** An individual practitioner as defined in Iowa Code subsection 204.101(23) may not administer or dispense Schedule II Dronabinol products unless such administering or dispensing is for indications for use approved by the Food and Drug Administration. Any person knowingly administering or dispensing Schedule II Dronabinol products contrary to this rule shall be subject to the penalties provided for violation of the provisions of law relating to controlled substances. Nothing in this rule shall be deemed to prohibit the administering or dispensing of Schedule II Dronabinol products for other indications for use approved by the Food and Drug Administration by a researcher or registered practitioner conducting research provided that the research is conducted in accordance with research protocol provisions approved by the board or federal law (21 CFR 1301.33 as of December 29, 1979).

This rule is intended to implement Iowa Code section 205.3.

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◊2 ARC's
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# CHAPTER 18
# ANABOLIC STEROIDS

**657—18.1(203B) Definition of anabolic steroid.** The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, and includes the following:

1. Boldenone,
2. Chlorotestosterone,
3. Clostebol,
4. Dehydrochlormethyltestosterone,
5. Dihydrotestosterone,
6. Drostanolone,
7. Ethylestrenol,
8. Fluoxymesterone,
9. Formobulone,
10. Mesterolone,
11. Methandienone,
12. Methandranone,
13. Methandriol,
14. Methandrostenolone,
15. Methenolone,
16. Methyltestosterone,
17. Mibolerone,
18. Nandrolone,
19. Norethandrolone,
20. Oxandrolone,
21. Oxymesterone,
22. Oxymetholone,
23. Stanolone,
24. Stanozolol,
25. Testolactone,
26. Testosterone,
27. Trenbolone, and
28. Any salt, ester, or isomer of a drug or substance described or listed in this rule, if that salt, ester, or isomer promotes muscle growth.

**657—18.2(203B) Exception to definition.** Except as provided below, such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species.

If any person prescribes, dispenses, or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of rule 18.1(203B).

These rules are intended to implement Iowa Code chapter 203B.

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# CHAPTER 19
# NONRESIDENT PHARMACY LICENSES

**657—19.1(155A) Definitions.**

*"Board"* means the Iowa board of pharmacy examiners.

*"Home state"* means the state in which a pharmacy is located.

*"Nonresident pharmacy"* means a pharmacy located outside the state of Iowa which delivers, dispenses, or distributes, by any method, prescription drugs or devices to an ultimate user physically located in this state. "Nonresident pharmacy" shall include a pharmacy located outside the state of Iowa which provides routine pharmacy services to an ultimate user in this state.

*"Nonresident pharmacy license"* means a pharmacy license issued to a nonresident pharmacy.

**657—19.2(155A) Application and license requirements.** A nonresident pharmacy shall apply for and obtain a nonresident pharmacy license from the board prior to delivering, dispensing, or distributing prescription drugs to an ultimate user in this state.

**19.2(1)** A nonresident pharmacy license shall expire on December 31 of each year. The fee for a new or renewal license shall be $100. A nonresident pharmacy license form shall be issued upon receipt of the license application information required in subrule 19.2(2) and payment of the license fee.

Failure to renew the license before February 1 following expiration shall require a renewal fee of $200. Failure to renew the license before March 1 following expiration shall require a renewal fee of $300. Failure to renew the license before April 1 following expiration shall require a renewal fee of $400. Failure to renew the license before May 1 following expiration shall require an appearance before the board and a renewal fee of $500. In no event shall the fee for late renewal of the license exceed $500.

**19.2(2)** A nonresident pharmacy shall submit all of the following in order to obtain or renew a nonresident pharmacy license:

*a.* A completed application form, available from the board, and an application fee of $100.

*b.* Evidence of possession of a valid license, permit, or registration as a pharmacy in compliance with the laws of the home state. Such evidence shall consist of one of the following:

(1) Copy of the current license, permit, or registration certificate issued by the regulatory or licensing agency of the home state;

(2) Letter from the regulatory or licensing agency of the home state certifying the pharmacy's compliance with the pharmacy laws of that state.

*c.* A copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the home state.

*d.* Evidence of correction of any noncompliance noted on inspection reports of the regulatory or licensing agency of the home state and all other regulatory agencies.

*e.* A list of the names, titles, and home addresses of all principal owners, partners, or officers of the nonresident pharmacy.

*f.* A list of the names and license numbers of all pharmacists and, if available, the names and license or registration numbers of all supportive personnel employed by the nonresident pharmacy who deliver, dispense, or distribute, by any method, prescription drugs to an ultimate user in this state, and of the pharmacist in charge of the nonresident pharmacy.

*g.* A copy of the nonresident pharmacy's policies and procedures regarding the records of controlled substances delivered, dispensed, or distributed to ultimate users in this state to be maintained and detailing the format and location of those records.

*h.* A copy of the nonresident pharmacy's policies and procedures evidencing that the pharmacy provides, during its regular hours of operation for at least 6 days and for at least 40 hours per week, toll-free telephone service to facilitate communication between ultimate users in this state and a pharmacist who has access to the ultimate user's records in the nonresident

pharmacy, and that the toll-free number is printed on the label affixed to each container of prescription drugs delivered, dispensed, or distributed in this state. A copy of a prescription label including the toll-free number shall be included.

**19.2(3)** A nonresident pharmacy shall update lists required by subrule 19.2(2), paragraphs *"e"* and *"f,"* within 30 days of any addition, deletion, or other change to a list.

**657—19.3(155A) Discipline.** Pursuant to 657—Chapter 9, the board may deny, suspend, or revoke a nonresident pharmacy license for any violation of Iowa Code Supplement section 155A.13A; Iowa Code Supplement section 155A.15, subsection 2, paragraph *"a," "b," "d," "e," "f," "g," "h,"* or *"i";* Iowa Code chapter 203B, 204, 204A, 204B, or 205; or a rule of the board promulgated thereunder unless the Iowa Code or Iowa Administrative Code conflicts with law, administrative rule, or regulation of the home state. The more stringent of the two shall apply when there is a conflict of law regarding services to Iowa residents.

These rules are intended to implement Iowa Code Supplement section 155A.13A.

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CHAPTERS 20 to 25
Reserved

## CHAPTER 26
## PETITIONS FOR RULE MAKING

Adopt, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to petitions for rule making which are printed in the first Volume of the Iowa Administrative Code.

**657—26.1(17A) Petition for rule making.** In lieu of the words "(designate office)" insert "1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319". In lieu of the words "(AGENCY NAME)" insert "IOWA BOARD OF PHARMACY EXAMINERS". In paragraph 6 in lieu of "rule X.4(17A)", insert "rule 657—26.4(17A)".

**657—26.3(17A) Inquiries.** In lieu of the words "(designate official by full title and address)" insert "Executive Secretary/Director, Iowa Board of Pharmacy Examiners, 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319".

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

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## CHAPTER 27
## DECLARATORY RULINGS

Adopt, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to declaratory rulings which are printed in the first Volume of the Iowa Administrative Code.

**657—27.1(17A) Petition for declaratory ruling.** In lieu of the words "(designate office)" insert "1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319". In lieu of the words "(AGENCY NAME)" insert "IOWA BOARD OF PHARMACY EXAMINERS". In paragraph 8 in lieu of "rule X.4(17A)", insert "rule 657—27.4(17A)".

**657—27.3(17A) Inquiries.** In lieu of the words "(designate official by full title and address)" insert "Executive Secretary/Director, Iowa Board of Pharmacy Examiners, 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319".

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

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For purposes of this subrule, the following nonexclusive list of items shall be considered exempt from tax: color keys, film, halftones, linotype, magnesium and zinc etchings, masters, nonsensitized plates, positives, printing cylinders, stepped plates, tints, transparencies and veloxes. For purposes of this subrule, the following nonexclusive list of items shall not be considered exempt from tax: electrotypes, mats, photos, proofs and stereotypes.

This subrule applies only to supplies purchased by printers from trade shops. For an explanation of other rules which may apply to printers see rule 16.51(422,423) (treatment of printing as the sale of tangible personal property), subrule 18.27(4) (preliminary art), rules 18.29(422,423) and 28.2(423) (processing), rule 18.31(422,423) (purchases of tangible personal property by persons engaged in the performance of a service) and rule 26.39(422) (treatment of printing as a service).

**18.33(3)** The exemption provisions of subrule 18.33(2) are retroactive to July 1, 1971. Sales or use tax paid on transactions occurring between July 1, 1971, and July 1, 1983, are subject to refund. Claims for refunds for transactions occurring between July 1, 1971, and July 1, 1983, must have been filed with the department by September 1, 1983. No claim for refund filed with the department after September 1, 1983, will be paid.

Notwithstanding the foregoing, the total amount of refunds to be paid shall not exceed $50,000. If the total dollar amount of all allowable claims for refunds exceeds $50,000, the $50,000 will be prorated among the claimants. Each claimant will be refunded an amount equal to the percent that $50,000 bears to the total amount of all allowable claims. Therefore, a refund paid pursuant to this subrule must be deemed final and nonadjustable.

EXAMPLE. The total amount of allowable claims filed by September 1, 1983, amounts to $500,000. The total amount available for refund to all claimants is $50,000. In this example each claimant will receive a refund of 10 percent of the amount of their allowable claim.

This rule is intended to implement Iowa Code section 422.45(21).

**701—18.34(422,423) Automatic data processing.**

**18.34(1)** *In general.*

*a. Applicability of tax.* For the purposes of this rule, the tax on automatic data processing is applicable to the gross receipts of:

(1) Sales and rentals of data processing equipment (hardware).

(2) Sales and rentals of tangible personal property produced or consumed by data processing equipment or prewritten (canned) computer software used in data processing operations.

(3) Certain enumerated services performed on or connected with data processing such as rental of tangible personal property, machine repair, services of machine operators, office and business machines repair, electrical installation, and any other taxable service enumerated in Iowa Code section 422.43.

*b. Definitions.*

(1) *"Computer"* means a programmed or programmable machine or device having information processing capabilities and includes word processing equipment, testing equipment, and programmed or programmable microprocessors and any other integrated circuit embedded in manufactured machinery or equipment.

(2) *"Hardware"* means the physical computer assembly and peripherals including, but not limited to, such items as the central processing unit, keyboards, consoles, monitors, memory, disk and tape drives, terminals, printers, plotters, modems, tape readers, document sorters, optical readers and digitizers.

(3) *"Canned software"* is prewritten computer software which is offered for general or repeated sale or rental to customers with little or no modification at the time of the transaction beyond specifying the parameters needed to make the program run. Canned software is tangible personal property. The term also includes programs offered for general or repeated sale or rental which were initially developed as custom software. Evidence of canned software includes

the selling or renting of the software more than once. Software may qualify as custom software for the original purchaser or lessor but is canned software with respect to all others. Canned software includes program modules which are prewritten and later used as needed for integral parts of a complete program.

(4) *"Custom software"* is specified, designed, and created by a vendor at the specific request of a customer to meet a particular need and is considered to be a sale of a service rather than a sale of tangible personal property. It includes those services represented by separately stated charges for the modification of existing prewritten software when the modifications are written or prepared exclusively for a customer. Modification to existing prewritten software to meet the customer's needs is custom computer programming only to the extent of the modification and only to the extent that the actual amount charged for the modification is separately stated. Examples of services that do not result in custom software include loading parameters to initialize program settings and arranging preprogrammed modules to form a complete program.

When the charges for modification of a prewritten program are not separately stated, tax applies to the entire charge made to the customer for the modified program unless the modification is so significant that the new program qualifies as a custom program. If the prewritten program before modification was previously marketed, the new program will qualify as a custom program if the price of the prewritten program was 50 percent or less of the price of the new program. If the prewritten program was not previously marketed, the new program will qualify as a custom program if the charge made to the customer for custom programming services, as evidenced by the records of the seller, was more than 50 percent of the contract price to the customer.

The department will consider the following records in determining the extent of modification to prewritten software when there is not a separate charge for the modification: logbooks, timesheets, dated documents, source codes, specifications of work to be done, design of the system, performance requirements, diagrams of programs, flow diagrams, coding sheets, error printouts, translation printouts, correction notes, and invoices or billing notices to the client.

(5) *"Storage media"* includes hard disks, compact disks, floppy disks, diskettes, diskpacks, magnetic tape, cards, or other media used for nonvolatile storage of information readable by a computer.

(6) *"Rental"* includes any lease or license agreement between a vendor and a customer for the customer's use of hardware or software.

(7) *"Program"* is interchangeable with the term "software" for purposes of this rule.

**18.34(2)** *Taxable sales, rentals and services.*

*a. Sales of equipment.* Tax applies to sales of automatic data processing equipment and related equipment.

*b. Rental or leasing of equipment.* Where a lease includes a contract by which a lessee secures for a consideration the use of equipment which may or may not be used on the lessee's premises, the rental or lease payments are subject to tax. See rule 26.18 on tangible personal property rental.

*c. Canned software.* The sale or rental for a consideration of any computer software which is not custom software is a transfer of tangible personal property and is taxable. Canned software may be transferred to a customer in the form of diskettes, disks, magnetic tape, or other storage media or by listing the program instructions on coding sheets.

(1) Tax applies whether title to the storage media on which the software is recorded, coded, or punched passes to the customer or the software is recorded, coded, or punched on storage media furnished by the customer. A fee for the temporary transfer of possession of canned software for the purpose of direct use to be recorded, coded, or punched by the customer or by the lessor on the customer's premises, is a sale or rental of canned software and is taxable.

(2) Tax applies to the entire amount charged to the customer for canned software. Where the consideration consists of license fees, royalty fees, right to use fees or program design fees, whether for a period of minimum use or for extended periods, all fees includable in the purchase price are subject to tax.

*d. Training materials.* Persons who sell or lease data processing equipment may provide a number of training services with the sale or rental of their equipment. Training services, per se, are not subject to tax. Training materials, such as books, furnished to the trainees for a specific charge are taxable.

*e. Services a part of the sale or lease of equipment.* Where services, such as programming, training or maintenance services, are provided to those who purchase or lease automatic data processing and related equipment, on a mandatory basis as an inseparable part of the sale or taxable lease of the equipment, charges for the furnishing of the services are includable in the measure of tax from the sale or lease of the equipment whether or not the charges are separately stated. (Where the purchaser or lessee has the option to acquire the equipment either with the services or without the services, charges for the services may not be excluded from the measure of tax if they are taxable enumerated services.)

*f. Materials and supplies.* The transfer of title, for a consideration, of tangible personal property, including property on which or into which information has been recorded or incorporated is a sale subject to tax.

Generally service bureaus are consumers of all tangible personal property, including cards and forms, which they use in providing services unless a separate charge is made to customers for the materials, in which case, tax applies to the charge made for the materials.

*g. Additional copies.* When additional copies of records, reports, tabulation, etc., are sold, tax applies to the charges made for the additional copies. "Additional copies" are all copies in excess of those produced on multipart carbon paper simultaneously with the production of the original and on the same printer, whether the copies are prepared by rerunning the same program, by using multiple simultaneous printers, by looping a program such that the program is run continuously, by using different programs to produce the same output product, or by other means. Where additional copies are prepared, the tax will be measured by the charge made by the service bureau to the customer. If no separate charge is made for the additional copies, tax applies to that portion of the gross receipts which the cost of the additional computer time (if any) and the cost of materials and labor cost to produce the additional copies bear to the total job cost. Charges for copies produced by means of photocopying, multilithing, or by other means are subject to tax. Tax applies to a contract where data on magnetic tape are converted into combinations of alphanumeric printing, curve plotting or line drawings, and put on microfilm or photorecording paper.

*h. Mailing lists.* Addressing (including labels) for mailing. Where the service bureau addresses, through the use of its automatic data processing equipment or otherwise, material to be mailed, with names and addresses furnished by the customer or maintained by the service bureau for the customer, tax does not apply to the charge for addressing. Similarly, where the service bureau prepares, through the use of its automatic data processing equipment or otherwise, labels to be affixed to material to be mailed, with names and address furnished by the customer or maintained by the service bureau for the customer, tax does not apply to the charge for producing the labels, regardless of whether the service bureau itself affixes the labels to the material to be mailed. However, tax would be due on any tangible personal property, such as labels, consumed by the service bureau. (See "*f*" above. Mailing lists in the form of Cheshire tapes, gummed labels, and heat transfers which are attached to envelopes and placed in the mail by a service bureau constitute tangible personal property and are subject to tax.

*i. Services of a machine operator.* The services of a machine operator, such as a key punch operator or the operator of any other data processing equipment, when hired to operate another person's machinery or equipment, are subject to tax when contracted for and performed by someone other than an employee of the owner of the machinery and equipment.

*j. Maintenance contracts.* Maintenance contracts sold in connection with the sale or lease of canned software generally provide that the purchaser will be entitled to receive storage media on which prewritten program improvements have been recorded. The maintenance contract may also provide that the purchaser will be entitled to receive certain services, including error corrections and telephone or on-site consultation services.

(1) Nonoptional maintenance contract. If the maintenance contract is required as a condition of the sale or rental of canned software, it will be considered as part of the sale or rental of the canned software, and the gross sales price is subject to tax whether or not the charge for the maintenance contract is separately stated from the charge for software.

(2) Optional maintenance contract. If the maintenance contract is optional to the purchaser of canned software, then only the portion of the contract fee representing improvements delivered on storage media is subject to sales tax if the fee for other services, including consultation services and error corrections, is separately stated. If the fee for other services, including consultation services and error corrections, is not separately stated from the fee for improvements delivered on storage media, the entire charge for the maintenance contract is subject to sales tax.

**18.34(3)** *Nontaxable items and activities.*

*a. Custom programs.* These are programs prepared to the special order of a customer. Tax does not apply to the transfer of custom programs in the form of written procedures,

Any claim for refund lawfully filed shall be paid by the department within 90 days after the department's receipt of the claim. The department must have placed the claimant's payment in the mail within this 90-day period.

*c.* See rule 14.3(422,423) for guidance in determining the date upon which a sale of farm machinery or equipment has occurred. Concerning periodic payments under a lease, the gross receipts of which are subject to sales tax, the following is an example of how payments under this sort of lease are to be treated when the lease extends throughout the periods of taxability, refund and exemption.

EXAMPLE: A farmer signs a lease on May 1, 1984, to rent a combine for a four-year period. The farmer takes delivery of the combine on June 1, 1984; each monthly lease payment is due upon the first day of the month for the 48 months beginning in July of 1984. The payments due for the period beginning June 1, 1984, and ending June 30, 1985, would be subject to tax with no right of refund. The payment due for the period July 1985 to June 1987 would be subject to a tax but would be refundable. Payments due for the period beginning July 1, 1987, would be exempt.

**18.44(5)** and **18.44(6)** Rescinded, IAB 9/7/88, effective 10/12/88.

This rule is intended to implement Iowa Code subsections 422.43(3) and 422.45(26) and Iowa Code chapter 422, Division IV.

**701—18.45(422,423) Sale or rental of computers, industrial machinery and equipment; refund of and exemption from tax paid.** The sale or rental of computers, industrial machinery and equipment, including pollution control equipment, used in manufacturing, in research and development, or in the processing or storage of data or information by an insurance company, financial institution, or commercial enterprise is, under certain circumstances, exempt from tax and under other circumstances, is subject to refund of sales or use tax paid. The sale or rental of machinery, equipment, or computers directly and primarily used in the recycling or reprocessing of waste products is also exempt from tax; see subrule 18.45(8). For purposes of the organization of this rule items that may be exempt or subject to refund of tax are referred to as specified property unless the context of the rule indicates otherwise. See subrule 18.45(1) for definition of what constitutes specified property. Also, for purposes of organization of this rule the rule refers only to an exemption from tax but the tax paid may be refundable as is discussed in subrule 18.45(6).

**18.45(1)** *Definitions.* The following words are defined for the purposes of this rule in the manner set out below.

*"Commercial enterprise"* includes businesses and manufacturers conducted for profit and includes centers for data processing services to insurance companies, financial institutions, businesses, and manufacturers, but excludes professions and occupations and nonprofit organizations. A hospital that is a not-for-profit organization would not be a "commercial enterprise." The term "professions" means a vocation or employment requiring specialized knowledge and often long and intensive academic preparation. The term "occupations" means the principal business of an individual. Included within the meaning of "occupations" is the business of farming. A professional corporation which carries on any business which is a "profession" or "occupation" is not a commercial enterprise.

*"Computer"* means stored program processing equipment and all devices fastened to it by means of signal cables or any communication medium that serves the function of a signal cable. Nonexclusive examples of devices fastened by a signal cable or other communication medium are: terminals, printers, display units, card readers, tape readers, document sorters, optical readers, and card or tape punchers. Excluded from the definition of "computer" is point-of-sale equipment. For a characterization of "point-of-sale equipment" see subrule 71.1(7).

Also included within the meaning of the word "computer" is any software consisting of an operating system or executive program. Such software coordinates, supervises, or monitors the basic operating procedures of a computer. An operating system or executive program is exempt from sales tax only if purchased as part of the sale of the computer for which it operates. An operating system or executive program priced separately or sold at a later time is subject to the provisions of rule 18.34(422,423). Excluded from the meaning of the word "computer" is any software consisting of an application program. For purposes of this subrule, "operating system or executive program" means a computer program which is fundamental and necessary to the functioning of a computer. The operating system or executive program software controls the operation of a computer by managing the allocation of all system resources, including the central processing unit, main and secondary storage, input/output devices, and the processing of programs. This is in contrast to application software which is a collection of one or more programs used to develop and implement the specific applications which the computer is to perform, and which calls upon the services of the operating system or executive program.

*"Directly used."* Property is "directly used" only if it is used to initiate, sustain, or terminate the transformation of any activity. In determining whether any property is "directly used," consideration should be given to the following factors:

1. The physical proximity of the property in question to the activity in which it is used;
2. The proximity of the time of use of the property in question to the time of use of other property used before and after it in the activity involved; and
3. The active causal relationship between the use of the property in question and the activity involved. The fact that a particular piece of property may be essential to the conduct of the activity because its use is required either by law or practical necessity does not, of itself, mean that the property is directly used.

*"Financial institution"* is a bank incorporated under Iowa Code chapter 524 or federal law; a savings and loan association incorporated under Iowa Code chapter 534 or federal law; a credit union organized under Iowa Code chapter 533 or federal law; or any corporation licensed as an industrial loan company under Iowa Code chapter 536A. Excluded from the meaning of the term are loan brokers governed by Iowa Code chapter 535C and production credit associations.

*"Industrial machinery and equipment"* means machinery and equipment used by a manufacturer in a manufacturing establishment. Machinery is any mechanical, electrical or electronic device designed and used to perform some function and to produce a certain effect or result. The word includes not only the basic unit of the machinery but also any adjunct or attachment necessary for the basic unit to accomplish its intended function. The word also includes all devices used or required to control, regulate or operate a piece of machinery, provided such devices are directly connected with or are an integral part of the machinery and are used primarily for control, regulation or operation of machinery. Jigs, dies, tools, and other devices necessary to the operation of or used in conjunction with the operation of what would be ordinarily thought of as machinery are also considered to be "machinery." See *Deere Manufacturing Co. v. Zeiner,* 247 Iowa 1264 78 N.W.2d 527 (1956). Machinery does not include buildings designed specifically to house or support machinery. Equipment is any tangible personal property used in an operation or activity. Nonexclusive examples of equipment are: tables on which property is assembled on an assembly line and chairs used by assembly line workers.

*"Insurance company"* means an insurer organized or operating under Iowa Code chapter 508, 514, 515, 518, 519, or 520 or authorized to do business in Iowa as an insurer. An insurance company must have fifty or more persons employed in Iowa, excluding licensed insurance agents. Excluded from the definition of "insurance company" are fraternal and beneficial societies governed by Iowa Code chapter 512 and health maintenance organizations governed by Iowa Code chapter 514B. This list of exclusions is not intended to be exclusive.

*"Manufacturer"* means any person, firm, or corporation who purchases, receives, or holds personal property for the purpose of adding to its value by any process of manufacturing, refining, purifying, combining of different materials, or by packing of meats with an intent to sell at a gain or profit. Those who are in the business of printing, newspaper publication, bookbinding, lumber milling, and production of drugs and agricultural supplies are illustrative, nonexclusive examples of manufacturers. Construction contracting; quarrying; remanufacture or rebuilding of tangible personal property (such as automobile engines); provision of health care; farming; transporation for hire; mining; and the activities of restaurateurs, hospitals, and medical doctors are illustrative, nonexclusive examples of businesses which are not manufacturers. See *Associated General Contractors of Iowa v. State Tax Commission,* 255 Iowa 673, 123 N.W.2d 922 (1963) and *River Products Co. v. Board of Review of Washington County,* 332 N.W.2d 116 (Iowa Ct. App. 1982).

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**79.1(5)** *Refunds.* County recorders shall not refund any overpayment of a real estate transfer tax liability. The grantor of the real property for which the real estate transfer tax has been overpaid shall petition the state appeal board for a refund of seventy-five percent of the overpayment amount. A refund of the remaining twenty-five percent of the overpayment shall be petitioned from the board of supervisors of the county in which the tax was paid.

This rule is intended to implement Iowa Code chapter 428A.

**701—79.2(428A) Taxable status of real estate transfers.**

**79.2(1)** *Federal rules and regulations.* In factual situations not covered by these rules and involving those portions of Iowa law which are consistent with the former federal statutes (26USCA 4361) that imposed a real estate transfer tax, the department of revenue and finance and county recorders shall follow the federal rules and regulations in administering the provisions of chapter 428A. (1968 O.A.G. 643).

**79.2(2)** *Transfer of realty to a corporation or partnership.* Capital stock, partnership shares and debt securities received in exchange for real property constitutes consideration which is subject to the real estate transfer tax. Where the value of the capital stock is definite or may be definitely determined in a dollar amount, the specific dollar amount is subject to the tax. Where the value of the capital stock is not definitely measurable in a dollar amount, the tax imposed is to be calculated on the fair market value of the realty transferred. For purposes of this rule, fair market value shall be as defined in Iowa Code section 441.21. (1976 O.A.G. 776)

Real estate transfer tax is not due when real property is conveyed to a family corporation, partnership, or limited partnership as defined in Iowa code section 428A.2 in an incorporation or organization action where the only consideration is the issuance of capital stock, partnership shares, or debt securities of the corporation, partnership, or limited partnership. Actual consideration other than these shares or debt securities is subject to real estate transfer tax.

**79.2(3)** *Trades of real estate.* Real estate transfers involving the exchange of one piece of real property for another are transfers subject to the real estate transfer tax. Each grantor of the real estate is liable for the tax based on the fair market value of the property received in the trade as well as other consideration including but not limited to cash and assumption of debt. (1972 O.A.G. 654)

For purposes of this rule, fair market value shall be as defined in Iowa Code section 441.21.

**79.2(4)** *Conveyance to the United State government or the state of Iowa.* Any conveyance of real estate to the United States or any agency or instrumentality thereof or to the state of Iowa or any agency, instrumentality, or political subdivison thereof not exempt from the real estate transfer tax pursuant to Iowa Code section 428A.2, is subject to the real estate transfer tax. (1968 O.A.G. 579) An exception to this rule is any conveyance to the United States Department of Agriculture, Farmers Home Administration, which is specifically exempted by federal law (7 USCS §1984).

**79.2(5)** *Conveyance of property on leased land.* The transfer of buildings or other structures located on leased land is subject to the real estate transfer tax. The fact that the person who owns a building or other structure does not own the land upon which the property is located does not exempt this type of conveyance from the real estate transfer tax. (1972 O.A.G. 318)

**79.2(6)** *Mortgage default.* In the factual situation where a defaulting mortgagor issues a deed or other conveyance instrument to the mortgagee as satisfaction of the mortgage debt, the transaction is subject to the real estate transfer tax. The consideration upon which the tax is calculated is the outstanding unsatisfied mortgage debt. (Federal Rule)

However, as an exception to this rule, a conveyance of real property to lienholders in lieu of forfeiture or foreclosure action is exempt from real estate transfer tax.

**79.2(7)** *Completion of contract.* A deed or other conveyance instrument given at the time of completion of a single real estate contract is subject to the real estate transfer tax. The tax is to be computed on the full amount of the purchase price as stated in the contract and not solely on the last installment payment made prior to the issuance of the deed or other

conveyance instrument. If the original contract is assigned to a third party or parties prior to fulfillment of such contract, the tax is to be computed only on the original contract price upon completion of the contract.

When a single deed or other conveyance instrument is given at the time of completion of multiple successive real estate contracts, separate taxes are to be computed and paid based upon the full purchase price stated in each contract. For example, if: A sells real estate to B on an installment contract, and then B sells the same property to C on another installment contract, and subsequently both A and B transfer their respective interests in the property to C via one deed, A is liable for a tax computed on the full purchase price stated in the original contract to which A was a party and B is liable for a tax computed on the full purchase price stated in the subsequent contract to which B was a party.

**79.2(8)** *Assignments of contract.* Assignments of real estate contracts by contract sellers and contract buyers are not subject to the real estate transfer tax. (1970 O.A.G. 605)

**79.2(9)** *Corporate and partnership dissolution.* A conveyance of realty by a corporation or partnership in liquidation or in dissolution to its shareholders or partners subject to the debts of the corporation or partnership is a conveyance subject to the real estate transfer tax. However, if there are no debts and the conveyance is made solely for the cancellation and retirement of the capital stock or dissolution, the tax does not apply. (Federal Rule)

Real estate transfer tax is not due when real property is conveyed from a family corporation, partnership, or limited partnership as defined in Iowa Code section 428A.2 to its shareholders or partners in a dissolution action where the only consideration is capital stock, partnership shares, or debt securities of the corporation, partnership, or limited partnership, including the assumption of debts by the shareholders or partners. Actual consideration other than these shares or debt securities is subject to the real estate transfer tax.

**79.2(10)** *Security instruments.* Any deed or instrument given exclusively to secure a loan or debt is not subject to the real estate transfer tax. (Federal Rule)

**79.2(11)** Marriage dissolution exemption from the real estate transfer tax provided in section 428A.2(16) applies only to real property conveyances between former spouses specifically mandated by a dissolution decree.

**79.2(12)** The family debt cancellation exemption from the real estate transfer tax provided in Iowa Code section 428A.2(11) applies only to real estate conveyances between husband and wife, or parent and child and indebtedness between these parties.

The amount of indebtedness subject to exemption shall not exceed the fair market value of the property being transferred.

Example 1. A son is indebted to his father for $10,000. The son transfers real property with a fair market value of $12,000 to his father as satisfaction of the indebtedness. No real estate transfer tax is due in this situation.

Example 2. A son is indebted to his father for $10,000. The son transfers real property with a fair market value of $4,000 to his father as satisfaction of the indebtedness. Real estate transfer tax is due on $6,000 in this situation.

This rule is intended to implement Iowa Code sections 428A.1 and 428A.2.

**701—79.3(428A) Declarations of value: Responsibility of county recorders and city and county assessors.**

**79.3(1)** *Forms and procedures.* County recorders and county and city assessors shall use only the declaration of value forms and procedures prescribed and provided by the director of revenue and finance for reporting real estate transfers.

**79.3(2)** *Report of sales.* County recorders and city and county assessors shall complete the appropriate portions of the real estate transfer-declaration of value form for each real estate transfer for which a declaration of value has been completed by the buyer, seller, or agent. The completion of the real estate transfer-declaration of value forms constitutes the preparation of a quarterly sales report to the director of revenue as required by Iowa Code section 421.17(6).

**79.3(3)** *Transmittal of forms.* Real estate transfer-declaration of value forms filed with the county recorder shall be transmitted promptly to the appropriate assessor. City and county assessors shall transmit to the department of revenue and finance within sixty (60) days of the end of each calendar quarter all real estate transfer-declaration of value forms received from the county recorder during that calendar quarter. Under no circumstances shall the assessor retain any real estate transfer-declaration of value form longer than designated in this subrule.

**79.3(4)** *Completion of forms.* County recorders and city and county assessors shall complete declaration of value forms in accordance with instructions issued by the department. The assessed values entered on the forms are to be the final values as of January 1 of the year in which the transfer occurred.

This rule is intended to implement Iowa Code section 428A.1.

**701—79.4(428) Certain transfers of agricultural realty.**

**79.4(1)** In determining whether agricultural realty is purchased by a corporation, limited partnership, trust, alien, or nonresident alien for purposes of providing information required for such transfers by Iowa Code section 428A.1, the definitions in this rule shall apply.

**79.4(2)** Corporation defined. Corporation means a domestic or foreign corporation and includes a nonprofit corporation and cooperatives.

**79.4(3)** Limited partnership defined. Limited partnership means a partnership as defined in Iowa Code section 545.1 and which owns or leases agricultural land or is engaged in farming.

**79.4(4)** Trust defined. Trust means a fiduciary relationship with respect to property, subjecting the person by whom the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it. A trust includes a legal entity holding property as a trustee, agent, escrow agent, attorney-in-fact, and in any similar capacity.

Trust does not include a person acting in a fiduciary capacity as an executor, administrator, personal representative, guardian, conservator or receiver.

**79.4(5)** Alien defined. Alien means a person born out of the United States and unnaturalized under our Constitution and laws of the United States. (Breuer v. Beery, 189 N.W. 714, 194 Iowa 243, 244 (1922).)

**79.4(6)** Nonresident alien defined. Nonresident alien means an alien as defined in subrule 79.4(5) who is not a resident of the state of Iowa.

This rule is intended to implement Iowa Code section 428A.1.

**701—79.5(428A) Form completion and filing requirements.**

**79.5(1)** *Real estate transfer—declaration of value form.* A real estate transfer-declaration of value form shall be completed for any deed, contract, instrument or writing that grants, assigns, transfers or otherwise conveys real property, except those specifically exempted by law, if the document presented for recording clearly states on its face that it is a document exempt from the reporting requirements as enumerated in Iowa Code section 428A.2, subsections 2 to 13 and 16 to 20, or is a deed given in fulfillment of a previously recorded real estate contract. A real estate transfer-declaration of value form is not required for any transaction that does not grant, assign, transfer or convey real property.

**79.5(2)** *Real estate transfer-declaration of value: Real estate transfer tax.* Requirements for completing real estate transfer-declaration of value forms or exceptions from filing the forms shall not be construed to alter the liability for the real estate transfer tax or the amount of such tax as provided in Iowa Code chapter 428A.

**79.5(3)** *Agent defined.* As used in Iowa Code section 428A.1, an agent is defined as any person designated or approved by the buyer or seller to act on behalf of the buyer or seller in the real estate transfer transaction.

**79.5(4)** *Government agency filing requirements.* The real estate transfer-declaration of value form does not have to be completed for any real estate transfer document in which the state of Iowa or any agency, instrumentality or political subdivision thereof is the grantor, assignor, transferor or conveyor or for any transfer in which the state of Iowa or any agency, instrumentality or political subdivision thereof is the grantee or assignee where there is no consideration. However, any transfer in which any unit of government is the grantee or assignee where there is consideration is subject to the real estate transfer-declaration of value filing requirements (1980 O.A.G. 92) and any transfer to which the United States or any agency or instrumentality thereof is a party to the transfer is subject to the real estate transfer-declaration of value filing requirements. An exception to this subrule is conveyances for public purposes occurring through the exercise of the power of eminent domain.

**79.5(5)** *Recording refused.* The county recorder shall refuse to record any document for which a real estate transfer-declaration of value is required if the form is not completed accurately and completely by the buyer or seller or the agent of either. The declaration of value shall include the social security number or federal identification number of the buyer and seller and all other information required by the director of revenue and finance, *(Iowa Association of Realtors et al v. Iowa Department of Revenue,* CE 18-10479, Polk County District Court, February 4, 1983.) However, if having made good faith effort, the person or person's agent completing the declaration of value is unable to obtain the social security or federal identification number of the other party to the transaction due to factors beyond the control of the person or person's agent, a signed affidavit stating that the effort was made and the reasons why the number could not be obtained shall be submitted with the incomplete declaration of value. The declaration of value with attached affidavit shall be considered sufficient compliance with Iowa Code section 428A.1 and the affidavit shall be considered a part of the declaration of value subject to the provisions of Iowa Code section 428A.15.

This rule is intended to implement Iowa Code sections 428A.1, 428A.2 and 428A.4.

**701—79.6(428A) Public access to declarations of value.** Declarations of value are public records and shall be made available for public inspection in accordance with Iowa Code chapter 68A.

This rule is intended to implement Iowa Code chapter 428A.

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*Effective date of subrule 79.1(4) was delayed by the administrative rules review committee seventy days and delay was lifted on November 14, 1979.

CHAPTER 116
JUNKYARD CONTROL



CHAPTER 117
OUTDOOR ADVERTISING

# CHAPTER 115
# UTILITY ACCOMMODATION

[Prior to 6/3/87, Transportation Department (820)—(06,D)Ch 1]

**761—115.1(306A) Statement of policy.**

**115.1(1)** This chapter covers initial placement, adjustment, improvement, relocation, replacement and maintenance of utility facilities in, on, above or below the right-of-way of primary highways, including attachments to primary highway structures. It embodies the basic specifications and standards needed to ensure the safety of the highway user and the integrity of the highway.

**115.1(2)** The department reserves the right to make exceptions to this chapter where the exercise of sound and reasonable judgment indicates that the literal enforcement of this chapter would defeat its objectives.

**761—115.2(306A) Definitions.** The following terms, when used in this chapter, shall have the following meanings unless the context otherwise requires:

*Agreement.* A contract between the department and a utility facility owner relative to utility facility relocation and reimbursement.

*Appurtenance.* A utility facility-related feature such as a vent, drain, utility access hole or marker.

*Backfill.* Replacement of suitable material around and over a pipe, conduit, duct, casing or utility tunnel, and compacted as specified.

*Cable.* An insulated conductor or combination of insulated conductors.

*Carrier.* A pipe directly enclosing a transmitted fluid (liquid or gas) or slurry. Also, an electric or communication cable, wire or line.

*Casing.* An oversize load-bearing pipe, conduit, duct, utility tunnel or structure through which a carrier or cable is inserted.

*Clear zone.* That roadside border area, starting at the edge of the traveled way, available for use by errant vehicles.

*Communication line or cable.* A circuit for telephone, telegraph, alarm system, television transmission or traffic control purposes.

*Conduit or duct.* An enclosed tubular runway for protecting wires or cables.

*Cover.* Depth from the grade of a roadway or ditch to the top of an underground utility facility.

*Department.* Iowa department of transportation.

*Direct burial.* Installing a utility facility underground, without encasement, by plowing.

*Drain.* An appurtenance used to discharge moisture or liquid contaminants from casings.

*Emergency.* A situation that presents a danger to the life, safety or welfare of motorists, persons working within the right-of-way or the general public and requires immediate attention.

*Encasement.* Placing a casing around a utility facility.

*Engineer.* The chief engineer of the department, or the chief engineer's duly authorized representative.

*FHWA.* Federal Highway Administration.

*Freeway.* A fully controlled access primary highway.

*Fully controlled access highway.* A primary highway for which the rights of ingress and egress from abutting properties have been legally eliminated by the roadway jurisdiction. Access to the highway is allowed only at interchange locations.

*Highly energized.* An electrical energy level that could be hazardous if the utility facility is struck or exposed. For purposes of this chapter, voltage exceeding 60 volts is considered to be highly energized.

*Highway, street or road.* A public way for the purposes of vehicular travel, including the entire area between the right-of-way lines.

*Interchange.* A system that provides for the movement of traffic between intersecting roadways via one or more grade separations.

*Median.* That portion of a divided highway separating the traveled ways from opposing traffic.

*MUTCD.* The Manual on Uniform Traffic Control Devices for Streets and Highways, as adopted in rule 761—130.1(321).

*Nonfreeway highway.* A primary highway that is not a freeway.

*Occupying the right-of-way.* Located or to be located in, on, above or below the primary highway right-of-way, including attachments to primary highway structures.

*Pavement.* That portion of a roadway used for the movement of vehicles, exclusive of shoulders.

*Pipe.* A tubular product made as a production item and for sale as a pipe. Cylinders formed from plate in the course of the fabrication of auxiliary equipment are not "pipe" as defined herein.

*Pipeline.* A carrier system used to transport liquids, gases, or slurries.

*Plowing.* Direct burial of a utility line by means of a plow-type mechanism that breaks the ground, places the utility line and closes the break in the ground in a single operation.

*Primary road or primary highway.* A road or street so designated in accordance with Iowa Code subsection 306.3(2). This definition includes primary road extensions in municipalities and primary roads under construction.

*Relocation.* The removal, rearrangement, reinstallation, protection or adjustment of a utility facility.

*Right-of-way.* The land for a public highway, street or road, including the entire area between the property lines. For purposes of this chapter, the right-of-way line for a freeway is the access control line.

*Roadway.* That portion of a highway, including shoulders and auxiliary lanes, available for vehicular use. A divided highway has two or more roadways.

*Rural-type roadway.* Any roadway that does not have as its outside extremities a curb and gutter section.

*Service connection.* Any water, gas, power, communication, sanitary sewer or storm sewer line that extends from the main or primary utility facility into an adjacent property and that is used to serve the property.

*Shoulder.* That portion of a roadway contiguous to the traveled way for accommodation of disabled vehicles, for emergency use and for the lateral support of the pavement base and surface courses.

*Toe of foreslope.* The intersection of the foreslope and the natural ground or ditch bottom.

*Traveled way.* That portion of a roadway used for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

*Trenched.* Installed in a narrow open excavation.

*Untrenched.* Installed without breaking the ground or the pavement surface, such as by jacking, boring, tunneling or mechanical compaction.

*Urban-type roadway.* A roadway that has as its outside extremities a curb and gutter section.

*Utility.* A system for supplying water, gas, power or communications; a storm sewer, sanitary sewer, drainage tile or other system for transmitting liquids; a pipeline system; or like service systems. This definition includes traffic signal and street and intersection lighting systems.

*Utility access hole.* An opening in an underground system through which workers or others may enter for the purposes of making installations, inspections, removals, repairs, connections or tests.

*Utility facility.* Any pole, pipe, pipeline, pipeline company facility, sewer line, drainage tile, conduit, cable, aqueduct or other utility-related structure or appurtenance. However, the term does not include departmental facilities or the lines that service them.

*Utility tunnel.* An underpass for two or more utility lines.

*Vent.* An appurtenance used to ventilate or to discharge gaseous contaminants from casings.

**761—115.3** Reserved.

**761—115.4(306A) General provisions for occupancy of the right-of-way.** The general requirements for utility facilities occupying the right-of-way are as follows:

**115.4(1)** *Permit.*

*a.* Except as provided in rule 115.10(306A), a utility facility owner shall not place its utility facilities in, on, above or below the primary highway right-of-way, attach its facilities to a primary highway structure, or adjust, improve, relocate or replace existing facilities occupying the right-of-way without first obtaining permission from the department.

*b.* This permission shall be in the form of a utility accommodation permit issued by the department to the utility facility owner.

*c.* The purpose of the permit process is to ensure the safety of motorists, pedestrians, construction workers and other highway users; to ensure the integrity of the highway; and to document the location of utility facilities for use in managing the highway right-of-way and locating the facilities in the future.

*d.* For certain utility facility relocations, an agreement between the utility facility owner and the department may be negotiated. However, the agreement by itself does not constitute a permit nor does it grant permission to occupy the primary highway right-of-way. The utility facility owner is responsible for obtaining a permit prior to commencing work within the right-of-way. The agreement will then be attached to and become a part of the permit.

*e.* The term "permit" includes any attachments thereto.

**115.4(2)** *Assurance of compliance.* It is the responsibility of the owner of the utility facility to assure that its utility facility complies with all applicable local, state, federal and franchise requirements and meets generally accepted industry standards at the time of installation.

**115.4(3)** *No adverse effect on highway.* A utility facility shall not adversely affect the safety, design, construction, operation, maintenance or stability of a primary highway.

**115.4(4)** *Minimal hazards to the highway user.* Construction and maintenance of the utility facility shall be accomplished in a manner that minimizes disruption of primary highway traffic and other hazards to the highway user.

**115.4(5)** *Protection of landscaped and planted areas.* A landscaped or planted area that is disturbed shall be restored as nearly as practical to its original condition. Specific authorization must be obtained from the engineer prior to trimming trees or spraying within the right-of-way.

**115.4(6)** *Notice by department.* The department shall give the utility facility owner at least 48 hours' notice of any proposed primary highway construction or maintenance work, on either existing or newly acquired right-of-way, when the proposed work will be within ten feet of existing utility facilities that have been previously authorized by the department to occupy the right-of-way.

**115.4(7)** *Noncompliance.* The department may take any or all of the following actions for noncompliance with any provision of this chapter or any term of a permit:

*a.* Halt utility construction or maintenance activities within the right-of-way.

*b.* Withhold a relocation reimbursement until compliance is ensured.

*c.* Revoke the permit.

*d.* Remove the noncomplying construction or maintenance work, restore the area to its previous condition, and assess the removal and restoration costs against the utility facility owner.

**115.4(8)** *Private utility facility.* A utility facility that is dedicated to private use shall be accommodated in accordance with this chapter. However:

*a.* At the discretion of the engineer, the cover requirement of rule 115.27(306A) for tile lines and sewer lines may be waived when necessary.

*b.* At the discretion of the engineer, the original replacement and the removal of signs required in rule 115.11(306A) may be accomplished by department personnel.

**761—115.5(306A) General design provisions.** The general design requirements for utility facilities occupying the right-of-way are as follows:

**115.5(1)** *Responsibilities.* The utility facility owner is responsible for the design. Departmental review and approval of the design are required.

**115.5(2)** *Plans.* Design plans shall be prepared by a person knowledgeable in highway design and in work zone traffic control and shall include the measures to be taken to preserve the safe and free flow of traffic, structural integrity of the roadway and highway structures, ease of highway maintenance, appearance of the highway and integrity of the utility facility.

**115.5(3)** *Materials.* All utility facilities shall be of durable materials designed for long service life expectancy and relatively free from routine servicing and maintenance.

**115.5(4)** *Ground-mounted facilities.* Ground-mounted utility facilities shall be of a design compatible with the visual quality of the specific highway section being traversed. (See rule 115.8(306A))

**761—115.6(306A) Access to utility facilities.**

**115.6(1)** *Freeways.* Access to utility facilities occupying the right-of-way of freeways shall be in accordance with the following:

*a.* Except for emergency work, access shall be obtained from other than the freeway or its ramps during utility construction or maintenance operations. This means that access shall be obtained from intersecting, adjacent or nearby public highways, streets, roads or trails or from private property. See subrules 115.11(4) and 115.14(4) for emergencies.

*b.* Fence removal and replacement are subject to the limitations imposed by the permit.

*c.* No gates or ladders shall be placed in or upon the right-of-way fence.

**115.6(2)** *Nonfreeway highways.* Access to utility facilities occupying the right-of-way of nonfreeway highways is generally permitted, subject to any limitation imposed by the permit.

**761—115.7(306A) Clear zone requirements.** Highway roadsides shall be as free from physical obstructions above the ground as practicable.

**115.7(1)** *Freeways.* The clear zone requirements for utility facilities occupying the right-of-way of freeways are as follows:

*a.* On freeways open to traffic, no personnel, equipment or materials shall be permitted in the median or within the clear zone area, right-of-way width permitting, during utility facility construction or maintenance operations, except for the stringing of transverse overhead conductors. In the interest of safety, temporary poles in the median may be permitted during cable or conductor stringing operations if considered advisable by the engineer.

*b.* The clear zone shall be determined by reference to Table 3.1 of the 1989 AASHTO Roadside Design Guide.

**115.7(2)** *Nonfreeway highways.* The clear zone requirements for utility facilities occupying the right-of-way of nonfreeway highways are as follows:

*a.* In rural areas with rural-type roadways, a permanent, aboveground obstruction shall be restricted to an area beyond the clear zone or the roadway foreslope, whichever locates the obstruction a greater distance from the edge of the traveled way.

(1) If sufficient right-of-way is not available to accommodate this distance, the department may require that the facility consist of a breakaway design, require regrading of the right-of-way, or authorize the facility to be placed near the right-of-way line.

(2) The clear zone table shown below shall, unless otherwise specified, be used to determine the appropriate clear zone distance on rural-type roadways based on present day traffic and the existing foreslope adjacent to and preceding the utility facility. The values in the table

are based on a 60 mph design speed. Should the department decide that another design speed is more appropriate, the clear zone shall be determined by reference to Table 3.1 of the 1989 AASHTO Roadside Design Guide.

(3) The clear zone shall, unless otherwise specified, be measured from the edge of the traveled way. In the table, the lower value represents the minimum acceptable distance, while the higher value represents the desirable distance to be achieved whenever practical.

(4) Clear zone table:

CLEAR ZONE (in feet)
Traffic Volume, ADT

| Foreslope | Under 750 | 750-1500 | 1500-6000 | Over 6000 |
|---|---|---|---|---|
| 3:1 or steeper | *16'-18' beyond the toe of foreslope or 20'-24' from edge of traveled way, whichever is greater | *20'-24' beyond the toe of foreslope or 26'-32' from edge of traveled way, whichever is greater | *26'-30' beyond the toe of foreslope or 32'-40' from edge of traveled way, whichever is greater | *30'-32' beyond the toe of foreslope or 36'-44' from edge of traveled way, whichever is greater |
| 4:1 | 20'-24' | 26'-32' | 32'-40' | 36'-44' |
| 6:1 or flatter | 16'-18' | 20'-24' | 26'-30' | 30'-32' |

*Since recovery is less likely on foreslopes that are 3:1 or steeper, fixed objects should not be present in the vicinity of the toe of these slopes. Recovery of errant vehicles may be expected to occur beyond the toe of the slope. Determination of the width of the recovery area at the toe of a slope that is 3:1 or steeper should take into consideration right-of-way availability, environmental concerns, economic factors, safety needs and accident histories. The distance beyond the toe of foreslope may be reduced by the width of the existing shoulder.

*b.* In subruban areas with rural-type roadways and speed limits of 45 miles per hour or lower, a permanent, aboveground obstruction shall be located at least 15 feet from the edge of the paved traveled way or beyond the roadway foreslope, whichever is greater.

*c.* On urban-type roadways, a permanent, aboveground obstruction shall be located no closer than ten feet from the edge of the traveled way.

**761—115.8(306A) Scenic enhancement.** The type and size of utility facilities and the manner in which they are installed can materially alter the scenic quality, appearance and view of highway roadsides and adjacent areas. For these reasons, additional controls are applicable in areas that have been acquired or set aside for their scenic quality. Such areas include scenic strips, scenic overlooks, rest areas, recreation areas, public parks and historic sites, and the right-of-way of primary highways that pass through or are adjacent to these areas. The additional controls are as follows:

**115.8(1)** *Underground installations.* A new underground installation may be permitted if it does not require extensive removal or alteration of trees or other natural features visible to the highway user and if it does not impair the visual quality of the area being traversed.

**115.8(2)** *Overhead installations.* The department may permit a new overhead installation only if the following three conditions are met:

*a.* Other locations for an overhead installation are unusually difficult, are unreasonably costly, or are more undesirable from the standpoint of visual quality.

*b.* Underground installation is not technically feasible or is unreasonably costly.

*c.* The location, design and materials to be used for the proposed overhead installation will give adequate attention to the visual qualities of the area being traversed.

**761—115.9(306A) Costs and liability.**

**115.9(1)** *Costs of relocation.* Should the department be responsible for the costs of utility facility relocation required for highway work, the department shall not pay for any betterment that results in an increase in the capacity of the facility, or any other utility adjustment not required by highway construction. The department is entitled to receive credit for the accrued depreciation on replaced facilities and the salvage value of any materials or parts salvaged and retained or sold by the utility facility owner.

**115.9(2)** *Liability under a permit.*

*a.* The owner of the utility facility shall indemnify and save harmless the state of Iowa, its agencies and employees from any and all causes of action, suits at law or in equity, for losses, damages, claims or demands, and from any and all liability and expense of whatsoever nature (including reasonable attorney fees), arising out of or in connection with the owner's use or occupancy of the primary highway right-of-way.

*b.* The state of Iowa, its agencies or employees, will be liable for expense incurred by the permit holder in its use and occupancy of the primary highway right-of-way only when negligence of the state, its agencies or employees, is the sole approximate cause of such expense. Whether in contract, tort or otherwise, the liability of the state, its agencies, and employees, is limited to the reasonable, direct expenses to repair damaged utilities, and in no event will such liability extend to loss of profits or business, indirect, special, consequential or incidental damages.

**761—115.10(306A) Utility accommodation permit.**

**115.10(1)** *Application for permit.*

*a.* When a utility facility is to be placed in, on, above or below the primary highway right-of-way or attached to a primary highway structure, or an existing utility facility occupying the right-of-way is to be adjusted, improved, relocated or replaced, the owner of the utility facility shall submit a utility accommodation permit application to the department's appropriate resident maintenance engineer.

*b.* Exception: City approval, rather than departmental approval, is required for service connections within incorporated municipalities. The utility facility owner shall apply to the city. However, all service connections shall, as a minimum, meet the requirements of this chapter.

**115.10(2)** *Plan.* Each permit application shall be accompanied by a plan showing the following:

*a.* Location of the utility facility by section, township, range, milepost and highway station, where such exist.

*b.* Highway centerline and right-of-way limits.

*c.* Location of the utility facility by distance to the nearest foot at each point where the facility's location changes alignment, as measured from:

(1) Centerline of the highway on nonfreeway installations.

(2) Right-of-way fence on freeway installations.

*d.* All construction details including:

(1) Depth of burial.

(2) Types of materials to be used in the installation.

(3) Operating pressures and voltages.

(4) Vertical and horizontal clearances.

(5) Traffic control plan prepared by a person knowledgeable in work zone traffic control, or reference to a standard traffic control plan of the department.

**115.10(3)** *Waterways.* A permit application for the placement of a utility facility that will discharge materials into the nation's waters must be accompanied by satisfactory evidence of compliance with all applicable federal, state and local environmental laws and regulatory standards.

**115.10(4)** *Department action on permit application.*

*a.* The department shall act on the permit application within 30 days after its filing with the appropriate resident maintenance engineer. If an emergency should exist, the department shall act on the application as expeditiously as possible.

*b.* Failure on the part of the applicant in providing the information listed in subrules 115.10(2) and 115.10(3) may, within this 30-day period, cause a delay in the department's taking final action on the application.

**115.10(5)** *Approvals required.*

*a.* Departmental approval of the permit application is required.

*b.* City approval is also required if the proposed work is within the corporate limits of the municipality.

*c.* FHWA approval may be required if the proposed work is in, on, above or below the right-of-way of an interstate highway, including attachments to interstate highway structures.

*d.* Prior to completion of construction, any change in the work as described in the approved permit shall require the prior approval of the department and the submission of as-built plans.

**115.10(6)** *Permit.*

*a.* At a minimum, the permit allows:

(1) The permittee to perform the work covered by the permit.

(2) The utility facility described in the permit to occupy the right-of-way and to be used and maintained.

*b.* The permit does not convey a permanent right of occupancy.

**115.10(7)** *New permit required.* A new permit is required any time there is a change in the class of transmittant, an increase in the maximum design pressure shown on the permit or any other physical change in the utility facility. Replacing an existing copper communication line with fiber optic cable is a physical change and requires a new permit.

**115.10(8)** *Expiration of certain permits.*

*a.* Permits covering gas or water mains outside the corporate limits of municipalities shall expire after 20 years. Renewal may be requested.

*b.* See subrule 115.24(17) for permits covering longitudinal occupancy of freeways.

**115.10(9)** *Copy at job site.* The owner of the utility facility or its contractor shall have a copy of the permit on the construction site at all times for examination by highway officials.

**115.10(10)** *Transfer of permit.*

*a.* A new permit is not needed when a utility facility is sold, transferred or leased, unless there is a change that requires a new permit (see subrule 115.10(7)). The requirements of the permit and this chapter shall remain in force as long as the utility facility continues to occupy the right-of-way and serve its intended purpose.

*b.* To assist the department in completing the notifications required in subrule 115.4(6), the new utility facility owner should contact the department's resident maintenance engineer responsible for the geographical area involved and advise the resident maintenance engineer of the following:

(1) Geographical area involved in the new ownership.

(2) New ownership name and address.

(3) Designated telephone number for notification purposes.

**761—115.11(306A) Traffic protection.** The traffic protection and traffic control requirements and guidelines for utility work within the primary highway right-of-way are as follows:

**115.11(1)** *Signs furnished.* The department shall furnish all signs necessary to conduct primary highway traffic through the construction or repair area. However, the owner of the utility facility may elect to use its own signs if they conform to the MUTCD.

*a.* The utility facility owner is responsible for the original placement of signs and their removal after the work has been completed. The utility facility owner shall correctly use signs as needed while work is in progress.

*b.* Department-owned signs shall be made available to the utility facility owner at one of the major departmental maintenance facilities. When work has been completed, these signs shall be returned to the facility from which obtained. Signs lost, damaged or destroyed shall be replaced or paid for by the owner of the utility facility.

**115.11(2)** *Traffic control for all work.* The following applies to all types of work.

*a.* When performing work within the right-of-way, the owner of the utility facility is responsible for installing warning signs and protective devices and providing flaggers in accordance with departmental requirements for the protection of the traveling public and workers on the site.

*b.* The placement of signs, barricades and channelizing devices shall be in accordance with the MUTCD and departmental specifications for traffic control for street and highway construction and maintenance operations.

*c.* Flaggers shall be provided at work sites to stop traffic intermittently as necessitated by work progress or to maintain continuous traffic past a work site at reduced speeds to help protect the work crew. For both of these functions the flagger must, at all times, be clearly visible to approaching traffic for a distance sufficient to permit proper response by the motorist to the flagging instructions, and to permit traffic to reduce speed before entering the work site. In positioning flaggers, consideration must be given to maintaining color contrast between the work area background and the flagger's protective garments. Flagging shall be conducted in accordance with the MUTCD and the procedures required in the department's Flagger's Handbook.

*d.* On urban-type roadways, the work vehicle may be used to supplement normal signing if it is equipped with an amber revolving light or amber strobe light.

*e.* Additional protection should be provided when special complexities and hazards exist.

**115.11(3)** *Traffic control for construction and maintenance work.* The following applies to work that is not emergency work.

*a.* The type of traffic control used shall be adequate for the nature, location and duration of work, type of roadway, traffic volume and speed, and potential hazards.

*b.* Where high traffic volumes cause frequent congestion, routine scheduled maintenance and construction should be avoided during hours of peak traffic.

*c.* Work areas should be occupied for only as long as it is necessary to safely move in, finish the work, remove all utility work signs and move out.

*d.* Special care should be taken to clearly mark suitable boundaries for the work space with channelizing devices so that pedestrians and drivers can see the work space. If any of the traveled lanes are closed, tapers shall be used as required by the MUTCD and department standard road plans.

*e.* Pedestrians should not be expected to walk on a path that is inferior to the previous path. Loose dirt, mud, broken concrete or steep slopes may force pedestrians to walk on the roadway rather than the sidewalk. Repairs (temporary or permanent) to damaged sidewalks should be made quickly. This may include bridging with steel plates or good quality wood supports.

*f.* Any work that cannot be completed during the day and that impedes traffic, presents a hazard overnight or is located within the clear zone may need additional attention. Reflectorized signs and channelizing devices are required by the MUTCD. Warning lights are optional but should be considered.

*g.* Any member of the crew who serves as a flagger shall be equipped with a red flag or STOP-SLOW paddle and with a reflective vest and shall be trained for proper flagging procedures as specified in the department's Flagger's Handbook.

*h.* Work areas involving excavations on the roadway should generally not exceed the width of one traffic lane at a time. The work should be staged and, if needed, approved bridging should be used. This type of activity should be fully coordinated with the engineer or, in cities, with the city traffic or public works department.

**115.11(4)** *Traffic control for emergency work.*

*a.* Emergency work on a utility facility is unplanned work and may be necessary at any time of the day or night. It may be caused by storm damage or involve disruption of utility service to customers. The emergency work operation usually involves a small crew and a work vehicle for a short period of time.

*b.* The extent of traffic control used for emergency work may be less than that used for longer term construction or maintenance. However, the safety of pedestrians, motorists and workers should be provided.

*c.* The work vehicle should be equipped with an amber revolving light or amber strobe light, portable signs and channelizing devices in good condition, and necessary equipment for flaggers.

**761—115.12(306A) General construction and maintenance responsibilities and procedures.** The general requirements for utility construction and maintenance work within the primary highway right-of-way are as follows:

**115.12(1)** *Execution of work.* The work shall be executed in a satisfactory manner and in accordance with good construction practices.

**115.12(2)** *Disturbance of other contractors.* The work shall be accomplished in a manner that minimizes disturbance to any other contractor working within the right-of-way.

**115.12(3)** *Protection of landscaped and planted areas.* No person shall spray, trim, cut down, root up, remove, cut or mutilate in any manner, any tree, shrub, bush or vine situated upon any portion of the right-of-way without the specific written authorization of the engineer.

**115.12(4)** *Safety, health and sanitation.* The owner of the utility facility shall comply with the MUTCD and all applicable federal, state and local laws and regulations governing safety, health and sanitation. The owner shall furnish such additional safeguards, safety devices and protective equipment and shall take such actions as are reasonably necessary to protect the life and health of the public.

**115.12(5)** *Clear zone.* When not in actual use in an installation operation, vehicles, equipment and materials shall not be parked or stored within the clear zone or median.

**115.12(6)** *Underground transverse crossings.* Underground transverse crossings of existing paved roadways shall be made by untrenched construction whenever possible. Any variance must be specifically authorized by the engineer and noted in the permit.

**115.12(7)** *Clear zone for jacking pits.*

*a.* On freeways, jacking pits are not permitted within the median. Also, they shall be located in an area beyond the clear zone or the roadway foreslope, whichever locates the pits a greater distance from the edge of the traveled way, right-of-way width permitting.

*b.* On rural-type, nonfreeway highways, jacking pits are not permitted within the median. Also, they shall normally be located in an area beyond the clear zone or the roadway foreslope, whichever locates the pits a greater distance from the edge of the traveled way, right-of-way width permitting. However, a jacking pit may be allowed within the foreslope if it is specifically authorized by the engineer and noted in the permit.

*c.* On urban-type, nonfreeway highways, jacking pits shall generally be located at least two feet back from the curb.

*d.* Jacking pits authorized within the clear zone shall not remain open during night-time hours.

**761—115.13(306A) Construction responsibilities and procedures.** The requirements for utility construction work within the primary highway right-of-way are as follows:

**115.13(1)** *Notice of construction.* The owner of a utility facility shall give the engineer at least 48 hours' prior notice of its intent to start construction within the right-of-way.

**115.13(2)** *Relocation.* If relocation of an existing utility facility occupying the right-of-way is required due to highway construction, the owner of the utility facility shall relocate the facility without cost to the state and, whenever possible, in advance of the highway work.

**115.13(3)** *Authority of engineer.*

*a.* The engineer has the authority to decide any questions that arise regarding the intent of the permit and compliance therewith, as related to the condition of the highway.

*b.* The engineer may approve minor alterations in the plans or character of the work, as related to the condition of the highway, which may be considered necessary or desirable during the progress of the work to satisfactorily complete the proposed construction. Such an alteration shall not be considered a waiver of, nor shall it invalidate any provision of, the permit.

**115.13(4)** *Authority to inspect and approve.*

*a.* The department reserves the right to inspect and approve any construction work performed within the right-of-way as it relates to the condition of the highway.

*b.* The utility facility owner shall provide reasonable cooperation.

**115.13(5)** *Department inspectors.* The department may appoint inspectors to represent the engineer in the inspection of construction. Inspectors are placed on the job to keep the engineer informed of the progress of the work and the manner in which it is being performed and to call to the utility facility owner's attention any infringements of the permit. The inspectors shall not:

*a.* Modify in any way the provisions of the permit.

*b.* Delay the work by failing to inspect the work with reasonable promptness.

*c.* Act as a supervisor for the work or perform any other duties for the utility facility owner or its contractor.

*d.* Improperly interfere with the management of the work.

*e.* Approve or accept any portion of the work on behalf of the department.

**115.13(6)** *Work in progress.* The utility facility owner is responsible for the care and maintenance of partially completed work within the right-of-way. Unless otherwise authorized by the permit or the engineer, all work performed within the right-of-way shall be restricted to a time frame of 30 minutes after sunrise to 30 minutes before sunset.

**115.13(7)** *Repair and clean-up.* Prior to final inspection of the work by the department, the utility facility owner shall:

*a.* Upon notification by the department, immediately make any repairs to the right-of-way that are necessary due to the construction work.

*b.* Remove from the right-of-way all unused materials and rubbish resulting from the work and leave the right-of-way in a clean, presentable condition.

**115.13(8)** *Final inspection.* Upon notification by the utility facility owner or its authorized representative that the work is completed, the engineer shall make a prompt inspection of each item of work included in the permit as it relates to the condition of the highway.

*a.* If the engineer finds that the work is not in compliance with the permit, the engineer shall provide to the utility facility owner written notice of the particular defects found. The owner is responsible for remedying these defects in a timely manner.

*b.* If the engineer finds that the work is in compliance with the permit, the engineer shall so notify the utility facility owner.

**115.13(9)** *Procedures for backfilling trenched construction and jacking or boring pits.*

*a.* When a carrier, pipe, conduit, duct or cable is placed by trenched construction beneath a roadway or driveway or within five feet of the edge of an existing or proposed pavement or base course, the backfill within the roadway shall be placed and compacted in no more

than six-inch lifts, from the top of the installation to the ground line. The backfill shall be of suitable material free from boulders, frozen clods, and roots, excessive sod and other vegetation. The fill shall be carefully hand-tamped under and around the installation in lifts not to exceed four inches in loose thickness.

*b.* Jacking or boring pits shall be backfilled in the same manner as that described in paragraph *"a."*

*c.* When compaction is required in an area inaccessible to tamping-type rollers, a mechanical tamper of a size suitable for the work involved shall be used.

*d.* Pneumatic tampers shall be operated at pressures no less than those recommended by the manufacturer.

*e.* Compaction of backfill shall be to the satisfaction of the engineer and consistent with good highway construction methods.

**115.13(10)** *Procedures for untrenched construction.*

*a.* When untrenched construction techniques are used, the bore shall be as small as possible and in no case more than four inches larger than the facility or casing inserted.

*b.* Grout backfill is required for all unused holes and abandoned pipes. Grout or sand backfill is required for any borehole more than two inches larger than the installed casing or other facility. All bored facilities shall be constructed in such a manner that surface water will not be transported to or otherwise allowed access to groundwater.

**115.13(11)** *Procedures for pavement removal.*

*a.* When the existing pavement must be cut to accommodate a utility installation, the cut shall be made with a concrete saw to a minimum depth of one and one-half inches.

*b.* The width of the cut shall be determined by the width of the required trench plus 12 inches on each side of the trench. If the distance from the recommended width of cut to any adjacent longitudinal or transverse joint or crack is less than four feet, the pavement shall be removed to that joint or crack.

*c.* Final determination of depth and width of cut shall be made by the engineer.

**115.13(12)** *Procedures for pavement replacement.*

*a.* Restoration of pavement shall be accomplished in accordance with department's specifications.

*b.* Temporary repair with bituminous material may be authorized by the engineer.

*c.* A permanent patch shall be placed as soon as conditions will permit.

**761—115.14(306A) Maintenance responsibilities and procedures.** The requirements for utility maintenance work within the primary highway right-of-way are as follows:

**115.14(1)** *General.* The owner of the utility facility is responsible for its maintenance. The owner shall:

*a.* Maintain the facility in a good state of repair in accordance with applicable federal, state and local laws and regulatory standards.

*b.* Replace and stabilize all earth cover and vegetation where it has eroded over an underground utility facility when the erosion is due to or caused by the placement or existence of the facility.

**115.14(2)** *Freeways—notice required.*

*a.* For freeways, the owner of the utility facility shall give the department's resident maintenance engineer 48 hours' prior notice of its intent to perform predictable routine maintenance within the right-of-way. Telephone notification is sufficient notice.

*b.* Access to the utility facility shall be obtained from other than the freeway or its ramps.

*c.* See subrule 115.14(4) for emergency maintenance activities.

**115.14(3)** *Nonfreeway highways—notice required.*

*a.* For nonfreeway highways, the owner of the utility facility shall give the department's resident maintenance engineer 48 hours' prior notice of its intent to perform predictable routine maintenance within the right-of-way. Telephone notification is sufficient notice.

*b.* Notice is not required to perform predictable routine maintenance on service connections.

*c.* See subrule 115.14(4) for emergency maintenance activities.

**115.14(4)** *Utility emergency maintenance activities.*

*a.* Access to the site is permissible from the freeway roadways and ramps when an emergency exists.

*b.* The utility facility owner shall take all necessary and reasonable safety measures to protect the traveling public and cooperate fully with the state highway patrol and the department in completing the emergency maintenance activities.

*c.* If the nature of the emergency is such that it interferes with the free movement of traffic, the state highway patrol and the department shall be notified immediately.

*d.* The utility facility owner shall as soon as possible notify the department of the emergency, advising the department of what steps are being taken for the protection of the traveling public, the extent of the emergency, and what steps are being taken to address the emergency.

**115.14(5)** *Department emergency maintenance activities.* There will be times when department forces will be required to perform highway-related emergency maintenance activities. Examples would be stop sign replacement and handling hazardous material spills. If utility facilities are affected, the department shall as soon as possible notify the utility facility owner of the emergency condition and what steps are necessary to protect the utility facility.

**761—115.15** to **115.19** Reserved.

**761—115.20(306A) General requirements for transverse utility facility occupancy.**

**115.20(1)** *Number of crossings.* The number of utility facilities crossing the primary highway right-of-way shall be kept to a minimum. The department may require distribution facilities to be installed on each side of the highway to minimize numerous crossings and service connections. In individual cases, the department may require several facilities to cross in a single conduit or structure. Crossings should be perpendicular to the highway alignment.

**115.20(2)** *Underground installations.*

*a.* For both cased and uncased installations, consideration shall be given to placing spare conduit or duct to accommodate known or planned expansion of underground lines crossing the highway.

*b.* Underground installations shall be located and encased as provided in rules 115.27(306A) to 115.34(306A).

**761—115.21(306A) Transverse utility facility occupancy of freeways.** The requirements for utility facilities crossing the right-of-way of freeways are as follows:

**115.21(1)** *General.* The following applies to both underground and overhead installations:

*a.* Utility facility installations are not permitted within the interchange area of intersecting freeways unless they are highway related.

*b.* In other interchange areas, occupancy may be considered if access to the utility facility can be obtained from other than the freeway or its ramps. If a utility facility cannot reasonably be accessed from an intersecting, adjacent or nearby public highway, street, road or trail, it shall be installed on private property around the interchange area to a point of crossing.

**115.21(2)** *Overhead installations.* Overhead installations shall comply with the following:

*a.* In general, poles, guys and other supporting structures and related ground-mounted facilities shall be located outside the freeway right-of-way. A single span shall be used to cross the the freeway where the width of freeway right-of-way permits.

*b.* In interchange areas:

(1) Single pole construction shall be used with the number of poles kept to a minimum.

(2) Overhead lines shall be constructed on tangent, parallel to the intersecting road, without guys or anchors being placed in the areas between the ramps and main roadways of the free-

way. Guy poles shall be located as near to the freeway right-of-way line as possible.

(3) Poles shall be located as close to the toe of foreslope of the intersecting road as possible, but shall remain outside the clear zone.

(4) Poles shall be located as far from the main roadways and ramps of the freeway as possible. No poles are permitted within the median, or within the clear zone along the ramp pavement and the freeway pavement.

(5) Self-supporting poles or towers, double arming and insulators, and dead-end construction should be considered.

**761—115.22(306A) Transverse utility facility occupancy of nonfreeway highways.** The requirements for utility facilities crossing the right-of-way of nonfreeway highways are as follows:

**115.22(1)** *Underground installations.* Underground installations shall comply with the following:

*a.* Waterlines two inches or less in inside diameter shall be copper, ABS plastic ASTM 1527 or equivalent, or PVC pipe ASTM 1785 or equivalent.

*b.* Reserved.

**115.22(2)** *Overhead installations.* Overhead installations shall comply with the following:

*a.* In rural areas with rural-type roadways, poles, guys and other supporting structures and related ground-mounted facilities shall be located as near to the right-of-way line as possible.

(1) These aboveground obstructions shall be located in an area beyond the clear zone or the roadway foreslope, whichever locates the obstruction a greater distance from the edge of the traveled way, right-of-way width permitting.

(2) Self-supporting poles or towers, double arming and insulators, and dead-end construction should be considered.

*b.* In suburban areas with rural-type roadways and speed limits of 45 miles per hour or lower, utility poles shall be located at least 15 feet from the edge of the paved traveled way or beyond the roadway foreslope, whichever is greater, with the preferred location being near the right-of-way line.

*c.* On urban-type roadways, utility poles shall be placed at the right-of-way line, but no closer than 10 feet from the back of the curb. Exceptions to this requirement shall be considered on an individual basis. In general, ground anchors or stub poles shall not be placed between a pole and the pavement.

*d.* Poles, guys, anchors and other appurtenances shall not be located in ditches, at drainage structure openings or on roadway shoulders. All poles, guys, anchors and other appurtenances shall be located to minimize interference with the maintenance operations of the department.

*e.* The engineer may approve the adjustment of minimum setback distances for poles and other appurtenances if they meet minimum AASHTO breakaway criteria.

**761—115.23(306A) General requirements for longitudinal utility facility occupancy.**

**115.23(1)** *Uniform alignment.* Longitudinal utility facility installations should be located on uniform alignment as near as practicable to the right-of-way line so as to provide a safe environment for traffic operations and to preserve space for future highway improvements and other utility installations.

**115.23(2)** Reserved.

**761—115.24(306A) Longitudinal utility facility occupancy of freeways.** The requirements for longitudinal utility facility occupancy of the right-of-way of freeways are as follows:

**115.24(1)** *Type of installation permitted.* Underground utility facilities installed in compliance with this rule are permissible. Except as provided in this rule, no aboveground installations other than those needed to serve highway facilities are permitted.

**115.24(2)** *General prohibitions.*

*a.* The facility shall not adversely affect the safety, design, construction, operation, maintenance or stability of the present use or future expansion of the freeway.

*b.* The facility shall not be used for transmitting gases or liquids or for transmitting products that are flammable, corrosive, expansive, highly energized or unstable.

*c.* The facility shall not present a hazard to life, health or property if it fails to function properly, is severed or is otherwise damaged.

*d.* No direct service connection to adjacent properties is permitted.

*e.* No utility facility is permitted in or on a structure carrying a freeway roadway or ramp, except as provided in subrule 115.24(18).

**115.24(3)** *Minimal maintenance.* Once installed, the facility shall require minimal maintenance.

**115.24(4)** *Location and depth.* The facility shall be located on uniform alignment, preferably within eight feet of the freeway right-of-way line, and at a location approved by the department. The facility shall be installed at a minimum depth of 36 inches.

*a.* The department reserves the right to waive the minimum depth of installation where rocky terrain makes it difficult to obtain the desired depth. The department shall determine the minimum depth in these situations; however, no installation shall be authorized with less than 24 inches of cover.

*b.* Except for multiduct systems and isolated locations as determined by the department, cable shall be installed by the plowing method only. Borings, as necessitated at public road intersections, stream crossings and railroad crossings, shall be in compliance with rule 115.33(306A).

*c.* Utility access holes and splice boxes may be placed below the existing ground line. The location and number of installations are subject to department approval.

**115.24(5)** *Access to facility.* Access to the facility shall be obtained from other than the freeway or its ramps. See subrule 115.6(1).

**115.24(6)** *Clear zone.* See rule 115.7(306A).

**115.24(7)** *Aboveground installations.*

*a.* Identification signs shall be placed by the utility facility owner within 12 inches of the right-of-way fence, at the line of sight, along the entire occupancy route. These signs shall identify the owner/operator's name, telephone number to contact in case of an emergency, and type of buried utility.

(1) The signs shall be composed of an ultraviolet-resistant material.

(2) The signs shall be no larger than 200 square inches each.

(3) The interval between signs shall be no more than one-quarter mile in rural areas and 500 feet in urban areas.

(4) Additional signs shall be placed on each side of public roads and streets intersecting or crossing the freeway at points where the freeway right-of-way line intersects the public road or street right-of-way line.

(5) The utility facility owner is responsible for the installation and maintenance of the signs.

*b.* Pedestals may be placed within six inches of the right-of-way fence. The number of installations is subject to department approval.

*c.* Repeater stations shall be placed outside the right-of-way line.

**115.24(8)** *Metallic warning tape.* Metallic warning tape shall be installed a minimum of 12 inches below the existing grade and above the utility installation to facilitate future locating.

**115.24(9)** *Engineering.* The utility facility owner shall retain the services of a qualified engineering firm.

*a.* The firm is responsible for overseeing continuous on-site inspection of the installation of the facility including all provisions pertaining to access to the work site and traffic control.

*b.* Upon completion of the project, a registered engineer of the engineering firm shall certify to the department on the appropriate forms that the installation, traffic control, and access

to the work site were accomplished in accordance with the permit.

*c.* Any changes in the original alignment as approved by the department shall require prior approval of the department and the submission of as-built plans.

**115.24(10)** *Traffic control.* See rule 115.11(306A).

**115.24(11)** *Multiduct system.* The department reserves the right to require facilities to be installed within a multiduct system to be shared with others. A multiduct system consists of two or more ducts as determined by the department. Details of the installation are subject to department approval.

*a.* A multiduct system is required for all occupancies located in the following areas:

| ROUTE | LOCATION |
|---|---|
| I-29 | I-80 to 16th Avenue in Council Bluffs |
| I-29 | Big Sioux River to Sergeant Bluff/Airport Interchange in Sioux City |
| I-80 | Missouri River to Madison Avenue in Council Bluffs |
| I-35/80 | W. Jct. of I-235 to E. Jct. of I-235 |
| I-235 | Entire Route in and near Des Moines |
| I-80 | I-280 Interchange to Mississippi River Bridge in Scott County |
| I-80 | Iowa 965 to Iowa 1 in Iowa City |
| I-74 | Entire Route in Scott County |
| I-280 | Entire Route in Scott County |
| I-380 | Gilbertville Interchange Westerly to End of Route |
| I-380 | U.S. 30 to Boysen Road in Cedar Rapids |
| U.S. 30 | Fairfax Road to "C" Street in Cedar Rapids |
| U.S. 20 | Iowa 58 to I-380 in Waterloo/Cedar Falls Area |
| U.S. 20 | I-29 to Iowa 12 Interchange in Sioux City |
| U.S. 61 | Locust Street Connection to City Island Bridge in Dubuque |
| U.S. 218 | 11th Street to Airport Interchange in Waterloo |

*b.* The department may designate the first utility facility owner requesting occupancy as the "lead company." The lead company is responsible for:

(1) Design and construction of the multiduct system.

(2) Maintenance of the multiduct system.

(3) Providing all capital required to construct the multiduct system.

*c.* Once a multiduct system has been established, the department shall require future longitudinal facility occupancies to be located within one of the unoccupied inner ducts of the system. If all inner ducts are occupied, the department may require the establishment of an additional multiduct system.

*d.* Each occupant of a multiduct system shall share equally in the entire capital costs of the facility. As each new occupant is added to an existing system, the new occupant shall be required to pay its proportionate share based on the number of inner ducts it occupies.

**115.24(12)** *Occupancy fees.* The utility facility owner shall pay to the department an annual fee for longitudinal occupancy of the right-of-way. The initial fee is due before any construction work commences within the right-of-way.

*a.* Unless otherwise specified, the annual fee shall be as follows:

(1) Urban areas (those locations listed in 115.24(11)*"a"*): Flat fee of $9,000 per cable installation, or $4,500 per cable mile of occupancy, whichever is greater.

(2) Rural areas (all other locations): Flat fee of $7,500 per cable installation, or $1,500 per cable mile of occupancy, whichever is greater.

*b.* When the department requires the installation of a multiduct system, the department reserves the right to negotiate an agreement with the lead company for a discounted fee payment schedule until the lead company has recovered all or an agreed upon portion of the cost of placing the system. Subsequent occupants of the multiduct system shall be required to pay

the full annual fee as established in paragraph *"a."*

*c.* The department reserves the right to negotiate an annual fee for an occupancy dedicated solely to state governmental use. If a multiduct system has been established and at least one inner duct is unoccupied, the department shall require the facility to be installed within the multiduct system.

*d.* Every fifth year from the effective date of this subrule (May 6, 1992), the department shall review the established fees for possible adjustment. Any change in the fee structure shall be noted in all existing permits when the next annual fee is payable.

**115.24(13)** *Performance bond.* The utility facility owner shall file a performance bond with the department prior to commencing work within the freeway right-of-way.

*a.* The bond shall be in the amount of $100,000 per permit and shall guarantee prompt restoration of any damage caused during the installation of the utility facility.

*b.* Upon completion of the project, certification as required in subrule 115.24(9), and acceptance of the project by the department, the performance bond shall be released.

**115.24(14)** *Insurance.*

*a.* The utility facility owner shall maintain the following insurance for bodily injury, death and property damage arising out of or in connection with the construction, maintenance and operation of the facility:

(1) General public liability insurance with limits of not less than $500,000 for injury or death of a single person, or not less than $1,000,000 for any one accident, and not less than $250,000 per accident for property damage.

(2) Comprehensive automobile liability insurance with limits of not less than $500,000 for injury or death of a single person, or not less than $1,000,000 for any one accident, and not less than $250,000 per accident for property damage.

(3) Excess liability coverage with limits of not less than $5,000,000.

(4) Statutory workers' compensation coverage.

*b.* This insurance shall be in effect prior to commencing any work within the freeway right-of-way.

*c.* Coverage may be provided by blanket policies of insurance covering other property or risks.

*d.* The department shall be named as an additional insured in the general public liability and excess liability insurance policies.

**115.24(15)** *Future relocation.*

*a.* The utility facility owner shall agree to waive all future rights to be reimbursed for relocation costs incurred should maintenance or construction of the freeway system require relocation of the utility facility.

*b.* Should relocation of the utility facility be required, the department makes no assurance nor assumes any liability to the utility facility owner that the facility will again be allowed to occupy the freeway right-of-way.

**115.24(16)** *Liability.* The utility facility owner shall agree to the liability statements found in subrule 115.9(2).

**115.24(17)** *Permit.*

*a.* The utility facility owner shall not commence work within the right-of-way until it receives the approved permit from the department.

*b.* The term of the permit shall not exceed 20 years. Upon expiration, it may be extended in writing or renegotiated.

**115.24(18)** *Utility attachments to border bridges.* Occupancy may be permitted for utility attachments to existing or planned border bridges when the adjoining state's highway agency requests the department to approve the request. The department's approval is subject to the following:

*a.* The facility shall not be used for transmitting gases or liquids or for transmitting products that are flammable, corrosive, expansive or highly energized or unstable.

*b.* The facility shall not present a hazard to life, health or property if it fails to function properly, is severed or is otherwise damaged.

*c.* Except for communication cable, the facility shall exit the freeway right-of-way as soon as physically possible after crossing the state line into Iowa.

*d.* Occupancy is subject to receipt of the attachment and engineering fees specified in rule 115.40(306A) and the occupancy fee specified in subrule 115.24(12).

*e.* All other applicable provisions of this chapter shall be adhered to.

**115.24(19)** *Existing facilities.*

*a.* A utility facility occupying land that subsequently becomes freeway right-of-way may remain within the right-of-way if the facility:

(1) Can be accessed from other than the freeway or its ramps.

(2) Does not adversely affect the safety, design, construction operation, maintenance or stability of the freeway.

*b.* If these conditions are not met, the facility shall be relocated.

**115.24(20)** *Utilities for highway facilities.* Longitudinal occupancy of utility facilities that service highway-related facilities are permissible upon such terms and conditions as the department may determine.

**761—115.25(306A) Longitudinal occupancy of nonfreeway highways.** The requirements for longitudinal utility facility occupancy of the right-of-way of nonfreeway highways are as follows:

**115.25(1)** *Underground installations.* Underground installations shall comply with the following:

*a.* With the exception of natural gas lines with an operating pressure of 150 pounds per square inch or less, no carriers of transmittants that are flammable, corrosive, expansive or unstable shall be placed longitudinally within the right-of-way.

*b.* On rural-type roadways, utility facilities shall be located in an area byeond the roadway foreslope, right-of-way width permitting, except at locations where this is not acceptable, such as deep ravines or ditches. A determination as to what is acceptable in these situations shall be made by the engineer.

*c.* On urban-type roadways, utility facilities shall be located as near to the highway right-of-way line as possible and preferably not within the traveled way. Utility access holes placed within the right-of-way shall not protrude above the surrounding surface.

*d.* In general, utility facilities are not permitted in the median. However, in special cases an exception may be approved by the engineer.

**115.25(2)** *Overhead installations.* Overhead installations shall comply with the following:

*a.* In rural areas with rural-type roadways, poles, guys and other supporting structures and related ground-mounted facilities shall be located as near to the right-of-way line as possible.

(1) These aboveground obstructions shall be located in an area beyond the clear zone or the roadway foreslope, whichever locates the obstruction a greater distance from the edge of the traveled way, right-of-way width permitting.

(2) In individual cases, the department reserves the right to require self-supporting poles or towers, double arming and insulators, breakaway devices and dead-end construction to be used.

*b.* In suburban areas with rural-type roadways and speed limits of 45 miles per hour or lower, utility poles shall be located at least 15 feet from the edge of the paved traveled way or beyond the roadway foreslope, whichever is greater, with the preferred location being near the right-of-way line.

*c.* On urban-type roadways, utility poles shall be placed at the right-of-way line, but no closer than 10 feet from the edge of traveled way. Exceptions to this requirement shall be considered on an individual basis. In general, ground anchors or stub poles shall not be placed between a pole and the pavement.

*d.* Poles, guys, anchors and other appurtenances shall not be located in ditches, at drainage structure openings or on roadway shoulders. All poles, guys, anchors and other appurtenances shall be located to minimize interference with the maintenance operations of the department.

*e.* The engineer may approve the adjustment of minimum setback distances for poles and other appurtenances if they meet minimum AASHTO breakaway criteria.

**761—115.26(306A) Vertical overhead clearance requirements.**

**115.26(1)** The vertical clearance for overhead utility facilities and the lateral and vertical clearances from bridges shall conform with generally accepted industry standards, except where greater clearances are required by state statute or rule.

**115.26(2)** However, in no event shall the minimum vertical clearance be less than:

*a.* 18 feet above the roadway for service connections.

*b.* 20 feet above the roadway for other overhead utility facilities.

**761—115.27(306A) Underground depth requirements.**

**115.27(1)** *Measurement of cover.* The cover is measured from:

*a.* The ultimate pavement surface edge except that on a curve, it is measured from the lowest pavement surface edge.

*b.* The gutter flow line, excluding local depressions at inlets, where there are curbs and gutters.

*c.* The top of the curb, where installation is to be behind the curb.

*d.* The surface of the surrounding ground or the low point in the ditch.

**115.27(2)** *Minimum cover—roadway.* The minimum cover under a roadway shall be 48 inches or such greater depth as may be required to clear the pavement structure.

**115.27(3)** *Minimum cover—other portions of right-of-way.*

*a.* The minimum cover in other portions of the right-of-way shall be:

(1) 48 inches for electrical cables.

(2) 30 inches for communication cables except as noted in subrule 115.24(4) for longitudinal occupancy of freeway right-of-way.

(3) 36 inches for all other underground facilities.

*b.* In critical situations where the necessary cover cannot be obtained, other protective measures may be approved.

*c.* The department reserves the right to waive the minimum depth of installation where rocky terrain makes it difficult to obtain the desired depth. The department shall determine the minimum depth in these situations; however, no installation shall be authorized with less than 24 inches of cover.

**761—115.28(306A) Location of appurtenances.**

**115.28(1)** *Freeways.* Unless otherwise provided, all aboveground appurtenances shall be located outside the right-of-way of freeways.

**115.28(2)** *Nonfreeway highways—rural-type.* For rural-type nonfreeway highways, all appurtenances shall generally be located at or as near as possible to the right-of-way line.

**115.28(3)** *Nonfreeway highways—urban-type.* For urban-type nonfreeway highways, all appurtenances should generally be located outside the pavement as near to the right-of-way line as possible. Utility access holes for existing facilities may be incorporated into the pavement when it is not practicable to relocate the existing utility facility.

**761—115.29** Reserved.

**761—115.30(306A) General requirements for encasement of underground utility facilities.**

**115.30(1)** *Casing.* A casing is an oversize load-bearing pipe, conduit, duct, utility tunnel or structure through which a carrier or cable is inserted. A casing shall:

*a.* Protect the roadway from damage and provide for repair, removal and replacement of the utility facility without interference to highway traffic.

*b.* Protect the carrier pipe from external loads or shock, either during or after construction of the highway.

*c.* Convey leaking liquids or gases away from the area directly beneath the traveled way to a point of venting at or near the right-of-way line.

**115.30(2)** *Appurtenances.* The casing shall include necessary appurtenances, such as vents, drains and markers.

**115.30(3)** *Seals.* Casing pipe shall be sealed at both ends with a suitable material to prevent water or debris from entering the annular space between the casing and the carrier, in accordance with generally accepted industry standards.

**115.30(4)** *Transverse occupancy.* See rules 115.31(306A) and 115.32(306A).

**115.30(5)** *Longitudinal occupancy.* Utility lines installed longitudinally to the primary highway right-of-way shall be encased at certain locations. Such locations include, but are not limited to, crossings of hard surfaced sideroads, streets and entrances.

**761—115.31(306A) Encasement requirements for transverse occupancy of freeways.** Underground utility facilities crossing freeway right-of-way shall be encased through the entire right-of-way limits. However, a pipeline carrying high pressure natural gas, liquid petroleum products, ammonia, chlorine or other hazardous or corrosive products need not be encased as long as the installation meets the requirements of paragraph 115.32(2)*"a."*

**761—115.32(306A) Encasement requirements for transverse occupancy of nonfreeway highways.** The requirements for encasement of underground utility facilities crossing the right-of-way of nonfreeway highways are as follows:

**115.32(1)** *Electrical service.* Underground electric service must be placed in conduit or duct from right-of-way line to right-of-way line and shall be clearly marked by the owner at the outer limits of the right-of-way.

**115.32(2)** *Pipelines.*

*a.* A pipeline carrying natural gas at an operating pressure of greater than 60 pounds per square inch, liquid petroleum products, ammonia, chlorine or other hazardous or corrosive products shall be encased unless the pipeline meets the following requirements:

(1) It is a welded steel pipeline.

(2) It is cathodically protected.

(3) It is coated in accordance with accepted industry standards.

(4) It complies with federal and state requirements and meets accepted industry standards regarding wall thickness and operating stress levels.

(5) It is marked at the outer right-of-way limits in accordance with paragraph *"b"* of this subrule.

(6) The utility facility owner certifies, as a part of the permit, that the requirements of subparagraphs (1) to (5) will be met.

*b.* A pipeline carrying a product identified in paragraph *"a"* of this subrule:

(1) Shall be marked at the outer right-of-way limits. The markers shall give the name and address of the owner, phone number to contact in case of an emergency, and the type of product carried.

(2) Shall, if it does not qualify for a waiver of encasement requirements, be encased in a plastic casing from right-of-way line to right-of-way line and be vented at the outer right-of-way limits.

*c.* Encasement of a natural gas pipeline with an operating pressure of 60 pounds per square inch or less, of copper, steel or plastic, is not required if:

(1) The pipeline is protected and installed in accordance with accepted industry standards.

(2) The utility facility owner certifies, as a part of the permit, that such standards will be met.

**115.32(3)** *Communication cables.* Communication cables shall be encased from toe of foreslope to toe of foreslope. Exception: Direct buried lines need not be encased.

**115.32(4)** *Sanitary sewer lines.* Sanitary sewer lines shall be encased from right-of-way line to right-of-way line. Exceptions:

*a.* Properly embedded gravity flow lines that are installed prior to highway construction need not be encased if:

(1) Heavy duty cast iron or ductile iron pipe is used within the highway construction limits.

(2) Suitable mechanical joints and seals are used.

*b.* Gravity flow lines that are installed subsequent to highway construction need not be encased if:

(1) The opening is cut immediately ahead of the pipe installation, and the opening is cut to the size of the carrier pipe so that there are no excessive voids around the carrier pipe once installed. The cut of the opening and the jacking of the pipe must be completed in one operation.

(2) The pipe is of sufficient strength to withstand the external loads created by the vehicular traffic on the roadway being traversed.

**115.32(5)** *Water lines.*

*a.* Water lines shall be encased, as a minimum, from toe of foreslope to toe of foreslope. Venting and sealing of the encasement is not required.

*b.* Water lines with an inside diameter of more than two inches shall be encased from right-of-way line to right-of-way line.

*c.* Exception: Properly embedded water lines that are installed prior to highway construction need not be encased if extra strength cast iron or ductile iron pipe with mechanical joints and seals is used from right-of-way line to right-of-way line.

**115.32(6)** *Installations vulnerable to damage.* Utility facilities which by reason of shallow depth or location are vulnerable to damage from highway construction or maintenance operations shall be protected with a casing, suitable bridging, concrete slabs or other appropriate measures.

**115.32(7)** *Other installations.* Where it is acceptable to both the utility facility owner and the department, an underground utility facility not otherwise addressed in this rule may be installed without protective casing if the installation involves trenched construction or small bores. These shall be determined on an individual basis.

**761—115.33(306A) Boring requirements.**

**115.33(1)** *Clear zone for pits.*

*a.* On freeways, boring pits are not permitted within the median. Also, they shall be located in an area beyond the clear zone or the roadway foreslope, whichever locates the pits a greater distance from the edge of the traveled way, right-of-way width permitting.

*b.* On rural-type, nonfreeway highways, boring pits are not permitted within the median. Also, they shall normally be located in an area beyond the clear zone or the roadway foreslope, whichever locates the pits a greater distance from the edge of the traveled way, right-of-way width permitting. However, a boring pit may be allowed within the foreslope if it is specifically authorized by the engineer and noted in the permit.

*c.* On urban-type, nonfreeway highways, boring pits shall generally be located at least two feet back from the curb.

*d.* Boring pits authorized within the clear zone shall not remain open during nighttime hours.

**115.33(2)** *Construction methods.* Casing and pipeline installations shall be accomplished by dry boring, tunneling, jacking, trenching or other approved methods.

*a.* The use of water under pressure (jetting) or puddling to facilitate boring, pushing or jacking operations is not permitted.

*b.* However, a boring that requires the use of water only to lubricate the cutter and pipe is considered dry boring and is permitted.

**761—115.34(306A) Encasement material.** It is the responsibility of the owner of the utility facility to ensure that it complies with all applicable local, state, federal and franchise requirements and meets generally accepted industry standards in the selection of encasement materials. The following materials are acceptable for use in encasing utility facilities:

**115.34(1)** *Welded steel pipe.* Welded steel pipe, smooth wall, that is in sound condition. Welded steel pipe shall have the following minimum wall thickness:

| Casing Diameter (inches) | Minimum Wall Thickness (inches) |
|---|---|
| Under 6 | Standard wall pipe or .188 wall pipe |
| 6, 8, 10, 12, 14, 16 | .188-3/16 |
| 18, 20, 22 | .250-1/4 |
| 24, 26 | .281-9/32 |
| 28, 30, 32, 34 | .312-5/16 |
| 36, 38, 40, 48 | .344-11/32 |

**115.34(2)** *Cast iron or ductile iron pipe.* Cast iron pipe or ductile iron pipe of the same class as used for carrier pipe.

**115.34(3)** *PVC or CPVC pipe.* Polyvinyl chloride (PVC) or chlorinated polyvinyl chloride (CPVC) pipe. PVC sewer pipe, types PSP and PSM, shall have the following minimum wall thickness:

| Casing Diameter (inches) | Minimum Wall Thickness (inches) | |
|---|---|---|
| | PSP | PSM |
| 4 | .120 | .120 |
| 6 | .253 | .153 |
| 8 | .199 | .205 |
| 9 | .230 | .230 |
| 10 | .249 | .256 |
| 12 (maximum acceptable) | .299 | .305 |

**115.34(4)** *PE pipe.* Polyethylene (PE) pipe. PE pipe shall have the following minimum wall thickness:

| Casing Diameter (inches) | Minimum Wall Thickness (inches) |
|---|---|
| 3 | 0.318 |
| 4 | 0.409 |
| 6 | 0.602 |
| 8 | 0.785 |
| 10 | 0.978 |
| 12 (maximum acceptable) | 1.160 |

**115.34(5)** *Reinforced concrete pipe.* Reinforced concrete pipe meeting the requirements of the department's standard road plans at the time of installation.

*a.* Material used with a diameter of less than 18 inches shall use the fill height table for 18-inch diameter pipe.

*b.* If bell-jointed material is used, the bell shall not exceed the outside diameter pipe by:

(1) One and one-half inches on pipes with an inside diameter of 12 inches or less.

(2) Two inches on pipes with an inside diameter of more than 12 inches.

*c.* In lieu of bell-jointed material, banded material may be used.

*d.* Material used for encasement of liquid or gas transmission lines shall have joints sealed with all-weather butyl rope-type sealer.

**115.34(6)** *Electric conduit.* Nonmetallic materials such as polyvinyl chloride, transite or vitrified clay for electric conduit.

**761—115.35** to **115.39** Reserved.

**761—115.40(306A) Utility facility attachments to bridges.**

**115.40(1)** *Electrical power and communication cable attachments.* The requirements for attaching electrical power and communication cable to primary highway structures are as follows:

*a.* Electrical power and communication cable may be attached to existing structures if it is determined by the department to be in the best interest of the public. New structures may be designed to accommodate electrical power and communication cable if the attachment is determined by the department to be in the best interest of the public.

*b.* Proposals for placing any electrical power or communication cable on or near bridges, whether existing or planned, or whether on rural or urban roadways, must be approved by the department. The application shall include a detailed sketch showing the method of attachment and weights of attachment. A separate permit is required for each bridge.

*c.* All attachments shall be in conduits, pipes or trays, shall be located beneath the structure's floor, shall be located above low steel or masonry of the structure and shall not be attached to the structural steel.

*d.* Expansion devices are required. Cables in cells or casings shall be grounded wherever necessary. Carrier pipe shall be suitably insulated from electrical power line attachments.

*e.* All costs attributable to the installation of an attachment to a new structure shall be paid by the utility facility owner unless the attachment is installed as a part of or in lieu of utility relocation costs.

*f.* For an attachment to an existing structure:

(1) Welding or drilling holes in or attaching to structural steel primary members is prohibited.

(2) Utility facilities may be attached to noncritical concrete areas.

(3) Holes shall generally not be cut in wing walls, abutments or piers.

**115.40(2)** *Pipeline attachments.* The requirements for attaching pipelines to primary highway structures are as follows:

*a.* Pipelines may be attached to bridge structures when installation below ground is not feasible, the design of the bridge will accommodate the attachment, and space is available.

*b.* The method of attachment and replacement of the pipeline must be approved by the department. A separate permit is required for each bridge.

*c.* Pipelines shall be attached in a neat manner. Pipes shall be placed beneath the structure's floor, inside the outer girders or beams (or in cells specifically designed for the installation), and above low steel or masonry of the structure.

*d.* Pipes shall be designed to withstand expected expansion or contraction forces. If necessary, expansion devices such as expansion joints, offsets or loops shall be used.

*e.* Pipelines in cells or casings shall be vented and grounded whenever necessary.

*f.* Pipelines that have an operating pressure of more than 75 pounds per square inch or that are larger than two inches in diameter shall have shutoffs not more than 300 feet from each end of the bridge.

*g.* Casing requirements shall be judged on an individual basis. In some instances, thicker-walled or extra strength pipe may be considered in lieu of encasement.

*h.* All costs attributable to the installation of an attachment to a new structure shall be paid by the utility facility owner unless the attachment is installed as a part of or in lieu of utility relocation costs.

*i.* For an attachment to an existing structure:

(1) Welding or drilling holes in or attaching to structural steel primary members is prohibited.

(2) Utility facilities may be attached to noncritical concrete areas.

(3) Holes shall generally not be cut in wing walls, abutments or piers.

*j.* The owner of the utility facility shall provide an indemnity bond to be executed by either itself or by a responsible bonding company, at the department's option.

(1) The indemnitor under the bond shall, in the event of damage resulting from any cause whatsoever arising out of or from permission to attach a pipeline, indemnify the department against all loss or damage to it or any third party therefrom, including but not limited to the expense of repairing or replacing the bridge and the cost of alternate highway facilities for traffic during the period of such bridge repair or replacement.

(2) The indemnity bond shall be kept in full force and effect for as long as the pipeline is attached to the highway bridge. The amount of the bond may be reviewed by the department, and adjustments may be required as deemed necessary.

**115.40(3)** *Attachment fee.*

*a.* The fee for attaching electrical power or communication cable to a bridge is $50 per bridge plus:

$0.30 × weight of attachment in pounds per foot × length of bridge in feet.

*b.* The fee for attaching a pipeline to a bridge is $50 per bridge plus:

2-inch pipeline: $1.50 per foot × length of bridge in feet
3-inch pipeline: $3.00 per foot × length of bridge in feet
4-inch pipeline: $4.50 per foot × length of bridge in feet
5-inch pipeline: $6.25 per foot × length of bridge in feet
6-inch pipeline: $8.50 per foot × length of bridge in feet
7-inch pipeline: $10.75 per foot × length of bridge in feet
8-inch pipeline: $13.00 per foot × length of bridge in feet
Other sizes: $0.30 × weight of attachment in pounds per foot × length of bridge in feet.

*c.* The attachment fee is due in advance of the utility facility owner's commencement of any construction work within the right-of-way.

*d.* Water mains, sewer lines and steam lines belonging to or serving a municipality may, if the department considers it desirable, be attached to a primary highway bridge structure without an attachment fee being assessed.

**115.40(4)** *Engineering fee.* An engineering fee for the department's increased costs of design, construction and inspection is required for a utility facility owner's proposal to attach a facility to a structure that is in the planning stages. This fee shall be billed to the owner when the department's work is completed.

These rules are intended to implement Iowa Code chapters 306A and 320 and section 314.20 and Iowa Code Supplement section 319.14.

[Filed 10/2/85, Notice 8/14/85—published 10/23/85, effective 11/27/85]
[Filed 5/11/87, Notice 3/11/87—published 6/3/87, effective 7/8/87]
[Filed 11/29/89, Notice 10/18/89—published 12/27/89, effective 1/31/90]
[Filed 3/11/92, Notice 2/5/92—published 4/1/92, effective 5/6/92]

# CHAPTER 116
# JUNKYARD CONTROL

[Prior to 6/3/87, Transportation Department (820)—(06,F)Ch 7]

**761—116.1(306C) Definitions.** The following terms when used in these rules shall have the following meanings:

**116.1(1)** *Abandoned or discontinued junkyards.* An accumulation of junk which would be a junkyard except that it has not been maintained, operated or used as an establishment or place of business for storing, keeping, buying or selling junk for the past twelve months. The owner or operator of a yard that otherwise would be an abandoned or discontinued junkyard may continue to qualify the yard as a junkyard by providing proof of income or loss through a copy of federal, state or local income tax returns or proof of the purchase or acquisition of new junk or sale or disposal of junk as substantiated by receipts, canceled checks, or other acceptable evidence of value exchanged.

**116.1(2)** *Adjacent area.* An area which is contiguous to and within one thousand feet of the nearest edge of the right-of-way of an interstate, freeway primary, or primary highway.

**116.1(3)** *Automobile graveyard.* Any establishment which is maintained, used, or operated for storing, keeping, buying, or selling ten or more wrecked, scrapped, ruined, dismantled or inoperative motor vehicles, but such terms shall not include any location where motor vehicle bodies are placed along stream banks for purposes of bank stabilization and soil erosion control, if such placement conforms with guidelines established by the chief engineer of the department of natural resources.

**116.1(4)** *Industrial activities.* Activities permitted only in industrial zones, or in less restrictive zones by the nearest zoning authority within the state, or prohibited by the authority but generally recognized as industrial by other zoning authorities within the state, except that none of the following shall be considered industrial activities:

*a.* Outdoor advertising structures,

*b.* Agricultural, forestry, ranching, grazing, farming and related activities including, but not limited to, wayside fresh produce stands,

*c.* Activities normally and regularly in operation less than three months of the year,

*d.* Transient or temporary activities,

*e.* Activities not visible from the traffic lanes of the main traveled way,

*f.* Activities more than three hundred feet from the nearest edge of the main traveled way within the corporate limits of cities and towns,

*g.* Activities more than one thousand feet from the nearest edge of the main traveled way outside of the corporate limits of cities and towns,

*h.* Activities conducted in a building principally used as a residence,

*i.* Railroad tracks, minor sidings, and passenger depots,

*j.* Junkyards.

**116.1(5)** *Industrial zone.* A zone established by zoning authorities as being most appropriate for industry or manufacturing. A zone which simply permits certain industrial activities as an incident to the primary land use designation is not considered to be an industrial zone.

**116.1(6)** *Junk, interstate highway, freeway primary, primary highway and department* shall have the same meanings as in Iowa Code chapter 306C.

**116.1(7)** *Junkyard.* An establishment or place of business which is maintained, operated, or used primarily for storing, keeping, buying or selling junk; and the term includes garbage dumps, sanitary landfills, and automobile graveyards subject to the requirements of Iowa Code chapter 306C.

**116.1(8)** *Main traveled way.* The portion of the roadway for movement of vehicles on which through traffic is carried exclusive of shoulders and auxiliary lanes. In the case of a divided highway, the main traveled way includes each of the separated roadways for traffic in opposite directions, exclusive of frontage roads, turning roadways, or parking areas.

**116.1(9)** *Right-of-way.* Land area dedicated to public use for the highway and its maintenance, and includes land acquired in fee simple or by permanent easement for highway purposes, but does not include temporary easements or rights for supplementary highway appurtenances.

**116.1(10)** *Unzoned industrial area.* The land occupied by the regularly used building, parking lot, storage or processing area of an industrial activity, and that land within one thousand feet thereof which is:

*a.* Located on the same side of the highway as the activity, and

*b.* Not predominantly used for residential or commercial purposes, and

*c.* Not zoned by state or local law, regulation or ordinance.

**116.1(11)** *Visible.* Capable of being seen without visual aid by a person of normal visual acuity.

This rule is intended to implement Iowa Code subsection 306C.2(3) and section 306C.8.

**761—116.2(306C) Junkyards prohibited—exceptions.** After July 1, 1972, a person shall not establish, operate, or maintain a junkyard, any portion of which is within the adjacent area and visible from the main traveled way of any interstate, freeway primary or primary highway except:

1. A junkyard which is screened by natural objects, plantings, fences, or other appropriate means.
2. A junkyard which is located within an industrial zone.
3. A junkyard which is located within an unzoned industrial area.
4. A junkyard which is not visible from the main traveled portion of the highway.

This rule is intended to implement Iowa Code section 306C.2.

**761—116.3(306C) Screening or removal.**

**116.3(1)** *Removal of junkyards which subsequently become nonconforming.* Any junkyard, except those junkyards which meet the requirements of rule 116.2(306C), lawfully in existence on July 1, 1972, and any junkyard which was lawfully established, but which subsequently becomes nonconforming through changed conditions, such as a change of zoning, or being located upon land adjacent to any highway or land made an interstate, freeway primary, or primary highway after July 1, 1972, shall be screened, if feasible, or removed by the department.

*a.* Operators of interstate vehicles shall be given an invoice that meets the standards set forth in Iowa Code section 324.17, subsection 3, for each tank fill, and the vehicle operator must then log the mileage; or

*b.* The permit holder shall report total miles driven and total fuel used from the bulk tank, including both interstate and intrastate vehicles.

This rule is intended to implement Iowa Code sections 324.53, 324.55, 324.60, 324.62, and 324.69.

**761—505.6(324) Hearings.**

**505.6(1)** *Conduct of hearings.* Hearings are conducted in accordance with Iowa Code section 324.69.

**505.6(2)** *Circumstances for holding hearings.*

*a.* When there is reasonable cause to believe that there is an evasion of fuel taxes, the department may cause a hearing to be held to determine the amount of fuel taxes due, if any. The person who is suspected of evading fuel taxes shall be sent at least ten days' notice of the hearing. The provisions of Iowa Code section 324.64 and subrule 505.4(13), paragraph *"b,"* shall apply.

*b.* If a permit holder disputes the findings of an investigation or audit by the department, the permit holder may request a hearing to present further evidence, information or records to support the claim. The written request for hearing shall be directed to the attention of the Director, Office of Motor Carrier Services, Iowa Department of Transportation, 5238 N.W. Second Avenue, Des Moines, Iowa 50313, within thirty days of the date of notice of audit results issued by the department.

This rule is intended to implement Iowa Code sections 324.64 and 324.69.

**505.7(324)** Rescinded, effective 3/6/85.

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[Filed 5/11/87, Notice 3/11/87—published 6/3/87, effective 7/8/87]

CHAPTERS 506 to 509
Reserved

# CHAPTER 510*
# DESIGNATED HIGHWAY SYSTEM

[Prior to 6/3/87, Transportation Department(820)—(07,A)Ch1]

**761—510.1(321) Designated system for length and width of vehicles.** The following highways are designated by the transportation commission of the Iowa department of transportation for the movement of vehicles of the lengths and widths specified in rule 510.2(321).

**510.1(1)** *Designated routes.*

| | | |
|---|---|---|
| IA | 1 | IA 2 N. to Iowa City |
| IA | 1 | US 30 N. to US 151 |
| IA | 2 | Nebraska E. to Illinois |
| IA | 3 | South Dakota E. to Luxemburg |
| IA | 4 | Panora N. to US 30 |
| IA | 4 | Churdan N. to Lohrville |
| IA | 4 | E. Jct US 20 N. to Pomeroy |
| IA | 4 | Pocahontas N. to W. Jct US 18 |
| IA | 4 | Wallingford N. to Minnesota |
| IA | 5 | Missouri N. to I-35 |
| US | 6 | Nebraska E. to I-80 in Council Bluffs |
| US | 6 | IA 48 E. to I-80 in Cass Co. |
| US | 6 | Casey E. to W. Jct IA 25 |
| US | 6 | I-80 in Dallas Co. E. to I-80 near Altoona |
| US | 6 | I-80 in Jasper Co. E. to I-80 in Cedar Co. |
| IA | 7 | IA 3 E. to S. Jct US 71 |
| IA | 7 | Near Barnum E. to US 169 |
| IA | 8 | US 63 E. to US 218 |
| IA | 9 | South Dakota E. to Lansing |
| IA | 10 | South Dakota E. to Hawarden |
| IA | 10 | Orange City E. to Sutherland |
| IA | 12 | US 20 N. to Hawarden |
| IA | 13 | US 30 N. to US 52 |
| IA | 13 | Old route through Elkader |
| IA | 14 | Corydon N. to Charles City |
| IA | 15 | W. Jct US 18 N. to Minnesota |
| IA | 16 | US 61 N. to Denmark |
| IA | 16 | US 218 N. to US 34 |
| IA | 17 | IA 141 N. to US 18 |
| US | 18 | South Dakota E. to Wisconsin |

*Not subject to Iowa Code chapter 17A.

| | | |
|---|---|---|
| US | 20 | Nebraska E. to Illinois |
| US | 20 | Old route from Moorland E. to IA 17 |
| US | 20 | Old route from US 63 E. to IA 187 |
| IA | 21 | Delta N. to Waterloo |
| IA | 22 | IA 21 E. to Webster |
| IA | 22 | Wellman E. to Buffalo |
| IA | 23 | Eddyville E. to Ottumwa |
| IA | 24 | New Hampton E. to Calmar |
| IA | 25 | IA 2 N. to IA 92 |
| IA | 25 | W. Jct US 6 N. to W. Jct IA 141 |
| IA | 26 | Lansing N. to New Albin |
| IA | 28 | IA 92 N. to US 6 |
| I | 29 | Missouri N. to South Dakota |
| US | 30 | Nebraska E. to Illinois |
| IA | 31 | Smithland N. to US 59 |
| US | 34 | Nebraska E. to Illinois |
| I | 35 | Missouri N. to Minnesota |
| IA | 36 | Wall Lake N. to US 71 |
| IA | 37 | IA 175 E. to US 59 |
| IA | 38 | Muscatine N. to Olin |
| IA | 38 | IA 64 N. to IA 3 |
| IA | 39 | Denison N. to Odebolt |
| IA | 41 | Malvern N. to US 34 |
| IA | 44 | Harlan E. to IA 141 |
| IA | 46 | IA 5 N. to IA 163 |
| IA | 48 | Shenandoah N. to US 6 |
| IA | 49 | Near Sharpsburg N. to US 34 |
| IA | 50 | US 169 E. to Lehigh |
| IA | 51 | Postville N. to IA 9 |
| US | 52 | Dubuque N. to W. Jct IA 386 |
| US | 52 | Luxemburg N. to Minnesota |
| IA | 55 | Seymour N. to IA 2 |
| IA | 56 | West Union E. to Elkader |
| IA | 57 | IA 14 E. to US 63 |
| IA | 57 | Old route from US 20 N. to IA 58 |
| US | 59 | Missouri N. to W. Jct US 18 |
| IA | 60 | Le Mars N. to Minnesota |
| US | 61 | Missouri N. to Wisconsin |
| IA | 62 | Maquoketa N. to Bellevue |
| US | 63 | Missouri N. to Minnesota |
| IA | 64 | Anamosa E. to Sabula |

| | | |
|---|---|---|
| US | 65 | Missouri N. to IA 330 |
| US | 65 | US 30 N. to Minnesota |
| US | 67 | US 61 N. to IA 64 |
| IA | 68 | Melrose N. to US 34 |
| US | 69 | Lamoni E. to I-35 |
| US | 69 | S. Jct US 65 N. to Minnesota |
| IA | 70 | Columbus City N. to West Liberty |
| US | 71 | Missouri N. to Minnesota |
| I | 74 | Illinois N. to I-80 |
| US | 75 | Nebraska N. to Minnesota |
| IA | 77 | IA 92 N. to Keota |
| US | 77 | Nebraska N. to I-29 |
| IA | 78 | IA 149 E. to US 61 |
| I | 80 | Nebraska E. to Illinois |
| IA | 83 | Avoca E. to E. Jct US 6 |
| IA | 85 | Montezuma E. to IA 21 |
| IA | 86 | US 71 N. to IA 9 |
| IA | 92 | Nebraska E. to E. Jct US 61 |
| IA | 93 | US 63 E. to IA 150 |
| IA | 94 | Cedar Rapids N. to Palo |
| IA | 96 | IA 14 E. to US 63 |
| IA | 99 | Toolesboro N. to Wapello |
| IA | 103 | US 218 E. to Fort Madison |
| IA | 105 | Lake Mills E. to Saint Ansgar |
| IA | 107 | IA 3 N. to Alexander |
| IA | 107 | Thornton N. to US 18 |
| IA | 110 | US 20 N. to IA 7 |
| IA | 111 | US 18 N. to Woden |
| IA | 113 | IA 64 N. to Sprague ville |
| IA | 117 | Prarie City N. to US 65 |
| IA | 127 | I-29 E. to Mondamin |
| IA | 127 | W. Jct IA 183 E. to Logan |
| IA | 128 | IA 13 E. to US 52 |
| I | 129 | Nebraska E. to I-29 |
| IA | 130 | US 67 N. to I-80 |
| IA | 133 | US 30 N. to Nevada |
| IA | 136 | Charlotte W. to Lost Nation |
| IA | 136 | Cascade N. to Luxemburg |
| US | 136 | Missouri E. to Illinois |
| IA | 137 | Albia N. to Oskaloosa |
| IA | 141 | I-29 E. to I-35 |
| IA | 143 | IA 3 N. to IA 10 |

| | |
|---|---|
| IA 144 | IA 141 N. to Dana |
| IA 145 | I-29 E. to Thurman |
| IA 146 | New Sharon N. to Dunbar |
| IA 147 | Rockford E. to IA 14 |
| IA 148 | Missouri N. to I-80 |
| IA 149 | US 63 E. to IA 78 |
| IA 149 | South English N. to I-80 |
| IA 149 | Old route from I-80 N. to US 6 |
| IA 150 | Vinton N. to West Union |
| IA 150 | Old route from Hiawatha N. to IA 150 |
| US 151 | I-80 N. to Wisconsin |
| IA 157 | US 63 E. to Lime Springs |
| IA 160 | IA 415 E. to I-35 |
| IA 161 | W. Jct IA 141 E. to Dedham |
| IA 163 | Des Moines E. to Oskaloosa |
| US 169 | IA 2 N. to Ia 9 |
| IA 173 | IA 83 N. to Ia 44 |
| IA 175 | Nebraska E. to Onawa |
| IA 175 | Turin E. to Battle Creek |
| IA 175 | W. Jct US 59 E. to Lake City |
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**510.1(2)** *Restricted bridges.* The following bridges are restricted to vehicles with a width of 8 feet or less:

| Route | Location |
|---|---|
| IA 2 | Mississippi River at Fort Madison, Iowa |
| US 34 | Missouri River at Plattsmouth, Nebraska |
| US 136 | Des Moines River at Keokuk, Iowa |

**761—510.2(321) Applicable vehicles and dimensions.**

**510.2(1)** Trailer or semitrailer length not to exceed 53 feet, unladen or with load, when operating in a truck-tractor, semitrailer combination.

**510.2(2)** Trailer or semitrailer length not to exceed 28 feet 6 inches, unladen or with load,

when operating in a truck-tractor, semitrailer-trailer combination.

**510.2(3)** Truck-tractor, semitrailer overall length and truck-tractor, semitrailer-trailer overall length not restricted.

**510.2(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.

**510.2(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.

**510.2(6)** Kingpin setting unrestricted.

**761—510.3(321) Other vehicles.** If not specified in rule 510.2(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.

**761—510.4(321) Access.**

**510.4(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 and for any truck tractor-semitrailer combination in which the semitrailer is not longer than 28 feet 6 inches or wider than 8 feet 6 inches.

*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.

*e.* One (1) road mile from highways designated in subrule 510.1(1) for access to terminals or facilities for food, fuel, repairs and rest.

**510.4(2)** Cities and counties may restrict truck operation on any road or street under their jurisdiction by local ordinance.

**510.4(3)** For purposes of this chapter the word "terminal" means any location where freight either originates, terminates, or is handled in the transportation process; or any location where commercial motor carriers maintain operating facilities.

**761—510.5(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 510.4(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.

**761—510.6(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:

**510.6(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.

**510.6(2)** *Deletion.* A request for the deletion of a route from the Iowa designated system shall be processed according to the procedure in subrule 510.6(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.

**510.6(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.

These rules are intended to implement Iowa Code subsections 321.454(2) and 321.457(3).

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*Not subject to Iowa Code chapter 17A.

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