State of Iowa

Iowa Administrative Code Supplement

Biweekly
December 1, 1999

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PUBLISHED BY THE
STATE OF IOWA
UNDER AUTHORITY OF IOWA CODE SECTION 17A.6

The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code section 17A.6. The Supplement contains replacement pages to be inserted in the loose-leaf Iowa Administrative Code (IAC) according to instructions included with each Supplement. The replacement pages incorporate rule changes which have been adopted by the agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17 and 17A.4 to 17A.6. To determine the specific changes in the rules, refer to the Iowa Administrative Bulletin bearing the same publication date.

In addition to the changes adopted by agencies, the replacement pages may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(4); an effective date delay imposed by the ARRC pursuant to section 17A.4(5) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(6); or nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa.

The Supplement may also contain replacement pages for the IAC Index and for the preliminary sections of the IAC: General Information about the IAC, Chapter 17A of the Code of Iowa, Style and Format of Rules, Table of Rules Implementing Statutes, and Uniform Rules on Agency Procedure.

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.

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UPDATING INSTRUCTIONS
December 1, 1999, Biweekly Supplement

[Previous Supplement dated 11/17/99]

IOWA ADMINISTRATIVE CODE

	Remove Old Pages*	Insert New Pages
First Volume—General Information (Gray Tab)	p. 13, 14	p. 13, 14
Insurance Division[191]	Analysis, p. 3, 4 Ch 16, p. 1—Ch 17, p. 4	Analysis, p. 3—Analysis, p. 4a Ch 16, p. 1—Ch 17, p. 5
CORRECTIONS DEPARTMENT[201]	Ch 20, p. 23—Ch 20, p. 26	Ch 20, p. 23—Ch 20, p. 26
Iowa Finance Authority[265]	Analysis, p. 1, 2 Ch 9, p. 3, 4	Analysis, p. 1, 2 Ch 9, p. 3—Ch 9, p. 10
Libraries and Information Services Division[286]	Analysis, p. 1	Analysis, p. 1 Ch 8, p. 1—Ch 8, p. 3
HUMAN SERVICES DEPARTMENT[441]	Analysis, p. 21, 22 Analysis, p. 31, 32 Ch 75, p. 53, 54 Ch 75, p. 91, 92 Ch 77, p. 29—Ch 77, p. 32	Analysis, p. 21, 22 Analysis, p. 31, 32 Ch 75, p. 53, 54 Ch 75, p. 91, 92 Ch 77, p. 29—Ch 77, p. 32

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

	Remove Old Pages*	Insert New Pages
HUMAN SERVICES DEPARTMENT[441] (Cont'd)	Ch 79, p. 11, 12	Ch 79, p. 11, 12
	Ch 79, p. 31, 32	Ch 79, p. 31, 32
	Ch 79, p. 61, 62	Ch 79, p. 61, 62
	Ch 81, p. 13, 14	Ch 81, p. 13, 14
	Ch 81, p. 71	Ch 81, p. 71
	Ch 83, p. 35—Ch 83, p. 41	Ch 83, p. 35—Ch 83, p. 41
	Ch 110, p. 1—Ch 110, p. 22	Ch 110, p. 1—Ch 110, p. 22
	Ch 185, p. 53, 54	Ch 185, p. 53, 54
	Ch 185, p. 59—Ch 185, p. 62	Ch 185, p. 59—Ch 185, p. 62
INSPECTIONS AND APPEALS DEPARTMENT[481]	Analysis, p. 7, 8	Analysis, p. 7, 8
	Ch 51, p. 17—Ch 51, p. 20	Ch 51, p. 17—Ch 51, p. 20
	Ch 51, p. 29, 30	Ch 51, p. 29, 30
	Ch 58, p. 1—Ch 58, p. 30	Ch 58, p. 1—Ch 58, p. 30
	Ch 58, p. 49—Ch 59, p. 55	Ch 58, p. 49—Ch 58, p. 54
Natural Resource Commission[571]	Analysis, p.11—Analysis, p.13	Analysis, p.11—Analysis, p.13
	Ch 41, p. 1—Ch 43, p. 1	Ch 41, p. 1—Ch 44, p. 1
	Ch 51, p. 1—Ch 51, p. 5	Ch 51, p. 1—Ch 51, p. 5
	Ch 81, p. 1—Ch 81, p. 4	Ch 81, p. 1—Ch 81, p. 4
	Ch 94, p. 3—Ch 94, p. 5	Ch 94, p. 3—Ch 94, p. 5
	Ch 98, p. 1—Ch 98, p. 6	Ch 98, p. 1—Ch 98, p. 6
	Ch 106, p. 7—Ch 106, p. 10	Ch 106, p. 7—Ch 106, p. 10
	Ch 110, p. 1, 2	Ch 109, p. 1—Ch 110, p. 2
PERSONNEL DEPARTMENT[581]		Ch 21, p. 16a, 16b
PUBLIC HEALTH DEPARTMENT[641]	Analysis, p. 19, 20	Analysis, p. 19, 20
	Ch 70, p. 1—Ch 70, p. 8	Ch 70, p. 1—Ch 70, p. 8
	Ch 70, p. 10a—Ch 70, p. 23	Ch 70, p. 10a—Ch 70, p. 23
	Ch 73, p. 1—Ch 73, p. 24	Ch 73, p. 1—Ch 73, p. 24
	Ch 201, p. 1—Ch 201, p. 10	Ch 201, p. 1—Ch 201, p. 10
	Ch 201, p. 17, 18	Ch 201, p. 17, 18
Dental Examiners Board[650]	Ch 25, p. 1—Ch 25, p. 6	Ch 25, p. 1—Ch 25, p. 6
Medical Examiners Board[653]	Analysis, p. 1, 2	Analysis, p. 1, 2
	Ch 10, p. 5, 6	Ch 10, p. 5, 6
	Ch 10, p. 9, 10	Ch 10, p. 9, 10
	Ch 11, p. 13, 14	Ch 11, p. 13, 14
	Ch 11, p. 17	Ch 11, p. 17
	Ch 12, p. 3, 4	Ch 12, p. 3, 4
	Ch 12, p. 25, 26	Ch 12, p. 25, 26

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

	Remove Old Pages*	Insert New Pages
PUBLIC SAFETY DEPARTMENT[661]	Analysis, p. 3, 4 Ch 5, p. 81—Ch 5, p. 120	Analysis, p. 3, 4 Ch 5, p. 81—Ch 5, p. 116
TURKEY MARKETING COUNCIL, IOWA[787]		Analysis, p. 1 (Insert following Treasurer of State[781] Ch 18, p. 10. Orange tab will be forthcoming in a subsequent issue.)
Index Volume	"E" Tab, p. 53-76	"E" Tab, p. 53-77

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

HUMAN SERVICES DEPARTMENT[441]

INSPECTIONS AND APPEALS DEPARTMENT[481]
- Employment Appeal Board[486]
- Foster Care Review Board[489]
- Racing and Gaming Commission[491]
- State Public Defender[493]

LAW ENFORCEMENT ACADEMY[501]

LIVESTOCK HEALTH ADVISORY COUNCIL[521]

MANAGEMENT DEPARTMENT[541]
- Appeal Board, State[543]
- City Finance Committee[545]
- County Finance Committee[547]

NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]

NATIONAL AND COMMUNITY SERVICE, IOWA COMMISSION ON[555]

NATURAL RESOURCES DEPARTMENT[561]
- Energy and Geological Resources Division[565]
- Environmental Protection Commission[567]
- Natural Resource Commission[571]
- Preserves, State Advisory Board[575]

PERSONNEL DEPARTMENT[581]

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

PREVENTION OF DISABILITIES POLICY COUNCIL[597]

PUBLIC DEFENSE DEPARTMENT[601]
- Emergency Management Division[605]
- Military Division[611]

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

PUBLIC HEALTH DEPARTMENT[641]
- Substance Abuse Commission[643]
- Professional Licensure Division[645]
- Dental Examiners Board[650]
- Medical Examiners Board[653]
- Nursing Board[655]
- Pharmacy Examiners Board[657]

CHAPTER 19
PREARRANGED FUNERAL CONTRACTS
RULES OF GENERAL APPLICABILITY

CHAPTER 16
REPLACEMENT OF LIFE INSURANCE AND ANNUITIES

[Prior to 10/22/86, Insurance Department[510]]

DIVISION I

191—16.1(507B) Purpose and authority.

16.1(1) The purpose of these rules is:

a. To regulate the activities of insurers, agents and brokers with respect to the replacement of existing life insurance and annuities; and

b. To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement transactions by:

(1) Assuring that purchasers receive information with which a decision can be made in the best interests of the purchasers;

(2) Reducing the opportunity for misrepresentation and incomplete disclosures; and

(3) Establishing penalties for failure to comply with requirements of this chapter.

16.1(2) These rules are authorized by Iowa Code section 507B.12 and are intended to implement Iowa Code section 507B.4.

191—16.2(507B) Definition of replacement. "Replacement" means any transaction in which new life insurance or a new annuity is to be purchased, and it is known or should be known to the proposing agent or broker or to the proposing insurer if there is no agent, that by reason of such transaction, existing life insurance or annuity has been or is to be:

16.2(1) Lapsed, forfeited, surrendered, or otherwise terminated;

16.2(2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

16.2(3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

16.2(4) Reissued with any reduction in cash value; or

16.2(5) Pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding 25 percent of the loan value set forth in the policy.

191—16.3(507B) Other definitions.

16.3(1) *"Conservation"* means any attempt by the existing insurer or its agent or broker to dissuade a policyowner from the replacement of existing life insurance or annuity. Conservation does not include such routine administrative procedures as late payment reminders, late payment offers or reinstatement offers.

16.3(2) *"Direct-response sales"* means any sale of life insurance or annuity where the insurer does not utilize an agent in the sale or delivery of the policy.

16.3(3) *"Existing insurer"* means the insurance company whose policy is or will be changed or terminated in such a manner as described within the definition of "replacement."

16.3(4) *"Existing life insurance or annuity"* means any life insurance or annuity in force, including life insurance under a binding or conditional receipt or a life insurance policy or annuity that is within an unconditional refund period.

16.3(5) *"Replacing insurer"* means the insurance company that issues or proposes to issue a new policy or contract which is a replacement of existing life insurance or annuity.

16.3(6) *"Registered contract"* means variable annuities, investment annuities, variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account, or any other contracts issued by life insurance companies which are registered with the Federal Securities and Exchange Commission.

191—16.4(507B) Exemptions.

16.4(1) Unless otherwise specifically included, this chapter shall not apply to transactions involving:

a. Credit life insurance;

b. Group life insurance or group annuities;

c. An application to the existing insurer that issued the existing life insurance and when a contractual change or conversion privilege is being exercised; and

d. Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company.

16.4(2) Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control shall be exempt from the requirements of paragraph 16.7(1)*"b"* and subrule 16.8(2) only. A replacement notice must be left as required by paragraph 16.5(2)*"a."* However, agents or brokers proposing replacement shall comply with the requirements of subrule 16.5(1); and

16.4(3) Registered contracts shall be exempt from the provisions of subparagraph 16.7(1)*"b"*(2) and subrule 16.7(2) requiring provision of policy summary or ledger statement information; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required in lieu thereof.

191—16.5(507B) Duties of agents and brokers.

16.5(1) Each agent or broker who takes an application for life insurance or annuity shall submit to the insurer, with or as part of each application, the following:

a. A statement signed by the applicant as to whether replacement of existing life insurance or annuity is involved in the transaction; and

b. A signed statement as to whether the agent or broker knows replacement is or may be involved in the transaction.

16.5(2) Where replacement is involved, the agent or broker shall:

a. Present to the applicant, not later than at the time of taking the application, a "Notice Regarding Replacement" in the form as described in Exhibit A, or other substantially similar form approved by the commissioner ("replacement notice"). The notice shall be signed by both the applicant and the agent or broker and the original shall be left with the applicant.

b. Obtain with or as part of each application a list of all existing life insurance or annuity to be replaced and properly identified by name of insurer, the insured and contract number. If a contract number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

c. Leave with the applicant the original or a copy of written or printed communications used for presentation to the applicant.

d. Submit to the replacing insurer with the application a copy of the replacement notice provided pursuant to paragraph 16.5(2)*"a."*

16.5(3) Each agent or broker who uses written or printed communications in a conservation shall leave with the applicant a copy of the materials used.

191—16.6(507B) Duties of all insurers. Each insurer shall:

16.6(1) Inform its field representatives or other personnel responsible for compliance with this chapter of its requirements.

16.6(2) Require with or as a part of each completed application for life insurance or annuity a statement signed by the applicant as to whether such proposed insurance or annuity will replace existing life insurance or annuity.

191—16.7(507B) Duties of insurers that use agents or brokers.

16.7(1) Each insurer that uses an agent or broker in life insurance or annuity sales shall:

a. Require with or as part of each completed application for life insurance or annuity, a statement signed by the agent or broker as to whether the agent or broker knows replacement is or may be involved in the transaction.

b. Where a replacement is involved:

(1) Require a list of all of the applicant's existing life insurance or annuity to be replaced and a copy of the replacement notice provided the applicant pursuant to paragraph 16.5(2)*"a"* to be submitted by the agent or broker with the application for life insurance or annuity. Such existing life insurance or annuity shall be identified by name of insurer, insured and contract number. If a number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(2) Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained pursuant to subparagraph 16.7(1)*"b"*(1) and a policy summary or ledger statement containing policy data on the proposed life insurance as required by 191—subrule 15.68(7) or, for an annuity, a summary as required by paragraph 16.7(2)*"c."* Life insurance cost index and equivalent level annual dividend figures need not be included in the policy summary or ledger statement. This written communication shall be made within ten working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner.

16.7(2) Existing insurers—conservation.

a. Each existing insurer, or such insurer's agent or broker, that undertakes a conservation shall within 20 days from the date the written communication plus the materials required in paragraph 16.7(1)*"b"* are received by the existing insurer, furnish the policyowner with a policy summary for the existing life insurance or a ledger statement containing policy data on the existing policy or annuity.

b. The policy summary or ledger statement shall be completed in accordance with 191—subrule 15.68(7), except that information relating to premiums, cash values, death benefits and dividends, if any, shall be computed from the current policy year of the existing life insurance. The policy summary shall include the amount of any outstanding indebtedness, the sum of any dividend accumulations or additions, and may include any other information that is not in violation of any regulation or statute. Life insurance cost index and equivalent level annual dividend figures need not be included in the policy summary.

c. When annuities are involved, the information shall be sufficient to disclose all of the material terms of the annuity. The use of the contract summary described in Exhibit B is sufficient.

d. The replacing insurer may request the existing insurer to furnish it with a copy of the summaries which shall be done within five working days of the receipt of the request.

16.7(3) Records maintenance.

a. The replacing insurer shall maintain evidence of the replacement notice, the policy summary, the annuity disclosure and any ledger statements used, and a replacement register, cross-indexed, by replacing agent and existing insurer to be replaced.

b. The existing insurer shall maintain evidence of policy summaries, annuity disclosures or ledger statements used in any conservation.

c. Evidence that all requirements were met shall be maintained for at least three years or until the conclusion of the next succeeding regular examination by the insurance department of its state of domicile, whichever is earlier.

16.7(4) The replacing insurer shall provide in its policy or in a separate written notice which is delivered with the policy that the applicant has a right to an unconditional refund of all premiums paid, which right may be exercised within a period of 20 days commencing from the date of delivery of the policy.

191—16.8(507B) Duties of insurers with respect to direct response sales.

16.8(1) If in the solicitation of a direct response sale, the insurer did not propose the replacement, and a replacement is involved, the insurer shall send a replacement notice omitting the signature lines only, with the policy to the applicant.

16.8(2) If the insurer proposed the replacement it shall:

a. Provide to applicants or prospective applicants with or as a part of the application a replacement notice.

b. Request from the applicant with or as part of the application, a list of all existing life insurance or annuity to be replaced and properly identified by name of insurer and insured.

c. Comply with the requirements of subparagraph 16.7(1)*"b"*(2) if the applicant furnishes the names of the existing insurers, and the requirements of subrule 16.7(3), except that it need not maintain a replacement register.

191—16.9(507B) Penalties.

16.9(1) A violation of this chapter shall occur if an agent, broker or insurer recommends the replacement or conservation of an existing policy by use of a substantially inaccurate presentation or comparison of an existing contract's premiums and benefits or dividends and values, if any.

16.9(2) Any insurer, agent, representative, officer or employee of such insurer failing to comply with the requirements of this chapter shall be subject to such penalties as may be appropriate under Iowa Code sections 507B.1 and 507B.11.

16.9(3) Patterns of action by policyowners who purchase replacing policies from the same agent or broker after indicating on applications that replacement is not involved, shall be deemed prima facie evidence of the agent's or broker's knowledge that replacement was intended in connection with the sale of those policies, and such patterns of action shall be deemed prima facie evidence of the agent's or broker's intent to violate this chapter.

16.9(4) This chapter does not prohibit the use of additional material other than that which is required that is not in violation of these rules or any other statute or administrative rule.

191—16.10(507B) Severability. If any rule or portion of a rule of this chapter, or the applicability thereof to any person or circumstance, is held invalid by a court, the remainder of this chapter, or the applicability of such provision to other persons, shall not be affected thereby.

These rules are intended to implement Iowa Code chapter 507B.

191—16.11 to 16.20 Reserved.

EXHIBIT A
TO CHAPTER 16

NOTICE REGARDING REPLACEMENT

REPLACING YOUR LIFE INSURANCE POLICY OR ANNUITY?

Are you thinking about buying a new life insurance policy or an annuity and discontinuing or changing an existing one? If you are, your decision could be a good one—or a mistake. You will not know for sure unless you make a careful comparison of your existing benefits and the proposed benefits.

Make sure you understand the facts. You should ask the company or agent that sold you your existing policy to give you information about it.

Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest.

We are required by law to notify your existing company that you may be replacing their policy.

Date	Print Agent's Name
Applicant's Signature	Agent's Signature

ATTENTION CONSUMER. THIS NOTICE IS REQUIRED BY THE INSURANCE COMMISSIONER. PLEASE READ IT CAREFULLY BEFORE SIGNING.

EXHIBIT B
TO CHAPTER 16
SECTION 4 OF THE MODEL

ANNUITY AND DEPOSIT FUND
DISCLOSURE REGULATION

Contract Summary. For the purposes of this Chapter, Contract Summary means a written statement describing the elements of the annuity contract and deposit fund, including but not limited to:

1. A prominently placed title as follows: STATEMENT OF BENEFIT INFORMATION. (This shall be followed by an identification of the annuity contract or deposit fund, or both, to which the statement applies.)
2. The name and address of the insurance agent or, if no agent is involved, a statement of the procedure to be followed in order to receive responses to inquiries regarding the Contract Summary.
3. The full name and home office or administrative office address of the insurer which will issue the annuity contract or administer the deposit fund.
4. The death benefits for the deposit fund, and for the annuity contract during the deferred period, and the form of the annuity payout. In the case where a choice of annuity payout form is provided, this item shall show the payout options guaranteed and the form of annuity payout selected for items 6, 7 and 9 of this section.
5. A prominent statement that the contract does not provide cash surrender values if such is the case.
6. The amount of the guaranteed annuity payments at the scheduled commencement of the annuity, based on the assumption that all scheduled considerations are paid and there are no prior withdrawals from or partial surrenders of the contract and no indebtedness to the insurer on the contract.

7. On the same basis as for item 6, except for guarantees, illustrative annuity payments not greater in amount than those based on (1) the current dividend scale and the interest rate currently used to accumulate dividends under such contracts, or the current excess interest rate credited by the insurer, and (2) current annuity purchase rates. A dividend scale or excess interest rate which has been declared by the insurer with an effective date not more than two months subsequent to the date of declaration shall be considered a current dividend scale or current excess interest rate.

8. For annuity contracts or deposit funds for which guaranteed cash surrender values at any duration are less than the total considerations paid, a prominent statement that such contract or fund may result in loss if kept for only a few years, together with a reference to the schedule of guaranteed cash surrender values required by item 9(c) of this section.

9. The following amounts, for the first five contract years and representative contract years thereafter sufficient to clearly illustrate the patterns of considerations and benefits, including but not limited to the tenth and twentieth contract years and at least one age from 60 through 65 or the scheduled commencement of annuity payments, if any, whichever is earlier:

a. The gross annual or single consideration for the annuity contract.

b. Scheduled annual or single deposit for the deposit fund, if any.

c. The total guaranteed cash surrender value at the end of the year or, if no guaranteed cash surrender values are provided, the total guaranteed paid-up annuity at the end of the year. Values for a deposit fund must be shown separately from those for a basic contract.

d. The total illustrative cash value or paid-up annuity at the end of the year, not greater in amount than that based on (1) the current dividend scale and the interest rate currently used to accumulate dividends under such contracts or the current excess interest rate credited by the insurer, and (2) current annuity purchase rates. A dividend scale or excess interest rate which has been publicly declared by the insurer with an effective date not more than two months subsequent to the date of declaration shall be considered a current dividend scale or current excess interest rate.

10. For a Contract Summary which includes values based on the current dividend scale or the current dividend accumulation or excess interest rate, a statement that such values are illustrations and are not guaranteed.

11. The date on which the Contract Summary is prepared.

The Contract Summary must be a separate document. All information required to be disclosed must be set out in such a manner as not to minimize or render any portion thereof obscure. Any amounts which remain level for two or more contract years may be represented by a single number if it is clearly indicated what amounts are applicable for each contract year. Amounts in items 4, 6, 7, and 9 of this section shall, in the case of flexible premium annuity contracts, be determined either according to an anticipated pattern of consideration payments or on the assumption that considerations payable will be $1,000 per year. If not specified in the contract, annuity payments shall be assumed to commence at age 65 or 10 years from issue, whichever is later. Zero amounts shall be displayed as zero and shall not be displayed as blank spaces.

DIVISION II
(Effective July 1, 2000)

191—16.21(507B) Purpose.

16.21(1) The purpose of these rules is:

a. To regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities.

b. To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions by:

(1) Ensuring that purchasers receive information with which a decision can be made in the purchaser's own best interest;

(2) Reducing the opportunity for misrepresentation and incomplete disclosure; and

(3) Establishing penalties for failure to comply with requirements of these rules.

16.21(2) These rules are authorized by Iowa Code section 507B.12 and are intended to implement Iowa Code section 507B.4.

191—16.22(507B) Definitions.

"Commissioner" means the Iowa insurance commissioner.

"Contract" means an individual annuity contract.

"Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity or individually solely through mails, telephone, the Internet or other mass communication media.

"Existing insurer" means the insurance company whose policy or contract is or will be changed or affected in a manner described within the definition of "replacement."

"Existing policy or contract" means an individual life insurance policy (policy) or annuity contract (contract) in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.

"Financed purchase" means the purchase of a new policy involving the actual use of funds obtained by the withdrawal or surrender of, or by borrowing from, values of an existing policy to pay all or part of any premium due on a new policy issued by the same insurer. If a request for withdrawal, surrender, or borrowing involving the policy values of an existing policy is accompanied by direction to pay premiums on a new policy owned by the same policyholder within 13 months before or after the effective date of the new policy and is known by the insurer, it will be deemed prima facie evidence of a financed purchase.

"Illustration" means a presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years as defined in Iowa Administrative Code 191—Chapter 14.

"Policy" means an individual life insurance policy.

"Policy summary," for the purposes of these rules, means:

1. For policies or contracts other than universal life policies, a written statement regarding a policy or contract which shall contain to the extent applicable, but need not be limited to, the following information: current death benefit; annual contract premium; current cash surrender value; current dividend; application of current dividend; and amount of outstanding loan.

2. For universal life policies, a written statement that shall contain at least the following information: the beginning and end date of the current report period; the policy value at the end of the previous report period and at the end of the current report period; the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense and riders); the current death benefit at the end of the current report period on each life covered by the policy; the net cash surrender value of the policy as of the end of the current report period; and the amount of outstanding loans, if any, as of the end of the current report period.

"Producer" means a person licensed under Iowa Code chapter 522.

"Registered contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

"Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:

1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;
2. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
3. Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
4. Reissued with any reduction in cash value; or
5. Used in a financed purchase.

"Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.

"Sales material" means a sales illustration and any other written, printed or electronically presented information created, completed or provided by the company or producer that is used in the presentation to the policy or contract owner and which describes the benefits, features and costs of the specific policy or contract which is purchased.

191—16.23(507B) Exemptions.

16.23(1) Unless otherwise specifically included, these rules shall not apply to transactions involving:

a. Credit life insurance.

b. Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single provider in connection with enrolling that individual. Group life insurance or group annuity certificates marketed through direct-response solicitation shall be subject to the provisions of rule 16.28(507B).

c. Group life insurance and annuities used to fund formal prepaid funeral contracts.

d. An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner.

e. Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company.

f. Except as noted below, policies or contracts used to fund:

(1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(2) A plan described by Section 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;

(3) A governmental or church plan defined in Section 414 of the Internal Revenue Code, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under Section 457 of the Internal Revenue Code; or

(4) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

These rules shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pretax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more annuity providers or policy providers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this subrule, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single provider in connection with enrolling that individual employee.

g. New coverage provided under a life insurance policy or contract where the cost is borne wholly by the insured's employer or by an association of which the insured is a member.

h. Existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed.

i. Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this chapter.

j. Structured settlement annuities.

16.23(2) Registered contracts shall be exempt from the requirements of paragraph 16.26(1)*"b"* and subrule 16.27(2) with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

191—16.24(507B) Duties of producers.

16.24(1) A producer who initiates an application for a policy or a contract shall submit to the insurer, with or as part of the application, a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts. If the applicant does not have an existing policy or contract, the producer's duties with respect to replacement are complete.

16.24(2) If the applicant does have an existing policy or contract, the producer shall present and read to the applicant, not later than at the time of taking the application, a notice regarding replacements in the form as described in Appendix A or A1 or other substantially similar form approved by the commissioner.

a. The notice shall be signed by both the applicant and the producer attesting that the notice has been read aloud by the producer or that the applicant did not wish the notice to be read aloud (in which case the producer need not have read the notice aloud) and that a copy of the notice was left with the applicant.

b. The notice shall list all life insurance policies or annuities proposed to be replaced, properly identified by name of insurer, the insured or annuitant, and policy or contract number if available; and shall include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

16.24(3) In connection with a replacement transaction, the producer shall leave with the applicant at the time an application for a new policy or contract is completed the original or a copy of all sales material. A copy of any electronically presented sales material shall be provided to the policyholder in printed form no later than at the time of policy or contract delivery.

16.24(4) Except as provided in subrule 16.26(3), in connection with a replacement transaction, the producer shall submit to the insurer to which an application for a policy or contract is presented a copy of each document required by this subrule, a statement identifying any preprinted or electronically presented insurer-approved sales materials used, and copies of any individualized sales materials, including any illustrations related to the specific policy or contract purchased.

191—16.25(507B) Duties of all insurers that use producers on or after January 1, 2001.

16.25(1) Each insurer that uses producers shall maintain a system of supervision and control to ensure compliance with the requirements of these rules that shall include at least the following:

a. Informing its producers of the requirements of these rules and incorporating the requirements of these rules into all relevant producer training manuals prepared by the insurer;

b. Providing to each producer a written statement of the insurer's position with respect to the acceptability of replacements including providing guidance to its producer as to the appropriateness of these transactions;

c. Reviewing the appropriateness of each replacement transaction that the producer does not indicate is in accord with paragraph 16.25(1)*"b"* above;

d. Confirming that the requirements of these rules have been met; and

e. Detecting transactions that are replacements of existing policies or contracts by the existing insurer but that have not been reported as such by the applicant or producer. Compliance with this subrule may include, but shall not be limited to, systematic customer surveys, interviews, confirmation letters or programs of internal monitoring.

16.25(2) Each insurer that uses producers shall have the capacity to monitor each producer's life insurance policy and annuity contract replacements for that insurer and shall, upon request, make such records available to the insurance division. The capacity to monitor shall include the ability to produce records for each producer's:

a. Life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;

b. Number of lapses of policies by the producer as a percentage of the producer's total annual sales for life insurance;

c. Annuity contract replacements as a percentage of the producer's total annual annuity contract sales;

d. Number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the insurer's monitoring system as required by paragraph *"e"* of subrule 16.25(1); and

e. Replacements, indexed by replacing producer and existing insurer.

16.25(3) Each insurer that uses producers shall require with or as a part of each application for life insurance or for an annuity a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts.

16.25(4) Each insurer that uses producers shall require with each application for life insurance or for an annuity that indicates an existing policy or contract a completed notice regarding replacements as contained in Appendix A or A1.

16.25(5) When the applicant has existing policies or contracts, each replacing insurer that uses producers shall be able to produce completed and signed copies of the notice regarding replacements for at least five years after the termination or expiration of the proposed policy or contract.

16.25(6) In connection with a replacement transaction, each replacing insurer that uses producers shall be able to produce copies of any sales material required by subrule 16.24(4), the basic illustration and any supplemental illustrations related to the specific policy or contract which is purchased and the producer's and applicant's signed statements with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract.

16.25(7) Each insurer that uses producers shall ascertain that the sales material and illustrations required by subrule 16.24(4) meet the requirements of these rules and are complete and accurate for the proposed policy or contract.

16.25(8) If an application does not meet the requirements of these rules, each insurer that uses producers shall notify the producer and applicant and fulfill the outstanding requirements.

16.25(9) Records required to be retained by this rule may be maintained in paper, photographic, microprocessed, magnetic, mechanical or electronic media or by any process which accurately reproduces the actual document.

191—16.26(507B) Duties of replacing insurers that use producers.

16.26(1) Where a replacement is involved in the transaction, the replacing insurer that uses producers shall:

a. Verify that the required forms are received and are in compliance with these rules;

b. Notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or policy summary for the proposed policy or available disclosure document for the proposed contract within five business days of a request from an existing insurer;

c. Be able to produce copies of the notification regarding replacement required in subrule 16.24(2), indexed by producer, for at least five years or until the next regular examination by the insurance department of an insurer's state of domicile, whichever is later; and

d. Provide to the policy or contract owner notice of the right to return the policy or contract within 30 days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract. The notice may be included in Appendix A, A1 or C.

16.26(2) Where a replacement is involved in the transaction and where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control, the replacing insurer shall allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide period up to the face amount of the existing policy or contract. With regard to financed purchases, the credit may be limited to the amount that the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

16.26(3) Where a replacement is involved in the transaction and where an insurer prohibits the use of sales material other than that approved by the insurer, the insurer may, as an alternative to the requirements of subrule 16.24(4) do all of the following:

a. Require of and obtain from the producer a signed statement with each application that:

(1) Represents that the producer used only insurer-approved sales material; and

(2) Represents that copies of all sales material were left with the applicant in accordance with subrule 16.24(3).

b. Provide to the applicant a letter or by verbal communication by a person whose duties are separate from the marketing area of the insurer, within ten days of the issuance of the policy or contract, which shall include:

(1) Information that the producer has represented that copies of all sales material have been left with the applicant in accordance with subrule 16.24(3);

(2) The toll-free number by which the applicant can contact company personnel involved in the compliance function if copies of all sales material were not left with the applicant; and

(3) Information regarding the importance of retaining copies of the sales material for future reference.

c. Be able to produce a copy of the letter or other verification obtained pursuant to this subrule in the policy file for at least five years after the termination or expiration of the policy or contract.

191—16.27(507B) Duties of the existing insurer. Where a replacement is involved in the transaction, the existing insurer shall:

16.27(1) Retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five years or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later.

16.27(2) Send a letter to the policy or contract owner notifying the owner of the right to receive information regarding the existing policy or contract values including, if available, an in-force illustration or policy summary if an in-force illustration cannot be produced within five business days of receipt of a notice that an existing policy or contract is being replaced. The information shall be provided within five business days of receipt of the request from the policy or contract owner.

16.27(3) Upon receipt of a request to borrow, surrender or withdraw any policy values, send to the applicant a notice, advising the policyowner that the release of policy values may affect the guaranteed elements, nonguaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent separate from the check if the check is sent to anyone other than the policyowner. In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

191—16.28(507B) Duties of insurers with respect to direct-response solicitations.

16.28(1) In the case of an application that is initiated as a result of a direct-response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue or change an existing policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, the notice regarding replacement in Appendix B, or other substantially similar form approved by the commissioner.

16.28(2) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

a. Provide to applicants or prospective applicants with the policy or contract a notice, as described in Appendix C, or other substantially similar form approved by the commissioner. In these instances the insurer may delete the references to the producer, including the producer's signature, without having to obtain approval of the form from the commissioner. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the notice referred to in this paragraph. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed, postage prepaid envelope with instructions for the return of the signed notice referred to in this subrule; and

b. Comply with the requirements of paragraph 16.26(1)*"b,"* if the applicant furnishes the names of the existing insurers, and the requirements of paragraphs 16.26(1)*"c"* and *"d"* and subrule 16.26(2).

191—16.29(507B) Violations and penalties.

16.29(1) Any failure to comply with these rules shall be considered a violation of Iowa Administrative Code rules 191—15.7(507B) and 191—15.8(507B). Examples of violations include but are not limited to:

a. Any deceptive or misleading information set forth in sales material;

b. Failing to ask the applicant in completing the application the pertinent questions regarding the possibility of financing or replacement;

c. The intentional incorrect recording of an answer;

d. Advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer; or

e. Advising a policy or contract owner to write directly to the insurer in such a way as to attempt to obscure the identity of the replacing producer or insurer.

16.29(2) Policy and contract owners have the right to replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policy or contract owners of the same producer shall be deemed prima facie evidence of the producer's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the producer's intent to violate these rules.

16.29(3) Where it is determined that the requirements of these rules have not been met, the replacing insurer shall provide to the policy owner an in-force illustration if available or policy summary for the replacement policy or available disclosure document for the replacement contract and the appropriate notice regarding replacements in Appendix A, A1 or C.

16.29(4) Violations of these rules shall subject the violators to penalties that may include the revocation or suspension of a producer's or insurer's license, monetary fines, the forfeiture of any commissions or compensation paid to a producer as a result of the transaction in connection with which the violations occurred, or any other penalties authorized by Iowa Code chapter 507B or Iowa Administrative Code 191—Chapter 15.

191—16.30(507B) Severability. If any rule or portion of a rule of this division, or its applicability to any person or circumstances, is held invalid by a court, the remainder of this division, or the applicability of its provisions to other persons, shall not be affected.

These rules are intended to implement Iowa Code chapter 507B.

APPENDIX A

IMPORTANT NOTICE:
REPLACEMENT OF LIFE INSURANCE OR ANNUITIES

This document must be signed by the applicant and the producer, if there is one, and a copy left with the applicant.

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy, to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interest. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacements before you make your purchase decision and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract? ___ YES ___ NO

2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? ___ YES ___ NO

If you answered "yes" to either of the above questions, list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured, and the contract number if available) and whether each policy will be replaced or used as a source of financing:

INSURER NAME	CONTRACT OR POLICY #	INSURED	REPLACED (R) OR FINANCING (F)
1.			
2.			
3.			

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. [If you request one, an in-force illustration, policy summary or available disclosure document must be sent to you by the existing insurer.] Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

The existing policy or contract is being replaced because_____.

I certify that the responses herein are, to the best of my knowledge, accurate:

Applicant's Signature and Printed Name _____ Date _____

Producer's Signature and Printed Name _____ Date _____

I do not want this notice read aloud to me. _____ (Applicants must initial only if they do not want the notice read aloud.)

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

PREMIUMS: Are they affordable?
Could they change?
You're older—are premiums higher for the proposed new policy?
How long will you have to pay premiums on the new policy? On the old policy?

POLICY VALUES: New policies usually take longer to build cash values and to pay dividends.
Acquisition costs for the old policy may have been paid; you will incur costs for the new one.
What surrender charges do the policies have?
What expense and sales charges will you pay on the new policy?
Does the new policy provide more insurance coverage?

INSURABILITY: If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.
You may need a medical exam for a new policy.
[Claims on most new policies for up to the first two years can be denied based on inaccurate statements. Suicide limitations may begin anew on the new coverage.]

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:
How are premiums for both policies being paid?
How will the premiums on your existing policy be affected?
Will a loan be deducted from death benefits?
What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:
Will you pay surrender charges on your old contract?
What are the interest rate guarantees for the new contract?
Have you compared the contract charges or other policy expenses?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:
What are the tax consequences of buying the new policy?
Is this a tax-free exchange? (See your tax advisor.)
Is there a benefit from favorable "grandfathered" treatment of the old policy under the federal tax code?
Will the existing insurer be willing to modify the old policy?
How does the quality and financial stability of the new company compare with your existing company?

APPENDIX A1—Optional for use when the product being sold is an annuity.

IMPORTANT NOTICE:
REPLACEMENT OF LIFE INSURANCE POLICIES OR ANNUITY CONTRACTS
This document must be signed by the applicant and the producer, if there is one, and a copy left with the applicant.

You are contemplating the purchase of an annuity contract. In some cases this purchase may involve discontinuing or changing an existing life insurance policy or annuity contract. If so, a replacement is occurring.

A replacement occurs when a new contract is purchased and, in connection with the sale, an existing life insurance policy or annuity contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated.

You should carefully consider whether a replacement is in your best interest. You will pay acquisition costs on the new annuity contract and there may be surrender costs deducted from your existing life insurance policy or annuity contract. You may be able to make changes to your existing life insurance policy or annuity contract to meet your insurance needs at less cost. Using existing funds from your existing life insurance policy or annuity contract to purchase a new annuity contract will reduce the value of your existing policy or contract and may reduce the death benefit of your existing policy or contract.

We want you to understand the effects of replacements before you make your purchase decision and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing life insurance policy or annuity contract? ___YES ___NO

2. Are you considering using funds from your existing life insurance policies or annuity contracts to pay the premium or premiums on the new annuity contract? ___YES ___NO

If you answered "yes" to either of the above questions, list each existing life insurance policy or annuity contract you are contemplating replacing (include the name of the insurer, the insured or annuitant, and the policy or contract number if available).

INSURER NAME	CONTRACT OR POLICY #	ANNUITANT OR INSURED
1.		
2.		
3.		

Make sure you know the facts. Contact your existing company or its agent for information about your existing life insurance policy or annuity contract. [If you request one, an in-force illustration, policy summary or available disclosure document must be sent to you by the existing insurer.] Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

The existing life insurance policy or annuity contract is being replaced because _____.

I certify that the responses herein are, to the best of my knowledge, accurate:

_____ _____
Applicant's Signature and Printed Name Date

_____ _____
Producer's Signature and Printed Name Date

I do not want this notice read aloud to me. _____ (Applicants must initial only if they do not want the notice read aloud.)

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing life insurance policy or annuity contract and the proposed annuity contract. One way to do this is to ask the company or agent that sold you your existing life insurance policy or annuity contract to provide you with information concerning your existing life insurance policy or annuity contract. This may include an illustration of how your existing life insurance policy or annuity contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare life insurance policies or annuity contracts. You should discuss the following with your agent to determine whether replacement of your existing life insurance policy or annuity contract makes sense:

PREMIUMS: Are they affordable?
Could they change?
How long will you have to pay premiums on the new annuity contract? On the existing life insurance policy or annuity contract?

POLICY VALUES: Acquisition costs for the existing life insurance policy or annuity contract may have been paid; you may incur costs for the new annuity contract.
What surrender charges do the policies have?
What expense and sales charges will you pay on the new annuity contract?
Does the new annuity provide more or better benefits?

INSURABILITY: If your health has changed since you bought your existing life insurance policy or annuity contract, the new annuity contract could provide fewer benefits, or you could be turned down.
You may need a medical exam for a new annuity contract.
[Claims on some annuity contracts for up to the first two years can be denied based on inaccurate statements.]

IF YOU ARE KEEPING THE EXISTING LIFE INSURANCE POLICY OR ANNUITY CONTRACT AS WELL AS THE NEW ANNUITY CONTRACT:
How are premiums for both policies and/or contracts being paid?
How will the premiums on your existing life insurance policy or annuity contract be affected?
Will a loan be deducted from death benefits?
What values from the existing life insurance policy or annuity contract are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:
Will you pay surrender charges on your existing life insurance policy or annuity contract?
What are the interest rate guarantees for the new annuity contract?
Have you compared the charges and expenses of your existing life insurance policy or annuity contract to the charges and expenses of the new annuity contract?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:
What are the tax consequences of buying the new annuity contract?
Is this a tax-free exchange? (See your tax advisor.)
Is there a benefit from favorable "grandfathered" treatment of the existing life insurance policy or annuity contract under the federal tax code?
Will the existing insurer be willing to modify the existing life insurance policy or annuity contract?
How does the quality and financial stability of the new company compare with your existing company?

APPENDIX B

NOTICE REGARDING REPLACEMENT
REPLACING YOUR LIFE INSURANCE POLICY OR ANNUITY?

Are you thinking about buying a new life insurance policy or annuity and discontinuing or changing an existing one? If you are, your decision could be a good one—or a mistake. You will not know for sure unless you make a careful comparison of your existing benefits and the proposed policy or contract's benefits.

Make sure you understand the facts. You should ask the company or agent that sold you your existing policy or contract to give you information about it.

Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest.

APPENDIX C

IMPORTANT NOTICE:
REPLACEMENT OF LIFE INSURANCE OR ANNUITIES

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy, to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interest. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacements and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract? ___ YES ___ NO

2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? ___ YES ___ NO

Please list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured, and the contract number if available) and whether each policy will be replaced or used as a source of financing:

INSURER NAME	CONTRACT OR POLICY #	INSURED	REPLACED (R) OR FINANCING (F)
1.			
2.			
3.			

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. [If you request one, an in-force illustration, policy summary or available disclosure document must be sent to you by the existing insurer.] Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

I certify that the responses herein are, to the best of my knowledge, accurate:

_____ _____

Applicant's Signature and Printed Name Date

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

PREMIUMS: Are they affordable?
Could they change?
You're older—are premiums higher for the proposed new policy?
How long will you have to pay premiums on the new policy? On the old policy?

POLICY VALUES: New policies usually take longer to build cash values and to pay dividends.
Acquisition costs for the old policy may have been paid; you will incur costs for the new one.
What surrender charges do the policies have?
What expense and sales charges will you pay on the new policy?
Does the new policy provide more insurance coverage?

INSURABILITY: If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.
You may need a medical exam for a new policy.
[Claims on most new policies for up to the first two years can be denied based on inaccurate statements. Suicide limitations may begin anew on the new coverage.]

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:
How are premiums for both policies being paid?
How will the premiums on your existing policy be affected?
Will a loan be deducted from death benefits?
What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:
Will you pay surrender charges on your old contract?
What are the interest rate guarantees for the new contract?
Have you compared the contract charges or other policy expenses?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:
What are the tax consequences of buying the new policy?
Is this a tax-free exchange? (See your tax advisor.)
Is there a benefit from favorable "grandfathered" treatment of the old policy under the federal tax code?
Will the existing insurer be willing to modify the old policy?
How does the quality and financial stability of the new company compare with your existing company?

[Filed 11/18/83, Notice 9/14/83—published 12/7/83, effective 4/1/84]
[Filed emergency 2/22/84—published 3/14/84, effective 4/1/84]
[Editorially transferred from [510] to [191], IAC Supp. 10/22/86; see IAB 7/30/86]
[Filed 10/2/87, Notice 8/26/87—published 10/21/87, effective 11/25/87]
[Filed 11/12/99, Notice 10/6/99—published 12/1/99, effective 7/1/00]

CHAPTER 17
LIFE AND HEALTH REINSURANCE AGREEMENTS

191—17.1(508) Authority and purpose. This chapter is adopted and promulgated by the commissioner of insurance pursuant to Iowa Code section 505.8 and chapter 508.

The insurance division recognizes that licensed insurers routinely enter into reinsurance agreements that yield legitimate relief to the ceding insurer from strain to surplus.

However, it is improper for a licensed insurer, in the capacity of a ceding insurer, to enter into reinsurance agreements for the principal purpose of producing a significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business being reinsured. In substance or effect, the expected potential liability to the ceding insurer remains basically unchanged by the reinsurance transaction, notwithstanding certain risk elements in the reinsurance agreement, such as catastrophic mortality or extraordinary survival. The terms of such agreements referred to herein and described in rule 17.3(508) would violate:

1. Iowa Code section 508.11 relating to financial statements which do not properly reflect the financial condition of the ceding insurer;
2. Iowa Code section 521B.2 relating to reinsurance reserve credits, thus resulting in a ceding insurer improperly reducing liabilities or establishing assets for reinsurance ceded; and
3. Iowa Code section 507C.12 relating to creating a situation that may be hazardous to policyholders and the people of this state.

191—17.2(508) Scope. This chapter shall apply to all domestic life and accident and health insurers and to all other licensed life and accident and health insurers which are not subject to a substantially similar regulation in their domiciliary state. This chapter shall also similarly apply to licensed property and casualty insurers with respect to their accident and health business. This chapter shall not apply to assumption reinsurance, yearly renewable term reinsurance or certain nonproportional reinsurance such as stop loss or catastrophe reinsurance.

191—17.3(508) Accounting requirements.

17.3(1) No insurer subject to this chapter shall, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with the division if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exist:

a. Renewal expense allowances provided or to be provided to the ceding insurer by the reinsurer in any accounting period are not sufficient to cover anticipated allocable renewal expenses of the ceding insurer on the portion of the business reinsured, unless a liability is established for the present value of the shortfall (using assumptions equal to the applicable statutory reserve basis on the business reinsured). Those expenses include commissions, premium taxes and direct expenses including, but not limited to, billing, valuation, claims and maintenance expected by the company at the time the business is reinsured.

b. The ceding insurer can be deprived of surplus or assets at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer, except that termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums or other amounts due, such as modified coinsurance reserve adjustments, interest and adjustments on funds withheld, and tax reimbursements, shall not be considered to be such a deprivation of surplus or assets.

c. The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against current and prior years' losses under the agreement nor payment by the ceding insurer of any amount equal to the current and prior years' losses under the agreement upon voluntary termination of in-force reinsurance by the ceding insurer shall be considered such a reimbursement to the reinsurer for negative experience. Voluntary termination does not include situations where termination occurs because of unreasonable provisions which allow the reinsurer to reduce its risk under the agreement. An example of such a provision is the right of the reinsurer to increase reinsurance premiums or risk and expense charges to excessive levels forcing the ceding company to prematurely terminate the reinsurance treaty.

d. The ceding insurer must, at specific points in time scheduled in the agreement, terminate or automatically recapture all or part of the reinsurance ceded.

e. The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income realized from the reinsured policies. For example, it is improper for a ceding company to pay reinsurance premiums or other fees or charges to a reinsurer which are greater than the direct premiums collected by the ceding company.

f. The treaty does not transfer all of the significant risk inherent in the business being reinsured. The following table identifies, for a representative sampling of products or type of business, the risks which are considered to be significant. For products not specifically included, the risks determined to be significant shall be consistent with this table.

Risk categories:

(1) Morbidity.

(2) Mortality.

(3) Lapse. This is the risk that a policy will voluntarily terminate prior to the recoupment of a statutory surplus strain experienced at issue of the policy.

(4) Credit quality (C1). This is the risk that invested assets supporting the reinsured business will decrease in value. The main hazards are that assets will default or that there will be a decrease in earning power. It excludes market value declines due to changes in interest rate.

(5) Reinvestment (C3). This is the risk that interest rates will fall and funds reinvested (coupon payments or moneys received upon asset maturity or call) will therefore earn less than expected. If asset durations are less than liability durations, the mismatch will increase.

(6) Disintermediation (C3). This is the risk that interest rates rise and policy loans and surrenders increase or maturing contracts do not renew at anticipated rates of renewal. If asset durations are greater than the liability durations, the mismatch will increase. Policyholders will move their funds into new products offering higher rates. The company may have to sell assets at a loss to provide for these withdrawals.

+ — Significant; 0 — Insignificant

	RISK CATEGORY					
	a	b	c	d	e	f
Health Insurance - other than LTC/LTD*	+	0	+	0	0	0
Health Insurance - LTC/LTD*	+	0	+	+	+	0
Immediate Annuities	0	+	0	+	+	0
Single Premium Deferred Annuities	0	0	+	+	+	+
Flexible Premium Deferred Annuities	0	0	+	+	+	+
Guaranteed Interest Contracts	0	0	0	+	+	+
Other Annuity Deposit Business	0	0	+	+	+	+
Single Premium Whole Life	0	+	+	+	+	+
Traditional Non-Par Permanent	0	+	+	+	+	+
Traditional Non-Par Term	0	+	+	0	0	0
Traditional Par Permanent	0	+	+	+	+	+
Traditional Par Term	0	+	+	0	0	0

Adjustable Premium Permanent	0	+	+	+	+	+
Indeterminate Premium Permanent	0	+	+	+	+	+
Universal Life Flexible Premium	0	+	+	+	+	+
Universal Life Fixed Premium	0	+	+	+	+	+
Universal Life Fixed Premium (dump-in premiums allowed)	0	+	+	+	+	+

*LTC = Long Term Care Insurance

*LTD = Long Term Disability Insurance

g. (1) The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not (other than for the classes of business excepted in subparagraph (2) of this paragraph "*g*") either transfer the underlying assets to the reinsurer or legally segregate such assets in a trust or escrow account or otherwise establish a mechanism satisfactory to the commissioner which legally segregates, by contract or contract provision, the underlying assets.

(2) Notwithstanding the requirements of subparagraph (1) of this paragraph "*g,*" the assets supporting the reserves for the following classes of business and any classes of business which do not have a significant credit quality, reinvestment or disintermediation risk may be held by the ceding company without segregation of such assets:

1. Health Insurance—LTC/LTD
2. Traditional Non-Par Permanent
3. Traditional Par Permanent
4. Adjustable Premium Permanent
5. Indeterminate Premium Permanent
6. Universal Life Fixed Premium (no dump-in premiums allowed)

The associated formula for determining the reserve interest rate adjustment must use a formula which reflects the ceding company's investment earnings and incorporates all realized and unrealized gains and losses reflected in the statutory statement. The following is an acceptable formula:

$$\text{Rate} = \frac{2(I + CG)}{X + Y - I - CG}$$

Where:
- I is the net investment income (Exhibit 2, Column 7)
- CG is capital gains less capital losses (Exhibit 4, Column 6)
- X is the current year cash and invested assets (Page 2, Column 1) plus investment income due and accrued (Page 2, Column 1) less borrowed money (Page 3, Column 1)
- Y is the same as X but for the prior year

h. Settlements are made less frequently than quarterly or payments due from the reinsurer are not made in cash within 90 days of the settlement date.

i. The ceding insurer is required to make representations or warranties not reasonably related to the business being reinsured.

j. The ceding insurer is required to make representations or warranties about future performance of the business being reinsured.

k. The reinsurance agreement is entered into for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business reinsured and, in substance or effect, the expected potential liability to the ceding insurer remains basically unchanged.

17.3(2) Notwithstanding 191—subrule 17.3(1), an insurer subject to this chapter may, with the prior approval of the commissioner, take such reserve credit or establish such asset as the commissioner may deem consistent with the insurance code or rules, including actuarial interpretations or standards adopted by the insurance division.

17.3(3) *a.* Agreements entered into after the effective date of this chapter which involve the reinsurance of business issued prior to the effective date of the agreements, along with any subsequent amendments thereto, shall be filed by the ceding company with the commissioner within 30 days from its date of execution. Each filing shall include data detailing the financial impact of the transaction. The ceding insurer's actuary who signs the financial statement actuarial opinion with respect to valuation of reserves shall consider this rule and any applicable actuarial standards of practice when determining the proper credit in financial statements filed with this division. The actuary should maintain adequate documentation and be prepared upon request to describe the actuarial work performed for inclusion in the financial statements and to demonstrate that such work conforms to this rule.

b. Any increase in surplus net of federal income tax resulting from arrangements described in paragraph *"a"* of this subrule shall be identified separately on the insurer's statutory financial statement as a surplus item (aggregate write-ins for gains and losses in surplus in the Capital and Surplus Account, page 4 of the Annual Statement) and recognition of the surplus increase as income shall be reflected on a net of tax basis in the "Reinsurance ceded" line, page 4 of the Annual Statement, as earnings emerge from the business reinsured.

*[For example, on the last day of calendar year N, company XYZ pays a $20 million initial commission and expense allowance to company ABC for reinsuring an existing block of business. Assuming a 34% tax rate, the net increase in surplus at inception is $13.2 million ($20 million - $6.8 million) which is reported on the "Aggregate write-ins for gains and losses in surplus" line in the Capital and Surplus Account. $6.8 million (34% of $20 million) is reported as income on the "Commissions and expense allowances on reinsurance ceded" line of the Summary of Operations.

At the end of year N + 1 the business has earned $4 million. ABC has paid $.5 million in profit and risk charges in arrears for the year and has received a $1 million experience refund. Company ABC's annual statement would report $1.65 million (66% of ($4 million - $1 million - $.5 million) up to a maximum of $13.2 million) on the "Commissions and expense allowance on reinsurance ceded" line of the Summary of Operations, and - $1.65 million on the "Aggregate write-ins for gains and losses in surplus" line of the Capital and Surplus Account. The experience refund would be reported separately as a miscellaneous income item in the Summary of Operations.]

*NOTE: Brackets supplied by agency.

191—17.4(508) Written agreements.

17.4(1) No reinsurance agreement or amendment to any agreement may be used to reduce any liability or to establish any asset in any financial statement filed with the division, unless the agreement, amendment, or a binding letter of intent has been duly executed by both parties no later than the "as of date" of the financial statement.

17.4(2) In the case of a letter of intent, a reinsurance agreement or an amendment to a reinsurance agreement must be executed within a reasonable period of time, not exceeding 90 days from the execution date of the letter of intent, in order for credit to be granted for the reinsurance ceded.

17.4(3) The reinsurance agreement shall contain provisions which provide that:

a. The agreement shall constitute the entire agreement between the parties with respect to the business being reinsured thereunder and that there are no understandings between the parties other than as expressed in the agreement; and

b. Any change or modification to the agreement shall be null and void unless made by amendment to the agreement and signed by both parties.

191—17.5(508) Existing agreements. Insurers subject to this chapter shall, by December 31, 1994, reduce to zero any reserve credits or assets established with respect to reinsurance agreements entered into prior to the effective date of this chapter which, under the provisions of this chapter, would not be entitled to recognition of the reserve credits or assets; provided, however, that the reinsurance agreements shall have been in compliance with laws or rules in existence immediately preceding the effective date of this chapter.

These rules are intended to implement Iowa Code chapter 508.

[Filed 7/21/89, Notice 6/14/89—published 8/9/89, effective 9/13/89]
[Filed 8/13/93, Notice 7/7/93—published 9/1/93, effective 10/6/93]

d. The classification committee's recommendation must be approved by the warden/superintendent.

e. If approved by the warden/superintendent, the recommendation and all pertinent information shall be forwarded to the deputy director for final approval.

f. If the recommendation is approved by the deputy director, the inmate must agree to abide by all rules established in the program plan including institutional rules and community corrections rules as well as all local, state, and federal laws.

g. Each level of review has the authority to deny the application or to make changes in the program plan including level of placement, i.e., institutional, residential/halfway house, home, as well as electronic monitoring devices.

h. Inmates placed in any of these programs will not be relieved of paying restitution or any other financial obligation as required by the court or institution.

20.17(6) *Violations.*

a. Violation of any rule set forth in the program plan including any additional rules set forth by any authority listed in this policy may constitute the revocation of participation in either program at any level.

b. Revocation may also occur for improper care of children or dependents, inadequate earnings, failure to maintain employment or unacceptable employment conduct, rule violations, or failure to meet program expectations.

20.17(7) *Program activity.* This rule does not create any liberty interest in the inmate's continued participation in any of the programs at any level listed under this rule, and the department of corrections or its designee(s) reserves the right to revoke, suspend, or limit/restrict program activity from the listed programs for any reason, without hearing.

20.17(8) *Waiver of liberty interests.* As a condition for an inmate to participate in any of the programs at any level listed under this rule, the inmate must voluntarily waive any and all liberty interests to a hearing should the department exercise its right to revoke, suspend or limit/restrict program activity. This waiver must be signed prior to an inmate's acceptance into a program. The signed waiver shall remove any and all rights to due process should the department exercise its right to revoke, suspend or limit/restrict program activity.

This rule is intended to implement Iowa Code section 904.910.

201—20.18(904) Violator programs. The department of corrections provides violator programs at two institutions: 30 female beds at the Iowa correctional institution for women (ICIW) at Mitchellville and 80 male beds at the correctional release center (CRC) at Newton. These programs provide up to a six-month confinement for probation, parole, and work release offenders that have violated conditions of supervision and would otherwise have been returned to or sent to prison.

20.18(1) The violator programs provide up to a six-month intensive, highly structured treatment program designed to divert certain offenders from long-term incarceration.

20.18(2) "Violator" means probationer, parolee, or work releasee not having community status revoked but found to have violated conditions of supervision by the appropriate jurisdiction having statutory authority to revoke.

20.18(3) Offenders will be committed to a violator program pursuant to Iowa Code section 904.207.

20.18(4) All probation offenders committed to a violator program shall be admitted to the Iowa medical and classification center (IMCC) reception unit. Upon admittance to IMCC, the transporting authority shall provide the receiving officer with a court order disposing of the violation (including commitment to the custody of the director and stating violator program participation is a condition of probation), mittimus, case origination documents, indictment or information documents, minutes of testimony, and judgment entry.

20.18(5) All parole or work release offenders committed to a violator program shall enter the program through the IMCC reception unit.

The violator program shall be a condition of release, and the offender will remain in the custody of the department of corrections under the terms of the offender's original commitment.

20.18(6) Admission standards.

a. Reception process at IMCC, including medical intake screen, will normally be completed within seven days.

b. If further medical testing or treatment is necessary, transfer to the violator program may be delayed until additional testing or treatment is completed and the offender's health status permits transfer.

c. The department may deny admission to a violator program if the offender is medically unable to complete the program or if an offender's mental health status prohibits participation.

d. Offenders will not be allowed any personal property with the exception of clothing being worn at the time of admission to the IMCC reception unit. Other property will not be accepted by the IMCC receiving officer.

20.18(7) Release standards.

a. Upon successful completion of a violator program, offenders will be referred to the sending or supervising judicial district department of correctional services.

b. An offender that does not successfully complete the violator program will be returned to the sending or supervising judicial district department of correctional services for disposition.

20.18(8) An offender placed in a violator program will not be granted all the privileges and rights or may not be subject to certain requirements established in Iowa Administrative Code 201—Chapter 20. The following paragraphs establish which rules of Iowa Administrative Code 201—Chapter 20 that violators will or will not be subject to:

a. Rule 20.1(904)—Application of rules. Will not apply to violator programs except as otherwise stated.

b. Rule 20.2(904)—Title II definitions. Will apply only where listed in the following applicable rules.

c. Rule 20.3(904)—Visits to inmates. Offenders will not be allowed visits except individuals determined by staff and only in conjunction with participation in the family treatment component. Attorney and clergy visits must be scheduled in advance so as to not conflict with program schedules. Exceptions may be authorized by the warden.

d. Rule 20.4(904)—Mail. Offenders will be allowed mail privileges pursuant to rule 20.4(904) with the following exceptions:

(1) There will be no limit on the amount of incoming mail although program policy may limit the amount of mail that can be stored or maintained in the living area.

(2) Offenders will not receive an allowance and will not be allowed to receive outside source moneys. Therefore, offenders will be provided writing materials and postage for two letters per week.

(3) Packages and publications will not be allowed.

e. Rule 20.5(904)—Gifts to inmates. Offenders will not be granted any of the privileges of rule 20.5(904).

f. Rule 20.6(904)—Publications. Offenders will not be granted any of the privileges or rights of rule 20.6(904).

g. Rule 20.7(904)—Interviews and statements. This rule may apply only as stated "with prior consent of the warden, superintendent or designee."

h. Rule 20.8(904)—Guests of institution. This rule is not applicable since this rule has no impact on the violator program.

i. Rule 20.9(904)—Donations. This rule is not applicable since this rule has no impact on the violator program.

j. Rule 20.11(904,910)—Restitution. This rule will be temporarily suspended while offenders are in the program. Restitution plans will be maintained, and the plan of payment will be reinstated upon release from the program.

k. Rule 20.12(904)—Furloughs. This rule will only apply in family emergency situations in accordance with 20.12(5)*"a"* and 20.12(6)*"a,"* although the criteria for eligibility are waived, and these furloughs will only be granted at the discretion of the warden/superintendent or designee with approval of the regional deputy director.

l. Rule 20.13(904)—Board of parole interviews. This rule is not applicable since this rule has no impact on the violator program.

m. Rule 20.15(910A)—Victim notification. This rule will not apply to the violator program.

n. Rule 20.17(904)—Institutional community placement. This rule will not apply to the violator program.

20.18(9) Good conduct time.

a. Iowa Code chapter 903A will not apply to probationers and parolees.

b. Iowa Code chapter 903A will apply to work releasees in accordance with work release policies and procedures.

20.18(10) Clothing, transportation, and release moneys. The provisions of Iowa Code section 906.9 will not apply to violator programs.

20.18(11) Any exceptions to these rules must be specifically approved by the warden/superintendent or designee.

This rule is intended to implement Iowa Code section 904.207.

201—20.19 Reserved.

201—20.20(904) Inmate telephone commissions.

20.20(1) All commissions received from the vendor will be deposited in a special account established by the institution.

20.20(2) All expenditures from this account will be used for the benefit of inmates. Expenditures shall include the enhancement of existing educational, vocational, recreational, work or treatment programs, services or projects, or to initiate new programs, services, or projects. Institutions are encouraged to give spending priority to programs, services, and projects that promote the health and welfare of inmates.

20.20(3) Each institution is authorized to expend or encumber up to 75 percent of available commission funds. No institution will be allowed to overspend its account or borrow from the account.

20.20(4) Twenty-five percent of each commission will be held in reserve to assist other institutional programs, services, or projects.

20.20(5) Requests requiring expenditures or encumbrances from the 25 percent reserve will be reviewed by a committee comprised of the director, deputy director of institutions, and a warden(s) to be selected by the deputy director of institutions. These requests will be reviewed at six-month intervals or upon special need as determined by the director.

a. These requests will be in writing to the deputy director of institutions and shall describe the product or service to be purchased, the expected benefit to inmates, and the actual cost.

b. The committee will approve, deny, or modify the request in writing.

20.20(6) The director may expend and encumber a portion of the 25 percent reserve fund to support or subsidize a service or project at an institution not having sufficient funds to complete a project or service.

This rule is intended to implement Iowa Code section 904.508A.

[Filed 9/25/81, Notice 10/29/80—published 10/14/81, effective 11/18/81]
[Filed emergency 10/23/81—published 11/11/81, effective 10/23/81]
[Filed 10/23/81, Notice 9/2/81—published 11/11/81, effective 12/16/81]
[Filed 4/5/82, Notice 1/20/82—published 4/28/82, effective 6/2/82]
[Filed 4/29/82, Notice 3/17/82—published 5/26/82, effective 6/30/82]
[Filed emergency 6/15/82—published 7/7/82, effective 7/1/82]
[Filed emergency 10/29/82—published 11/24/82, effective 10/29/82]
[Filed 1/14/83, Notice 11/10/82—published 2/2/83, effective 3/9/83]
[Filed emergency 6/17/83—published 7/6/83, effective 7/1/83]
[Filed emergency 8/29/83—published 9/14/83, effective 10/1/83]
[Filed emergency 9/9/83—published 9/28/83, effective 10/1/83]
[Filed 11/18/83, Notice 9/28/83—published 12/7/83, effective 1/11/84]
[Filed 2/24/84, Notice 1/4/84—published 3/14/84, effective 4/18/84]
[Filed 5/4/84, Notice 2/15/84—published 5/23/84, effective 6/27/84]
[Filed emergency 6/8/84—published 7/4/84, effective 6/8/84]
[Filed 7/24/84, Notice 4/25/84—published 8/15/84, effective 9/19/84]
[Filed 9/21/84, Notice 7/4/84—published 10/10/84, effective 11/14/84]
[Filed emergency 11/16/84—published 12/5/84, effective 11/16/84]
[Filed 4/4/85, Notice 10/24/84—published 4/24/85, effective 5/29/85]
[Filed 4/19/85, Notice 2/13/85—published 5/8/85, effective 6/12/85]
[Filed emergency 6/28/85—published 7/17/85, effective 7/1/85]
[Filed 9/20/85, Notice 7/31/85—published 10/9/85, effective 11/13/85]
[Filed emergency 7/11/86—published 7/30/86, effective 7/11/86]
[Filed 2/6/87, Notice 12/31/86—published 2/25/87, effective 4/1/87]
[Filed emergency 9/30/88—published 10/19/88, effective 9/30/88]
[Filed emergency 12/9/88—published 12/28/88, effective 12/9/88]
[Filed 3/31/89, Notice 12/28/88—published 4/19/89, effective 5/24/89]
[Filed emergency 7/21/89—published 8/9/89, effective 7/21/89]
[Filed 8/3/90, Notice 2/21/90—published 8/22/90, effective 9/26/90]
[Filed emergency 9/14/90—published 10/3/90, effective 9/26/90]
[Filed emergency 9/28/90—published 10/17/90, effective 9/28/90]
[Filed emergency 2/20/91—published 3/20/91, effective 2/20/91]
[Filed 1/31/92, Notice 10/2/91—published 2/19/92, effective 3/27/92]
[Filed 7/17/92, Notice 2/19/92—published 8/5/92, effective 9/9/92]
[Filed 10/23/92, Notice 5/27/92—published 11/11/92, effective 12/16/92]
[Filed 2/26/93, Notice 9/16/92—published 3/17/93, effective 4/21/93]
[Filed 2/26/93, Notice 12/23/92—published 3/17/93, effective 4/21/93]
[Filed 6/21/93, Notice 2/17/93—published 7/7/93, effective 8/11/93]
[Filed 10/21/94, Notice 8/17/94—published 11/9/94, effective 12/14/94]
[Filed emergency 7/14/95—published 8/2/95, effective 7/14/95]
[Filed 3/7/97, Notice 1/29/97—published 3/26/97, effective 4/30/97]
[Filed emergency 5/22/97—published 6/18/97, effective 5/22/97]
[Filed emergency 6/30/97—published 7/30/97, effective 6/30/97]
[Filed emergency 7/25/97—published 8/13/97, effective 7/25/97]
[Filed 12/12/97, Notice 8/13/97—published 12/31/97, effective 2/4/98]◊
[Filed 10/16/98, Notice 7/29/98—published 11/4/98, effective 12/9/98]
[Filed emergency 11/4/99—published 12/1/99, effective 11/4/99]

◊ Two ARCs

IOWA FINANCE AUTHORITY[265]

[Prior to 7/26/85, Housing Finance Authority[495]]
[Prior to 4/3/91, Iowa Finance Authority[524]]

CHAPTER 7
CONTESTED CASES

CHAPTER 8
PRIVATE ACTIVITY BOND ALLOCATION

CHAPTER 9
TITLE GUARANTY DIVISION

CHAPTER 10
MORTGAGE CREDIT CERTIFICATES

CHAPTER 11
Reserved

CHAPTER 12
LOW-INCOME HOUSING TAX CREDIT

265—9.15(16) Participation requirements for lenders. Any mortgage lender as defined in Iowa Code section 16.1(14) that is authorized to make mortgage loans on Iowa real estate shall be eligible to participate in the title guaranty program.

265—9.16(16) Forms, endorsements, and manuals. The division shall adopt title guaranty certificate forms and endorsement forms that are acceptable to the secondary market in accord with the provisions of Iowa Code chapter 16. In addition, the division shall publish a manual for use by participating attorneys, abstracters, and lenders, which manual may be revised from time to time. Such manual shall include forms of the certificates and endorsements. The manual shall also include the membership participation standards and requirements, and such other matters deemed necessary by the division for implementation and effective administration of the title guaranty program.

265—9.17(16) Application for waiver of participation requirements. It is the intention of the division to make title guaranties available statewide. Therefore, in order to achieve the widest possible geographic coverage, the division will allow any abstracter or attorney the opportunity to apply for a waiver of the participation requirements set out in rules 9.13(16) and 9.14(16). Any application for waiver of participating requirements should be directed to the board of the division and should succinctly state which participation requirements are requested to be waived. The request should contain adequate supporting information and argument so that the board may make an informed decision on the request. It is the intention of the board to waive participation requirements only when it is determined that they result in a hardship to the requesting abstracter or attorney and the waiver clearly is in the public interest or is absolutely necessary to ensure availability of title guaranties throughout the state.

265—9.18(16) Rates. The division shall fix the rate for the owner's guaranty, the lender's guaranty, and the various endorsements that will be offered by the division. The division shall make a published rate schedule available to mortgage lenders.

265—9.19(16) Charges. No participant in the title guaranty program shall charge or receive any portion of the charge for the guaranty as a result of participation in the title guaranty program.

265—9.20(78GA,ch54) Mortgage release certificate.

9.20(1) *Definitions.* As used in this rule, unless the context otherwise requires:

"Authority" means the Iowa finance authority described in Iowa Code chapter 16.

"Certificate" means the certificate of release or partial release of mortgage issued by the division.

"Claim for damages" means a claim for actual money damages against the division caused by the negligent, wrongful or erroneous filing of a certificate while the staff of the division are acting within the scope of their office or employment, under circumstances where the state, if a private person, would be liable to the claimant for such damage.

"Division" means the title guaranty division in the Iowa finance authority.

"Effective release or satisfaction" means a release or satisfaction of mortgage pursuant to Iowa Code chapter 655.

"Mortgage" means a mortgage or mortgage lien on an interest in real property in this state given to secure a loan in an original principal amount of $500,000 or less. Any future advance supported by the mortgage that exceeds the original principal amount of $500,000 shall not be eligible for release under this rule.

"Mortgagee" means the grantee of a mortgage. If a mortgage has been assigned of record, the mortgagee is the last person to whom the mortgage is assigned of record.

"Mortgage servicer" means the mortgagee or a person other than the mortgagee to whom a mortgagor or the mortgagor's successor in interest is instructed by the mortgagee to send payments on a loan secured by the mortgage. A person transmitting a payoff statement for a mortgage is the mortgage servicer for purposes of such mortgage.

"Mortgagor" means the grantor of a mortgage.

"Payoff statement" means a written statement furnished by the mortgage servicer which sets forth all of the following:

1. The unpaid balance of the loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage, or the amount required to be paid in order to release or partially release the mortgage.
2. Interest on a per-day basis for an amount set forth pursuant to "1" above.
3. The address where payment is to be sent or other specific instructions for making a payment.
4. If, after payment of the unpaid balance of the loan secured by the mortgage, the mortgage continues to secure any unpaid obligation due the mortgagee or any unfunded commitment by the mortgagor to the mortgagee, the legal description of the property that will continue to be subject to the mortgage and the legal description of the property that will be released from the mortgage.

"Person" shall have the same meaning as in Iowa Code chapter 4.

"Prior mortgage" means a mortgage for which an effective release or satisfaction has not been filed of record which was either paid in full by someone other than the real estate lender or closer or was paid by the real estate lender or closer under a previous transaction.

"Real estate lender or closer" means a person licensed to regularly lend moneys in Iowa to be secured by a mortgage on real property in this state, a licensed real estate broker, or a licensed attorney.

9.20(2) *Request for certificate.*

a. A real estate lender or closer may request a certificate from the division by submitting:

(1) A fully and accurately completed request form.

(2) All necessary documents and information to support the certifications made on the request form.

(3) Payment of the filing fee by check or money order made payable to the filing officer of the county in which the certificate is to be recorded in the amount of the filing fee imposed by the filing officer of the county in which the certificate is to be recorded. If duplicate certificates are to be recorded in more than one county, additional checks or money orders payable to the filing officer of such counties shall be submitted.

b. A certificate which is not a full release but is executed and recorded to release part of the security described in a mortgage shall be issued only when the real estate lender or closer has paid the mortgage servicer for the partial release. A certificate shall not be issued for a partial release if the real estate lender or closer is requesting a release pursuant to 1999 Iowa Acts, chapter 54, section 1(7).

c. In the event a person requesting a certificate fails to complete any of the steps or include any of the required information described in this rule, the division may reject the request for a certificate and require the person to refile or amend the request so that it conforms to the provisions of the law or this rule.

9.20(3) *Forms.*

a. Requests for mortgage release certificates shall be made on forms developed and provided by the division. The forms may be obtained from the division or from the authority's Internet Web site located at http://www.ifahome.com. The real estate lender or closer must use the forms developed and provided by the division; however, it is permissible to use reproductions of the forms, including reproductions placed in a word processing program. A reproduced form must substantially conform to the forms provided by the division. A nonconforming form may be rejected by the division.

b. The forms to request a certificate of release shall identify the mortgage to be released and shall contain sufficient information to identify that the requester is a real estate lender or closer; establish that the time requirements have elapsed; establish the party or parties to receive notice of the request; indicate that the debt secured by the mortgage to be released has been paid and the mortgage was less than $500,000; and, in the case of requests for partial releases, include the legal descriptions of the property that will continue to be subject to the mortgage and the property that will be released from the mortgage.

c. The forms giving notice of the request shall be directed to the last-known mortgage servicer and shall contain sufficient information to identify the mortgage to be released; inform the mortgage servicer what is required to prevent the filing of a certificate of release; establish a time limit for the mortgage servicer to respond; and, in the case of requests for partial releases, include the legal descriptions of the property that will continue to be subject to the mortgage and the property that will be released from the mortgage.

d. The certificate of release form shall contain sufficient information to identify the mortgage released; recite the authority for the certificate; recite that the substantive and procedural requirements as to the amount of debt, payment, notice, or other requirements of the division have been met; and, in the case of partial releases, include the legal descriptions of the property that will continue to be subject to the mortgage and the property that will be released from the mortgage.

e. The notice by publication form shall contain sufficient information to identify the mortgage to be released; inform the mortgage servicer what is required to prevent the filing of a certificate of release; establish a time limit for the mortgage servicer to respond; and, in the case of requests for partial releases, include the legal descriptions of the property that will continue to be subject to the mortgage and the property that will be released from the mortgage.

f. All forms may require real estate lenders or closers to provide other information as may be required by law or this rule.

9.20(4) *Certification to the division—mortgages paid by real estate lender or closer.* To obtain a certificate for a mortgage which the mortgage lender or closer has paid and an effective release or partial release has not been filed of record, the mortgage lender or closer shall certify to the division in writing on the form provided:

a. That more than 30 days have elapsed since the date the payment was sent.

b. That, as of the date of the request for a certificate, no effective mortgage release or partial release appears of record.

c. That the payoff statement satisfies one of the following:

(1) The statement does not indicate that the mortgage continues to secure an unpaid obligation due the mortgagee or an unfunded commitment by the mortgagor to the mortgagee; or

(2) The statement contains the legal description of the property to be released from the mortgage and the legal description of the property that will continue to be subject to the mortgage.

d. That payment was made in accordance with the payoff statement, including a statement as to the date the payment was received by the mortgagee or mortgage servicer, as evidenced by one or more of the following in the records of the real estate lender or closer or its agent:

(1) A bank check, certified check, escrow account check, real estate broker trust account check, or attorney trust account check that was negotiated by the mortgagee or mortgage servicer.

(2) Other documentary evidence satisfactory to the division of payment to the mortgagee or mortgage servicer.

e. That the original principal amount of the mortgage was $500,000 or less.

f. That the information provided to identify the mortgage to be released includes the name of the mortgagor, the name of the original mortgagee, the mortgage servicer and last-known mailing address, the date of the mortgage, the date of recording, the county of recording, volume and page, or other applicable recording information in the real property records where the mortgage is to be released, and the same information for the last recorded assignment of record.

g. That any documents or other information attached to or included in the form and submitted in support of the request are original documents or are true and accurate reproductions and that the subject matter contained in the documents is true and correct.

h. If the last-known address of the mortgage servicer is unknown and the real estate lender or closer requesting the certificate is unable to locate an address for the last mortgage servicer of record, the real estate lender or closer may attach an affidavit to the request that service by certified mail on the mortgage servicer is not possible because the last-known address of the mortgage servicer is unknown and the real estate lender or closer, after exercising due diligence, is unable to locate an address for the last mortgage servicer of record.

9.20(5) *Certification to the division—prior mortgages.* To obtain a release of a mortgage that has been paid in full by someone other than the real estate lender or closer, or was paid by the real estate lender or closer under a previous transaction, and an effective release has not been filed of record, the mortgage lender or closer shall certify to the division in writing on the form provided:

a. That the mortgage was paid in full in accordance with one of the following:

(1) By someone other than the real estate lender or closer requesting the certificate.

(2) By the real estate lender or closer under a previous transaction.

b. That, as of the date of the request for a certificate, no effective mortgage release appears of record.

c. That the original principal amount of the mortgage was $500,000 or less.

d. That the information provided to identify the mortgage to be released includes the name of the mortgagor, the name of the original mortgagee, the mortgage servicer and last-known mailing address, the date of the mortgage, the date of recording, the county of recording, volume and page, or other applicable recording information in the real property records where the mortgage is to be released, and the same information for the last recorded assignment of record.

e. That any documents or other information attached to or included in the form and submitted in support of the request are original documents or are true and accurate reproductions and that the subject matter contained in the documents is true and correct.

f. If the last-known address of the mortgage servicer is unknown and the real estate lender or closer requesting the certificate is unable to locate an address for the last mortgage servicer of record, the real estate lender or closer may attach an affidavit to the request that service by certified mail on the mortgage servicer is not possible because the last-known address of the mortgage servicer is unknown and the real estate lender or closer, after exercising due diligence, is unable to locate an address for the last mortgage servicer of record.

9.20(6) *Division determination to give notice—reliance on information submitted.*

a. Upon receipt of a request for issuance of a certificate, the division shall determine that an effective release has not been executed and recorded within 30 days after the date payment was sent or otherwise made in accordance with a payoff statement based upon the information submitted by the person seeking the certificate.

b. The division may use discretion in determining whether an effective release has been executed and recorded and shall rely on the information contained in the request in determining whether further inquiry may be required before giving notice of intent to issue a certificate.

c. The division shall not be required to make a physical search of the real property records in the county or counties where the certificate is to be recorded nor will the division be required to obtain any formal report such as a lien search, abstract opinion, or attorney's opinion. The division may, but is not required to, verify the status of an effective release by contacting the officer responsible for maintaining the real property records of the county in which the certificate is to be recorded; however, if such verification is determined to be necessary, the division may rely on information from the filing officer obtained by telephone, facsimile, electronic mail, or other such means.

d. The division shall not be required to verify or research the accuracy or status of a title to any legal descriptions which are requested to be partially released. The division shall rely on the descriptions certified to the division in the request for a certificate of partial release.

9.20(7) *Contested case proceeding.* In the event a person who is seeking a certificate is aggrieved by the decision of the division not to issue a certificate and wishes to challenge that decision, the person must request a contested case proceeding pursuant to the rules described in 265—Chapter 7. The request for a contested case proceeding must be filed with the division within ten days from the date of the division's decision not to issue a certificate. An aggrieved person must exhaust all administrative remedies before that person may file a proceeding in any court.

9.20(8) *Notice of intent to issue certificate and recording.*

a. Upon determination that an effective release or partial release has not been executed and recorded within 30 days after the date payment was sent or otherwise made in accordance with a payoff statement, the division shall send written notice of intent to execute a certificate by certified mail to the last-known address of the last mortgage servicer of record. If the real estate lender or closer requesting the certificate has attached an affidavit to the request that service by certified mail on the mortgage servicer is not possible because the last-known address of the mortgage servicer is unknown and the real estate lender or closer is unable to locate an address for the last mortgage servicer of record, the division shall proceed pursuant to paragraph 9.20(8)*"e."*

b. The notice shall be given by certified mail and the 30-day period shall begin on the date the notice is placed in the custody of the United States Postal Service for delivery to the mortgage servicer.

c. The notice shall state that a certificate shall be recorded by the division after 30 days from the date the notice was mailed unless the mortgage servicer notifies the division of any reason the certificate of release should not be executed and recorded.

d. In the event the notice sent by certified mail to the last-known mortgage servicer of record is returned to the division for the reason that the mortgage servicer is no longer at the address or the certificate of receipt is not returned within 30 days of mailing, the division shall attempt to serve the mortgage servicer pursuant to Iowa Rule of Civil Procedure 56.1.

e. In the event the division is unable to serve the mortgage servicer, the division shall prepare a notice for publication and send it to the real estate lender or closer for publication in a newspaper of general circulation in the county in which the mortgage to be released is recorded. Notice by publication shall be once each week for three consecutive weeks and shall provide for a 20-day period following the last publication for the mortgage servicer to respond to the division. A copy of the notice together with a certificate of publication shall be submitted to the division after the last publication date. Upon receipt of the certified notice and expiration of the time to respond, the division shall file the certificate of release provided that the mortgage servicer has not notified the division of any satisfactory reason the certificate of release should not be executed and recorded. The notice shall also be posted to the authority's Web page.

f. If, prior to executing and recording the certificate of release, the division receives written notification setting forth reasons satisfactory to the division why the certificate of release should not be executed and recorded by the division, the division shall not execute and record the certificate of release. The division may use its discretion in determining whether a satisfactory reason not to record the certificate has been given depending upon the facts. A satisfactory reason not to record the certificate includes, but is not limited to:

(1) Evidence of an unpaid balance under the terms of any loan secured by the mortgage.

(2) Evidence that a release or satisfaction of mortgage pursuant to Iowa Code chapter 655 has been placed of record.

(3) Failure to submit any information requested by the division or required by the law or this rule.

g. In the event the division determines that a certificate should not be recorded, the division shall return the check or money order, which was made payable to the county filing officer, to the real estate lender or closer that requested the certificate.

h. If the division does not receive written notification setting forth a reason satisfactory to the division why the certificate of release should not be executed and recorded, the division shall proceed to execute and record the certificate. The certificate shall be delivered, by regular mail, along with proper recording fees, to the filing officer in the county where the subject property is located.

i. If duplicate certificates were requested, the division will also deliver the duplicate certificates to the filing officer of those counties.

j. If duplicate certificates were not requested, the real estate lender or closer may record a certified copy of the certificate in another county with the same effect as the original.

9.20(9) *Certificate—mortgages paid by real estate lender or closer.* Certificates issued on mortgages paid by the real estate lender or closer shall contain substantially the following information:

a. That the division sent the 30-day notice required by 1999 Iowa Acts, chapter 54, section 1(2c), and that more than 30 days have elapsed since the date the notice was sent.

b. That the division did not receive written notification setting forth a reason satisfactory to the division why the certificate of release should not be executed and recorded.

c. A statement indicating one of the following:

(1) That the mortgage servicer provided a payoff statement that was used to make payment, and it does not indicate that the mortgage continues to secure an unpaid obligation due the mortgagee or an unfunded commitment by the mortgagor to the mortgagee.

(2) That the mortgage release certificate is a partial release of the mortgage and contains the legal description of the property that will be released from the mortgage and the legal description of the property that will continue to be subject to the mortgage.

d. That payment was made in accordance with the payoff statement including the date the payment was received by the mortgagee or mortgage servicer as evidenced by a bank check, certified check, escrow account check, real estate broker trust account check, or attorney trust account check that was negotiated by the mortgagee or mortgage servicer or other documentary evidence of payment to the mortgagee or mortgage servicer.

e. That the original principal amount of the mortgage was $500,000 or less.

f. Information to identify the mortgage to be released includes the name of the mortgagor, the name of the original mortgagee, the mortgage servicer, the date of the mortgage, the date of recording, county of recording, volume and page, or other applicable recording information in the real property records where the mortgage is to be released, and the same information for the last recorded assignment of record.

g. That the person executing the certificate is a duly authorized officer or employee of the division.

9.20(10) *Certificate—prior mortgages.* Certificates issued on mortgages that have been paid in full by someone other than the real estate lender or closer or were paid by the real estate lender or closer under a previous transaction shall contain substantially the following information:

a. That the division sent the 30-day notice required by 1999 Iowa Acts, chapter 54, section 1(2c), and that more than 30 days have elapsed since the date the notice was sent.

b. That the division did not receive written notification setting forth a reason satisfactory to the division why the certificate of release should not be executed and recorded.

c. A statement indicating the mortgage was paid in full in accordance with one of the following:

(1) By someone other than the real estate lender or closer requesting the certificate.

(2) By the real estate lender or closer under a previous transaction.

d. That the original principal amount of the mortgage was $500,000 or less.

e. Information to identify the mortgage to be released includes the name of the mortgagor, the name of the original mortgagee, the mortgage servicer, the date of the mortgage, the date of recording, county of recording, volume and page, or other applicable recording information in the real property records where the mortgage is to be released, and the same information for the last recorded assignment of record.

f. That the person executing the certificate is a duly authorized officer or employee of the division.

9.20(11) *Authority to sign certificate.* The board of directors of the division may, by resolution, authorize such personnel within the division as the board should determine to execute and record the certificates pursuant to 1999 Iowa Acts, chapter 54, and this rule.

9.20(12) *Records—return to the division.* The certificate of release shall contain instructions to the filing officer(s) to return the document to the division, once file-stamped and entered in the real estate records of the county.

9.20(13) *Photocopy.* The division shall transmit a copy of the recorded certificate to the real estate lender or closer that requested the certificate.

9.20(14) *Effect of filing of the certificate of release.* For purposes of a release or partial release of a mortgage, a certificate of release executed under this rule that contains the information and statements required under 1999 Iowa Acts, chapter 54, and this rule is prima facie evidence of the facts contained in such release or partial release, is entitled to be recorded with the county recorder where the mortgage is recorded, operates as a release or partial release of the mortgage described in the certificate of release, and may be relied upon by any person who owns or subsequently acquires an interest in the property released from the mortgage. The county recorder shall rely upon the certificate of release to release the mortgage.

9.20(15) *Effect of wrongful or erroneous recording of a certificate of release.* A wrongful or erroneous recording of a certificate of release by the division or the authority shall not relieve the mortgagor, or the mortgagor's successors or assigns on the debt, from personal liability on the loan or on other obligations secured by the mortgage.

9.20(16) *Liability of the division.* In addition to any other remedy provided by law, if the division or the authority wrongfully or erroneously records a certificate of release pursuant to this rule, the division is liable to the mortgagee and mortgage servicer for actual damages sustained due to the recording of the certificate of release. A claim for damages is a tort claim as described in Iowa Code chapter 669 since the claim is for money damages caused by the wrongful or erroneous actions of the staff of the division or the authority. The procedures of Iowa Code chapter 669 shall apply to any claim for damages arising out of 1999 Iowa Acts, chapter 54.

Prior to any such satisfaction or resolution of a claim for wrongful or erroneous filing of a certificate of release, the division will inform the real estate lender or closer that requested the certificate about the proposed terms and allow it a reasonable opportunity to resolve or satisfy the claim on other terms.

9.20(17) *Subrogation.* Upon payment of a claim relating to the recording of a certificate, the division is subrogated to the rights of the claimant against all persons relating to the claim including, but not limited to, the real estate lender or closer that requested the certificate.

9.20(18) *Additional remedies.* In addition to any other remedy provided by law, the division may recover from the real estate lender or closer who requested the certificate all expenses incurred, and all damages including punitive or exemplary damages paid to the mortgagee or mortgage service provider, in satisfaction or resolution of a claim for wrongful or erroneous filing of a certificate of release.

9.20(19) *Record keeping.* The original certificate of release document shall remain in the records of the division or the authority for the minimum period of one year after execution. After this time, records may be stored by electronic or other means. Requests and other documents generated or received under this system shall be indexed in such a manner as to allow their retrieval at a future date.

This rule is intended to implement 1999 Iowa Acts, chapter 54.

265—9.21(16) Seal. The division shall have a corporate seal that may be altered from time to time. The seal shall impress the words "Title Guaranty Division Iowa Finance Authority" and may be used to authenticate acts and legal instruments of the division.

Rules 9.8(16) through 9.21(16) are intended to implement Iowa Code sections 17A.3, 17A.9, 17A.10, 16.1, 16.2, 16.3, 16.5, 16.40, 16.91, 535.8(10), and 535A.12.

265—9.22(17A,16) Contested case proceedings presiding officer. Rescinded IAB 9/22/99, effective 9/3/99.

265—9.23(17A,16) Right to contested case proceedings. Rescinded IAB 9/22/99, effective 9/3/99.

265—9.24(17A,16) Time limit for request. Rescinded IAB 9/22/99, effective 9/3/99.

265—9.25(17A,16) Notice of contested case. Rescinded IAB 9/22/99, effective 9/3/99.

265—9.26(17A,16) Form of request. Rescinded IAB 9/22/99, effective 9/3/99.

265—9.27(17A,16) Subpoena power. Rescinded IAB 9/22/99, effective 9/3/99.

265—9.28(17A,16) Conduct of contested case. Rescinded IAB 9/22/99, effective 9/3/99.

265—9.29(17A,16) Decisions. Decisions of the board shall be in writing and shall be mailed to the parties involved in the proceeding.

265—9.30(17A,16) Petition for receipt of additional evidence. If, prior to the issuance of the final decision, any party feels that the submission of additional evidence is necessary, the party shall request an opportunity to present additional evidence by mailing a request to the chair of the division's board by ordinary mail, c/o the division's office at Suite 222, 200 East Grand Avenue, Des Moines, Iowa 50309. The party shall, in addition, notify all opposing parties by certified mail, return receipt requested, including in such notice to the opposing parties all information submitted to the chair.

The chair shall review the requests and either reject the request or establish an additional hearing no sooner than seven calendar days from the chair's decision. The chair shall notify the parties of a decision to adopt additional evidence by certified mail, return receipt requested. Notice of a decision to reject additional evidence may be by ordinary mail.

Rules 9.29(17A,16) and 9.30(17A,16) are intended to implement Iowa Code sections 17A.10 to 17A.18.

[Filed 2/28/86, Notice 1/15/86—published 3/26/86, effective 4/30/86]
[Filed 12/12/86, Notice 10/22/86—published 12/31/86, effective 2/4/87]
[Filed 7/10/87, Notice 6/3/87—published 7/29/87, effective 9/2/87]
[Filed 4/13/90, Notice 12/13/89—published 5/2/90, effective 6/6/90]
[Filed 3/19/91, Notice 10/17/90—published 4/3/91, effective 5/8/91]
[Filed emergency 9/3/99 after Notice 4/21/99—published 9/22/99, effective 9/3/99]
[Filed emergency 11/12/99 after Notice 9/22/99—published 12/1/99, effective 11/12/99]

LIBRARIES AND INFORMATION SERVICES DIVISION[286]

[Prior to 6/26/91, see Library Department [560] Ch 1]
[Prior to 3/30/94, see Cultural Affairs Department[221], Library Division[224], Chs 1 and 6]

CHAPTER 8
IOWA REGIONAL LIBRARY SYSTEM

286—8.1(256) Purpose. This chapter describes the organization and operation of the Iowa regional library system (hereinafter referred to as the regional system or system) consisting of seven regional libraries (hereinafter referred to as the regions or the regional libraries) and establishes regional library service standards.

286—8.2(256) Definitions. The definitions in Iowa Code chapters 17A and 256 and in other chapters of the division's administrative rules apply for terms used throughout this chapter. In addition, the following definitions apply:

"Consultation" means the process of advising librarians, trustees, local government officials, and others on local library management and operations.

"Continuing education" means a lifelong learning process, which builds on and modifies previously acquired knowledge, skills, and attitudes of the individual.

"Information services" means providing local library patrons with access to professional reference librarians and to larger reference collections in order to answer local patrons' information questions.

"Interlibrary loan (ILL)" means providing local library patrons with access to materials that are not available in the local collection.

"OCLC" means the not-for-profit organization that cumulates electronic card catalog records from member libraries around the world and makes those records available to all members for the purpose of cataloging, interlibrary loan, and acquisitions.

286—8.3(256) Organization. The regional library system consists of seven regional libraries each located in and serving a different geographic area of the state. Business hours are 8 a.m. to 4:30 p.m., Monday through Friday, excepting legal holidays. The seven regional libraries are:

1. Central Iowa Regional Library System, 8345 University Blvd., Suite E-1, Clive, Iowa 50325, telephone (515)223-7709 (serves libraries in Polk, Marion, Greene, Dallas, Madison, Warren, Boone, Story, Marshall, and Jasper counties);
2. East Central Regional Library System, 222 Third St. SE, Suite 402, Cedar Rapids, Iowa 52401, telephone (319)365-0521 (serves libraries in Linn, Jones, Iowa, Johnson, Cedar, Tama, Benton, Poweshiek, Jackson, and Clinton counties);
3. North Central Regional Library System, 22 North Georgia, Suite 208, Mason City, Iowa 50401, telephone (515)423-6917 (serves libraries in Cerro Gordo, Franklin, Hancock, Humboldt, Wright, Webster, Kossuth, Winnebago, Hamilton, Hardin, Worth, Mitchell, and Floyd counties);
4. Northeastern Iowa Regional Library System, 415 Commercial St., Waterloo, Iowa 50701, telephone (319)233-1200 (serves libraries in Black Hawk, Delaware, Dubuque, Grundy, Butler, Bremer, Howard, Winneshiek, Allamakee, Chickasaw, Buchanan, Fayette, and Clayton counties);
5. Northwest Regional Library System, 529 Pierce St., P.O. Box 1319, Sioux City, Iowa 51102, telephone (712)255-2939 (serves libraries in Woodbury, Lyon, Sioux, Osceola, Dickinson, Emmet, Clay, Palo Alto, O'Brien, Plymouth, Cherokee, Buena Vista, Pocahontas, Ida, Sac, Calhoun, Monona, Crawford, and Carroll counties);
6. Southeastern Library Services, 4209½ West Locust, Davenport, Iowa 52804, telephone (319)386-7848 (serves libraries in Scott, Appanoose, Davis, Wapello, Jefferson, Van Buren, Lee, Monroe, Mahaska, Keokuk, Henry, Des Moines, Muscatine, Louisa, and Washington counties);
7. Southwest Iowa Regional Library System, 310 W. Kanesville, M-4, Council Bluffs, Iowa 51503, telephone (712)328-9218 (serves libraries in Pottawattamie, Harrison, Shelby, Audubon, Guthrie, Cass, Adair, Mills, Fremont, Page, Montgomery, Adams, Union, Taylor, Clarke, Lucas, Ringgold, Decatur, and Wayne counties).

286—8.4(256) Governance.

8.4(1) *Regional boards of library trustees.* The system consists of seven regional boards of library trustees whose election and representation are prescribed in Iowa Code sections 256.61 and 256.62. Each board of library trustees sets its own meeting schedule and operating procedures.

8.4(2) *Minutes.* Minutes of meetings of regional boards of library trustees are available for inspection at the administrator's office of each respective regional library during regular business hours.

8.4(3) *Iowa regional library system trustees council.* Membership of the council is comprised of all the boards of library trustees of the seven regional libraries. The council's purpose is to further the programs of the regional library system and to serve as a clearinghouse, coordinating cooperative actions and programs initiated by the individual regions or by the council itself.

8.4(4) *Iowa regional library system trustees executive board.* Comprised of 2 trustees from each of the regional boards of library trustees of the seven regional libraries, the 14-member executive board is responsible for approving the system's budget request, long-range plan, and annual joint plan of service, and pursuing opportunities to enhance system services.

8.4(5) *Federated system.* The Iowa regional library system is a federated system, meaning that all public libraries within each region's jurisdiction are independent libraries with their own administrative boards of trustees.

286—8.5(256) Services.

8.5(1) *Advisory.* Regional libraries act in a consultative and advisory capacity, providing support services and encouraging local library development and funding.

8.5(2) *Consultation services.* Regional libraries:

a. Provide information, technical advice, and professional opinion on all aspects of library management for local library boards, staff, and governmental officials. Requests from local libraries are answered as soon as possible, within an average of two days. Responses are delivered via telephone, fax, E-mail, or by an on-site visit to the local library, depending upon the need and the complexity of the question.

b. Provide training and development opportunities for Iowa's public library trustees on the nature of public library law and governance. These opportunities may take the form of workshops or on-site presentations at local board meetings.

c. Visit new library directors to discuss the responsibilities of the director's position and the effective provision of library service, as well as to acquaint them with services available from the regional library system and from the state library.

d. Provide information and technical advice on the uses of technology in public libraries, including implementing automation systems, converting data to electronic form, acquiring and using the Internet, purchasing new computer hardware and software and using electronic information resources including SILO and online databases.

e. Answer questions regarding statewide programs such as Enrich Iowa, Open Access, Access Plus, SILO, librarian certification, library accreditation, and annual reports, thus enabling library boards and staff to better understand these programs and to participate more effectively.

f. Communicate with libraries on a regular basis via newsletters and electronic media.

8.5(3) *Continuing education.* Regional libraries:

a. Conduct annual continuing education needs assessments of libraries within each respective region in order to address continuing education needs and to coordinate statewide delivery of continuing education activities for local library personnel.

b. Sponsor continuing education workshops on all aspects of public library governance and management for local library boards and staff.

c. Sponsor training in the use of the Internet and other information technologies for local library boards and staff.

8.5(4) *Information services.* Regional libraries:

a. Provide backup reference service for local libraries, answering questions from library customers that local library staff are unable to answer with their own resources. Eighty percent of these questions are answered within one week of receipt; all questions are answered or a progress report is supplied to the local library within two weeks of receipt.

b. Train local library staff on reference service including conducting effective reference interviews with customers, evaluating/building a reference collection, using the Internet and other electronic information resources such as SILO to supplement local collections. At least one continuing education workshop on providing reference service is offered each fiscal year.

8.5(5) *Interlibrary loan services.* Regional libraries:

a. Train local library staff in the effective use of the SILO ILL system. Regional staff visit libraries and offer on-site training within one month of the local library's acquiring Internet access.

b. Answer SILO-related questions from library boards and staff within two working days.

c. Provide access (within two working days) to the OCLC interlibrary loan subsystem in order to facilitate access to materials owned by libraries outside Iowa.

d. Process interlibrary loan requests for those libraries without access to SILO. Regional library staff process all interlibrary loan requests within two working days of receipt.

286—8.6(256) State library of Iowa. The regional library system and the state library work cooperatively to improve library service within the state of Iowa. These agencies are partners in advancing local library service and library development across the state. Chief partnership efforts include, but are not limited to:

1. An annual joint plan of service;
2. Joint sponsorship of continuing education programs for local library boards and staff;
3. Cooperative training of local library boards and staff on state library-administered program;
4. Effective use of technology; and
5. Planning, in partnership with Iowa's library community, for library service delivery in the future.

286—8.7(256) Planning.

8.7(1) *Annual joint plan of service.* The joint plan is developed with the state library. The plan includes a description of the system's programs and services. The annual joint plan is submitted to each regional library board of trustees for approval. Upon approval, the plan of service is submitted to the director of the department.

8.7(2) *Long-range plan for the regional library system.* The long-range plan includes how the system intends to provide programs and services to Iowa's public libraries for the next three to five years. The long-range plan is submitted to each regional library board of trustees for approval. Upon approval, the document is submitted to the director of the department.

These rules are intended to implement Iowa Code section 256.51(1)*"k."*

[Filed 11/10/99, Notice 9/22/99—published 12/1/99, effective 1/5/00]

CHAPTER 103
ELDORA TRAINING SCHOOL
103.1(218) Definitions
103.2(218) Visiting
103.3(218) Interviews and statements
103.4(218) Mail and packages
103.5(218) Use of buildings and grounds
103.6(218) Incoming telephone calls
103.7(218) Resident employment
103.8(218) Tours
103.9(218) Acceptance
103.10(218) Admission procedures
103.11(218) Program assignment
103.12(218) Individual care plan
103.13(218) Special staffing
103.14(218) Detention
103.15(218) Grievance procedure
103.16(218) Alleged child abuse
103.17(218) Temporary home visits
103.18(218) Prerelease staffing
103.19(218) Attorney contacts
103.20(218,233A) Standards
103.21(218,233A) Advisory committee

CHAPTER 104
Reserved

TITLE XII
LICENSING AND APPROVED STANDARDS

CHAPTER 105
COUNTY AND MULTICOUNTY JUVENILE DETENTION HOMES AND COUNTY AND MULTICOUNTY JUVENILE SHELTER CARE HOMES
105.1(232) Definitions
105.2(232) Buildings and grounds
105.3(232) Personnel policies
105.4(232) Procedures manual
105.5(232) Staff
105.6(232) Intake procedures
105.7(232) Assessments
105.8(232) Program services
105.9(232) Drug utilization and control
105.10(232) Control room—juvenile detention home only
105.11(232) Clothing
105.12(232) Staffings
105.13(232) Child abuse
105.14(232) Daily log
105.15(232) Children's rights
105.16(232) Discipline
105.17(232) Case files
105.18(232) Discharge
105.19(232) Approval
105.20(232) Provisional approval
105.21(232) Mechanical restraint—juvenile detention only
105.22(232) Chemical restraint

CHAPTER 106
Reserved

CHAPTER 107
CERTIFICATION OF ADOPTION INVESTIGATORS
107.1(600) Introduction
107.2(600) Definitions
107.3(600) Application
107.4(600) Requirements for certification
107.5(600) Granting, denial, or revocation of certification
107.6(600) Certificate
107.7(600) Renewal of certification
107.8(600) Investigative services
107.9(600) Retention of adoption records
107.10(600) Reporting of violations
107.11(600) Appeals

CHAPTER 108
LICENSING AND REGULATION OF CHILD-PLACING AGENCIES
108.1(238) Definitions
108.2(238) Licensing procedure
108.3(238) Administration and organization
108.4(238) Staff qualifications
108.5(238) Staffing requirements
108.6(238) Personnel administration
108.7(238) Foster care services
108.8(238) Foster home studies
108.9(238) Adoption services
108.10(238) Independent living placement services

CHAPTER 109
CHILD CARE CENTERS
109.1(237A) Definitions
109.2(237A) Licensure procedures
109.3(237A) Complaint file
109.4(237A) Administration
109.5(237A) Parental participation
109.6(237A) Personnel
109.7(237A) Professional growth and development
109.8(237A) Staff ratio requirements
109.9(237A) Records
109.10(237A) Health and safety policies
109.11(237A) Physical facilities
109.12(237A) Activity program requirements
109.13(237A) Extended evening care

DIVISION V
GROUP TREATMENT

185.81(234) Required component services
185.82(234) Optional services
185.83(234) Levels of group treatment
185.84(234) Additional services provided in group care
185.85(234) Duration of services
185.86(234) Desired outcomes of group treatment
185.87 to 185.100 Reserved

DIVISION VI
ESTABLISHMENT OF RATES

185.101(234) Definitions
185.102(234) Financial and statistical report
185.103(234) Submission of reports
185.104(234) Expenses not allowed
185.105(234) Costs subject to limits
185.106(234) Establishment of reimbursement rates
185.107(234) Payment of new rates
185.108 Reserved
185.109(234) Fiscal years 1997 and 1998 determination of rates
185.110(234) Providers under an exception to policy for establishing rates
185.111(234) Data
185.112(234) Determination of rates
185.113 to 185.120 Reserved

DIVISION VII
BILLING AND PAYMENT PROCEDURES

185.121(234) Billing procedures
185.122(234) Recoupment procedures

CHAPTERS 186 to 199
Reserved

TITLE XVI
ALTERNATIVE LIVING

CHAPTER 200
ADOPTION SERVICES

200.1(600) Definitions
200.2(600) Release of custody services
200.3(600) Application
200.4(600) Components of adoption services
200.5(600) Termination of parental rights
200.6(600) Service provision
200.7(600) Department fees
200.8(600) Interstate placements
200.9(600) International adoptions
200.10(600) Requests for home studies
200.11(600) Reasons for denial
200.12(600) Removal of child from preadoptive family
200.13(600) Consents
200.14(600) Requests for access to information for research or treatment
200.15(600) Requests for information for other than research or treatment
200.16(600) Appeals

CHAPTER 201
SUBSIDIZED ADOPTIONS

201.1(600) Administration
201.2(600) Definitions
201.3(600) Conditions of eligibility or ineligibility
201.4(600) Application
201.5(600) Negotiation of amount of presubsidy or subsidy
201.6(600) Types of subsidy
201.7(600) Termination of subsidy
201.8(600) Reinstatement of subsidy
201.9(600) New application
201.10(600) Medical assistance based on residency
201.11(600) Presubsidy recovery

CHAPTER 202
FOSTER CARE SERVICES

202.1(234) Definitions
202.2(234) Eligibility
202.3(234) Voluntary placements
202.4(234) Selection of facility
202.5(234) Preplacement
202.6(234) Placement
202.7(234) Out-of-region placements
202.8(234) Out-of-state placements
202.9(234) Independent living
202.10(234) Services to foster parents
202.11(234) Services to the child
202.12(234) Services to parents
202.13(234) Removal of the child
202.14(234) Termination
202.15(234) Case permanency plan
202.16(135H) Department approval of need for a psychiatric medical institution for children
202.17(232) Regional group care targets

CHAPTER 203
IOWA ADOPTION EXCHANGE

CHAPTER 204
SUBSIDIZED GUARDIANSHIP PROGRAM

CHAPTER 205
Reserved

CHAPTER 206
COMMUNITY SUPERVISED APARTMENT LIVING ARRANGEMENTS SERVICES PROGRAM

CHAPTER 207
RESIDENTIAL SERVICES FOR ADULTS

CHAPTERS 208 and 209
Reserved

2. A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse.

3. Any person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

"Income" shall be defined by 42 U.S.C. Section 1382a.

"Institutionalized individual" shall mean an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility or who is eligible for home- and community-based waiver services.

"Resources" shall be defined by 42 U.S.C. Section 1382b without regard (in the case of an institutionalized individual) to the exclusion of the home and land appertaining thereto.

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

441—75.24(249A) Treatment of trusts established after August 10, 1993. For purposes of determining an individual's eligibility for, or the amount of, medical assistance benefits, trusts established after August 10, 1993, (except for trusts specified in 75.24(3)) shall be treated in accordance with 75.24(2).

75.24(1) *Establishment of trust.*

a. For the purposes of this rule, an individual shall be considered to have established a trust if assets of the individual were used to form all or part of the principal of the trust and if any of the following individuals established the trust other than by will: the individual, the individual's spouse, a person (including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse), or a person (including a court or administrative body) acting at the direction or upon the request of the individual or the individual's spouse.

b. The term "assets," with respect to an individual, includes all income and resources of the individual and of the individual's spouse, including any income or resources which the individual or the individual's spouse is entitled to but does not receive because of action by the individual or the individual's spouse, by a person (including a court or administrative body, with legal authority to act in place of or on behalf of the individual's spouse), or by any person (including a court or administrative body) acting at the direction or upon the request of the individual or the individual's spouse.

c. In the case of a trust, the principal of which includes assets of an individual and assets of any other person or persons, the provisions of this rule shall apply to the portion of the trust attributable to the individual.

d. This rule shall apply without regard to:

(1) The purposes for which a trust is established.

(2) Whether the trustees have or exercise any discretion under the trust.

(3) Any restrictions on when or whether distribution may be made for the trust.

(4) Any restriction on the use of distributions from the trust.

e. The term "trust" includes any legal instrument or device that is similar to a trust, including a conservatorship.

75.24(2) *Treatment of revocable and irrevocable trusts.*

a. In the case of a revocable trust:

(1) The principal of the trust shall be considered an available resource.

(2) Payments from the trust to or for the benefit of the individual shall be considered income of the individual.

(3) Any other payments from the trust shall be considered assets disposed of by the individual, subject to the penalties described at rule 441—75.23(249A) and 441—Chapter 89.

b. In the case of an irrevocable trust:

(1) If there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the principal from which, or the income on the principal from which, payment to the individual could be made shall be considered an available resource to the individual and payments from that principal or income to or for the benefit of the individual shall be considered income to the individual. Payments for any other purpose shall be considered a transfer of assets by the individual subject to the penalties described at rule 441—75.23(249A) and 441—Chapter 89.

(2) Any portion of the trust from which, or any income on the principal from which, no payment could under any circumstances be made to the individual shall be considered, as of the date of establishment of the trust (or, if later, the date on which payment to the individual was foreclosed) to be assets disposed of by the individual subject to the penalties specified at 75.23(3) and 441—Chapter 89. The value of the trust shall be determined for this purpose by including the amount of any payments made from this portion of the trust after this date.

75.24(3) *Exceptions.* This rule shall not apply to any of the following trusts:

a. A trust containing the assets of an individual under the age of 65 who is disabled (as defined in Section 1614(a)(3) of the Social Security Act) and which is established for the benefit of the individual by a parent, grandparent, legal guardian of the individual, or a court if the state will receive all amounts remaining in the trust upon the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual.

b. A trust established for the benefit of an individual if the trust is composed only of pension, social security, and other income to the individual (and accumulated income of the trust), and the state will receive all amounts remaining in the trust upon the death of the individual up to the amount equal to the total medical assistance paid on behalf of the individual.

For disposition of trust amounts pursuant to Iowa Code sections 633.707 to 633.711, the average statewide charges and Medicaid rates for the period from December 1, 1999, to June 30, 2000, shall be as follows:

(1) The average statewide charge to a private pay resident of a nursing facility is $2,723 per month.

(2) The average statewide charge to a private pay resident of a hospital-based skilled nursing facility is $8,013 per month.

(3) The average statewide charge to a private pay resident of a non-hospital-based skilled nursing facility is $4,097 per month.

(4) The average statewide Medicaid rate for a resident of an intermediate care facility for the mentally retarded is $8,510 per month.

(5) The average statewide charge to a resident of a mental health institute is $11,924 per month.

(6) The average statewide charge to a private pay resident of a psychiatric medical institution for children is $4,359 per month.

(7) The average statewide charge to a home- and community-based waiver applicant or recipient shall be consistent with the level of care determination and correspond with the average charges and rates set forth in this paragraph.

c. A trust containing the assets of an individual who is disabled (as defined in 1614(a)(3) of the Social Security Act) that meets the following conditions:

(1) The trust is established and managed by a nonprofit association.

(2) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

[Filed emergency 6/11/93—published 7/7/93, effective 7/1/93]
[Filed emergency 6/11/93 after Notice 4/28/93—published 7/7/93, effective 7/1/93]
[Filed 7/14/93, Notice 5/12/93—published 8/4/93, effective 10/1/93]
[Filed 8/12/93, Notice 7/7/93—published 9/1/93, effective 11/1/93]
[Filed emergency 9/17/93—published 10/13/93, effective 10/1/93]
[Filed 9/17/93, Notice 7/21/93—published 10/13/93, effective 12/1/93]
[Filed emergency 11/12/93—published 12/8/93, effective 1/1/94]
[Filed emergency 12/16/93—published 1/5/94, effective 1/1/94]
[Filed without Notice 12/16/93—published 1/5/94, effective 2/9/94]
[Filed 12/16/93, Notices 10/13/93, 10/27/93—published 1/5/94, effective 3/1/94]
[Filed 2/10/94, Notices 12/8/93, 1/5/94◊—published 3/2/94, effective 5/1/94]
[Filed 3/10/94, Notice 2/2/94—published 3/30/94, effective 6/1/94]
[Filed 4/14/94, Notice 2/16/94—published 5/11/94, effective 7/1/94]
[Filed 5/11/94, Notice 3/16/94—published 6/8/94, effective 8/1/94]
[Filed 6/16/94, Notice 4/27/94—published 7/6/94, effective 9/1/94]
[Filed 9/15/94, Notice 8/3/94—published 10/12/94, effective 11/16/94]
[Filed 10/12/94, Notice 8/17/94—published 11/9/94, effective 1/1/95]
[Filed emergency 12/15/94—published 1/4/95, effective 1/1/95]
[Filed 12/15/94, Notices 10/26/94, 11/9/94—published 1/4/95, effective 3/1/95]
[Filed 2/16/95, Notices 11/23/94, 12/21/94, 1/4/95—published 3/15/95, effective 5/1/95]
[Filed 4/13/95, Notices 2/15/95, 3/1/95—published 5/10/95, effective 7/1/95]
[Filed emergency 9/25/95—published 10/11/95, effective 10/1/95]
[Filed 11/16/95, Notices 9/27/95, 10/11/95—published 12/6/95, effective 2/1/96]
[Filed emergency 12/12/95—published 1/3/96, effective 1/1/96]
[Filed 12/12/95, Notice 10/25/95—published 1/3/96, effective 3/1/96]
[Filed 2/14/96, Notice 1/3/96—published 3/13/96, effective 5/1/96]
[Filed 4/10/96, Notice 2/14/96—published 5/8/96, effective 7/1/96]
[Filed emergency 9/19/96—published 10/9/96, effective 9/19/96]
[Filed 10/9/96, Notice 8/28/96—published 11/6/96, effective 1/1/97]
[Filed emergency 12/12/96—published 1/1/97, effective 1/1/97]◊
[Filed 12/12/96, Notices 9/11/96, 10/9/96—published 1/1/97, effective 3/1/97]
[Filed 2/12/97, Notice 1/1/97—published 3/12/97, effective 5/1/97]
[Filed 3/12/97, Notice 1/1/97—published 4/9/97, effective 6/1/97]
[Filed 4/11/97, Notice 2/26/97—published 5/7/97, effective 7/1/97]
[Filed emergency 9/16/97—published 10/8/97, effective 10/1/97]
[Filed 9/16/97, Notice 7/16/97—published 10/8/97, effective 12/1/97]
[Filed emergency 12/10/97—published 12/31/97, effective 1/1/98]
[Filed emergency 12/10/97 after Notices 10/22/97, 11/5/97—published 12/31/97, effective 1/1/98]
[Filed emergency 1/14/98 after Notice 11/19/97—published 2/11/98, effective 2/1/98]
[Filed 2/11/98, Notice 12/31/97—published 3/11/98, effective 5/1/98]◊
[Filed 3/11/98, Notice 1/14/98—published 4/8/98, effective 6/1/98]
[Filed 4/8/98, Notice 2/11/98—published 5/6/98, effective 7/1/98]
[Filed emergency 6/10/98—published 7/1/98, effective 7/1/98]
[Filed emergency 6/25/98—published 7/15/98, effective 7/1/98]
[Filed 7/15/98, Notices 6/3/98—published 8/12/98, effective 10/1/98]
[Filed 8/12/98, Notices 6/17/98, 7/1/98—published 9/9/98, effective 11/1/98]
[Filed 9/15/98, Notice 7/15/98—published 10/7/98, effective 12/1/98]

◊Two or more ARCs

[Filed 11/10/98, Notice 9/23/98—published 12/2/98, effective 2/1/99]
[Filed emergency 12/9/98—published 12/30/98, effective 1/1/99]
[Filed 2/10/99, Notice 12/30/98—published 3/10/99, effective 4/15/99]
[Filed 3/10/99, Notice 11/18/98—published 4/7/99, effective 6/1/99]
[Filed 3/10/99, Notice 1/27/99—published 4/7/99, effective 7/1/99]
[Filed 4/15/99, Notice 2/10/99—published 5/5/99, effective 7/1/99]
[Filed 5/14/99, Notice 4/7/99—published 6/2/99, effective 8/1/99]
[Filed emergency 6/10/99—published 6/30/99, effective 7/1/99]
[Filed 6/10/99, Notice 4/21/99—published 6/30/99, effective 9/1/99]
[Filed emergency 8/12/99 after Notice 6/16/99—published 9/8/99, effective 9/1/99]
[Filed 8/11/99, Notice 6/30/99—published 9/8/99, effective 11/1/99]
[Filed emergency 11/10/99 after Notice 10/6/99—published 12/1/99, effective 12/1/99]

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

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

(4) Home health aide providers meeting the standards set forth in subrule 77.33(3). Home health aide providers certified by Medicare shall be considered to have met these standards.

(5) Supported community living providers certified under rules 441—77.39(13).

77.39(24) *Consumer-directed attendant care service providers.* The following providers may provide consumer-directed attendant care service:

a. An individual who contracts with the consumer to provide attendant care service and who is:

(1) At least 18 years of age.

(2) Qualified by training or experience to carry out the consumer's plan of care pursuant to the department-approved case plan or individual comprehensive plan.

(3) Not the spouse of the consumer or a parent or stepparent of a consumer aged 17 or under.

(4) Not the recipient of respite services paid through home- and community-based services on the behalf of a consumer who receives home- and community-based services.

b. Home care providers that have a contract with the department of public health or have written certification from the department of public health stating they meet the home care standards and requirements set forth in department of public health rules 641—80.5(135), 641—80.6(135), and 641—80.7(135).

c. Home health agencies which are certified to participate in the Medicare program.

d. Chore providers subcontracting with area agencies on aging or with letters of approval from the area agencies on aging stating that the organization is qualified to provide chore services.

e. Community action agencies as designated in Iowa Code section 216A.93.

f. Providers certified under an HCBS waiver for supported community living.

g. Assisted living programs that are voluntarily accredited or certified by the department of elder affairs.

h. Adult day service providers which meet the conditions of participation for adult day care providers as specified at 441—subrule 77.30(3), 77.33(1), 77.34(7), or 77.39(20) and which have provided a point-in-time letter of notification from the department of elder affairs or an area agency on aging stating the adult day service provider also meets the requirements of department of elder affairs rules in 321—Chapter 25 and has submitted a detailed cost account. The cost account shall provide a methodology for determining the cost of consumer-directed attendant care.

441—77.40(249A) Lead inspection agency providers. Lead inspection agency providers are eligible to participate in the Medicaid program if they are certified pursuant to 641—subrule 70.5(4), department of public health.

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

441—77.41(249A) HCBS physical disability waiver service providers. Consumer-directed attendant care, home and vehicle modification, personal emergency response system, specialized medical equipment, and transportation service providers shall be eligible to participate as approved physical disability waiver service providers in the Medicaid program based on the applicable subrules pertaining to the individual service. Enrolled providers shall maintain the certification listed in the applicable subrules in order to remain eligible providers.

77.41(1) *Enrollment process.* Reviews of compliance with standards for initial enrollment shall be conducted by the department's division of medical services quality assurance staff. Enrollment carries no assurance that the approved provider will receive funding.

Review of a provider may occur at any time.

The department may request any information from the prospective service provider that is pertinent to arriving at an enrollment decision. This may include, but is not limited to:

a. Current accreditations, evaluations, inspection reports, and reviews by regulatory and licensing agencies and associations.

b. Fiscal capacity of the prospective provider to initiate and operate the specified programs on an ongoing basis.

c. The prospective provider's written agreement to work cooperatively with the state and central point of coordination in the counties to be served by the provider.

77.41(2) *Consumer-directed attendant care providers.* The following providers may provide consumer-directed attendant care service:

a. An individual who contracts with the consumer to provide consumer-directed attendant care and who is:

(1) At least 18 years of age.

(2) Qualified by training or experience to carry out the consumer's plan of care pursuant to the department-approved case plan or individual comprehensive plan.

(3) Not the spouse or guardian of the consumer.

(4) Not the recipient of respite services paid through home- and community-based services on behalf of a consumer who receives home- and community-based services.

b. Home care providers that have a contract with the department of public health or have written certification from the department of public health stating that they meet the home care standards and requirements set forth in department of public health rules 641—80.5(135), 641—80.6(135), and 641—80.7(135).

c. Home health agencies that are certified to participate in the Medicare program.

d. Chore providers subcontracting with area agencies on aging or with letters of approval from the area agencies on aging stating that the organization is qualified to provide chore services.

e. Community action agencies as designated in Iowa Code section 216A.103.

f. Providers certified under an HCBS waiver for supported community living.

g. Assisted living programs that are voluntarily accredited or certified by the department of elder affairs.

h. Adult day service providers which meet the conditions of participation for adult day care providers as specified at 441—subrule 77.30(3), 77.33(1), 77.34(7), or 77.39(27) and which have provided a point-in-time letter of notification from the department of elder affairs or an area agency on aging stating the adult day service provider also meets the requirements of department of elder affairs rules in 321—Chapter 25.

77.41(3) *Home and vehicle modification providers.* A home and vehicle modification provider shall be either:

a. An approved HCBS brain injury or mental retardation supported community living service provider that meets all the following standards:

(1) The provider shall obtain a binding contract with a community business to perform the work at the reimbursement provided by the department without additional charge. The contract shall include, at a minimum, cost, time frame for work completion, employer's liability coverage, and workers' compensation coverage.

(2) The business shall provide physical or structural modifications to homes or vehicles according to service descriptions listed in 441—subrule 78.46(2).

(3) The business, or the business's parent company or corporation, shall have the necessary legal authority to operate in conformity with federal, state and local laws and regulations.

b. A community business that performs the work and meets all the following standards:

(1) The community business shall enter into binding contracts with consumers to perform the work at the reimbursement provided by the department without additional charge. The contract shall include, at a minimum, cost, time frame for work completion, employer's liability coverage, and workers' compensation coverage.

(2) The business shall provide physical or structural modifications to homes or vehicles according to service descriptions listed in 441—subrule 78.46(2).

(3) The business, or the business's parent company or corporation, shall have the necessary legal authority to operate in conformity with federal, state and local laws and regulations.

77.41(4) *Personal emergency response system providers.* Personal emergency response system providers shall be agencies which meet the conditions of participation set forth in subrule 77.33(2).

77.41(5) *Specialized medical equipment providers.* The following providers may provide specialized medical equipment:

a. Medical equipment and supply dealers participating as providers in the Medicaid program.

b. Retail and wholesale businesses participating as providers in the Medicaid program which provide specialized medical equipment as defined in 441—subrule 78.46(4).

77.41(6) *Transportation service providers.* The following providers may provide transportation:

a. Area agencies on aging as designated in 321—4.4(231) or with letters of approval from the area agencies on aging stating the organization is qualified to provide transportation services.

b. Community action agencies as designated in Iowa Code section 216A.93.

c. Regional transit agencies as recognized by the Iowa department of transportation.

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

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

[Filed 3/11/70, amended 6/21/73, 2/13/75, 3/21/75]
[Filed 6/25/76, Notice 5/17/76—published 7/12/76, effective 8/16/76]
[Filed 12/6/77, Notice 10/19/77—published 12/28/77, effective 2/1/78]
[Filed 2/8/78, Notice 12/28/78—published 3/8/78, effective 4/12/78]
[Filed without Notice 3/31/78—published 4/19/78, effective 7/1/78]
[Filed 2/26/82, Notice 10/14/81—published 3/17/82, effective 5/1/82]
[Filed 5/20/83, Notice 3/30/83—published 6/8/83, effective 8/1/83]
[Filed emergency 10/7/83—published 10/26/83, effective 11/1/83]
[Filed without Notice 10/7/83—published 10/26/83, effective 12/1/83]
[Filed 11/18/83, Notice 10/12/83—published 12/7/83, effective 2/1/84]
[Filed 4/29/85, Notice 2/27/85—published 5/22/85, effective 7/1/85]
[Filed 1/22/86, Notice 12/4/85—published 2/12/86, effective 4/1/86]
[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]
[Filed 3/3/87, Notice 12/31/86—published 3/25/87, effective 5/1/87]
[Filed emergency 8/28/87—published 9/23/87, effective 9/1/87]
[Filed emergency 6/9/88—published 6/29/88, effective 7/1/88]
[Filed 9/2/88, Notice 6/29/88—published 9/21/88, effective 11/1/88]
[Filed emergency 11/23/88 after Notices 7/13/88, 9/21/88—published 12/14/88, effective 1/1/89]
[Filed 12/8/88, Notice 10/19/88—published 12/28/88, effective 2/1/89]
[Filed 7/14/89, Notice 4/19/89—published 8/9/89, effective 10/1/89]
[Filed 9/15/89, Notice 8/9/89—published 10/4/89, effective 12/1/89]
[Filed emergency 12/15/89 after Notice 10/4/89—published 1/10/90, effective 1/1/90]
[Filed 4/13/90, Notice 11/29/90—published 5/2/90, effective 8/1/90]
[Filed 7/13/90, Notice 5/16/90—published 8/8/90, effective 10/1/90]
[Filed 10/12/90, Notice 8/8/90—published 10/31/90, effective 2/1/91]
[Filed emergency 1/17/91—published 2/6/91, effective 2/1/91]
[Filed 1/17/91, Notice 11/14/90—published 2/6/91, effective 4/1/91]

[Filed 3/14/91, Notice 2/6/91—published 4/3/91, effective 6/1/91]
[Filed 6/14/91, Notice 5/1/91—published 7/10/91, effective 9/1/91]
[Filed 7/10/91, Notice 5/29/91—published 8/7/91, effective 10/1/91]
[Filed 9/18/91, Notice 7/10/91—published 10/16/91, effective 12/1/91]
[Filed emergency 1/16/92 after Notice 11/27/91—published 2/5/92, effective 3/1/92]
[Filed emergency 5/13/92 after Notice 4/1/92—published 6/10/92, effective 5/14/92]
[Filed emergency 6/12/92—published 7/8/92, effective 7/1/92]
[Filed 8/14/92, Notice 7/8/92—published 9/2/92, effective 11/1/92]
[Filed 9/11/92, Notice 7/8/92—published 9/30/92, effective 12/1/92]
[Filed emergency 7/13/93 after Notice 5/12/93—published 8/4/93, effective 8/1/93]
[Filed without Notice 8/12/93—published 9/1/93, effective 11/1/93]
[Filed 8/12/93, Notices 4/28/93, 7/7/93—published 9/1/93, effective 11/1/93]
[Filed emergency 12/16/93 after Notice 10/27/93—published 1/5/94, effective 1/1/94]
[Filed 12/16/93, Notice 9/1/93—published 1/5/94, effective 3/1/94]
[Filed emergency 2/10/94 after Notice 1/5/94—published 3/2/94, effective 3/1/94]
[Filed 3/10/94, Notice 2/2/94—published 3/30/94, effective 6/1/94]
[Filed 11/9/94, Notice 9/14/94—published 12/7/94, effective 2/1/95]
[Filed 12/15/94, Notice 11/9/94—published 1/4/95, effective 3/5/95]
[Filed 5/11/95, Notice 3/29/95—published 6/7/95, effective 8/1/95]
[Filed 11/16/95, Notices 8/2/95, 9/13/95, 9/27/95—published 12/6/95, effective 2/1/96]
[Filed 7/10/96, Notice 4/24/96—published 7/31/96, effective 10/1/96]
[Filed 10/9/96, Notice 8/14/96—published 11/6/96, effective 1/1/97]
[Filed 2/12/97, Notice 12/18/96—published 3/12/97, effective 5/1/97]
[Filed 3/12/97, Notices 1/1/97, 1/29/97—published 4/9/97, effective 6/1/97]
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[Filed 11/12/97, Notice 9/10/97—published 12/3/97, effective 2/1/98]
[Filed 4/8/98, Notice 2/11/98—published 5/6/98, effective 7/1/98]
[Filed emergency 6/10/98—published 7/1/98, effective 6/10/98]
[Filed 10/14/98, Notice 7/1/98—published 11/4/98, effective 12/9/98]
[Filed 1/13/99, Notice 11/4/98—published 2/10/99, effective 4/1/99]
[Filed 2/10/99, Notice 12/16/98—published 3/10/99, effective 5/1/99]
[Filed emergency 9/13/99—published 10/6/99, effective 10/1/99]
[Filed 11/10/99, Notice 10/6/99—published 12/1/99, effective 2/1/00]

Provider category	Basis of reimbursement	Upper limit
Hospitals (Inpatient)	Prospective reimbursement. See 79.1(5)	Reimbursement rate in effect 6/30/99 increased by 2%
Hospitals (Outpatient)	Prospective reimbursement for providers listed at 441—paragraphs 78.31(1)*"a"* to *"f."* See 79.1(16)	Ambulatory patient group rate (plus an evaluation rate) and assessment payment rate in effect on 6/30/99 increased by 2%
	Fee schedule for providers listed at 441—paragraphs 78.31(1)*"g"* to *"n."* See 79.1(16)	Rates in effect on 6/30/99 increased by 2%
Independent laboratories	Fee schedule. See 79.1(6)	Medicare fee schedule. See 79.1(6)
Intermediate care facilities for the mentally retarded	Prospective reimbursement. See 441—82.5(249A)	Eightieth percentile of facility costs as calculated from 12/31/98 cost reports
Lead inspection agency	Fee schedule	Fee schedule in effect 6/30/99 plus 2%
Maternal health centers	Reasonable cost per procedure on a prospective basis as determined by the department based on financial and statistical data submitted annually by the provider group	Fee schedule in effect 6/30/99 plus 2%
Nurse-midwives	Fee schedule	Fee schedule in effect 6/30/99 plus 2%
Nursing facilities:		
1. Nursing facility care	Prospective reimbursement. See 441—subrule 81.10(1) and 441—81.6(249A)	Seventieth percentile of facility costs as calculated from all 6/30/99 cost reports
2. Skilled nursing care provided in: Hospital-based facilities	Prospective reimbursement. See 79.1(9)	Facility base rate per diems used on 6/30/99 inflated by 2% subject to a maximum allowable payment rate of $346.20 per day for hospital-based skilled facilities

Provider category	Basis of reimbursement	Upper limit
Freestanding facilities	Prospective reimbursement. See 79.1(9)	Facility base rate per diems used on 6/30/99 inflated by 2% subject to a maximum allowable payment rate of $163.41 per day for freestanding skilled facilities
Opticians	Fee schedule. Fixed fee for lenses and frames; other optical materials at product acquisition cost	Reimbursement rate for provider in effect 6/30/99 plus 2%
Optometrists	Fee schedule. Fixed fee for lenses and frames; other optical materials at product acquisition cost	Reimbursement rate for provider in effect 6/30/99 plus 2%
Orthopedic shoe dealers	Fee schedule	Reimbursement rate for provider in effect 6/30/99 plus 2%
Physical therapists	Fee schedule	Fee schedule in effect 6/30/99 plus 2%
Physicians (doctors of medicine or osteopathy)	Fee schedule. See 79.1(7)	Fee schedule in effect 6/30/99 plus 2%
Podiatrists	Fee schedule	Fee schedule in effect 6/30/99 plus 2%
Prescribed drugs	See 79.1(8)	$4.10 or $6.38 dispensing fee (See 79.1(8)*"a"* and *"e"*)

f. An additional reimbursement amount of one cent per dose shall be added to the allowable ingredient cost of a prescription for an oral solid if the drug is dispensed to a patient in a nursing home in unit dose packaging prepared by the pharmacist.

79.1(9) *Nursing facility reimbursement for skilled nursing care.* Reimbursement shall be prospective based on a per diem rate calculated for each facility by establishing a base year per diem to which an annual index is applied.

a. The base year per diem rate shall be the Medicaid cost per diem as determined using the facility's 1998 fiscal year-end Medicare cost report. The base per diem rate for facilities enrolled since 1998 will be determined using the facility's first finalized Medicare cost report. Determination of allowable costs for the base year will be made using Medicare methods in place on December 31, 1998. For facilities that have elected to receive the low Medicare volume prospective payment rate for 1998, the Medicare 1998 prospective payment rate plus ancillary costs attributable to skilled patient days and not payable by Medicare shall be used to determine the facility's Medicaid costs per patient day.

A new skilled facility shall be reimbursed at an interim rate determined by Medicare or, for facilities not participating in Medicare, at an interim rate determined using Medicare methodology. The initial interim rate shall be either the rate used by Medicare or a per diem (using Medicare methodology) developed using a projected cost statement from the facility. When the facility submits the first cost report to Medicare, the facility shall send a copy to the Medicaid fiscal agent. A new prospective rate shall be established based on this cost report effective the first day of the month in which the cost report is received. Interim and final rates may not exceed the maximum allowable costs established in paragraph *"d"* below unless the facility meets the requirements in paragraph *"e"* below.

b. In-state facilities serving Medicaid eligibles who require a ventilator at least six hours every day, are inappropriate for home care, have a failed attempt at weaning or are inappropriate for weaning, and have medical needs that require skilled care as determined by the Iowa foundation for medical care shall receive a $50 per day incentive factor. For ventilator care a facility may not receive a rate that exceeds the ceiling rate for its facility classification plus $50 per day. The facility may continue to receive the payment for 30 days for any person weaned from a respirator who continues to reside in the facility and continues to meet skilled criteria for those 30 days.

c. Nursing facilities providing skilled nursing care shall be classified as either hospital-based or free-standing (non-hospital-based). A hospital-based facility is under the management and administration of a hospital regardless of where the skilled beds are physically located.

d. Effective February 1, 2000, the maximum allowable cost for skilled care shall be $346.20 per day for hospital-based facilities and $163.41 per day for freestanding facilities.

e. Nursing facilities enrolled in the Iowa Medicaid program on May 31, 1993, providing skilled nursing care and serving a disproportionate share of Medicaid recipients shall be exempt from the payment ceiling. Nursing facilities which enroll in the Iowa Medicaid program on or after June 1, 1993, provide skilled care, and serve a disproportionate share of Medicaid recipients shall have an upper limit on their rate not to exceed 150 percent of the ceiling for the class of skilled nursing facility.

For nursing facilities providing skilled nursing care, a disproportionate share of Medicaid recipients shall exist when the total cost of skilled services rendered to Medicaid recipients in any one provider fiscal year is greater than or equal to 51 percent of the facility's total allowable cost for skilled services for the same fiscal year except as provided in subparagraphs (1) and (2). The department shall determine which providers qualify for this exemption.

(1) Nursing facilities enrolled in the Iowa Medicaid program on May 31, 1993, and meeting disproportionate share requirements on that date shall continue to be exempted from the payment ceiling if the total cost of services rendered to Medicaid recipients in any one provider fiscal year drops below 51 percent, but the total cost of services to Medicaid recipients is greater than 35 percent of the facility skilled nursing allowable cost for the same fiscal year.

For facilities meeting this condition, a 10 percent reduction in the Medicaid payment rate shall be made. For each percentage point in the facility's overall utilization rate (rounded to the nearest whole number) below 75 percent, a further 1 percent reduction shall be made in the Medicaid payment rate, in addition to any occupancy adjustment already made by the Medicare program.

(2) A facility meeting the conditions of subparagraph (1) as of July 1, 1996, or at a subsequent time, shall be subject to the following conditions and requirements:

- A census report shall be submitted to the department which verifies the Medicaid and overall occupancy of the facility for the entire year immediately preceding application by a facility to be reimbursed according to the conditions of this subrule.
- The initial rate for a facility approved for reimbursement under provisions of subparagraph (1) shall be the allowable Medicaid rate on the effective date less 10 percent and any further applicable percentage reduction.

Subsequent rate calculations shall be based on the annual cost report prepared by a facility subject to the limitations of this subparagraph and subject to an allowable rate of increase approved by the Iowa general assembly. These adjustments shall be effective July 1 of each year.

f. The current method for submitting billings and cost reports shall be maintained. All cost reports will be subject to desk review audit and, if necessary, a field audit.

g. Out-of-state nursing facilities providing skilled nursing services shall be reimbursed at the same level as in their state of residence.

h. Payment for outpatient services by certified skilled nursing facilities shall be made at the Medicare rate of reimbursement.

i. Rates for skilled nursing facilities shall be rebased every three years.

79.1(10) *Prohibition against reassignment of claims.* No payment under the medical assistance program for any care or service provided to a patient by any health care provider shall be made to anyone other than the providers. However with respect to physicians, dentists or other individual practitioners direct payment may be made to the employer of the practitioner if the practitioner is required as a condition of employment to turn over fees to the employer; or where the care or service was provided in a facility, to the facility in which the care or service was provided if there is a contractual arrangement between the practitioner and the facility whereby the facility submits the claim for reimbursement; or to a foundation, plan or similar organization including a health maintenance organization which furnishes health care through an organized health care delivery system if there is a contractual agreement between organization and the person furnishing the service under which the organization bills or receives payment for the person's services. Payment may be made in accordance with an assignment from the provider to a government agency or an assignment made pursuant to a court order. Payment may be made to a business agent, such as a billing service or accounting firm, which renders statements and receives payment in the name of the provider when the agent's compensation for this service is (1) reasonably related to the cost or processing the billing; (2) not related on a percentage or other basis to the dollar amounts to be billed or collected; and (3) not dependent upon the actual collection of payment. Nothing in this rule shall preclude making payment to the estate of a deceased practitioner.

[Filed 9/18/91, Notices 7/10/91, 7/24/91—published 10/16/91, effective 12/1/91]
[Filed 12/11/91, Notice 10/16/91—published 1/8/92, effective 3/1/92]
[Filed 12/11/91, Notice 10/30/91—published 1/8/92, effective 3/1/92]
[Filed emergency 1/16/92 after Notice 11/27/91—published 2/5/92, effective 3/1/92****]
[Filed 2/13/92, Notice 1/8/92—published 3/4/92, effective 4/8/92]
[Filed emergency 4/15/92—published 5/13/92, effective 4/16/92]
[Filed emergency 5/13/92 after Notice 4/1/92—published 6/10/92, effective 5/14/92]
[Filed emergency 6/12/92—published 7/8/92, effective 7/1/92]
[Filed 6/11/92, Notices 3/18/92, 4/29/92—published 7/8/92, effective 9/1/92]
[Filed without Notice 6/11/92—published 7/8/92, effective 9/1/92]
[Filed 8/14/92, Notice 7/8/92—published 9/2/92, effective 11/1/92]
[Filed emergency 9/11/92—published 9/30/92, effective 10/1/92]
[Filed 9/11/92, Notice 7/8/92—published 9/30/92, effective 12/1/92]
[Filed 10/15/92, Notice 8/19/92—published 11/11/92, effective 1/1/93]
[Filed 11/10/92, Notice 9/30/92—published 12/9/92, effective 2/1/93]
[Filed emergency 12/30/92 after Notice 11/25/92—published 1/20/93, effective 1/1/93]
[Filed 1/14/93, Notice 11/11/92—published 2/3/93, effective 4/1/93]
[Filed 3/11/93, Notice 1/20/93—published 3/31/93, effective 6/1/93]
[Filed 4/15/93, Notice 3/3/93—published 5/12/93, effective 7/1/93]
[Filed emergency 5/14/93 after Notice 3/31/93—published 6/9/93, effective 6/1/93]
[Filed 5/14/93, Notice 3/31/93—published 6/9/93, effective 8/1/93]
[Filed emergency 6/11/93—published 7/7/93, effective 7/1/93]
[Filed 6/11/93, Notice 4/28/93—published 7/7/93, effective 9/1/93]
[Filed emergency 6/25/93—published 7/21/93, effective 7/1/93]
[Filed emergency 7/13/93 after Notice 5/12/93—published 8/4/93, effective 8/1/93]
[Filed without Notice 8/12/93—published 9/1/93, effective 11/1/93]
[Filed 8/12/93, Notices 4/28/93, 7/7/93—published 9/1/93, effective 11/1/93]
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[Filed 12/16/93, Notice 9/1/93—published 1/5/94, effective 3/1/94]
[Filed 1/12/94, Notice 11/10/93—published 2/2/94, effective 4/1/94]
[Filed 3/10/94, Notices 1/19/94, 2/2/94◊—published 3/30/94, effective 6/1/94]
[Filed emergency 6/16/94—published 7/6/94, effective 7/1/94]
[Filed 9/15/94, Notice 7/6/94—published 10/12/94, effective 12/1/94]
[Filed 11/9/94, Notice 9/14/94—published 12/7/94, effective 2/1/95]
[Filed 12/15/94, Notices 10/12/94, 11/9/94—published 1/4/95, effective 3/1/95]
[Filed 3/20/95, Notice 2/1/95—published 4/12/95, effective 6/1/95]
[Filed 5/11/95, Notice 3/29/95—published 6/7/95, effective 8/1/95]
[Filed emergency 6/7/95—published 7/5/95, effective 7/1/95]
[Filed 8/10/95, Notice 7/5/95—published 8/30/95, effective 11/1/95]
[Filed 11/16/95, Notices 8/2/95, 9/27/95◊—published 12/6/95, effective 2/1/96]
[Filed 5/15/96, Notice 2/14/96—published 6/5/96, effective 8/1/96]
[Filed emergency 6/13/96—published 7/3/96, effective 7/1/96]
[Filed 7/10/96, Notice 6/5/96—published 7/31/96, effective 10/1/96]

****Effective date of 3/1/92 delayed until adjournment of the 1992 General Assembly by the Administrative Rules Review Committee at its meeting held February 3, 1992.

◊ Two ARCs

[Filed 8/15/96, Notice 7/3/96—published 9/11/96, effective 11/1/96]
[Filed 9/17/96, Notice 7/31/96—published 10/9/96, effective 12/1/96]
[Filed 11/13/96, Notice 9/11/96—published 12/4/96, effective 2/1/97]
[Filed 2/12/97, Notice 12/18/96—published 3/12/97, effective 5/1/97]
[Filed 3/12/97, Notices 1/1/97, 1/29/97—published 4/9/97, effective 6/1/97]
[Filed 4/11/97, Notice 2/12/97—published 5/7/97, effective 7/1/97]
[Filed emergency 5/14/97 after Notice 3/12/97—published 6/4/97, effective 7/1/97]
[Filed emergency 6/12/97—published 7/2/97, effective 7/1/97]
[Filed 6/12/97, Notice 4/23/97—published 7/2/97, effective 9/1/97]
[Filed 9/16/97, Notice 7/2/97—published 10/8/97, effective 12/1/97]
[Filed emergency 11/12/97—published 12/3/97, effective 11/12/97]
[Filed 11/12/97, Notice 9/10/97—published 12/3/97, effective 2/1/98]
[Filed 1/14/98, Notices 11/19/97, 12/3/97—published 2/11/98, effective 4/1/98]
[Filed 3/11/98, Notice 1/14/98—published 4/8/98, effective 6/1/98]
[Filed 4/8/98, Notice 2/11/98—published 5/6/98, effective 7/1/98]
[Filed emergency 6/10/98—published 7/1/98, effective 7/1/98]
[Filed 8/12/98, Notice 7/1/98—published 9/9/98, effective 11/1/98]
[Filed 9/15/98, Notice 7/15/98—published 10/7/98, effective 12/1/98]
[Filed 11/10/98, Notice 9/23/98—published 12/2/98, effective 2/1/99]
[Filed 1/13/99, Notice 11/4/98—published 2/10/99, effective 4/1/99]
[Filed 2/10/99, Notice 12/16/98—published 3/10/99, effective 5/1/99]
[Filed 4/15/99, Notice 2/10/99—published 5/5/99, effective 7/1/99]
[Filed emergency 6/10/99—published 6/30/99, effective 7/1/99]
[Filed 6/10/99, Notice 5/5/99—published 6/30/99, effective 9/1/99]
[Filed 7/15/99, Notice 5/19/99—published 8/11/99, effective 10/1/99]
[Filed 8/12/99, Notice 6/30/99—published 9/8/99, effective 11/1/99]
[Filed 11/10/99, Notice 9/22/99—published 12/1/99, effective 2/1/00]

e. Effective January 1, 1999, the basis for establishing the maximum reimbursement rate for non-state-owned nursing facilities shall be the seventieth percentile of participating facilities' per diem rates as calculated from the December 31, 1998, report of "unaudited compilation of various costs and statistical data."

Beginning July 1, 1999, the basis for establishing the maximum reimbursement rate for non-state-owned nursing facilities shall be the seventieth percentile of participating facilities' per diem rates as calculated from the June 30, 1999, report of "unaudited compilation of various costs and statistical data" submitted by each facility on medical assistance cost reports. A facility which does not have a current cost report on file with the department as of June 30, 1999, shall continue to receive the per diem rate in effect for that facility on June 30, 1999, until the facility's costs are above that rate or until June 30, 2000, whichever is earlier.

f. The per diem rate paid for skilled nursing care provided by a nursing facility certified under the Medicare program shall be established according to guidelines in 441—subrule 79.1(9).

g. Facilities, both hospital-based distinct units and freestanding, which have beds certified as Medicare-skilled beds may participate in both the skilled care program and the nursing facility program. These facilities shall submit Form 470-0030. The facility's costs shall be used to calculate the maximum nursing facility rate.

81.6(17) *Cost report documentation.* Beginning July 1, 1999, all nursing facilities shall submit semiannual cost reports based on the closing date of the facility's fiscal year and the midpoint of the facility's fiscal year, that incorporate additional documentation as set forth below. Initially, the additional documentation shall provide baseline information by describing the status of the facility with reference to the information requested as of July 1, 1999, and subsequently the additional documentation shall describe the status of the facility for the period of the cost report. The additional documentation to be incorporated in the cost reports shall include all of the following information:

a. Information on staffing costs, including the number of hours of the following provided per resident per day by all the following: nursing services provided by registered nurses, licensed practical nurses, certified nurse aides, restorative aides, certified medication aides, and contracted nursing services; other care services; administrative functions; housekeeping and maintenance; and dietary services.

b. The starting and average hourly wage for each class of employees for the period of the report.

This rule is intended to implement Iowa Code sections 249A.2(6), 249A.3(2)*"a,"* 249A.4, and 249A.16.

441—81.7(249A) Continued review. The Iowa Foundation for Medical Care shall review Medicaid recipients' need of continued care in nursing facilities, pursuant to the standards and subject to the reconsideration and appeals processes in subrule 81.3(1).

This rule is intended to implement Iowa Code sections 249A.2(6) and 249A.3(2)*"a."*

441—81.8(249A) Quality of care review. Rescinded IAB 8/8/90, effective 10/1/90.

441—81.9(249A) Records.

81.9(1) *Content.* The facility shall as a minimum maintain the following records:

a. All records required by the department of public health and the department of inspections and appeals.

b. Records of all treatments, drugs, and services for which vendors' payments have been made or are to be made under the medical assistance program, including the authority for and the date of administration of the treatment, drugs, or services.

c. Documentation in each resident's records which will enable the department to verify that each charge is due and proper prior to payment.

d. Financial records maintained in the standard, specified form including the facility's most recent audited cost report.

e. All other records as may be found necessary by the department in determining compliance with any federal or state law or rule or regulation promulgated by the United States Department of Health and Human Services or by the department.

f. Census records to include the date, number of residents at the beginning of each day, names of residents admitted, and names of residents discharged.

(1) Census information shall be provided for all residents of the facility.

(2) Census figures for each type of care shall be totaled monthly to indicate the number admitted, the number discharged, and the number of patient days.

(3) Failure to maintain acceptable census records shall result in the per diem rate being computed on the basis of 100 percent occupancy and a request for refunds covering indicated recipients of nursing care which have not been properly accounted for.

g. Resident accounts.

h. In-service education program records.

i. Inspection reports pertaining to conformity with federal, state and local laws.

j. Residents' personal records.

k. Residents' medical records.

l. Disaster preparedness reports.

81.9(2) *Retention.* Records identified in subrule 81.9(1) shall be retained in the facility for a minimum of five years or until an audit is performed on those records, whichever is longer.

81.9(3) *Change of owner.* All records shall be retained within the facility upon change of ownership.

This rule is intended to implement Iowa Code sections 249A.2(6) and 249A.3(2)*"a."*

441—81.10(249A) Payment procedures.

81.10(1) *Method of payment.* Facilities shall be reimbursed under a cost-related vendor payment program. A per diem rate shall be established based on information submitted according to rule 441—81.6(249A). The per diem rate shall be no greater than the maximum reasonable cost determined by the department.

81.10(2) *Authorization of payment.* The department shall authorize payment for care in a facility. The authorization shall be obtained prior to admission of the resident, whenever possible.

81.10(3) Rescinded IAB 8/9/89, effective 10/1/89.

[Filed 7/13/90, Notices 3/7/90, 5/30/90—published 8/8/90, effective 10/1/90*]
[Filed 8/16/90, Notice 6/27/90—published 9/5/90, effective 11/1/90]
[Filed 9/28/90, Notices 7/11/90, 8/8/90—published 10/17/90, effective 12/1/90**]
[Filed emergency 11/14/90—published 12/12/90, effective 12/1/90]
[Filed emergency 2/22/91—published 3/20/91, effective 3/1/91]
[Filed emergency 6/14/91—published 7/10/91, effective 7/1/91]
[Filed 6/14/91, Notices 3/20/91, 5/1/91—published 7/10/91, effective 9/1/91]
[Filed 7/10/91, Notice 5/29/91—published 8/7/91, effective 10/1/91]
[Filed 9/18/91, Notices 7/10/91, 7/24/91—published 10/16/91, effective 12/1/91]
[Filed 10/10/91, Notice 8/21/91—published 10/30/91, effective 1/1/92]
[Filed 2/13/92, Notice 1/8/92—published 3/4/92, effective 4/8/92]
[Filed without Notice 5/14/92—published 6/10/92, effective 7/15/92***]
[Filed emergency 6/12/92—published 7/8/92, effective 7/1/92]
[Filed 8/14/92, Notice 7/8/92—published 9/2/92, effective 11/1/92]
[Filed 11/10/92, Notice 9/30/92—published 12/9/92, effective 2/1/93]
[Filed 1/14/93, Notice 12/9/92—published 2/3/93, effective 4/1/93]
[Filed 3/11/93, Notice 1/20/93—published 3/31/93, effective 6/1/93†]
[Filed emergency 6/11/93—published 7/7/93, effective 7/1/93]
[Filed 8/12/93, Notice 7/7/93—published 9/1/93, effective 11/1/93]
[Filed emergency 6/16/94—published 7/6/94, effective 7/1/94]
[Filed 9/15/94, Notice 7/6/94—published 10/12/94, effective 12/1/94]
[Filed emergency 4/12/95—published 5/10/95, effective 4/12/95]
[Filed 4/13/95, Notice 3/1/95—published 5/10/95, effective 7/1/95]
[Filed emergency 6/7/95—published 7/5/95, effective 7/1/95]
[Filed 8/10/95, Notice 7/5/95—published 8/30/95, effective 11/1/95]
[Filed 11/16/95, Notice 9/27/95—published 12/6/95, effective 2/1/96]
[Filed emergency 6/13/96—published 7/3/96, effective 7/1/96]
[Filed 8/15/96, Notice 7/3/96—published 9/11/96, effective 11/1/96]
[Filed 4/11/97, Notice 2/12/97—published 5/7/97, effective 7/1/97]
[Filed emergency 6/12/97—published 7/2/97, effective 7/1/97]
[Filed 9/16/97, Notice 7/2/97—published 10/8/97, effective 12/1/97]
[Filed emergency 5/13/98—published 6/3/98, effective 6/22/98]
[Filed emergency 6/10/98—published 7/1/98, effective 7/1/98]
[Filed 7/15/98, Notice 6/3/98—published 8/12/98, effective 10/1/98]
[Filed emergency 8/12/98—published 9/9/98, effective 8/12/98]
[Filed 8/12/98, Notice 7/1/98—published 9/9/98, effective 11/1/98]
[Filed 9/15/98, Notice 7/29/98—published 10/7/98, effective 12/1/98]
[Filed 10/14/98, Notice 9/9/98—published 11/4/98, effective 1/1/99]
[Filed 11/10/98, Notice 8/26/98—published 12/2/98, effective 2/1/99]
[Filed emergency 6/10/99—published 6/30/99, effective 7/1/99]
[Filed 8/12/99, Notices 5/5/99, 6/30/99—published 9/8/99, effective 11/1/99]
[Filed 11/10/99, Notice 9/22/99—published 12/1/99, effective 2/1/00]

*Effective date of 81.16(4) delayed 30 days by the Administrative Rules Review Committee at its September 12, 1990, meeting; at the October 9, 1990, meeting the delay was extended to 70 days. Amendment effective 12/1/90 superseded the 70-day delay.

**Effective date of 81.10(5) delayed until adjournment of the 1991 session of the General Assembly by the Administrative Rules Review Committee at its November 13, 1990, meeting.

***Effective date of 81.13(7)"c"(1) delayed 70 days by the Administrative Rules Review Committee at its meeting held July 14, 1992; delay lifted by the Committee at its meeting held August 11, 1992, effective August 12, 1992.

†Effective date of 81.6(3), first unnumbered paragraph, delayed 70 days by the Administrative Rules Review Committee at its meeting held April 5, 1993.

c. Be ineligible for the HCBS MR waiver.

d. Have the ability to hire, supervise, and fire the provider as determined by the service worker, and be willing to do so, or have a guardian named by probate court who will take this responsibility on behalf of the consumer.

e. Be eligible for Medicaid under 441—Chapter 75.

f. Be aged 18 years to 64 years.

g. Be a current resident of a medical institution and have been a resident for at least 30 consecutive days at the time of initial application for the physical disability waiver.

EXCEPTION: During any waiver year, up to ten persons, two per departmental region as established in 441—subrule 1.4(2), in need of the skilled nursing facility or intermediate care facility level of care who are not residents of a medical institution at the time of application may receive HCBS physical disability waiver services as provided in subrule 83.102(3).

h. Be in need of skilled nursing or intermediate care facility level of care. Initial decisions on level of care shall be made for the department by the Iowa Foundation for Medical Care (IFMC) within two working days of receipt of medical information. After notice of an adverse decision by IFMC, the Medicaid applicant or recipient or the applicant's or recipient's representative may request reconsideration by IFMC pursuant to subrule 83.109(2). On initial and reconsideration decisions, IFMC determines whether the level of care requirement is met based on medical necessity and the appropriateness of the level of care under 441—subrules 79.9(1) and 79.9(2). Adverse decisions by IFMC on reconsiderations may be appealed to the department pursuant to 441—Chapter 7 and rule 441—83.109(249A).

i. Choose HCBS.

j. Use a minimum of one unit of consumer-directed attendant care service or personal emergency response system service each quarter.

83.102(2) *Need for services.*

a. The consumer shall have a service plan which is developed by the consumer and a department service worker. This must be completed and approved prior to service provision and at least annually thereafter.

The service worker shall identify the need for service based on the needs of the consumer as well as the availability and appropriateness of services.

b. The total monthly cost of physical disability waiver services shall not exceed $621 per month.

83.102(3) *Slots.* The total number of persons receiving HCBS physical disability waiver services in the state shall be limited to the number provided in the waiver approved by the Secretary of the U.S. Department of Health and Human Services. Of these, ten slots during any waiver year (two in each departmental region) shall be reserved for persons who were not residents of a medical institution at the time of initial application for the physical disability waiver as allowed by the exception under paragraph 83.102(1)*"g."* These slots shall be available on a first-come, first-served basis.

83.102(4) *County payment slots for persons requiring the ICF/MR level of care.* Rescinded IAB 10/6/99, effective 10/1/99.

83.102(5) *Securing a slot.*

a. The county department office shall contact the division of medical services for all cases to determine if a slot is available for all new applications for the HCBS physical disability waiver program.

(1) For persons not currently receiving Medicaid, the county department office shall contact the division of medical services by the end of the second working day after receipt of a completed Form 470-0442, Application for Medical Assistance or State Supplementary Assistance, submitted on or after April 1, 1999.

(2) For current Medicaid recipients, the county department office shall contact the division of medical services by the end of the second working day after receipt of a signed and dated Form 470-0660, Home- and Community-Based Service Report, submitted on or after April 1, 1999.

b. On the third day after the receipt of the completed Form 470-0442 or 470-0660, if no slot is available, the division of medical services shall enter persons on the HCBS physical disabilities waiver state waiting list for institutionalized persons or on a regional waiting list for the slots reserved for persons who are not institutionalized according to the following:

(1) Persons not currently eligible for Medicaid shall be entered on the basis of the date a completed Form 470-0442, Application for Medical Assistance or State Supplementary Assistance, is submitted on or after April 1, 1999, and date-stamped in the county department office. Consumers currently eligible for Medicaid shall be added on the basis of the date the consumer requests HCBS physical disability program services as documented by the date of the consumer's signature on Form 470-0660 submitted on or after April 1, 1999. In the event that more than one application is received on the same day, persons shall be entered on the waiting list on the basis of the day of the month of their birthday, the lowest number being first on the list. Any subsequent tie shall be decided by the month of birth, January being month one and the lowest number.

(2) Persons who do not fall within the available slots shall have their applications rejected but their names shall be maintained on the state waiting list for institutionalized persons or on a regional waiting list for the slots reserved for persons who are not institutionalized. As slots become available, persons shall be selected from the waiting lists to maintain the number of approved persons on the program based on their order on the waiting lists.

83.102(6) *Securing a county payment slot.* Rescinded IAB 10/6/99, effective 10/1/99.

83.102(7) *HCBS physical disability waiver waiting lists.* When services are denied because the statewide limit for institutionalized persons is reached, a notice of decision denying service based on the limit and stating that the person's name shall be put on a statewide waiting list shall be sent to the person by the department.

When services are denied because the two slots per region for persons already residing in the community at the time of application are filled, a notice of decision denying service based on the limit on those slots and stating that the person's name shall be put on a waiting list by region for one of the community slots shall be sent to the person by the department.

441—83.103(249A) Application.

83.103(1) *Application for financial eligibility.* The application process as specified in rules 441—76.1(249A) to 441—76.6(249A) shall be followed. Applications for this program may only be filed on or after April 1, 1999.

83.103(2) *Approval of application for eligibility.*

a. Applications for this waiver shall be initiated on behalf of the applicant who is a resident of a medical institution with the applicant's consent or with the consent of the applicant's legal representative by the discharge planner of the medical facility where the applicant resides at the time of application. The discharge planner shall complete Form 470-3502, Physical Disability Waiver Assessment Tool, and submit it to the Iowa Foundation for Medical Care (IFMC) review coordinator. After completing the determination of the level of care needed by the applicant, the IFMC review coordinator shall inform the income maintenance worker and the discharge planner on behalf of the applicant or the applicant's guardian of its decision.

b. Applications for this waiver shall be initiated by the applicant or by the applicant's legal guardian on behalf of the applicant who is residing in the community. The applicant or the applicant's legal guardian shall complete Form 470-3502, Physical Disability Waiver Assessment Tool, and submit it to the Iowa Foundation for Medical Care (IFMC) review coordinator. After completing the determination of the level of care needed by the applicant, the IFMC review coordinator shall inform the income maintenance worker and the applicant or the applicant's legal guardian.

c. Eligibility for this waiver shall be effective as of the date when both the eligibility criteria in subrule 83.102(1) and need for services in subrule 83.102(2) have been established. Decisions shall be mailed or given to the consumer or the consumer's legal guardian on the date when each eligibility determination is completed.

d. An applicant shall be given the choice between waiver services and institutional care. The applicant shall complete and sign Form 470-0660, Home- and Community-Based Service Report, indicating the consumer's choice of caregiver.

e. The consumer or the consumer's guardian shall cooperate with the service worker in the development of the service plan, which must be approved by the department service worker prior to the start of services.

f. HCBS physical disability waiver services provided prior to both approvals of eligibility for the waiver cannot be paid.

g. HCBS physical disability waiver services are not available in conjunction with other HCBS waiver programs. The consumer may also receive in-home health-related care service if eligible for that program.

83.103(3) *Effective date of eligibility.*

a. The effective date of eligibility for the waiver for persons who are already determined eligible for Medicaid is the date on which the person is determined to meet all of the criteria set forth in rule 441—83.102(249A).

b. The effective date of eligibility for the waiver for persons who qualify for Medicaid due to eligibility for the waiver services is the date on which the person is determined to meet all of the criteria set forth in rule 441—83.102(249A) and when the eligibility factors set forth in 441—subrule 75.1(7) and, for married persons, in rule 441—75.5(249A), have been satisfied.

c. Eligibility for the waiver continues until the consumer fails to meet eligibility criteria listed in rule 441—83.102(249A). Consumers who return to inpatient status in a medical institution for more than 30 consecutive days shall be reviewed by IFMC to determine additional inpatient needs for possible termination from the physical disability waiver. The consumer shall be reviewed for eligibility under other Medicaid coverage groups in accordance with rule 441—76.11(249A). The consumer shall be notified of that decision through Form 470-0602, Notice of Decision.

If the consumer returns home before the effective date of the notice of decision and the consumer's condition has not substantially changed, the denial may be rescinded and eligibility may continue.

83.103(4) *Attribution of resources.* For the purposes of attributing resources as provided in rule 441—75.5(249A), the date on which the waiver consumer meets the institutional level of care requirement as determined by IFMC or an appeal decision shall be used as the date of entry to the medical institution. Only one attribution of resources shall be completed per person. Attributions completed for a prior institutionalization shall be applied to the waiver application.

441—83.104(249A) Client participation. Consumers who are financially eligible under 441—subrule 75.1(7) (the 300 percent group) must contribute a client participation amount to the cost of physical disability waiver services.

83.104(1) *Computation of client participation.* Client participation shall be computed by deducting a maintenance needs allowance equal to 300 percent of the maximum SSI grant for an individual from the consumer's total income. For a couple, client participation is determined as if each person were an individual.

83.104(2) *Limitation on payment.* If the sum of the third-party payment and client participation equals or exceeds the reimbursement for the specific physical disability waiver service, Medicaid shall make no payments for the waiver service. However, Medicaid shall make payments to other medical providers.

441—83.105(249A) Redetermination. A complete financial redetermination of eligibility for the physical disability waiver shall be completed at least once every 12 months. A redetermination of continuing eligibility factors shall be made when a change in circumstances occurs that affects eligibility in accordance with rule 441—83.102(249A). A redetermination shall contain the components listed in rule 441—83.102(249A).

441—83.106(249A) Allowable services. The services allowable under the physical disability waiver are consumer-directed attendant care, home and vehicle modification, personal emergency response system, transportation service, and specialized medical equipment as set forth in rule 441—78.46(249A).

441—83.107(249A) Individual service plan. An individualized service plan shall be prepared and used for each HCBS physical disability waiver consumer. The service plan shall be developed and approved by the consumer and the DHS service worker prior to services beginning and payment being made to the provider. The plan shall be reviewed by the consumer and the service worker annually, and the current version approved by the service worker.

83.107(1) *Information in plan.* The plan shall be in accordance with 441—subrule 24.2(2) and shall additionally include the following information to assist in evaluating the program:

a. A listing of all services received by a consumer at the time of waiver program enrollment.

b. The name of all providers responsible for providing all services.

c. All service funding sources.

d. The amount of the service to be received by the consumer.

83.107(2) *Annual assessment.* The Iowa Foundation for Medical Care shall review the consumer's need for continued care annually and recertify the consumer's need for long-term care services, pursuant to the standards and subject to the reconsideration and appeal processes at paragraph 83.102(1)*"h"* and rule 441—83.109(249A), based on the completed Form 470-3502, Physical Disability Waiver Assessment Tool, and supporting documentation as needed. Form 470-3502 is completed by the service worker at the time of recertification.

83.107(3) *Case file.* The consumer case file shall contain the following completed forms:

a. Eligibility for Medicaid Waiver, Form 470-0563.

b. Home- and Community-Based Service Report, Form 470-0660.

c. Medicaid Home- and Community-Based Payment Agreement, Form 470-0379.

d. HCBS Consumer-Directed Attendant Care Agreement, Form 470-3372, when consumer-directed attendant care services are being provided.

e. The service plan.

f. Rescinded IAB 10/6/99, effective 10/1/99.

441—83.108(249A) Adverse service actions.

83.108(1) *Denial.* An application for services shall be denied when it is determined by the department that:

a. All of the medically necessary service needs cannot be met in a home- or community-based setting.

b. Service needs exceed the reimbursement maximums.

c. Service needs are not met by the services provided.

d. Needed services are not available or received from qualifying providers.

e. The physical disability waiver service is not identified in the consumer's service plan.

f. There is another community resource available to provide the service or a similar service free of charge to the consumer that will meet the consumer's needs.

g. The consumer receives services from other Medicaid waiver providers.

h. The consumer or legal representative requests termination from the services.

83.108(2) *Reduction.* A particular service may be reduced when the department determines that the provisions of 441—subrule 130.5(3), paragraph *"a"* or *"b,"* apply.

83.108(3) *Termination.* A particular service may be terminated when the department determines that:

a. The provisions of 441—subrule 130.5(2), paragraph *"d," "g,"* or *"h,"* apply.

b. Needed services are not available or received from qualifying providers.

c. The physical disability waiver service is not identified in the consumer's annual service plan.

d. Service needs are not met by the services provided.

e. Services needed exceed the service unit or reimbursement maximums.

f. Completion or receipt of required documents by the consumer for the physical disability waiver service has not occurred.

g. The consumer receives services from other Medicaid providers.

h. The consumer or legal representative requests termination from the services.

441—83.109(249A) Appeal rights. Notice of adverse actions and right to appeal shall be given in accordance with 441—Chapter 7 and rule 441—130.5(234).

83.109(1) *Appeal to county.* The applicant or consumer for whom a county has legal payment responsibility shall be entitled to a review of adverse decisions by the county by appealing to the county pursuant to rule 441—25.21(331). If dissatisfied with the county's decision, the applicant or consumer may file an appeal with the department.

83.109(2) *Reconsideration request to Iowa Foundation for Medical Care (IFMC).* After notice of an adverse decision by IFMC on the level of care requirement pursuant to paragraph 83.102(1)*"h,"* the Medicaid applicant or recipient or the applicant's or recipient's representative may request reconsideration by IFMC by sending a letter requesting a review to IFMC not more than 60 days after the date of the notice of adverse decision. Adverse decisions by IFMC on reconsiderations may be appealed to the department pursuant to 441—Chapter 7.

a. If a timely request for reconsideration of an initial denial determination is made, IFMC shall complete the reconsideration determination and send written notice including appeal rights to the Medicaid applicant or recipient and the applicant's or recipient's representative within ten working days after IFMC receives the request for reconsideration and a copy of the medical record.

b. If a copy of the medical record is not submitted with the reconsideration request, IFMC will request a copy from the facility within two working days.

c. The notice to parties. Written notice of the IFMC reconsidered determination will contain the following:

(1) The basis for the reconsidered determination.

(2) A detailed rationale for the reconsidered determination.

(3) A statement explaining the Medicaid payment consequences of the reconsidered determination.

(4) A statement informing the parties of their appeal rights, including the information that must be included in the request for hearing, the locations for submitting a request for an administrative hearing, and the time period for filing a request.

d. If the request for reconsideration is mailed or delivered to IFMC within ten days of the date of the initial determination, any medical assistance payments previously approved will not be terminated until the decision on reconsideration. If the initial decision is upheld on reconsideration, medical assistance benefits continued pursuant to this rule will be treated as an overpayment to be paid back to the department.

441—83.110(249A) County reimbursement. Rescinded IAB 10/6/99, effective 10/1/99.

441—83.111(249A) Conversion to the X-PERT system. For conversion to the X-PERT system at a time other than review, the consumer may be required to provide additional information. To obtain this information, a consumer may be required to have an interview. Failure to respond for this interview when so requested, or failure to provide requested information, shall result in cancellation.

These rules are intended to implement Iowa Code sections 249A.3 and 249A.4.

[Filed emergency 8/31/84—published 9/26/84, effective 10/1/84]
[Filed 1/22/86, Notice 12/4/85—published 2/12/86, effective 4/1/86]
[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]
[Filed emergency 5/13/88 after Notice 3/23/88—published 6/1/88, effective 6/1/88]
[Filed 7/14/89, Notice 4/19/89—published 8/9/89, effective 10/1/89]
[Filed 3/16/90, Notice 2/7/90—published 4/4/90, effective 6/1/90]
[Filed 4/13/90, Notice 11/29/89—published 5/2/90, effective 8/1/90]
[Filed emergency 6/13/90—published 7/11/90, effective 6/14/90]
[Filed 10/12/90, Notice 8/8/90—published 10/31/90, effective 2/1/91]
[Filed 1/17/91, Notices 11/14/90, 11/28/90—published 2/6/91, effective 4/1/91]
[Filed emergency 5/17/91 after Notice of 4/3/91—published 6/12/91, effective 7/1/91]
[Filed 10/10/91, Notice 9/4/91—published 10/30/91, effective 1/1/92]
[Filed emergency 1/16/92, Notice 11/27/91—published 2/5/92, effective 3/1/92]
[Filed 2/13/92, Notice 1/8/92—published 3/4/92, effective 5/1/92]
[Filed emergency 6/12/92—published 7/8/92, effective 7/1/92]
[Filed 7/17/92, Notice 5/13/92—published 8/5/92, effective 10/1/92]
[Filed 8/14/92, Notice 7/8/92—published 9/2/92, effective 11/1/92]
[Filed 9/11/92, Notice 7/8/92—published 9/30/92, effective 12/1/92]
[Filed emergency 7/13/93 after Notice 5/12/93—published 8/4/93, effective 8/1/93]
[Filed 8/12/93, Notice 4/28/93—published 9/1/93 effective 11/1/93]
[Filed 10/14/93, Notice 8/18/93—published 11/10/93, effective 1/1/94]
[Filed emergency 12/16/93 after Notice 10/27/93—published 1/5/94, effective 1/1/94]
[Filed emergency 2/10/94 after Notice 1/5/94—published 3/2/94, effective 3/1/94]
[Filed emergency 7/15/94 after Notice 6/8/94—published 8/3/94, effective 8/1/94]
[Filed 11/9/94, Notice 9/14/94—published 12/7/94, effective 2/1/95]
[Filed 12/15/94, Notice 11/9/94—published 1/4/95, effective 3/1/95]
[Filed 2/16/95, Notice 11/23/94—published 3/15/95, effective 5/1/95]
[Filed 5/11/95, Notice 3/29/95—published 6/7/95, effective 8/1/95]
[Filed emergency 6/7/95—published 7/5/95, effective 7/1/95]
[Filed 8/10/95, Notice 7/5/95—published 8/30/95, effective 11/1/95]
[Filed 11/16/95, Notices 8/2/95, 9/13/95, 9/27/95—published 12/6/95, effective 2/1/96]
[Filed 5/15/96, Notice 2/14/96—published 6/5/96, effective 8/1/96]
[Filed 6/13/96, Notice 4/24/96—published 7/3/96, effective 9/1/96]
[Filed 7/10/96, Notice 4/24/96—published 7/31/96, effective 10/1/96]
[Filed 8/15/96, Notice 6/19/96—published 9/11/96, effective 11/1/96]
[Filed emergency 10/9/96 after Notice 8/14/96—published 11/6/96, effective 11/1/96]

[Filed 1/15/97, Notice 11/20/96—published 2/12/97, effective 4/1/97]
[Filed 3/12/97, Notices 1/1/97, 1/29/97—published 4/9/97, effective 6/1/97]
[Filed emergency 5/14/97 after Notice 3/12/97—published 6/4/97, effective 7/1/97]
[Filed 6/12/97, Notice 4/23/97—published 7/2/97, effective 10/1/97]
[Filed 11/12/97, Notice 9/10/97—published 12/3/97, effective 2/1/98]
[Filed 12/10/97, Notice 11/5/97—published 12/31/97, effective 4/1/98]
[Filed 4/8/98, Notice 2/11/98—published 5/6/98, effective 7/1/98]
[Filed emergency 6/10/98—published 7/1/98, effective 7/1/98]
[Filed 6/10/98, Notice 5/6/98—published 7/1/98, effective 10/1/98]
[Filed 8/12/98, Notices 6/17/98, 7/1/98—published 9/9/98, effective 11/1/98]
[Filed 12/9/98, Notice 10/7/98—published 12/30/98, effective 4/1/99]
[Filed 1/13/99, Notice 11/4/98—published 2/10/99, effective 4/1/99]
[Filed 2/10/99, Notice 12/16/98—published 3/10/99, effective 5/1/99]
[Filed emergency 6/10/99—published 6/30/99, effective 7/1/99]
[Filed 8/11/99, Notice 6/30/99—published 9/8/99, effective 11/1/99]
[Filed emergency 9/13/99—published 10/6/99, effective 10/1/99]
[Filed 11/10/99, Notice 10/6/99—published 12/1/99, effective 2/1/00]

CHAPTER 110
FAMILY AND GROUP CHILD CARE HOMES

[Prior to 7/1/83, Social Services[770] Ch 110]
[Prior to 2/11/87, Human Services[498]]

DIVISION I
FAMILY AND GROUP CHILD CARE HOME REGISTRATION

PREAMBLE

This division establishes registration procedures for family and group child care homes and group child care-joint registration homes. Included are application and renewal procedures, standards for providers, and procedures for compliance checks and complaint investigation.

441—110.1(237A) Definitions.

"Adult" means a person aged 18 or older.

"Assistant" means a responsible person aged 14 or older.

"Child" means a person under 18 years of age.

"Child care" means the care, supervision, or guidance of a child by a person other than the parent, guardian, relative or custodian for periods of less than 24 hours per day per child on a regular basis in a place other than the child's home. Child care shall not mean special activity programs that meet on a regular basis such as music or dance classes, organized athletics or sports programs, scouting programs, or hobby or craft classes or clubs.

"Department" means the department of human services.

"Family child care home" means a program which provides child care to no more than 6 children at any one time, including the provider's own pre-school-age children. However, a registered or unregistered family child care home may provide care for more than 6 but less than 12 children at any one time for a period of less than two hours, provided that each child in excess of 6 children is attending school in kindergarten or a higher grade level. The provider's own children attending kindergarten or a higher level are not included in the total count. There can be no more than 4 children under the age of two years at any one time.

INCLEMENT WEATHER EXCEPTION: A family child care home may provide care for more than 6 but less than 12 children for two hours or more during a day with inclement weather following the cancellation of school classes. The home must have prior written approval from the parent or guardian of each child present in the home concerning the presence of excess children in the home. The home must have a responsible individual, aged 14 or older, on duty to assist the home provider when more than 6 children are present under this exception. In addition, one or more of the following conditions shall apply to each child present in the home in excess of 6 children:

1. The home provides care to the child on a regular basis for periods of less than two hours.
2. If the child was not present in the family child care home, the child would be unattended.
3. The home regularly provides care to a sibling of the child.

"Group child care home" means a program which provides child care to no more than 6 pre-school-age children at any one time, including the provider's own children not attending kindergarten or a higher grade level. A group child care home provider may also provide care for more than 6 but less than 12 children at any one time, provided that each child in excess of 6 children is attending school in kindergarten or a higher grade level, and there is an assistant in the home to assist in the care of children when any child in excess of 6 is provided care for longer than two hours. In addition to the above numbers, a registered group child care home may provide care for more than 11 but less than 16 children for a period of less than two hours at any time. The provider's own children attending kindergarten or a higher grade level are not included in the total count. There can be no more than 4 children under the age of 24 months at any one time.

INCLEMENT WEATHER EXCEPTION: A registered group child care home may provide care for more than 11 but less than 16 children for a period of two hours or more during a day with inclement weather following the cancellation of school classes. The home must have a prior written approval from the parent or guardian of each child present in the home concerning the presence of excess children in the home. In addition, one or more of the following conditions shall apply to each child present in the home in excess of 11 children during a period of inclement weather:

1. The group child care home provides care to the child on a regular basis for periods of less than two hours.
2. If the child was not present in the group child care home, the child would be unattended.
3. The group child care home provides care to a sibling of the child.

"Group child care home-joint registration" means a program which provides child care for more than 6 but less than 12 children, of whom no more than 4 children present may be less than 24 months of age, and not more than 10 children present shall be 24 months of age or older but not attending school in kindergarten or a higher grade level. The combined total number of these two categories of children shall not exceed 11. In a joint registration group child care home, the joint holder of the certificate of registration must be an adult, and must meet the same requirements as those listed for the provider. In addition to the above numbers, a joint registration group child care home may provide care for more than 11 but less than 16 children for a period of less than two hours at any time, and more than two hours when the inclement weather exception conditions are met.

INCLEMENT WEATHER EXCEPTION: A registered group child care home may provide care for more than 11 but less than 16 children for a period of two hours or more during a day with inclement weather following the cancellation of school classes. The home must have a prior written approval from the parent or guardian of each child present in the home concerning the presence of excess children in the home. In addition, one or more of the following conditions shall apply to each child present in the home in excess of 11 children during a period of inclement weather:

1. The group child care home provides care to the child on a regular basis for periods of less than two hours.
2. If the child was not present in the group child care home, the child would be unattended.
3. The group child care home provides care to a sibling of the child.

"Inclement weather" means weather which is so severe as to cause regularly scheduled school classes to be canceled, either for the entire day or that portion of the day remaining when classes are dismissed early.

"Parent" means parent or legal guardian.

"Provider" means the adult listed on the registration certificate for a family or group child care home, or the adult who is responsible and provides the child care in an unregistered family child care home. In a group child care home-joint registration, each individual is considered to be the provider, registrant, owner, or operator as used in this chapter.

"Registration" means the process by which child care providers certify that they comply with rules adopted by the department. This process is voluntary for family child care home providers, and mandatory for group child care home providers.

"Registration certificate" means the written document issued by the department of human services to publicly state that the provider has certified in writing compliance with the minimum requirements for registration of a family or group child care home or group child care home-joint registration.

441—110.2(237A) Application for registration.

110.2(1) *Family child care home.* A family child care home shall make application for registration on Form 470-3384, Application for Child Care Home Registration, provided by the county office of the department. The family child care home shall use Form 470-3384 to inform the department of any changes in circumstances that would affect their registration.

110.2(2) *Group child care home.* A group child care home shall make application for registration on Form 470-3384, Application for Child Care Home Registration, provided by the county office of the department. The group child care home shall use Form 470-3384 to inform the department of any changes in circumstances that would affect their registration.

110.2(3) *Group child care home-joint registration.* A group child care home-joint registration shall make application for registration on Application for Group Child Care Home-Joint Registration, Form 470-3384, provided by the county office of the department. The group child care home-joint registration shall use Form 470-3384 to inform the department of any changes in circumstances that would affect their registration.

441—110.3(237A) Renewal. Renewal of registration shall be completed yearly.

441—110.4(237A) Issuance of certificate. The department shall issue a registration certificate upon receipt from the provider of a signed statement of compliance with the requirements for registration.

441—110.5(237A) Standards. The provider shall certify that the child care home meets the following conditions:

110.5(1) Health and safety. Conditions in the home are safe, sanitary, and free of hazards. This shall include at a minimum:

a. A non-pay, working telephone with emergency numbers posted for police, fire, ambulance, and the poison information center. The number for each child's parent, for a responsible person who can be reached when the parent cannot, and for the child's physician shall be readily accessible by the telephone.

b. All medicines and poisonous, toxic, or otherwise unsafe materials secured from access by a child.

c. First-aid supplies which include, but are not limited to, adhesive bandages, antiseptic cleansing materials, tweezers, and disposable plastic gloves.

d. Medications given only with the parent's or doctor's written authorization. Each prescribed medication shall be accompanied by a physician's or pharmacist's direction. Both nonprescription and prescription medications shall be in the original container with directions intact and labeled with the child's name. All medications shall be stored properly and, when refrigeration is required, shall be stored in a separate, covered container so as to prevent contamination of food or other medications. All medications shall be stored so they are inaccessible to children.

e. Electrical wiring maintained with all accessible electrical outlets safely capped and electrical cords properly used. Improper use would include running cords under rugs, over hooks, through door openings, or other use that has been known to be hazardous.

f. Combustible materials are kept away from furnaces, stoves, or water heaters.

g. Safety barriers at stairways for children not attending kindergarten or a higher grade level and for special needs children.

h. A safe outdoor play area maintained in good condition throughout the year, fenced off when located on a busy thoroughfare or near a hazard which may be injurious to a child, and with both sunshine and shade areas. The play area shall be kept free from litter, rubbish, and flammable materials and shall be free from contamination by drainage or ponding of sewage, household waste, or storm water.

i. Annual laboratory analysis of a private water supply to show satisfactory bacteriological quality. When children under the age of two are to be cared for, the analysis shall include a nitrate analysis. When private water supplies are determined unsuitable for drinking, commercially bottled water or water treated through a process approved by the health department or designee shall be provided.

j. Emergency plans in case of fire or tornado written and posted by the primary and secondary exits. The plans shall include a diagram with the exits and an outside meeting place noted.

k. Fire and tornado drills practiced monthly and documentation evidencing compliance with monthly practice kept on file by the provider.

l. In order to prevent burns, a safety barrier shall surround any heating stove or heating element.

110.5(2) Provider. The provider shall meet the following requirements:

a. Is 18 years of age or older.

b. Gives careful supervision at all times.

c. Frequently exchanges information with the parent of each child to enhance the quality of care.

d. Gives consistent, dependable care, and is capable of handling emergencies. The provider shall maintain a valid first-aid and cardiopulmonary resuscitation (CPR) certificate to be completed within one year of registration. Providers who have a current certificate of registration shall be certified in first aid and CPR by March 1, 1997.

e. Is present at all times except if emergencies occur or when an absence is planned, at which time good substitute care is provided. When an absence is planned, the parents shall be given at least 24 hours' prior notice.

110.5(3) Activity program. There shall be an activity program which promotes self-esteem and exploration and includes:

a. Active play.

b. Quiet play.

c. Activities for large muscle development.

d. Activities for small muscle development.

e. Play equipment and materials in a safe condition, for both indoor and outdoor activities which are developmentally appropriate for the ages and number of children present.

110.5(4) The certificate of registration shall be displayed in a conspicuous place.

110.5(5) Number of children. The number of children shall conform to the following standards:

a. No greater number of children shall be received for care at any one time than the number authorized on the registration certificate.

b. The total number of children, including the provider's own infants and children not attending kindergarten or a higher grade level, in a family child care home at any one time shall not exceed 6 except when the provider provides care for up to 5 additional children attending kindergarten or a higher grade level, not including the provider's own school-age children, for not more than two hours before school and not more than two hours after school for a maximum of 11 children at any one time. There can be no more than 4 children under the age of two years at any one time. In determining the number of children cared for at any one time in a registered or unregistered family child care home, if the person who operates or establishes the home is a child's parent, guardian, relative, or custodian and the child is not attending kindergarten or a higher grade level, the child shall be considered to be receiving child care from the person and shall be counted as one of the children cared for in the home. If the person who operates or establishes the home is a child's parent, guardian, relative, or custodian and the child is attending kindergarten or a higher grade level, the child shall not be considered to be receiving child care from the person and shall not be counted as one of the children cared for in the home.

c. The total number of children not attending kindergarten or a higher grade level, including the provider's own infants and children not attending kindergarten or a higher grade level, in a group child care home at any one time shall never exceed 6. The provider may care for up to 5 additional children attending kindergarten or a higher grade level, not including the provider's own school-age children, for less than two hours at any one time for a maximum of 11 children at any one time. When any child in excess of 6 is provided care for longer than two hours, an assistant is required in the group child care home to assist in the care of children. Additionally, the group child care home may provide care for more than 11 but less than 16 children for a period of less than two hours at any one time as long as all the children in excess of 6 attend kindergarten or a higher grade level. There shall never be more than 4 children under two years of age present at any one time.

d. The total number of children not attending kindergarten or a higher grade level, including the provider's own infants and children not attending kindergarten or a higher grade level, in a group child care home at any one time shall never exceed 11. The providers may care for up to 4 additional children attending kindergarten or a higher grade level, not including the provider's own school-age children, for less than two hours at any one time. If there are more than 6 children present for a period of two hours or more, the group child care home must have the second adult of the joint registration present. There shall never be more than 4 children less than 24 months of age present, there shall never be more than 10 children present who are 24 months of age or older but not attending school in kindergarten or a higher grade level, and the total of these two groups of children shall never exceed 11.

110.5(6) Discipline. Discipline shall conform to the following standards:

a. Corporal punishment including spanking, shaking and slapping shall not be used.

b. Punishment which is humiliating or frightening or which causes pain or discomfort to the child shall not be used.

c. Punishment shall not be administered because of a child's illness, or progress or lack of progress in toilet training, nor shall punishment or threat of punishment be associated with food or rest.

d. No child shall be subjected to verbal abuse, threats, or derogatory remarks about the child or the child's family.

e. Discipline shall be designed to help the child develop self-control, self-esteem, and respect for the rights of others.

110.5(7) Meals. Regular meals and midmorning and midafternoon snacks shall be provided which are well-balanced, nourishing, and in appropriate amounts as defined by the USDA Child and Adult Care Food Program. Children may bring food to the child care home for their own consumption, but shall not be required to provide their own food.

110.5(8) Children's files. An individual file shall be maintained for each child and updated annually or when the provider becomes aware of changes. The file shall contain:

a. Identifying information including, at a minimum, the child's name, birth date, parent's name, address, telephone number, special needs of the child, and the parent's work address and telephone number.

b. Emergency information including, at a minimum, where the parent can be reached, the name, street address, city and telephone number of the child's regular source of health care, and the name, telephone number, and relationship to the child of another adult available in case of emergency.

c. A signed medical consent from the parent authorizing emergency treatment.

d. For each pre-school-age child, on the first day of attendance, an admission physical examination report signed by a licensed physician or designee in a clinic supervised by a licensed physician. The date of the physical examination shall not be more than 12 months prior to the first day of attendance at the child care home. The written report shall include past health history, status of present health, allergies and restrictive conditions, and recommendations for continued care when necessary.

e. A statement of health condition signed by a physician or designee shall be thereafter submitted annually from the date of the admission physical.

f. A list signed by the parent which names persons authorized to pick up the child. The authorization shall include the name, telephone number, and relationship of the authorized person to the child.

g. A signed and dated immunization card provided by the state department of public health shall be on file for each child enrolled. For the school-age child, a copy of the most recent immunization record shall be acceptable.

h. For each school-age child, on the first day of attendance, documentation of a physical examination that was completed at the time of school enrollment or since.

i. Written permission from the parent for their child to attend activities away from the child care home. The permission shall include:

(1) Times of departure and arrival.

(2) Destination.

(3) Persons who will be responsible for the child.

110.5(9) A provider file shall be maintained and shall contain the physician's signed statement obtained at the time of the first registration, and at least every three years thereafter, on all members of the provider's household that may be present when children are in the home, that the provider and members of the provider's household are free of diseases or disabilities which would prevent good child care.

110.5(10) A Request for Non-Law Enforcement Record Check, Form 595-1396, shall be completed on the provider and all persons living or working in the same home.

110.5(11) A Request for Child Abuse Information, Form 470-0643, shall be completed concerning the provider and all persons living or working in the same home.

110.5(12) A provider file shall contain certification of a minimum of two hours of training relating to the identification and reporting of child abuse pursuant to Iowa Code section 232.69.

110.5(13) Training. The provider file shall contain certificates or training verification documentation for the following required training:

a. During the first six months of registration as a family or group child care home, the provider shall receive two hours of child abuse and neglect mandatory reporter training.

b. During the first year of registration as a family or group child care home and the first year a nonregistered family child care home is under a department certificate agreement, the provider shall receive:

(1) Certification in American Red Cross or American Heart Association infant, child, and adult cardiopulmonary resuscitation (CPR) or equivalent CPR certification approved by the department. A valid certificate indicating the date of training and expiration date shall be maintained.

(2) Certification in infant, child, and adult first aid that uses a nationally recognized curriculum or is received from a nationally recognized training organization including the American Red Cross, American Heart Association, the National Safety Council, and Emergency Medical Planning (Medic First Aid) or an equivalent certification approved by the department. A valid certificate indicating the date of training and expiration date shall be maintained.

(3) Two hours of health and safety training.

c. During the second year of registration as a family or group child care home and the second year a nonregistered family child care home is under department certificate agreement, the provider shall receive a minimum of ten hours of training, chosen from the following categories:

(1) Ages and stages.

(2) Developmentally appropriate programming.

(3) Guidance and discipline.

(4) Nutrition.

(5) Business practices.

d. During the third year of registration and each successive year as a family or group child care home and the third year and each successive year as a nonregistered family child care home under department certificate agreement, the provider shall receive two hours of training in a subject of the provider's choice.

e. In addition, the provider shall receive two hours of child abuse and neglect mandatory reporter training every five years.

f. Rescinded IAB 12/1/99, effective 2/1/00.

g. Both of the individuals who are listed on a group child care home-joint registration are required to meet the training requirements.

441—110.6(237A) List of registered homes. The county offices of the department shall maintain a current list of registered family and group child care homes and group child care homes-joint registration as a referral service to the community.

441—110.7(237A) Denials and revocations.

110.7(1) Registration shall be denied or revoked if a hazard to the safety and well-being of a child is found by the department of human services, and the provider cannot or refuses to correct the hazards, even though the hazard may not have been specifically listed under the health and safety rules.

110.7(2) Record shall be kept in an open file of all denials or revocations of registration and the documentation of reasons for denying or revoking the registration.

110.7(3) The department shall submit record checks for each registrant, staff member, and anyone living in the home who is 14 years of age or older to determine whether they have any founded child abuse reports or criminal convictions. Form 470-0643, Request for Child Abuse Information, and Form 595-1396, DHS Criminal History Record Check, Form B, shall be used for this purpose.

a. If there is a record of founded child abuse or a criminal conviction for the registrant, a staff member, or anyone living in the home, the registration shall be denied or revoked, unless an evaluation of the abuse or crime determines that the abuse or criminal conviction does not warrant prohibition of registration. In an evaluation, the department and the registrant for an employee of the registrant shall consider the nature and seriousness of the abuse or crime, the time elapsed since the commission of the abuse or crime, the circumstances under which the crime or abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the abuse or crime again, and the number of crimes or abuses committed by the person. The person with the criminal conviction or founded child abuse report shall complete and return Form 470-2310, Record Check Evaluation, within ten calendar days of the date on the form to be used to assist in the evaluation. Failure of the person to complete and return the form within the specified time frame shall result in denial or revocation of the license.

b. The department may permit a person who is evaluated to be registered, employed, or to reside in, or to continue to be registered, employed, or to reside in a registered facility, if the person complies with the department's conditions relating to the person's registration, employment, or residence, which may include completion of additional training. For an employee of a registrant, these conditional requirements shall be developed with the registrant. The department has final authority in determining whether prohibition of the person's registration, employment, or residence is warranted and in developing any conditional requirements.

c. If the registrant, staff member, or anyone living in the home has been convicted of a simple misdemeanor or of a serious misdemeanor that occurred five or more years prior to the application, the evaluation and decision may be made by the regional administrator or designee and the registrant for an employee of the registrant. The regional administrator or designee shall notify the registrant and the employee of the registrant of the results of the evaluation using Form 470-2386, Record Check Decision.

d. If the registrant, staff member, or anyone living in the home has a founded abuse report, has been convicted of an aggravated misdemeanor or felony at any time, or has been convicted of a simple or serious misdemeanor that occurred within five years prior to application, the evaluation shall be initially conducted by the regional administrator or designee and the registrant for an employee of the registrant.

(1) If the regional administrator or designee and the registrant for an employee of the registrant determine that the crime or abuse does warrant prohibition of registration, the regional administrator or designee shall notify the individual on whom the evaluation was completed, and the registrant for an employee of the registrant of the results of the evaluation using Form 470-2386, Record Check Decision.

(2) If the regional administrator or designee and the registrant for an employee of the registrant believe that the abuse or criminal conviction should not warrant prohibition of registration, the regional administrator or designee shall provide copies of the child abuse report or criminal history record, Form 470-2310, Record Check Evaluation, and Form 470-2386, Record Check Decision, to the Department of Human Services, Administrator, Division of Adult, Children and Family Services, Hoover State Office Building, Des Moines, Iowa 50319. Within 30 days the administrator shall determine whether the abuse or crime merits prohibition of registration, and shall notify the regional administrator or designee in writing of that decision. The regional administrator or designee shall notify the individual on whom the evaluation was completed, and the registrant for an employee of the registrant using Form 470-2386, Record Check Decision.

110.7(4) Letter of revocation. A letter received by an owner or operator of a registered child care home initiating action to deny or revoke the child care home's registration shall be conspicuously posted where it can be read by parents or any member of the public. The letter shall remain posted until resolution of the action to deny or revoke an owner's or operator's certificate of registration.

110.7(5) If the department has denied or revoked a registration because the provider has continually or repeatedly failed to operate a registered child care home in compliance with Iowa Code chapter 237A and 441—Chapter 110, the person shall not own or operate a registered facility for a period of six months from the date the registration is denied or revoked. The department shall not act on an application for registration submitted by the applicant or provider during the six-month period.

441—110.8(237A) Complaints. A record of all unsubstantiated complaints received shall be kept by the department in a closed file and there shall be documented resolutions of all complaints. Contents of this file shall be available to the registered provider except that disclosure of the identity of the complainant shall be withheld unless expressly waived by the complainant. A record of all substantiated complaints and regulatory violations shall be kept by the department in the regulatory file and shall be available to the public upon request, except that disclosure of the identity of the complainant shall be withheld unless expressly waived by the complainant.

441—110.9(237A) Additional requirements for group child care homes.

110.9(1) The group child care home shall provide a separate quiet area for sick children.

110.9(2) Group child care home fire safety requirements.

a. Fire extinguisher. The group child care home shall have not less than one 2A 10BC rated fire extinguisher located in a visible and readily accessible place on each child-occupied floor.

b. Smoke detectors. The group child care home shall have a minimum of one single station battery operated UL approved smoke detector in each child-occupied room and at the top of every stairway. Each smoke detector shall be installed according to manufacturer's recommendations. Each smoke detector shall be tested monthly by the provider and a record kept for inspection purposes.

c. Two exits. The group child care home shall have a minimum of two direct exits to the outside from the main floor. Both a second story child-occupied floor and a basement child-occupied floor shall have in addition to one inside stairway at least one direct exit to the outside. All exits shall terminate at grade level with permanent steps. Occupancy above the second floor shall not be permitted for child care. A basement window may be used as an exit if the window is openable from the inside without the use of tools and it provides a clear opening of not less than 20 inches in width, 24 inches in height and 5.7 square feet in area. The bottom of the opening shall be not more than 44 inches above the floor with permanent steps inside leading up to the window.

110.9(3) An individual file shall be maintained for each staff assistant and shall contain:

a. A completed Request for Non-Law Enforcement Record Check, Form 595-1396.

b. Rescinded IAB 11/10/93, effective 1/1/94.

c. A completed Request for Child Abuse Information, Form 470-0643.

d. A physician's signed statement at the time of employment and at least every three years thereafter that the person is free of diseases or disabilities which would prevent good child care.

e. Certification of a minimum of two hours of training relating to the identification and reporting of child abuse pursuant to Iowa Code section 232.69.

441—110.10(237A) Compliance checks. Twenty percent or more of all registered family child care homes, 20 percent of all group child care homes-joint registration, and 20 percent of all group child care homes in the county shall be checked during the calendar year for compliance with registration requirements contained in this division. Completed evaluation checklists shall be placed in the registration files.

441—110.11(237A) Parental access. Parents shall be afforded unlimited access to their children and to the providers caring for their children during the normal hours of operations or whenever their children are in the care of the providers, unless parental contact is prohibited by court order.

441—110.12(237A) Registration actions for nonpayment of child support. The department shall revoke or deny the issuance or renewal of a child care registration for a group child care home or group child care home-joint registration provider upon the receipt of a certificate of noncompliance from the child support recovery unit of the department according to the procedures in Iowa Code chapter 252J. In addition to the procedures set forth in Iowa Code chapter 252J, the rules in this chapter shall apply.

110.12(1) *Service of notice.* The notice required by Iowa Code section 252J.8 shall be served upon the applicant or registrant by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rules of Civil Procedure 56.1. Alternatively, the applicant or registrant may accept service personally or through authorized counsel.

110.12(2) *Effective date.* The effective date of the revocation or denial of the registration as specified in the notice required by Iowa Code section 252J.8 shall be 60 days following service of the notice upon the applicant or licensee.

110.12(3) *Preparation of notice.* The department director or designee of the director is authorized to prepare and serve the notice as required by Iowa Code section 252J.8 upon the applicant or registrant.

110.12(4) *Responsibilities of registrants and applicants.* Registrants and registrant applicants shall keep the department informed of all court actions, and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J, and shall provide the department copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in the actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

110.12(5) *District court.* A registrant or applicant may file an application with the district court within 30 days of service of a department notice pursuant to Iowa Code sections 252J.8 and 252J.9.

a. The filing of the application shall stay the department action until the department receives a court order lifting the stay, dismissing the action, or otherwise directing the department to proceed.

b. For purposes of determining the effective date of the revocation, or denial of the issuance or renewal of a registration, the department shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

110.12(6) *Procedure for notification.* The department shall notify the applicant or registrant in writing through regular first-class mail, or such other means as the department deems appropriate in the circumstances, within ten days of the effective date of the revocation of a registration or the denial of the issuance or renewal of a registration, and shall similarly notify the applicant or registrant when the registration is issued, renewed, or reinstated following the department's receipt of a withdrawal of the certificate of noncompliance.

110.12(7) *Appeal rights.* Notwithstanding Iowa Code section 17A.18, the registrant does not have the right to a hearing regarding this issue, but may request a court hearing pursuant to Iowa Code section 252J.9.

These rules are intended to implement Iowa Code section 234.6 and chapter 237A as amended by 1999 Iowa Acts, chapter 192, division I.

441—110.13 to 110.20 Reserved.

DIVISION II
FOUR-LEVEL CHILD CARE HOME REGISTRATION

PREAMBLE

The purpose of this division is to establish a pilot project for a four-level approach to child care home registration as mandated by the general assembly in Iowa Code section 237A.3A as amended by 1999 Iowa Acts, chapter 192, section 4. The pilot project shall include a maximum of two counties in each department region where there is interest. The provisions of this division do not apply to unregistered family child care homes located in those counties. A report shall be submitted to the general assembly in January 2000 regarding the feasibility of implementing the pilot project statewide.

441—110.21(237A) Definitions.

"Adult" means a person aged 18 or older.

"Assistant" means a responsible person aged 14 or older.

"Child" means a person under 18 years of age.

"Child care home" means a person registered under this division to provide child care in a pilot project county.

"Child care" means the care, supervision, or guidance of a child by a person other than the parent, guardian, relative or custodian for periods of less than 24 hours per day per child on a regular basis in a place other than the child's home. Child care shall not mean special activity programs that meet on a regular basis such as music or dance classes, organized athletics or sports programs, scouting programs, or hobby or craft classes or clubs.

"Children receiving care on a part-time basis" means children who are present in a child care home for 90 hours per month or less who are not infants.

"Department" means the department of human services.

"Inclement weather exception" means if school classes have been canceled due to inclement weather, a registered child care home may have additional children present in accordance with the authorization for the registration level of the child care home and subject to all of the following conditions:

1. The child care home has prior written approval from the parent or guardian of each child present in the child care home concerning the presence of additional children in the child care home.
2. The child care home has a responsible individual, aged 14 or older, on duty to assist the care provider as required for the registration level of the child care home.
3. One or more of the following conditions are applicable to each of the additional children present in the child care home:

- The child care home provides care to the child on a regular basis for periods of less than two hours.
- If the child was not present in the child care home, the child would be unattended.
- The child care home regularly provides care to a sibling of the child.

"Infant" means a child who is less than 24 months of age.

"Parent" means parent or legal guardian.

"Provider" means the adult listed on the registration certificate for a Level I through Level IV child care home, or the adult who is responsible and provides the child care in an unregistered child care home.

"Registration" means the process by which child care providers certify that they comply with rules adopted by the department.

"Registration certificate" means the written document issued by the department to publicly state that the provider has certified in writing compliance with the minimum requirements for registration as a Level I, Level II, Level III, or Level IV child care home.

"School" means kindergarten or a higher grade level.

441—110.22(237A) Application for registration. Level I, II, III, and IV child care homes shall make application for registration on Application for Child Care Home Registration, Form 470-3386, provided by the county office of the department. The child care home shall also use Form 470-3386 to inform the department of any changes in circumstances that would affect the home's registration.

441—110.23(237A) Renewal. Renewal of registration shall be completed yearly. When a provider renews registration, copies of certificates of training shall be submitted to the department to be retained in the registration file.

441—110.24(237A) Number of children. In determining the number of children cared for at any one time in a child care home, each child present in the child care home shall be considered to be receiving care unless the child is described by one of the following exceptions:

1. The child's parent, guardian, or custodian operates or established the child care home and the child is attending school or the child receives child care full-time on a regular basis from another person.
2. The child has been present in the child care home for more than 72 consecutive hours and meets the requirements of exception "1" as though the person who operates or established the child care home is the child's parent, guardian, or custodian.

441—110.25(237A) Standards. The provider shall certify that the child care home meets the following conditions:

110.25(1) *Health and safety.* Conditions in the home are safe, sanitary, and free of hazards. This shall include at a minimum:

a. A non-pay, working telephone with emergency numbers posted for police, fire, ambulance, and the poison information center. The numbers for each child's parent, for a responsible person who can be reached when the parent cannot, and for the child's physician shall be readily accessible by the telephone.

b. All medicines and poisonous, toxic, or otherwise unsafe materials secured from access by a child.

c. First-aid supplies which include, but are not limited to, adhesive bandages, antiseptic cleansing materials, tweezers, and disposable plastic gloves.

d. Medications given only with the parent's or doctor's written authorization. Each prescribed medication shall be accompanied by a physician's or pharmacist's direction. Both nonprescription and prescription medications shall be in the original container with directions intact and labeled with the child's name. All medications shall be stored properly and, when refrigeration is required, shall be stored in a separate, covered container so as to prevent contamination of food or other medications. All medications shall be stored so they are inaccessible to children.

e. Electrical wiring maintained with all accessible electrical outlets safely capped and electrical cords properly used. Improper use would include running cords under rugs, over hooks, through door openings, or other use that has been known to be hazardous.

f. Combustible materials are kept away from furnaces, stoves, or water heaters.

g. Safety barriers at stairways for children not attending kindergarten or a higher grade level and for special needs children.

h. A safe outdoor play area maintained in good condition throughout the year, fenced off when located on a busy thoroughfare or near a hazard which may be injurious to a child, and with both sunny and shaded areas. The play area shall be kept free from litter, rubbish, and flammable materials and shall be free from contamination by drainage or ponding of sewage, household waste, or storm water.

i. Annual laboratory analysis of a private water supply to show satisfactory bacteriological quality. When children under the age of two are to be cared for, the analysis shall include a nitrate analysis. When private water supplies are determined unsuitable for drinking, commercially bottled water or water treated through a process approved by the health department or designee shall be provided.

j. Emergency plans in case of fire or tornado written and posted by the primary and secondary exits. The plans shall include a diagram with the exits and an outside meeting place noted.

k. Fire and tornado drills practiced monthly and documentation evidencing compliance with monthly practice kept on file by the provider.

l. In order to prevent burns, a safety barrier shall surround any heating stove or heating element.

110.25(2) *Activity program.* There shall be an activity program which promotes self-esteem and exploration and includes:

a. Active play.

b. Quiet play.

c. Activities for large muscle development.

d. Activities for small muscle development.

e. Play equipment and materials in a safe condition, for both indoor and outdoor activities which are developmentally appropriate for the ages and number of children present.

110.25(3) *Certificate of registration.* The certificate of registration shall be displayed in a conspicuous place.

110.25(4) *Discipline.* Discipline shall conform to the following standards:

a. Discipline shall be designed to help the child develop self-control, self-esteem, and respect for the rights of others.

b. Corporal punishment including spanking, shaking and slapping shall not be used.

c. Punishment which is humiliating or frightening or which causes pain or discomfort to the child shall not be used.

d. Punishment shall not be administered because of a child's illness, or progress or lack of progress in toilet training, nor shall punishment or threat of punishment be associated with food or rest.

e. No child shall be subjected to verbal abuse, threats, or derogatory remarks about the child or the child's family.

110.25(5) *Meals.* Regular meals and midmorning and midafternoon snacks shall be provided which are well balanced, nourishing, and in appropriate amounts as defined by the USDA Child and Adult Care Food Program. Children may bring food to the child care home for their own consumption, but shall not be required to provide their own food.

110.25(6) *Parental access.* Parents are afforded unlimited access to their children and to the providers caring for their children during the normal hours of operation or whenever their children are in the care of the providers, unless parental contact is prohibited by court order.

110.25(7) *Children's files.* An individual file shall be maintained for each child and updated annually or when the provider becomes aware of changes. The file shall contain:

a. Identifying information including, at a minimum, the child's name, birth date, parent's name, address, telephone number, special needs of the child, and the parent's work address and telephone number.

b. Emergency information including, at a minimum, where the parent can be reached, the name and telephone number of the child's regular source of health care, and the name, telephone number, and relationship to the child of another adult available in case of emergency.

c. A signed medical consent from the parent authorizing emergency treatment.

d. For each pre-school-age child, on the first day of attendance, an admission physical examination report signed by a licensed physician or designee in a clinic supervised by a licensed physician. The date of the physical examination shall not be more than 12 months prior to the first day of attendance at the child care home. The written report shall include past health history, status of present health, allergies and restrictive conditions, and recommendations for continued care when necessary.

e. A statement of health condition signed by a physician or designee shall be thereafter submitted annually from the date of the admission physical.

f. A list signed by a parent which names persons authorized to pick up the child. The authorization shall include the name, telephone number, and relationship of the authorized person to the child.

g. A signed and dated immunization card provided by the state department of public health shall be on file for each child enrolled. For the school-age child, a copy of the most recent immunization record shall be acceptable.

h. For each school-age child, on the first day of attendance, documentation of a physical examination that was completed at the time of school enrollment or since.

i. Written permission from the parents for their child to attend activities away from the child care home. The permission shall include:

(1) Times of departure and arrival.

(2) Destination.

(3) Persons who will be responsible for the child.

110.25(8) *Assistant file.* An individual file shall be maintained for each staff assistant and shall contain:

a. A completed DHS Criminal History Record Check, Form B, 595-1396.

b. A completed Request for Child Abuse Information, Form 470-0643.

c. A physician's signed statement at the time of employment and at least every three years thereafter that the person is free of diseases or disabilities which would prevent good child care.

d. Certification of a minimum of two hours of training relating to the identification and reporting of child abuse within six months of employment and every five years thereafter pursuant to Iowa Code section 232.69.

110.25(9) *Provider file.* A provider file shall be maintained and shall contain the following:

a. A physician's signed statement obtained at the time of the first registration, and at least every three years thereafter, on all members of the provider's household that may be present when children are in the home, that the provider and members of the provider's household are free of diseases or disabilities which would prevent good child care. This applies to providers of Levels I, II, III, and IV, and the assistant in a Level IV home.

b. Certificates or training verification documentation for the following required training:

(1) During the first three months of registration, the provider shall receive:

1. Two hours of child abuse and neglect mandatory reporter training.

2. Certification in American Red Cross or American Heart Association infant, child, and adult cardiopulmonary resuscitation (CPR) or equivalent CPR certification approved by the department. A valid certificate indicating the date of training and expiration date shall be maintained.

3. Certification in infant, child, and adult first aid that uses a nationally recognized curriculum or is received from a nationally recognized training organization including the American Red Cross, American Heart Association, the National Safety Council, and Emergency Medical Planning (Medic First Aid) or an equivalent certification approved by the department. A valid certificate indicating the date of training and expiration date shall be maintained.

(2) During the first year of registration, the provider shall receive two hours of health and safety training.

(3) During the second year of registration and each succeeding year, the provider shall receive a minimum of 10 hours of training for Level I, 12 hours for Levels II and III, and 15 hours for Level IV, chosen from the following categories: child development, guidance and discipline, developmentally appropriate practices, nutrition, health and safety, communication skills, professionalism, business practices, and cross-cultural competence. At least 4 hours of the hours of training shall be received in a sponsored group setting. The remaining hours may be received in self-study using a training package approved by the department.

(4) In addition, the provider shall receive two hours of child abuse and neglect mandatory reporter training every five years.

441—110.26(237A) Provider. The provider shall meet the following requirements:

1. Gives careful supervision at all times.
2. Frequently exchanges information with the parent of each child to enhance the quality of care.
3. Gives consistent, dependable care and is capable of handling emergencies.
4. Is present at all times except if emergencies occur or when an absence is planned, at which time good substitute care is provided. When an absence is planned, the parents shall be given at least 24 hours' prior notice.

441—110.27(237A) Specific requirements for individual levels of child care homes.

110.27(1) *Level I registration.*

a. Number of children.

(1) Except as otherwise provided in this paragraph, not more than six children shall be present at any one time.

(2) Not more than three children who are infants shall be present at any one time.

(3) In addition to the number of children authorized in subparagraph (1), not more than two children who attend school may be present for a period of more than two hours at any one time.

(4) Not more than eight children shall be present at any one time when an inclement weather exception is in effect.

b. Provider qualifications. The provider of Level I child care shall meet the following requirements:

(1) Must be at least 18 years old.

(2) Must have three written references which attest to character and ability to provide child care.

110.27(2) *Level II registration.*

a. Number of children.

(1) Except as otherwise provided in this paragraph, not more than six children shall be present at any one time.

(2) Not more than three children who are infants shall be present at any one time.

(3) In addition to the number of children listed in subparagraph (1), not more than four children who attend school may be present for a period of more than two hours at any one time.

(4) In addition to the number of children authorized in subparagraph (1), not more than two children who are receiving care on a part-time basis may be present.

(5) Not more than 12 children shall be present at any one time when an inclement weather exception is in effect. However, if more than 8 children are present during an inclement weather exception, the provider shall be assisted by a responsible individual who is at least 14 years of age.

b. Facility requirements. There shall be a minimum of 35 square feet of child use floor space for each child in care indoors.

c. Provider qualifications. The provider of Level II child care shall meet the following requirements:

(1) Must be at least 19 years old.

(2) Must have a high school diploma or GED.

(3) Must meet one of the following requirements:

1. Have two years of experience working directly with children in child care.

2. Have one year of experience working directly with children from birth through the age of 12 and one year of experience as a nonregistered, registered, or Level I child care home provider.

3. Have a child development associate credential or any two- or four-year degree in a child care related field and one year of experience as a nonregistered, registered, or Level I child care home provider.

d. Training. Rescinded IAB 12/1/99, effective 2/1/00.

110.27(3) *Level III registration.*

a. Number of children.

(1) Except as otherwise provided in this paragraph, not more than six children shall be present at any one time.

(2) Not more than three children who are infants shall be present at any one time.

(3) In addition to the number of children authorized in subparagraph (1), not more than four children who attend school may be present.

(4) In addition to the number of children authorized in subparagraph (1), not more than two children who are receiving care on a part-time basis may be present.

(5) Not more than 12 children shall be present at any one time when an inclement weather exception is in effect.

(6) If more than eight children are present at any one time, the provider must be assisted by a responsible individual who is at least 14 years of age.

b. Facility requirements.

(1) There shall be a minimum of 35 square feet of child use floor space for each child in care indoors, and a minimum of 50 square feet per child in care outdoors.

(2) There shall be a separate quiet area for sick children.

(3) The following fire safety requirements shall be met:

1. Fire extinguisher. The child care home shall have not less than one 2A 10BC rated fire extinguisher located in a visible and readily accessible place on each child-occupied floor.

2. Smoke detectors. The child care home shall have a minimum of one single-station, battery-operated, UL-approved smoke detector in each child-occupied room and at the top of every stairway. Each smoke detector shall be installed according to manufacturer's recommendations. Each smoke detector shall be tested monthly by the provider and a record kept for inspection purposes.

3. Two exits. The child care home shall have a minimum of two direct exits to the outside from the main floor. Both a second story child-occupied floor and a basement child-occupied floor shall have in addition to one inside stairway at least one direct exit to the outside. All exits shall terminate at grade level with permanent steps. Occupancy above the second floor shall not be permitted for child care. A basement window may be used as an exit if the window is openable from the inside without the use of tools and it provides a clear opening of not less than 20 inches in width, 24 inches in height and 5.7 square feet in area. The bottom of the opening shall be not more than 44 inches above the floor with permanent steps inside leading up to the window.

c. Provider qualifications. The provider of Level III child care shall meet the following requirements:

(1) Must be at least 21 years old.

(2) Must meet one of the following requirements:

1. Have two years of experience as a nonregistered, registered, or Level I child care home provider, and two years of experience as a nonregistered, registered, or Level II child care home provider.

2. Have one year of experience working directly with children from birth through the age of 12 and one year of experience as a nonregistered, registered, or Level I child care home provider and two years of experience as a nonregistered, registered, or Level II child care home provider.

3. Have a child development associate credential or any two- or four-year degree in a child care related field and one year of experience as a nonregistered, registered, or Level I child care home provider and two years of experience as a nonregistered, registered, or Level II child care home provider.

d. Training. Rescinded IAB 12/1/99, effective 2/1/00.

110.27(4) *Level IV registration.*

a. Number of children.

(1) Except as otherwise provided in this paragraph, not more than 12 children shall be present at any one time. If more than 8 children are present, a second person must be present who meets the individual qualifications for child care home registration.

(2) Of the above number, not more than four children who are infants shall be present at any one time.

(3) In addition to the number of children authorized in subparagraph (1), not more than two children who attend school may be present for a period of less than two hours at any one time.

(4) In addition to the number of children authorized in subparagraph (1), not more than two children who are receiving care on a part-time basis may be present.

(5) Not more than 16 children shall be present at any one time when an inclement weather exception is in effect. If more than 8 children are present at any one time during an inclement weather exception, the provider shall be assisted by a responsible individual who is at least 18 years of age.

b. Facility requirements.

(1) There shall be a minimum of 35 square feet of child use floor space for each child in care indoors, and a minimum of 50 square feet per child in care outdoors.

(2) There shall be a separate quiet area for sick children.

(3) The following fire safety requirements shall be met:

1. Fire extinguisher. The child care home shall have not less than one 2A 10BC rated fire extinguisher located in a visible and readily accessible place on each child-occupied floor.

2. Smoke detectors. The child care home shall have a minimum of one single-station, battery-operated, UL-approved smoke detector in each child-occupied room and at the top of every stairway. Each smoke detector shall be installed according to manufacturer's recommendations. Each smoke detector shall be tested monthly by the provider and a record kept for inspection purposes.

3. Two exits. The child care home shall have a minimum of two direct exits to the outside from the main floor. Both a second story child-occupied floor and a basement child-occupied floor shall have in addition to one inside stairway at least one direct exit to the outside. All exits shall terminate at grade level with permanent steps. Occupancy above the second floor shall not be permitted for child care. A basement window may be used as an exit if the window is openable from the inside without the use of tools and it provides a clear opening of not less than 20 inches in width, 24 inches in height and 5.7 square feet in area. The bottom of the opening shall be not more than 44 inches above the floor with permanent steps inside leading up to the window.

c. Provider qualifications. The provider of Level IV child care shall meet the following requirements:

(1) Must be at least 21 years old.

(2) Must meet one of the following requirements:

1. Have two years of experience as a nonregistered, registered, or Level I child care home provider and two years of experience as a nonregistered, registered, or Level II child care home provider and one year of experience as a nonregistered, registered, or Level III child care home provider.

2. Have one year of experience working directly with children and one year of experience as a nonregistered, registered, or Level I child care home provider and two years of experience as a nonregistered, registered, or Level II child care home provider and one year of experience as a nonregistered, registered, or Level III child care home provider.

3. Have a child development associate credential or any two- or four-year degree in a child care related field and one year of experience as a nonregistered, registered, or Level I child care home provider and two years of experience as a nonregistered, registered, or Level II child care home provider and one year of experience as a nonregistered, registered, or Level III child care home provider.

d. Training. Rescinded IAB 12/1/99, effective 2/1/00.

110.27(5) *Exception to total numbers.* A child care home may be registered at Level II, III, or IV if the provider is qualified even though the amount of space required to be available for the maximum number of children authorized for that level exceeds the actual amount of space available in that child care home. The total number of children authorized for the child care home at that level of registration shall be limited by the amount of space available per child. The basic number of children permitted for each age group may not be exceeded.

441—110.28(237A) List of registered homes. The county offices of the department shall maintain a current list of registered child care homes as a referral service to the community.

441—110.29(237A) Compliance checks. Twenty percent or more of each level of registered child care homes in the county shall be checked during the calendar year for compliance with registration requirements contained in this division.

441—110.30(237A) Complaints. A record of all unsubstantiated complaints received shall be kept by the department in a closed file, and there shall be documented resolutions of all complaints. Contents of this file shall be available to the registered provider except that disclosure of the identity of the complainant shall be withheld unless expressly waived by the complainant. A record of all substantiated complaints and regulatory violations shall be kept by the department in the regulatory file and shall be available to the public upon request, except that disclosure of the identity of the complainant shall be withheld unless expressly waived by the complainant.

441—110.31(237A) Record checks. The department shall submit record checks for each registrant, staff member, and anyone living in the home who is 14 years of age or older to determine whether the person has any founded child abuse reports or criminal convictions. Form 470-0643, Request for Child Abuse Information, and Form 595-1396, DHS Criminal History Record Check, Form B, shall be used for this purpose.

110.31(1) *Evaluation of record.* If there is a record of founded child abuse or a criminal conviction for the registrant, a staff member, or anyone living in the home, the registration shall be denied or revoked, unless an evaluation of the abuse or crime determines that the abuse or criminal conviction does not warrant prohibition of registration. In an evaluation, the department and the registrant for an employee of the registrant shall consider the nature and seriousness of the abuse or crime, the time elapsed since the commission of the abuse or crime, the circumstances under which the crime or abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the abuse or crime again, and the number of crimes or abuses committed by the person. The person with the criminal conviction or founded child abuse report shall complete and return Form 470-2310, Record Check Evaluation, within ten calendar days of the date on the form to be used to assist in the evaluation. Failure of the person to complete and return the form within the specified time frame shall result in denial or revocation of the certificate.

110.31(2) *Conditional requirements.* The department may permit a person who is evaluated to be registered, employed, or to reside in, or to continue to be registered, employed, or to reside in a registered facility, if the person complies with the department's conditions relating to the person's registration, employment, or residence, which may include completion of additional training. For an employee of a registrant, these conditional requirements shall be developed with the registrant. The department has final authority in determining whether prohibition of the person's registration, employment, or residence is warranted and in developing any conditional requirements.

110.31(3) *Evaluation process.*

a. If the registrant, staff member, or anyone living in the home has been convicted of a simple misdemeanor or of a serious misdemeanor that occurred five or more years prior to the application, the evaluation and decision may be made by the regional administrator or designee and the registrant for an employee of the registrant. The regional administrator or designee shall notify the registrant and the employee of the registrant of the results of the evaluation using Form 470-2386, Record Check Decision.

b. If the registrant, staff member, or anyone living in the home has a founded abuse report, has been convicted of an aggravated misdemeanor or felony at any time, or has been convicted of a simple or serious misdemeanor that occurred within five years prior to application, the evaluation shall be initially conducted by the regional administrator or designee and the registrant for an employee of the registrant.

(1) If the regional administrator or designee and the registrant for an employee of the registrant determine that the crime or abuse does warrant prohibition of registration, the regional administrator or designee shall notify the individual on whom the evaluation was completed, and the registrant for an employee of the registrant of the results of the evaluation using Form 470-2386, Record Check Decision.

(2) If the regional administrator or designee and the registrant for an employee of the registrant believe that the abuse or criminal conviction should not warrant prohibition of registration, the regional administrator or designee shall provide copies of the child abuse report or criminal history record, Form 470-2310, Record Check Evaluation, and Form 470-2386, Record Check Decision, to the Department of Human Services, Administrator, Division of Adult, Children and Family Services, Hoover State Office Building, Des Moines, Iowa 50319-0114. Within 30 days the administrator shall determine whether the abuse or crime merits prohibition of registration, and shall notify the regional administrator or designee in writing of that decision. The regional administrator or designee shall notify the individual on whom the evaluation was completed, and the registrant for an employee of the registrant using Form 470-2386.

441—110.32(237A) Denials and revocations.

110.32(1) *Reason for denial or revocation.* Registration shall be denied or revoked if a hazard to the safety and well-being of a child is found by the department, and the provider cannot or refuses to correct the hazards, even though the hazard may not have been specifically listed under the health and safety rules.

110.32(2) *Documentation.* Record shall be kept in an open file of all denials or revocations of registration and the documentation of reasons for denying or revoking the registration.

441—110.33(237A) Letter of revocation. A letter received by an owner or operator of a registered child care home initiating action to deny or revoke the child care home's registration shall be conspicuously posted where it can be read by parents or any member of the public. The letter shall remain posted until resolution of the action to deny or revoke an owner's or operator's certificate of registration.

441—110.34(237A) Sanction period. If the department has denied or revoked a registration because the provider has continually or repeatedly failed to operate a registered child care home in compliance with Iowa Code chapter 237A and 441—Chapter 110, the person shall not own or operate a registered facility for a period of six months from the date the registration is denied or revoked. The department shall not act on an application for registration submitted by the applicant or provider during the six-month period.

441—110.35(237A) Transition exception. The exception provisions of this rule are applicable to child care homes in Scott and Delaware counties registering under Iowa Code section 237A.3A during a transition period beginning April 20, 1998, and ending April 19, 2000. The transition period for other pilot counties selected shall be a period from July 1, 1999, to January 1, 2002. During the transition period, the following provisions shall apply, notwithstanding the previous specific rules:

110.35(1) *Infant care.* A child care home provider who is providing child care to four infants at the time of registration in the pilot project at Level I, II, or III may continue to provide care to those four infants. However, when the child care home no longer provides care to one or more of the infants or one or more of the infants reaches the age of 24 months, the transition period exception authorized in this rule shall no longer apply. The overall limitation on the number of children authorized for the level of care remains applicable.

110.35(2) *Care of school-age children.* A child care home provider who at the time of registration in the pilot project at Level I, II, or III is providing child care to school-age children in excess of the number of school-age children authorized for the registration level may continue to provide care for those children. The child care home provider may exceed the total number of children authorized for the level of registration by the number of school-age children in excess of the number authorized for the registration level. This transition period exception is subject to all of the following:

a. The provider must comply with the other requirements as to the number of children which is applicable to that registration level.

b. The maximum number of children attributable to the authorization for school-age children at the applicable registration level is five.

c. If more than eight children are present at any one time, the provider shall be assisted by a responsible person who is at least 14 years of age.

d. If the child care home no longer provides care to an individual school-age child who was receiving care at the time of the registration, the excess number of children allowed under the transition period exception shall be reduced accordingly.

441—110.36(237) Registration actions for nonpayment of child support. The department shall revoke or deny the issuance or renewal of a child care registration for a Level II, III, or IV child care home upon the receipt of a certificate of noncompliance from the child support recovery unit of the department according to the procedures in Iowa Code chapter 252J. In addition to the procedures set forth in Iowa Code chapter 252J, the rules in this chapter shall apply.

110.36(1) *Service of notice.* The notice required by Iowa Code section 252J.8 shall be served upon the applicant or registrant by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rules of Civil Procedure 56.1. Alternatively, the applicant or registrant may accept service personally or through authorized counsel.

110.36(2) *Effective date.* The effective date of the revocation or denial of the registration as specified in the notice required by Iowa Code section 252J.8 shall be 60 days following service of the notice upon the applicant or licensee.

110.36(3) *Preparation of notice.* The department director or designee of the director is authorized to prepare and serve the notice upon the applicant or registrant as required by Iowa Code section 252J.8.

110.36(4) *Responsibilities of registrants and applicants.* Registrants and registrant applicants shall keep the department informed of all court actions, and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J, and shall provide the department copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in the actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

110.36(5) *District court.* A registrant or applicant may file an application with the district court within 30 days of service of a department notice pursuant to Iowa Code sections 252J.8 and 252J.9.

a. The filing of the application shall stay the department action until the department receives a court order lifting the stay, dismissing the action, or otherwise directing the department to proceed.

b. For purposes of determining the effective date of the revocation, or denial of the issuance or renewal of a registration, the department shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

110.36(6) *Procedure for notification.* The department shall notify the applicant or registrant in writing through regular first-class mail, or such other means as the department deems appropriate in the circumstances, within ten days of the effective date of the revocation of a registration or the denial of the issuance or renewal of a registration, and shall similarly notify the applicant or registrant when the registration is issued, renewed, or reinstated following the department's receipt of a withdrawal of the certificate of noncompliance.

110.36(7) *Appeal rights.* Notwithstanding Iowa Code section 17A.18, the registrant does not have the right to a hearing regarding this issue, but may request a court hearing pursuant to Iowa Code section 252J.9.

These rules are intended to implement Iowa Code Supplement chapter 237A as amended by 1998 Iowa Acts, Senate File 2312.

[Filed 7/14/76, Notice 1/12/76—published 8/9/76, effective 9/13/76]
[Filed 8/20/82, Notice 6/23/82—published 9/15/82, effective 11/1/82]
[Filed emergency 2/10/84—published 2/29/84, effective 2/10/84]
[Filed 9/28/84, Notice 8/1/84—published 10/24/84, effective 12/1/84]
[Filed 10/18/85, Notice 9/11/85—published 11/6/85, effective 1/1/86]
[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]
[Filed 3/26/87, Notice 1/28/87—published 4/22/87, effective 6/1/87]
[Filed emergency 6/19/87—published 7/15/87, effective 7/1/87]
[Filed 8/28/87, Notice 7/15/87—published 9/23/87, effective 11/1/87]
[Filed 1/22/88, Notice 11/18/87—published 2/10/88, effective 4/1/88]
[Filed 9/21/88, Notice 8/10/88—published 10/19/88, effective 12/1/88]
[Filed 12/8/88, Notice 9/7/88—published 12/28/88, effective 2/1/89]
[Filed emergency 5/11/90—published 5/30/90, effective 7/1/90]
[Filed emergency 10/10/91—published 10/30/91, effective 11/1/91]
[Filed 12/11/91, Notice 10/30/91—published 1/8/92, effective 3/1/92]
[Filed 10/14/93, Notice 9/1/93—published 11/10/93, effective 1/1/94]
[Filed emergency 6/16/94—published 7/6/94, effective 7/1/94]
[Filed 8/12/94, Notice 7/6/94—published 8/31/94, effective 11/1/94]
[Filed 12/12/95, Notice 10/25/95—published 1/3/96, effective 3/1/96]
[Filed emergency 6/12/97—published 7/2/97, effective 7/1/97]
[Filed 9/16/97, Notice 7/2/97—published 10/8/97, effective 12/1/97]
[Filed emergency 6/10/98—published 7/1/98, effective 6/10/98]
[Filed 7/15/98, Notice 6/3/98—published 8/12/98, effective 10/1/98]
[Filed 8/12/98, Notice 7/1/98—published 9/9/98, effective 11/1/98]
[Filed 11/10/99, Notice 9/22/99—published 12/1/99, effective 2/1/00]

185.109(5) *Maintenance of fiscal records.* Subrules 185.102(1) to 185.102(3), rule 441—185.104(234), subrules 185.105(11) and 185.106(1), paragraph 185.106(3)*"d,"* and subrule 185.106(4) shall be used as the basis for maintenance of fiscal records.

185.109(6) *Certified audits.* Certified audits shall be conducted and the reports submitted to the department as set forth in subrule 185.102(4).

185.109(7) *Billing.* For billing purposes, subrule 185.106(4) remains in effect.

185.109(8) *Rates for services provided on or after July 1, 1998.* In absence of an alternative rate-setting methodology effective July 1, 1997, rules 441—185.102(234) to 441—185.107(234) shall be the basis of establishing rates to be effective for services provided on or after July 1, 1998.

a. In absence of a fixed fee schedule pursuant to rule 441—185.108(234) or other new rate-setting methodology set forth in rule, all providers, regardless of when their fiscal year ends, shall submit a Financial and Statistical Report, Form 470-3049, for the time period July 1, 1997, to December 31, 1997, based on the cost principles set forth in rule 441—185.101(234) to 441—185.107(234). This report shall be submitted no later than March 31, 1998. Rates based on reports submitted pursuant to this paragraph shall be effective no earlier than July 1, 1998, and no later than August 1, 1998, when the report is sufficient for the establishment of rates. However, if a provider with a contract in effect as of June 30, 1996, has a fiscal year which ends at the end of January, February, or March 1998, the provider shall submit the financial and statistical report for the time period July 1, 1997, through the end of the provider's fiscal year, 1998. The report shall be submitted no later than three months after the close of the provider's established 1998 fiscal year. Rates shall be effective no later than the first day of the second full month after receipt by the project manager of a complete financial and statistical report.

b. Failure by providers to submit the report within the established time frames without written approval from the chief of the bureau of purchased services or the chief's designee shall be cause to reduce the payment to 75 percent of the rate in effect June 30, 1998, or the weighted average rate as of July 1, 1997, whichever is less. Approval for an extension for the submission shall be granted only when the provider can demonstrate that there have been catastrophic circumstances prohibiting timely submission.

c. If an extension is granted, the rate in effect as of June 30, 1998, shall be continued until the new rate is established. If a new rate is not established by the date set forth by the chief of the bureau of purchased services or the chief's designee in the notice of approval of the request to extend the time frame for submission of the Financial and Statistical Report, Form 470-3049, the provider's rate in effect as of June 30, 1998, shall be reduced to 75 percent of the rate in effect June 30, 1998, or the weighted average rate as of July 1, 1997, whichever is less, until such time as the new rate can be established.

d. If a provider has submitted the report on time, but a rate cannot be established within four months of the original due date due to incomplete or erroneous information, payment shall be reduced to 75 percent of the rate in effect June 30, 1998, or the weighted average rate as of July 1, 1997, whichever is less, until such time as the new rate can be established.

e. All subsequent financial and statistical reports shall be submitted within the time frames established pursuant to subrule 185.103(1).

f. Rates for individual providers shall be established pursuant to subrule 185.103(7) with the exception of rates to be in effect July 1, 1998. Individual providers shall submit to the department the information required by subrule 185.103(7) no later than March 31, 1998, to establish rates to be effective July 1, 1998. Rates shall be recalculated annually on the anniversary of the effective date of the contract from that point forward.

185.109(9) *Audit adjustments.* If the department or its authorized representatives conduct an audit and the audit findings result in exceptions to costs and adjustment to the rate in effect June 30, 1996, and the June 30, 1996, rate was the basis of the rate established effective July 1, 1996, the July 1, 1996, rate shall be adjusted in accordance with the audit findings.

185.109(10) *Liability for payment.* The department shall not be liable for payment for any programs or services prior to the contract effective date or the effective date for the rate for the program or service.

441—185.110(234) Providers under an exception to policy for establishing rates. When a provider has been granted an exception to rules 441—185.102(234) to 441—185.107(234) by the director prior to June 30, 1996, and the rate was established based on that exception by June 30, 1996, the exception shall continue in effect as written.

The rate in effect June 30, 1996, shall be frozen. The rate to be effective July 1, 1996, shall be the frozen rate plus a 2 percent index factor. If the rate based on the exception to policy was not established by June 30, 1996, the rate in effect as of June 30, 1996, shall be frozen and the rate to be effective July 1, 1996, shall be the frozen rate plus a 2 percent index factor. If the provider has a zero rate or no rate has been established for the service, the rate shall be established pursuant to subrule 185.109(1). However, for out-of-state providers with an exception to policy to establish rates based on the rates established by the state in which the provider is located, rates shall continue to be established in accordance with the existing exception to policy.

441—185.111(234) Data. The data to be used in calculating the fiscal impact of any proposed rules for a cost–based rate–setting methodology to become effective July 1, 1997, and to be used for the establishment of rates to be effective July 1, 1998, shall be the data from financial and statistical reports on which rates were established as of June 30, 1996.

These rules are intended to implement Iowa Code sections 234.6 and 234.38.

441—185.112(234) Determination of rates. Rules 441—185.102(234) to 441—185.107(234), 185.109(234) and 185.110(234) shall be held in abeyance for purposes of establishing rates effective January 1, 1998, unless otherwise provided for in these rules. Rates for a service to be effective on or after February 1, 1998, shall be established based on the payment rate negotiated between the provider and the department. This negotiated rate shall be based upon the historical and future reasonable and necessary cost of providing that service, other payment-related factors and availability of funding. Negotiated rates may be increased without negotiation if funds are appropriated for an across-the-board increase. A rate in effect as of December 31, 1997, shall continue in effect until a negotiated rate is established in accordance with the requirements of subrules 185.112(1) to 185.112(3), subrule 185.112(6), or subrule 185.112(12) or until the service is terminated in accordance with subrule 185.112(4).

185.112(1) *Negotiation of rates.* Rates for services to be made effective on or after February 1, 1998, must be established in accordance with this subrule except as provided for at subrule 185.112(12).

a. On or after January 1, 1998, the department shall begin negotiating payment rates with providers of rehabilitative treatment and supportive services to be effective for services provided on or after February 1, 1998.

b. Except as provided in paragraph *"a"* above, when a new provider assumes the delivery of a program from another provider, all rates for the services previously provided by either provider shall need to be reviewed and may be renegotiated at the request of either party.

c. If a provider ceases to contract for and provide a service or program on or after July 1, 1996, and prior to establishing a negotiated rate in accordance with subrule 185.112(1), decides to again contract for and provide that program or service, the nonzero rate in effect when the contract ceased shall be used as a starting point in negotiating a new rate in accordance with subrule 185.112(1) for that service.

d. If an existing provider ceases to contract for and provide a service or program for which a zero rate has been established, and decides to again contract for and provide that program or service, the rate shall be established in accordance with subrule 185.112(2) and the starting point for negotiations shall be the weighted average rate.

e. If a provider ceases to contract for and provide a service or program after a rate has been established in accordance with subrule 185.112(1) and decides to again contract for and provide that program or service, the rate shall be established at the rate in effect when service was interrupted.

f. Rates for services interrupted prior to July 1, 1996, shall be treated as a new service in accordance with subrule 185.112(2).

185.112(7) *Maintenance of fiscal records.* Subrules 185.102(1) to 185.102(3), rule 441—185.104(234), subrules 185.105(11) and 185.106(1), paragraph 185.106(3)*"d,"* and subrule 185.106(4) shall be used as the basis for maintenance of fiscal records.

185.112(8) *Certified audits.* Certified audits shall be conducted and the reports submitted to the department as set forth in subrule 185.102(4).

185.112(9) *Billing.* Subrule 185.106(4) remains in effect for billing purposes.

185.112(10) *Rates for services provided on or after July 1, 2000.* Rescinded IAB 12/1/99, effective 2/1/00.

185.112(11) *Liability for payment.* The department shall not be liable for payment for any programs or services prior to the contract effective date or the effective date for the rate for the program or service.

185.112(12) *Providers under an exception to policy for establishing rates.* When a provider has been granted an exception to rules 441—185.102(234) to 441—185.107(234) or 441—185.109(234) by the director of the department prior to January 1, 1998, the exception shall continue in effect as written for any provider not located in the state of Iowa and for which the exception was based upon another state's requirement that providers be paid the same rate they are paid for clients from the provider's home state. The exceptions for all other providers shall terminate and the conditions leading to the exceptions being approved shall be considered in the rate establishment negotiations.

185.112(13) *Review of rate negotiations.* Rate negotiations are considered rate determinations and shall be handled in accordance with the provisions for rate determinations at rule 441—152.3(234). Requests for review of rate determinations shall be granted only if the rate resolution process as defined at subrule 185.112(3) has been used.

441—185.113 to **185.120** Reserved.

DIVISION VII
BILLING AND PAYMENT PROCEDURES

441—185.121(234) Billing procedures. At the end of each month the provider agency shall prepare Form AA–2241–0, Purchase of Service Provider Invoice, for contractual services provided by the agency during the month.

Separate invoices shall be prepared for each county from which clients were referred and each program. Complete invoices shall be sent to the department county office responsible for the client for approval and forwarding for payment.

Providers shall never bill for more than one month of service. A separate invoice is required for each separate month of service, even if the service span overlaps one month.

185.121(1) *Time limit for submitting invoices.* The time limit for submission of original invoices shall be 90 days from the date of service, except at the end of the state fiscal year when claims for services through June 30 are to be submitted by August 10.

185.121(2) *Resubmittals of rejected claims.* Valid claims which were originally submitted within the time limit specified in 185.121(1) but were rejected because of an error shall be resubmitted as soon as corrections can be made.

185.121(3) *Payment.* Within 60 days of the date of receipt of a valid invoice, the department shall make payment in full of all invoices concerning rehabilitative treatment and supportive services rendered to clients, provided the invoices shall be subject to audit and adjustment by the department.

441—185.122(234) Recoupment procedures. Public agencies that are reimbursed more than their actual costs are required to refund any excess to the department within four months of the end of their fiscal year. No provision for profit or other increment above cost is intended in OMB Circular A–87 for public agencies. Those public providers subject to this provision who fail to comply with this requirement shall be considered to be in violation of 185.12(1)"*r*" and subject to sanctions. Providers who do not refund any excess payments within six months of the end of their fiscal year shall be given notice in accordance with 185.12(6) and have any and all payments suspended or withheld in accordance with 185.12(7).

These rules are intended to implement Iowa Code sections 234.6 and 234.38.

[Filed without Notice 8/12/93—published 9/1/93, effective 11/1/93*]
[Filed emergency 8/12/93*—published 9/1/93, effective 8/12/93*]
[Filed emergency 10/14/93—published 11/10/93, effective 11/1/93]
[Filed 12/16/93, Notices 9/1/93, 11/10/93—published 1/5/94, effective 3/1/94]
[Filed 3/10/94, Notice 1/19/94—published 3/30/94, effective 6/1/94]
[Filed emergency 5/11/94 after Notice 3/16/94—published 6/8/94, effective 6/1/94]
[Filed emergency 6/16/94—published 7/6/94, effective 7/1/94]
[Filed 8/12/94, Notice 7/6/94—published 8/31/94, effective 11/1/94]
[Filed emergency 12/15/94—published 1/4/95, effective 2/1/95]
[Filed emergency 2/16/95 after Notice 12/7/94—published 3/15/95, effective 2/16/95]
[Filed 2/16/95, Notice 1/4/95—published 3/15/95, effective 5/1/95]
[Filed 4/13/95, Notice 2/15/95—published 5/10/95, effective 7/1/95]
[Filed 5/11/95, Notice 3/29/95—published 6/7/95, effective 8/1/95**]
[Filed emergency 6/7/95—published 7/5/95, effective 7/1/95]
[Filed 8/10/95, Notice 7/5/95—published 8/30/95, effective 11/1/95]
[Filed 10/12/95, Notice 8/30/95—published 11/8/95, effective 1/1/96]
[Filed emergency 6/13/96—published 7/3/96, effective 7/1/96]
[Filed emergency 6/13/96—published 7/3/96, effective 8/1/96]
[Filed 8/15/96, Notice 7/3/96—published 9/11/96, effective 11/1/96]
[Filed 9/17/96, Notice 7/31/96—published 10/9/96, effective 12/1/96]
[Filed 4/11/97, Notice 2/12/97—published 5/7/97, effective 7/1/97]
[Filed emergency 5/14/97 after Notice 3/12/97—published 6/4/97, effective 6/1/97]
[Filed 5/14/97, Notice 3/26/97—published 6/4/97, effective 8/1/97]
[Filed 10/15/97, Notices 7/30/97, 8/13/97—published 11/5/97, effective 1/1/98]
[Filed without Notice 6/10/98—published 7/1/98, effective 8/15/98]
[Filed 8/12/98, Notice 7/1/98—published 9/9/98, effective 11/1/98]
[Filed 1/13/99, Notices 11/18/98, 12/2/98—published 2/10/99, effective 3/17/99]
[Filed emergency 6/10/99—published 6/30/99, effective 7/1/99]
[Filed 7/14/99, Notice 6/2/99—published 8/11/99, effective 10/1/99]
[Filed 8/12/99, Notice 6/30/99—published 9/8/99, effective 11/1/99]
[Filed 11/10/99, Notice 10/6/99—published 12/1/99, effective 2/1/00]

CHAPTERS 186 to 199
Reserved

*Rule 185.4(234), subrule 185.8(4) and rule 185.9(234), effective 8/12/93.
**Effective date of 185.22(1)"*d*,"(2)"*d*," and (3)"*d*," 185.42(3), 185.62(1)"*d*,"(2)"*d*," and (3)"*d*," and 441—185.82(234) delayed 70 days by the Administrative Rules Review Committee at its meeting held July 11, 1995.

CHAPTER 58
NURSING FACILITIES

51.20(3) *Food and nutrition service staff.*

a. A licensed dietitian shall be employed on a full-time, part-time or consulting basis. Part-time or consultant services shall be provided on the premises at appropriate times on a regularly scheduled basis. These services shall be of sufficient duration and frequency to provide continuing liaison with medical and nursing staffs, advice to the administrator, patient counseling, guidance to the supervisor and staff of the food and nutrition service, approval of all menus, and participation in the development or revision of departmental policies and procedures and in planning and conducting in-service education programs.

b. If a licensed dietitian is not employed full-time, then one must be employed on a part-time or consultation basis with an additional full-time person who has completed a 250-hour dietary manager course and who shall be employed to be responsible for the operation of the food service.

c. Sufficient food service personnel shall be employed, oriented, trained, and their working hours scheduled to provide for the nutritional needs of the patients and to maintain the food service areas. If food service employees are assigned duties in other service areas, those duties shall not interfere with the sanitation, safety, or time required for food service work assignments.

d. Hygiene of food service staff.

(1) Food service personnel shall be trained in basic food sanitation techniques; shall be clean; and wear clean clothing, including a cap or a hair net sufficient to contain and restrain the shedding of hair. Beards and mustaches that are not closely cropped and neatly trimmed shall be covered.

(2) Food service personnel shall be excluded from duty when affected by skin infection or communicable diseases in accordance with the hospital's infection-control policies.

(3) Employees' street clothing stored in the food service area shall be in a closed area.

(4) Kitchen sinks shall not be used for hand washing. Separate hand-washing facilities with soap, running water, and single-use towels shall be properly and conveniently located.

(5) Persons other than food service personnel shall not be allowed in the food preparation area unless required to do so in the performance of their duties.

51.20(4) *Food service equipment and supplies.*

a. Equipment of the type and in the amount necessary for the proper preparation, serving and storing of food and for proper dishwashing shall be provided and maintained in good working order.

(1) The food service area shall be ventilated in a manner that will maintain comfortable working conditions, remove objectionable odors and fumes, and prevent excessive condensation.

(2) Equipment necessary for preparation and maintenance of menus, records, and references shall be provided.

(3) Fixed and mobile equipment in the food service area shall meet the American Institute of Architects Guidelines for Construction and Equipment of Hospital and Medical Facilities, 1996-1997 Edition, and the 1999 Food Code. Equipment shall be located to ensure sanitary and safe operation and shall be of sufficient size to handle the needs of the hospital.

b. Food supplies.

(1) At least one week's supply of staple foods and a reasonable supply of perishable foods shall be maintained on the premises. Supplies shall be appropriate to meet the requirements of the menu.

(2) All food and beverages shall be of good quality and procured from sources approved or considered satisfactory by federal, state, and local authorities. Food or beverages in unlabeled, rusty, leaking, broken, or damaged containers shall not be accepted or retained.

(3) Milk and milk products shall be processed or manufactured in milk product plants meeting the requirements of the Iowa department of agriculture and land stewardship.

(4) Milk may be served in individual, single-use containers. Homogenized milk may be served from a dispensing device that has been approved for such use. Milk served from an approved device shall be dispensed directly into the glass or other container from which the patient drinks.

(5) Catered foods and beverages from a source outside the hospital shall be prepared, packed, properly identified, stored and transported in compliance with these regulations and other applicable federal, state, and local codes.

(6) Foods held in refrigerated or other storage areas shall be appropriately covered. Food that was prepared and not served shall be stored appropriately, clearly identifiable, and dated.

51.20(5) *Food service space.*

a. Adequate space for the preparation and serving of food shall be provided. Equipment shall be placed to provide aisles of sufficient width to permit easy movement of personnel, mobile equipment, and supplies.

b. Well-ventilated food storage areas of adequate size shall be provided.

c. Adequate usable refrigerated space shall be maintained for the storage of frozen and chilled foods.

d. Adequate space shall be maintained to accommodate equipment, personnel, and procedures necessary for proper cleaning and sanitizing of dishes and other utensils.

481—51.21 Reserved.

481—51.22(135B) Equipment for patient care. Hospital equipment shall be selected, maintained and utilized in accordance with the needs of the patients.

51.22(1) *Furnishings, supplies and equipment.* Rescinded IAB 12/1/99, effective 1/5/00.

51.22(2) *Hot water bags.* Rescinded IAB 12/1/99, effective 1/5/00.

51.22(3) *Restraints.* Rescinded IAB 3/30/94, effective 5/4/94. See rule 51.7(135B).

51.22(4) *Signals.* Rescinded IAB 12/1/99, effective 1/5/00.

51.22(5) *Screens.* Rescinded IAB 12/1/99, effective 1/5/00.

51.22(6) *Storage space.* Rescinded IAB 12/1/99, effective 1/5/00.

481—51.23 Reserved.

481—51.24(135B) Infection control. There shall be proper policies and procedures for the prevention and control of communicable diseases. The hospital shall provide for compliance with the rules for the control of communicable disease as provided by the state department of public health in 641—Chapter 1, 1987 and 1988 Centers for Disease Control (CDC) guidelines on universal precautions and 1985 CDC guidelines for hand washing.

51.24(1) *Segregation.* There shall be proper arrangement of areas, rooms and patients' beds to provide for the prevention of cross-infections and the control of communicable diseases.

a. There shall be proper procedures for the cleansing of rooms and surgeries, immediately following the care of a communicable case.

b. Segregation of communicable cases shall include policies for the medical, nursing and lay staffs, providing for proper isolation technique in order to prevent cross-infection.

51.24(2) *Visitors.* The governing authority of the hospital shall establish proper policies for the control of visitors to all services in the hospital in accordance with hospital practice. In the maternity area, each hospital should develop its own criteria, control measures, and protocols to ensure against introduction of infection in this critical area. These criteria should be reviewed and approved by the committee of the hospital.

51.24(3) *Health examinations.* Health examinations for all personnel shall be required at the commencement of employment and thereafter at least every four years. The examination shall include, at a minimum, the health and tuberculosis status of the employee. Consideration shall be given to requiring health examinations at shorter intervals for those employees working in high-risk areas.

51.24(4) *Notification.* Prior to removal of a deceased resident/patient from a facility, the funeral director or person responsible for transporting the body shall be notified by the facility staff of any special precautions that were followed by the facility having to do with the mode of transmission of a known or suspected communicable disease.

This rule is intended to implement Iowa Code section 135B.7.

481—51.25 Reserved.

481—51.26(135B) Surgical services. All hospitals providing surgical services shall be properly organized and equipped to provide for the safe and aseptic treatment of surgical patients.

51.26(1) Written policies and procedures shall be implemented governing surgical services that are consistent with the needs of the patient and the resources of the hospital. Policies and procedures shall be developed in consultation with and the approval of the hospital's medical staff. At a minimum, the policies and procedures shall provide for:

a. Surgical services under the direction of a qualified doctor of medicine or osteopathy.

b. Delineation of the privileges and qualifications of individuals authorized to provide surgical services as set forth in the hospital's medical staff bylaws and in accordance with subrule 51.5(4). The surgical service must maintain a roster of these individuals specifying the surgical privileges of each. Surgical privileges shall be reviewed and updated at least once every two years.

c. Immediate availability of at least one registered nurse for the operating room suites to respond to emergencies.

d. The qualifications and job descriptions of nursing personnel, surgical technicians, and other support personnel and continuing education required.

e. Appropriate staffing for surgical services including physician and anesthesia coverage and other support personnel.

f. Availability of ancillary services for surgical patients including, but not limited to: blood banking, laboratory, radiology, and anesthesia.

g. Infection control and disease prevention, including aseptic surveillance and practice, identification of infected and noninfected cases, sterilization and disinfection procedures, and ongoing monitoring of infections and infection rates.

h. Housekeeping requirements.

i. Safety practices.

j. Ongoing quality assessment, performance improvement, and process improvement.

k. Provisions for the pathological examination of tissue specimens either directly or through contractual arrangements.

l. Appropriate preoperative teaching and discharge planning.

Reference sources to guide hospitals in the development of policies and procedures are: "Statement of Principles," March 1994 Edition, American College of Surgeons; and "Standards and Recommended Practices," 1995 Edition, Association of Operating Room Nurses.

51.26(2) Policies and procedures may be adjusted as appropriate to reflect the provision of surgical services in inpatient, outpatient or one-day surgical settings.

51.26(3) There must be an appropriate history and physical workup documented and a properly executed consent form in the chart of each patient prior to surgery, except in the event of an emergency.

51.26(4) An operative report must be written or dictated promptly following surgery and signed by the individual conducting the surgery.

51.26(5) Equipment available in the operating room, recovery room, outpatient surgical areas, and for postsurgical care, must be consistent with the needs of the patient.

51.26(6) The surgical facilities shall be constructed in accordance with 481—51.50(135B).

481—51.27 Reserved.

481—51.28(135B) Anesthesia services.

51.28(1) There shall be written policies and procedures governing anesthesia services which are consistent with the needs and resources of the hospital.

a. Policies and procedures shall be developed in consultation with and with the approval of the hospital's medical staff.

b. At a minimum, the policies and procedures shall provide:

(1) Anesthesia services shall be provided under the direction of a qualified doctor of medicine or osteopathy.

51.51(8) *Radiology suite.* The suite shall be designed and equipped in accordance with the following references:

a. National Council on Radiation Protection and Measurements Reports (NCRP), Nos. 33 and 49.

b. Iowa department of public health 641—Chapters 38 to 41.

51.51(9) *Waste processing services—storage and disposal.* In lieu of the waste processing service requirements in the "Guidelines for Construction and Equipment of Hospital and Healthcare Facilities" in paragraph 51.51(2)*"a,"* space and facilities shall be provided for the sanitary storage and disposal of waste by incineration, mechanical destruction, compaction, containerization, removal or a combination of these techniques. These techniques must comply with the following environmental protection commission rules: rules 567—64.2(455B) and 64.3(455B); solid waste requirements of rules 567—101.1(455B,455D), 102.1(455B), 104.1(455B), and 567—Chapters 106, 118 and 119; and air quality requirements of 567—subrules 22.1(1) and 23.4(12).

51.51(10) *Codes and standards.* See 481—subrule 51.50(10).

481—51.52(135B) Critical access hospitals. Critical access hospitals shall meet the following criteria:

51.52(1) The hospital shall be no less than 35 miles from another hospital or no less than 15 miles over secondary roads or shall be designated by the department of public health as a necessary provider of health care.

51.52(2) The hospital shall be a public or nonprofit hospital and shall be located in a county in a rural area.

51.52(3) The hospital shall provide 24-hour emergency care services as described in 481 IAC 51.30(135B).

51.52(4) The hospital shall maintain no more than 15 acute care inpatient beds or, in the case of a hospital having a swing-bed agreement, no more than 25 inpatient beds; and the number of beds used for acute inpatient services shall not exceed 15 beds.

51.52(5) The hospital shall meet the Medicare conditions of participation as a critical access hospital as described in 42 CFR Part 485, Subpart F as of October 1, 1997.

51.52(6) The hospital shall continue to comply with all general hospital license requirements as defined in 481 IAC 51.

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

[Filed June 30, 1948]
[Filed 9/9/76, Notice 6/14/76—published 10/6/76, effective 11/15/76]
[Filed 11/12/76, Notice 10/6/76—published 12/1/76, effective 1/5/77]
[Filed 11/10/77, Notice 9/7/77—published 11/30/77, effective 1/4/78]
[Filed 12/28/84, Notice 10/10/84—published 1/16/85, effective 4/3/85]
[Filed 1/10/86, Notice 11/6/85—published 1/29/86, effective 3/5/86]
[Filed 4/1/86, Notice 1/1/86—published 4/23/86, effective 5/28/86]
[Filed 5/15/86, Notice 2/26/86—published 6/4/86, effective 7/9/86]
[Filed 5/16/86, Notice 1/1/86—published 6/4/86, effective 7/9/86]
[Filed 1/20/87, Notice 12/3/86—published 2/11/87, effective 3/18/87]
[Filed 3/12/87, Notice 12/31/86—published 4/8/87, effective 5/13/87]
[Filed 5/12/88, Notice 3/9/88—published 6/1/88, effective 7/6/88]*
[Filed 5/13/88, Notice 3/9/88—published 6/1/88, effective 7/6/88]
[Filed 5/13/88, Notice 4/6/88—published 6/1/88, effective 7/6/88]
[Filed 11/17/88, Notice 8/10/88—published 12/14/88, effective 1/18/89]

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

[Filed 11/9/89, Notice 8/9/89—published 11/29/89, effective 1/3/90]
[Filed 1/12/90, Notice 11/29/89—published 2/7/90, effective 3/14/90]
[Filed 3/15/90, Notice 12/27/89—published 4/4/90, effective 5/9/90]
[Filed emergency 7/13/90—published 8/8/90, effective 7/20/90]
[Filed 9/28/90, Notice 8/8/90—published 10/17/90, effective 11/21/90]◊
[Filed 3/12/92, Notice 12/11/91—published 4/1/92, effective 5/6/92]
[Filed 12/2/93, Notices 10/13/93—published 12/22/93, effective 1/26/94]††
[Filed 3/11/94, Notice 2/2/94—published 3/30/94, effective 5/4/94]
[Filed 8/12/94, Notice 6/8/94—published 8/31/94, effective 10/5/94]
[Filed 5/16/95, Notice 3/15/95—published 6/7/95, effective 7/12/95]
[Filed 11/30/95, Notice 9/13/95—published 12/20/95, effective 1/24/96]
[Filed 1/25/96, Notice 12/20/95—published 2/14/96, effective 3/20/96]
[Filed 3/19/96, Notice 12/20/95—published 4/10/96, effective 5/15/96]
[Filed 7/11/97, Notice 4/9/97—published 7/30/97, effective 9/3/97]
[Filed 7/24/97, Notice 3/26/97—published 8/13/97, effective 9/17/97]
[Filed 3/31/98, Notice 11/5/97—published 4/22/98, effective 5/27/98]
[Filed 5/14/98, Notice 2/25/98—published 6/3/98, effective 7/8/98]
[Filed 11/12/98, Notice 9/23/98—published 12/2/98, effective 1/6/99]
[Filed 3/18/99, Notice 2/10/99—published 4/7/99, effective 5/12/99]
[Filed 5/14/99, Notice 3/10/99—published 6/2/99, effective 7/7/99]
[Filed 11/12/99, Notice 8/25/99—published 12/1/99, effective 1/5/00]

◊Three ARCs
††Two ARCs

CHAPTER 58
NURSING FACILITIES
[Prior to 7/15/87, Health Department[470] Ch 58]

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

"Accommodation" means the provision of lodging, including sleeping, dining, and living areas.

"Administrator" means a person licensed pursuant to Iowa Code chapter 147 who administers, manages, supervises, and is in general administrative charge of a 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.

"Alcoholic" means a person in a state of dependency resulting from excessive or prolonged consumption of alcoholic beverages as defined in Iowa Code section 125.2.

"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.

"Basement" means that part of a building where the finish floor is more than 30 inches below the finish grade.

"Board" means the regular provision of meals.

"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.

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

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

"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.

"Drug addiction" means a state of dependency, as medically determined, resulting from excessive or prolonged use of drugs as defined in Iowa Code chapter 124.

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

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

"Nourishing snack" is defined as a verbal offering of items, single or in combination, from the basic food groups. Adequacy of the "nourishing snack" will be determined both by resident interviews and by evaluation of the overall nutritional status of residents in the facility.

"Personal care" means assistance with the activities of daily living which the recipient can perform 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.

"Potentially hazardous food" means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, the growth and toxin production of clostridium botulinum, or in raw shell eggs, the growth of salmonella enteritidis. Potentially hazardous food includes an animal food (a food of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic and oil mixtures that are not acidified or otherwise modified at a food processing plant in a way that results in mixtures that do not support growth of bacteria.

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

"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's experience working with the mentally retarded.

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

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

"Responsible party" means the person who signs or cosigns the admission agreement required in 58.13(135C) or the resident's guardian or conservator if one has been appointed. In the event that a resident has neither a guardian, conservator nor person who signed or cosigned the resident's admission agreement, the term "responsible party" shall include the resident's sponsoring agency, e.g., the department of social services, Veterans' Administration, religious groups, fraternal organizations, or foundations that assume responsibility and advocate for their client patients and pay for their health care.

"Restraints" means the measures taken to control a resident's physical activity for the resident's own protection or for the protection of others.

"Substantial evening meal" is defined as an offering of three or more menu items at one time, one of which includes a high protein such as meat, fish, eggs or cheese. The meal would represent no less than 20 percent of the day's total nutritional requirements.

481—58.2(135C) Variances. Variances from these rules may be granted by the director of the department of inspections and appeals for good and sufficient reason when the need for variance has been established; no danger to the health, safety, or welfare of any resident results; alternate means are employed or compensating circumstances exist and the variance will apply only to an individual nursing facility. Variances will be reviewed at the discretion of the director of the department of inspections and appeals.

58.2(1) To request a variance, the licensee must:

a. Apply for variance 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 alternate arrangements or compensating circumstances which justify the variance;

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

58.2(2) Upon receipt of a request for variance, the director of inspections and appeals will:

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

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

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

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

58.2(3) Based upon these studies, approval of the variance will be either granted or denied within 45 days of receipt.

481—58.3(135C) Application for licensure.

58.3(1) Initial application and licensing. In order to obtain an initial nursing facility license, for a nursing facility which is currently licensed, the applicant must:

a. Meet all of the rules, regulations, and standards contained in 481—Chapters 58 and 61. Applicable exceptions found in rule 481—61.2(135C) shall apply based on the construction date of the facility.

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

c. Make application at least 30 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 nursing facility, drawn on 8½- × 11-inch 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 location;

e. Submit a photograph of the front and side elevation of the nursing facility;

f. Submit the statutory fee for a nursing facility license;

g. Meet the requirements of a nursing 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 nursing facility license for a facility not currently licensed as a nursing facility, the applicant must:

a. Meet all of the rules, regulations, and standards contained in 481—Chapters 58 and 61. Exceptions noted in 481—subrule 61.1(2) shall not apply;

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

c. Make application at least 30 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 nursing facility, drawn on 8½- × 11-inch 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 nursing facility;

f. Submit the statutory fee for a nursing 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 nursing facility license, the applicant must:

a. Submit the completed application form 30 days prior to annual license renewal date of nursing facility license;

b. Submit the statutory license fee for a nursing 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 résumé 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 nursing facility. (III)

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

58.4(5) No nursing 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 48 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)

58.5(2) Of any proposed change in the nursing 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 nursing facility or on the premises; (III)

58.5(4) Thirty days in advance of closure of the nursing 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 a 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 30 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 nursing 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 a 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—58.6(135C) Witness fees. Rescinded IAB 3/30/94, effective 5/4/94. See 481—subrule 50.6(4).

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 nursing facility shall have one person in charge, duly licensed as a nursing home administrator or acting in a provisional capacity. (III)

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

a. The distance between the two facilities shall be no greater than 50 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 150 beds in total if the administrator is an administrator of more than one facility. (II)

58.8(3) The licensee may be the licensed nursing home administrator providing the licensee 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 nursing facility licensee to assume the administrative duties when the facility, through no fault of its own, has lost its administrator and has been unable to replace the administrator provided that no facility licensed under Iowa Code chapter 135C shall be permitted to have a provisional administrator for more than 6 months in any 12-month period and further provided that:

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 18 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 40 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 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 nursing 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 to increase skills and knowledge needed for the position; (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 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—58.10(135C) General policies.

58.10(1) There shall be written personnel policies in facilities of more than 15 beds to include hours of work, and attendance at educational programs. (III)

58.10(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)

58.10(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)

58.10(4) Health certificates for all employees shall be available for review. (III)

58.10(5) Rescinded IAB 10/19/88, effective 11/23/88.

58.10(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)

58.10(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)

58.10(8) Infection control program. Each facility shall have a written and implemented infection control program addressing the following:

a. Techniques for hand washing consistent with Guidelines for Handwashing and Hospital Control, 1985, Centers for Disease Control, U.S. Department of Health and Human Services, PB85-923404; (I, II, III)

b. Techniques for handling of blood, body fluids, and body wastes consistent with Guideline for Isolation Precautions in Hospitals, Centers for Disease Control, U.S. Department of Health and Human Services, PB96-138102; (I, II, III)

c. Decubitus care; (I, II, III)

d. Infection identification; (I, II, III)

e. Resident care procedures to be used when there is an infection present which are consistent with Guideline for Isolation Precautions in Hospitals, Centers for Disease Control, U.S. Department of Health and Human Services, PB96-138102; (I, II, III)

f. Sanitation techniques for resident care equipment; (I, II, III)

g. Techniques for sanitary use and reuse of feeding syringes and single-resident use and reuse of urine collection bags; (I, II, III)

h. Techniques for use and disposal of needles, syringes, and other sharp instruments consistent with Guideline for Isolation Precautions in Hospitals, Centers for Disease Control, U.S. Department of Health and Human Services, PB96-138102; (I, II, III)

i. Aseptic techniques when using: (I, II, III)

(1) Intravenous or central line catheter consistent with Guidelines for Prevention of Intravascular Device Related Infections, Centers for Disease Control, U.S. Department of Health and Human Services, PB97-130074, (I, II, III)

(2) Urinary catheter, (I, II, III)

(3) Respiratory suction, oxygen or humidification, (I, II, III)

(4) Dressings, soaks, or packs, (I, II, III)

(5) Tracheostomy, (I, II, III)

(6) Nasogastric or gastrostomy tubes. (I, II, III)

CDC Guidelines may be obtained from the U.S. Department of Commerce, Technology Administration, National Technical Information Service, 5285 Port Royal Rd., Springfield, Virginia 22161 (1-800-553-6847).

58.10(9) Infection control committee. Each facility shall establish an infection control committee of representative professional staff responsible for overall infection control in the facility. (III)

a. The committee shall annually review and revise the infection control policies and procedures to monitor effectiveness and suggest improvement. (III)

b. The committee shall meet at least quarterly, submit reports to the administrator, and maintain minutes in sufficient detail to document its proceedings and actions. (III)

c. The committee shall monitor the health aspect and the environment of the facility. (III)

58.10(10) There shall be written policies for resident care programs and services as outlined in these rules. (III)

58.10(11) Prior to the removal of a deceased resident/patient from a facility, the funeral director or person responsible for transporting the body shall be notified by the facility staff of any special precautions that were followed by the facility having to do with the mode of transmission of a known or suspected communicable disease. (III)

481—58.11(135C) Personnel.

58.11(1) *General qualifications.*

a. No person with a current record of habitual alcohol intoxication or addiction to the use of drugs shall serve in a managerial role of a nursing facility. (II)

b. No person under the influence of alcohol or intoxicating drugs shall be permitted to provide services in a nursing facility. (II)

c. No person shall be allowed to provide services in a facility if the person has a disease:

(1) Which is transmissible through required workplace contact, (I, II, III)

(2) Which presents a significant risk of infecting others, (I, II, III)

(3) Which presents a substantial possibility of harming others, and (I, II, III)

(4) For which no reasonable accommodation can eliminate the risk. (I, II, III)

Refer to Guidelines for Infection Control in Hospital Personnel, Centers for Disease Control, U.S. Department of Health and Human Services, PB85-923402 to determine (1), (2), (3) and (4).

d. Reserved.

e. Individuals with either physical or mental disabilities may be employed for specific duties, but only if that disability is unrelated to that individual's ability to perform the duties of the job. (III)

f. Persons employed in all departments, except the nursing department of a nursing facility shall be qualified through formal training or through prior experience to perform the type of work for which they have been employed. Prior experience means at least 240 hours of full-time employment in a field related to their duties. Persons may be hired in laundry, housekeeping, activities and dietary without experience or training if the facility institutes a formal in-service training program to fit the job description in question and documents such as having taken place within 30 days after the initial hiring of such untrained employees. (III)

g. Rescinded, effective 7/14/82.

h. The health services supervisor shall be a qualified nurse as defined in these regulations. (II)

i. Those persons employed as nurse's aides, orderlies, or attendants in a nursing facility who have not completed the state-approved 60-hour nurse's aide program shall be required to participate in a structured on-the-job training program of 20 hours' duration to be conducted prior to any resident contact, except that contact required by the training program. This educational program shall be in addition to facility orientation. Each individual shall demonstrate competencies covered by the curriculum. This shall be observed and documented by an R.N. and maintained in the personnel file. No aide shall work independently until this is accomplished, nor shall their hours count toward meeting the minimum hours of nursing care required by the department. The curriculum shall be approved by the department. An aide who has completed the 60-hour course may model skills to be learned.

Further, such personnel shall be enrolled in a state-approved 60-hour nurse's aide program to be completed no later than six months from the date of employment or the effective date of implementation of this rule, whichever is the later. Those persons employed as nurse's aides, orderlies, or attendants by the facility prior to the effective date of this rule shall be exempt from participation in the 20-hour structured on-the-job training requirement. If the 60-hour program has been completed prior to employment, the on-the-job training program requirement is waived. The 20-hour course is in addition to the 60-hour course and is not a substitute in whole or in part. The 60-hour program, approved by the department, may be provided by the facility or academic institution.

Newly hired aides who have completed the 60-hour course shall demonstrate competencies taught in the 20-hour course upon hire. This shall be observed and documented by an R.N. and maintained in the personnel file.

All personnel administering medications must have completed the state-approved training program in medication administration. (II)

j. There shall be an organized ongoing in-service educational and training program planned in advance for all personnel in all departments. (II, III)

k. Nurse aides, orderlies or attendants in a nursing facility who have received training other than the Iowa state-approved program, must pass a challenge examination approved by the department of inspections and appeals. Evidence of prior formal training in a nursing aide, orderly, attendant, or other comparable program must be presented to the facility or institution conducting the challenge examination before the examination is given. The approved facility or institution, following department of inspections and appeals guidelines, shall make the determination of who is qualified to take the examination. Documentation of the challenge examinations administered shall be maintained.

58.11(2) *Nursing supervision and staffing.*

a. Rescinded IAB 8/7/91, effective 7/19/91.

b. Where only part-time nurses are employed, one nurse shall be designated health service supervisor. (III)

c. A qualified nurse shall be employed to relieve the supervising nurses, including charge nurses, on holidays, vacation, sick leave, days off, absences or emergencies. Pertinent information for contacting such relief person shall be posted at the nurse's station. (III)

d. When the health service supervisor serves as the administrator of a facility 50 beds and over, a qualified nurse must be employed to relieve the health service supervisor of nursing responsibilities. (III)

e. The department may establish on an individual facility basis the numbers and qualifications of the staff required in the facility using as its criteria the services being offered and the needs of the residents. (III)

f. Additional staffing, above the minimum ratio, may be required by the department commensurate with the needs of the individual residents. (III)

g. The minimum hours of resident care personnel required for residents needing intermediate nursing care shall be 2.0 hours per resident day computed on a seven-day week. A minimum of 20 percent of this time shall be provided by qualified nurses. If the maximum medical assistance rate is reduced below the 74th percentile, the requirement will return to 1.7 hours per resident per day computed on a seven-day week. A minimum of 20 percent of this time shall be provided by qualified nurses. (II, III)

h. The health service supervisor's hours worked per week shall be included in computing the 20 percent requirement.

i. A nursing facility of 75 beds or more shall have a qualified nurse on duty 24 hours per day, seven days a week. (II, III)

j. In facilities under 75 beds, if the health service supervisor is a licensed practical nurse, the facility shall employ a registered nurse, for at least four hours each week for consultation, who must be on duty at the same time as the health service supervisor. (II, III)

(1) This shall be an on-site consultation and documentation shall be made of the visit. (III)

(2) The registered nurse-consultant shall have responsibilities clearly outlined in a written agreement with the facility. (III)

(3) Consultation shall include but not be limited to the following: counseling the health service supervisor in the management of the health services; (III) reviewing and evaluating the health services in determining that the needs of the residents are met; (II, III) conducting a review of medications at least monthly if the facility does not employ a registered nurse part-time. (II, III)

k. Facilities with 75 or more beds must employ a health service supervisor who is a registered nurse. (II)

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

m. Physician's orders shall be implemented by qualified personnel. (II, III)

58.11(3) *Personnel histories.*

a. Each health care facility shall submit a form specified by the department of public safety to the department of public safety, and receive the results of a criminal history check and dependent adult abuse record check before any person is employed in a health care facility. The health care facility may submit a form specified by the department of human services to the department of human services to request a child abuse history check. For the purposes of this subrule, "employed in a facility" shall be defined as any individual who is paid, either by the health care facility or any other entity (i.e., temporary agency, private duty, Medicare/Medicaid or independent contractors), to provide direct or indirect treatment or services to residents in a health care facility. Direct treatment or services include those provided through person-to-person contact. Indirect treatment or services include those provided without person-to-person contact such as those provided by administration, dietary, laundry, and maintenance. Specifically excluded from the requirements of this subrule are individuals such as building contractors, repair workers or others who are in a facility for a very limited purpose, are not in the facility on a regular basis, and who do not provide any treatment or services to the residents of the health care facility. (I, II, III)

b. A person who has a criminal record or founded dependent adult abuse report cannot be employed in a health care facility unless the department of human services has evaluated the crime or founded abuse report and concluded that the crime or founded abuse report does not merit prohibition from employment. (I, II, III)

c. Each health care facility shall ask each person seeking employment in a facility "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of crime in this state or any other state?" The person shall also be informed that a criminal history and dependent adult abuse record check will be conducted. The person shall indicate, by signature, that the person has been informed that the record checks will be conducted. (I, II, III)

d. If a person has a record of founded child abuse in Iowa or any other state, the person shall not be employed in a health care facility unless the department of human services has evaluated the crime or founded report and concluded that the report does not merit prohibition of employment. (I, II, III)

e. Proof of dependent adult abuse and criminal history checks may be kept in files maintained by the temporary employee agencies and contractors. Facilities may require temporary agencies and contractors to provide a copy of the results of the dependent adult abuse and criminal history checks. (I, II, III)

481—58.12(135C) Admission, transfer, and discharge.

58.12(1) *General admission policies.*

a. No resident shall be admitted or retained in a nursing facility who is in need of greater services than the facility can provide. (II, III)

b. No nursing facility shall admit more residents than the number of beds for which it is licensed. (II, III)

c. There shall be no more beds erected than is stipulated on the license. (II, III)

d. There shall be no more beds erected in a room than its size and other characteristics will permit. (II, III)

e. The admission of a resident to a nursing facility shall 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 representative. (III)

f. The admission of a resident shall not grant the nursing facility the authority or responsibility to manage the personal affairs of the resident except as may be necessary for the safety of the resident and safe and orderly management of the facility as required by these rules. (III)

g. A nursing facility 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)

h. Rescinded, effective 7/14/82.

i. Funds or properties received by the nursing facility belonging to or due a resident, expendable for the resident's account, shall be trust funds. (III)

j. Infants and children under the age of 16 shall not be admitted to health care facilities for adults unless given prior written approval by the department. A distinct part of a health care facility, segregated from the adult section, may be established based on a program of care submitted by the licensee or applicant which is commensurate with the needs of the residents of the health care facility and has received the department's review and approval. (III)

k. No health care facility, and no owner, administrator, employee or representative thereof shall act as guardian, trustee, or conservator for any resident's property, unless such resident is related to the person acting as guardian within the third degree of consanguinity.

58.12(2) *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 nursing facility for the welfare of the resident prior to 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 58.15(2)*"k"* of these rules will accompany the resident. (II, III)

f. Prior to the transfer or discharge of a resident to another health care facility, arrangements to provide for continuity of care shall be made with the facility to which the resident is being sent. (II, 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 58.13(3); (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 the resident's 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 the facility's 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 30 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 the resident wants 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 a nursing 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 a nursing 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 a nursing 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)

58.14(8) Each resident shall be visited by or shall visit the resident's physician at least twice a year. The year period shall be measured by the date of admission and is not to include preadmission physicals. (III)*

*Emergency, pursuant to Iowa Code section 17A.5(2)"*b*"(2).

481—58.15(135C) Records.

58.15(1) *Resident admission record.* The licensee shall keep a permanent record on all residents admitted to a nursing facility with all entries current, dated, and signed. This shall be a part of the resident clinical record. (III) The admission record form shall include:

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

b. Birth date, 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)

58.15(2) *Resident clinical record.* There shall be a separate clinical record for each resident admitted to a nursing facility with all entries current, dated, and signed. (III) The resident clinical record shall include:

a. Admission record; (III)

b. Admission diagnosis; (III)

c. Physical examination: 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, estimation of restoration potential and results of any diagnostic procedures. The report of the physical examination shall be signed by the physician. (III)

d. Physician's certification that the resident requires no greater degree of nursing care than the facility is licensed to provide; (III)

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

f. Progress notes.

(1) Physician shall enter a progress note at the time of each visit; (III)

(2) Other professionals, i.e., dentists, social workers, physical therapists, pharmacists, and others shall enter a progress note at the time of each visit; (III)

g. All laboratory, X-ray, and other diagnostic reports; (III)

h. Nurse's record including:

(1) Admitting notes including time and mode of transportation; room assignment; disposition of valuables; symptoms and complaints; general condition; vital signs; and weight; (II, III)

(2) Routine notes including physician's visits; telephone calls to and from the physician; unusual incidents and accidents; change of condition; social interaction; and P.R.N. medications administered including time and reason administered, and resident's reaction; (II, III)

(3) Discharge or transfer notes including time and mode of transportation; resident's general condition; instructions given to resident or legal representative; list of medications and disposition; and completion of transfer form for continuity of care; (II, III)

(4) Death notes including notification of physician and family to include time, disposition of body, resident's personal possessions and medications; and complete and accurate notes of resident's vital signs and symptoms preceding death; (III)

i. Medication record.

(1) An accurate record of all medications administered shall be maintained for each resident. (II, III)

(2) Schedule II drug records shall be kept in accordance with state and federal laws; (II, III)

j. Death record.

(1) The death record shall include name, age, sex, and race of deceased; date and time of death; physician's name, address, and signature; immediate cause of death; name and address of relative or legal representative notified of death; name, address, and signature of mortician receiving the body. (III)

(2) If the physician does not sign the death record, a copy of the death certificate shall be obtained by the facility as soon as it becomes available and made a part of the resident's medical record retained by the facility; (III)

k. Transfer form.

(1) The transfer form shall include identification data from the admission record, name of transferring institution, name of receiving institution, and date of transfer; (III)

(2) The nurse's report shall include resident attitudes, behavior, interests, functional abilities (activities of daily living), unusual treatments, nursing care, problems, likes and dislikes, nutrition, current medications (when last given), and condition on transfer; (III)

(3) The physician's report shall include reason for transfer, medications, treatment, diet, activities, significant laboratory and X-ray findings, and diagnosis and prognosis; (III)

l. Consultation reports shall indicate services rendered by allied health professionals in the facility or in health-centered agencies such as dentists, physical therapists, podiatrists, oculists, and others. (III)

58.15(3) *Resident personal record.* Personal records may be kept as a separate file by the facility.

a. Personal records may include factual information regarding personal statistics, family and responsible relative resources, financial status, and other confidential information.

b. Personal records shall be accessible to professional staff involved in planning for services to meet the needs of the resident. (III)

c. When the resident's records are closed, the information shall become a part of the final record. (III)

d. Personal records shall include a duplicate copy of the contract(s). (III)

58.15(4) *Incident record.*

a. Each nursing 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 prepare and sign the report. (III)

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

e. The report shall cover all accidents or unusual occurrences within the facility or on the premises affecting residents, visitors, or employees. (III)

f. A copy of the incident report shall be kept on file in the facility. (III)

58.15(5) *Retention of records.*

a. Records shall be retained in the facility for five years following termination of services. (III)

b. Records shall be retained within the facility upon change of ownership. (III)

c. Rescinded, effective 7/14/82.

d. 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)

58.15(6) *Reports to the department.* The licensee shall furnish statistical information concerning the operation of the facility to the department on request. (III)

58.15(7) *Personnel record.*

a. An employment record shall be kept for each employee consisting of the following information: name and address of employee, social security number of employee, date of birth of employee, date of employment, experience and education, references, position in the home, date and reason for discharge or resignation. (III)

b. The personnel records shall be made available for review upon request by the department. (III)

481—58.16(135C) Resident care and personal services.

58.16(1) Beds shall be made daily and adjusted as necessary. A complete change of linen shall be made at least once a week and more often if necessary. (III)

58.16(2) Residents shall receive sufficient supervision so that their personal cleanliness is maintained. (II, III)

58.16(3) Residents shall have clean clothing as needed to present a neat appearance, be free of odors, and to be comfortable. Clothing shall be appropriate to their activities and to the weather. (III)

58.16(4) Rescinded, effective 7/14/82.

58.16(5) Residents shall be encouraged to leave their rooms and make use of the recreational room or living room of the facility. (III)

58.16(6) Residents shall not be required to pass through another's bedroom to reach a bathroom, living room, dining room, corridor, or other common areas of the facility. (III)

58.16(7) Rescinded, effective 7/14/82.

58.16(8) Uncontrollable residents shall be transferred or discharged from the facility in accordance with contract arrangements and requirements of Iowa Code chapter 135C. (II, III)

58.16(9) Residents who are not bedfast shall be fully dressed each day to maintain self-esteem and promote normal lifestyle. (III)

58.16(10) Residents shall be required to bathe at least twice a week. (II, III)

481—58.17 Rescinded, effective 7/14/82.

481—58.18(135C) Nursing care.

58.18(1) Individual health care plans shall be based on the nature of the illness or disability, treatment, and care prescribed. Long- and short-term goals shall be developed by each discipline providing service, treatment, and care. These plans shall be in writing, revised as necessary, and kept current. They shall be made available to all those rendering the services and for review by the department. (III)

58.18(2) Residents shall be protected against hazards to themselves and others or the environment. (II, III)

58.18(3) The facility shall provide resident and family education as an integral part of restorative and supportive care. (III)

58.18(4) The facility shall provide prompt response from qualified staff for the resident's use of the electrically operated nurse call system. (II, III) (Prompt response being considered as no longer than 15 minutes.)

481—58.19(135C) Required nursing services for residents. The program plan for nursing facilities shall have the following required nursing services under the 24-hour direction of qualified nurses with ancillary coverage as set forth in these rules:

58.19(1) *Activities of daily living.*

a. Bathing; (II, III)

b. Daily oral hygiene (denture care); (II, III)

c. Routine shampoo; (II, III)

d. Nail care; (III)

e. Shaving; (III)

f. Daily care and application of prostheses (glasses, hearing aids, glass eyes, limb prosthetics, braces, or other assistive devices); (II, III)

g. Ambulation with equipment if applicable, or transferring, or positioning; (I, II, III)

h. Daily routine range of motion; (II, III)

i. Mobility (assistance with wheelchair, mechanical lift, or other means of locomotion); (I, II, III)

j. Elimination.

(1) Assistance to and from the bathroom and perineal care; (II, III)

(2) Bedpan assistance; (II, III)

(3) Care for incontinent residents; (II, III)

(4) Bowel and bladder training programs including in-dwelling catheter care (i.e., insertion and irrigation), enema and suppository administration, and monitoring and recording of intake and output, including solid waste; (I, II, III)

k. Colostomy care (to be performed only by a registered nurse or licensed practical nurse or by a qualified aide under the direction of a registered nurse or licensed practical nurse); (I, II, III)

l. Ileostomy care (to be performed only by a registered nurse or licensed practical nurse or by a qualified aide under the direction of a registered nurse or licensed practical nurse); (I, II, III)

m. All linens necessary; (III)

n. Nutrition and meal service.

(1) Regular, therapeutic, modified diets, and snacks; (I, II, III)

(2) Mealtime preparation of resident; (II, III)

(3) Assistance to and from meals; (II, III)

(4) In-room meal service or tray service; (II, III)

(5) Assistance with food preparation and feeding including total feeding if needed; (II, III)

(6) Assistance with adaptive devices; (II, III)

(7) Tube feeding (to be performed by a registered nurse or licensed practical nurse only); (I, II, III)

o. Promote initiation of self-care for elements of resident care; (II, III)

p. Oral suctioning (to be performed only by a registered nurse or licensed practical nurse or by a qualified aide under the direction of a registered nurse or licensed practical nurse). (I, II)

58.19(2) *Medication and treatment.*

a. Administration of all medications as ordered by the physician including oral, instillations, topical, injectable (to be injected by a registered nurse or licensed practical nurse only); (I, II)

b. Decubitus care; (I, II)

c. Heat lamp; (II, III)

d. Clinitest/acetest; (I, II)

e. Vital signs, blood pressure, and weights; (I, II)

f. Ambulation and transfer; (II, III)

g. Provision of restraints; (I, II)

h. Administration of oxygen (to be performed only by a registered nurse or licensed practical nurse or by a qualified aide under the direction of a registered nurse or licensed practical nurse); (I, II)

i. Provision of all treatments; (I, II, III)

j. Provide emergency and arrange medical care, including transportation, in accordance with written policies and procedures of the facility. (I, II, III)

k. Provision of accurate assessment and timely intervention for all residents who have an onset of adverse symptoms which represent a change in mental, emotional, or physical condition. (I, II, III)

481—58.20(135C) Duties of health service supervisor. Every nursing facility shall have a health service supervisor who shall:

58.20(1) Direct the implementation of the physician's orders; (I, II)

58.20(2) Plan for and direct the nursing care, services, treatments, procedures, and other services in order that each resident's needs are met; (II, III)

58.20(3) Review the health care needs of each resident admitted to the facility and assist the attending physician in planning for the resident's care; (II, III)

58.20(4) Develop and implement a written health care plan in cooperation with other disciplines in accordance with instructions of the attending physician as follows:

a. The written health care plan, based on the assessment and reassessment of the resident health needs, is personalized for the individual resident and indicates care to be given, short- and long-term goals to be accomplished, and methods, approaches, and modifications necessary to achieve best results; (III)

b. The health service supervisor is responsible for preparing, reviewing, supervising the implementation, and revising the written health care plan; (III)

c. The health care plan is readily available for use by all personnel caring for the resident; (III)

58.20(5) Initiate preventative and restorative nursing procedures for each resident so as to achieve and maintain the highest possible degree of function, self-care, and independence; (II, III)

58.20(6) Supervise health services personnel to ensure they perform the following restorative measures in their daily care of residents:

a. Maintaining good bodily alignment and proper positioning; (II, III)

b. Making every effort to keep the resident active except when contraindicated by physician's orders, and encouraging residents to achieve independence in activities of daily living by teaching self-care, transfer, and ambulation activities; (III)

c. Assisting residents to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests as necessary; (III)

d. Assisting residents to carry out prescribed therapy exercises between visits of the therapist; (III)

e. Assisting residents with routine range of motion exercises; (III)

58.20(7) Plan and conduct nursing staff orientation and in-service programs and provide for training of nurse's aides; (III)

58.20(8) Plan with the physician, family and health-related agencies for the care of the resident upon discharge; (III)

58.20(9) Designate a responsible person to be in charge during absences; (III)

58.20(10) Be responsible for all assignments and work schedules for all health services personnel to ensure that the health needs of the residents are met; (III)

58.20(11) Ensure that all nurse's notes are descriptive of the care rendered including the resident's response; (III)

58.20(12) Visit each resident routinely to be knowledgeable of the resident's current condition; (III)

58.20(13) Evaluate in writing the performance of each individual on the health care staff on at least an annual basis. This evaluation shall be available for review in the facility to the department; (III)

58.20(14) Keep the administrator informed of the resident's status; (III)

58.20(15) Teach and coordinate rehabilitative health care including activities of daily living, promotion and maintenance of optimal physical and mental functioning; (III)

58.20(16) Supervise serving of diets to ensure that individuals unable to feed themselves are promptly fed and that special eating utensils are available as needed; (II, III)

58.20(17) Make available a nursing procedure manual which shall include all procedures practiced in the facility; (III)

58.20(18) Participate with the administrator in the formulation of written policies and procedures for resident services; (III)

58.20(19) The person in charge shall immediately notify the family of any accident, injury, or adverse change in the resident's condition requiring physician's notification. (III)

481—58.21(135C) Drugs, storage, and handling.

58.21(1) Drug storage for residents who are unable to take their own medications and require supervision shall meet the following requirements:

a. A cabinet with a lock, convenient to nursing service, shall be provided and used for storage of all drugs, solutions, and prescriptions; (III)

b. A bathroom shall not be used for drug storage; (III)

c. The drug storage cabinet shall be kept locked when not in use; (III)

d. The medication cabinet key shall be in the possession of the person directly responsible for issuing medications; (II, III)

e. Double-locked storage of Schedule II drugs shall not be required under single unit package drug distribution systems in which the quantity stored does not exceed a three-day supply and a missing dose can be readily detected. (II)

58.21(2) Drugs for external use shall be stored separately from drugs for internal use. (III)

58.21(3) Medications requiring refrigeration shall be kept in a refrigerator and separated from food and other items. A method for locking these medications shall be provided. (III)

58.21(4) All potent, poisonous, or caustic materials shall be stored separately from drugs. They shall be plainly labeled and stored in a specific, well-illuminated cabinet, closet, or storeroom and made accessible only to authorized persons. (I, II)

58.21(5) All flammable materials shall be specially stored and handled in accordance with applicable local and state fire regulations. (II)

58.21(6) A properly trained person shall be charged with the responsibility of administering nonparenteral medications.

a. The individual shall have knowledge of the purpose of the drugs, their dangers, and contraindications.

b. This person shall be a licensed nurse or physician or shall have successfully completed a department-approved medication aide course or passed a department-approved medication aide challenge examination administered by an area community college.

c. Prior to taking a department-approved medication aide course, the individual shall:

(1) Successfully complete an approved nurse aide course, nurse aide training and testing program or nurse aide competency examination.

(2) Be employed in the same facility for at least six consecutive months prior to the start of the medication aide course. This requirement is not subject to waiver.

(3) Have a letter of recommendation for admission to the medication aide course from the employing facility.

d. A person who is a nursing student or a graduate nurse may take the challenge examination in place of taking a medication aide course. This individual shall do all of the following before taking the medication aide challenge examination:

(1) Complete a clinical or nursing theory course within six months before taking the challenge examination;

(2) Successfully complete a nursing program pharmacology course within one year before taking the challenge examination;

(3) Provide to the community college a written statement from the nursing program's pharmacology or clinical instructor indicating the individual is competent in medication administration.

(4) Successfully complete a department-approved nurse aide competency evaluation.

e. A person who has written documentation of certification as a medication aide in another state may become a medication aide in Iowa by successfully completing a department-approved nurse aide competency examination and a medication aide challenge examination.

The requirements of paragraph *"c"* of this subrule do not apply to this individual.

58.21(7) Unless the unit dose system is used, the person assigned the responsibility of medication administration must complete the procedure by personally preparing the dose, observing the actual act of swallowing the oral medication, and charting the medication. (II) In facilities where the unit dose system is used, the person assigned the responsibility must complete the procedure by observing the actual act of swallowing the medication and charting the medication. Medications shall be prepared on the same shift of the same day that they are administered, (II) unless the unit dose system is used.

58.21(8) An accurate written record of medications administered shall be made by the individual administering the medication. (III)

58.21(9) Records shall be kept of all Schedule II drug medications received and dispensed in accordance with the controlled drug and substance Act. (III)

58.21(10) Any unusual resident reaction shall be reported to the physician at once. (II)

58.21(11) A policy shall be established by the facility in conjunction with a licensed pharmacist to govern the distribution of prescribed medications to residents who are on leave from the facility. (III)

a. Medication may be issued to residents who will be on leave from a facility for less than 24 hours. Notwithstanding the prohibition against paper envelopes in 58.21(14)*"a,"* 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 a nurse responsible for administering medication. (I, II, III)

58.21(12) Emergency medication tray. A nursing facility shall provide an emergency medication tray. (III) There shall be compliance with the following requirements:

a. Prescription drugs as well as nonprescription items in the tray must be prescribed or approved by the physician, in consultation with the pharmacist, who provides emergency service to the facility; (III)

b. The tray shall be stored in an accessible place; (III)

c. The tray shall contain a list of its contents and quantities of each item on the outside cover and within the box; (III)

d. The tray shall be closed with a seal which may be broken when drugs are required in an emergency or for inspection; (III)

e. Any item removed from the tray will be replaced within 48 hours; (III)

f. A permanent record shall be kept of each time the tray is utilized; (III)

g. The tray shall be inspected by a pharmacist at least once every three months to determine the stability of items in the tray. (III)

58.21(13) Drug handling.

a. Bulk supplies of prescription drugs shall not be kept in a nursing facility unless a licensed pharmacy is established in the facility under the direct supervision and control of a pharmacist. (III)

b. Inspection of drug storage condition shall be made by the health service supervisor and a registered pharmacist not less than once every three months. The inspection shall be verified by a report signed by the nurse and pharmacist and filed with the administrator. The report shall include, but not be limited to, certifying absence of the following: expired drugs, deteriorated drugs, improper labeling, drugs for which there is no current physician's order, and drugs improperly stored. (III)

c. If the facility permits licensed nurses to dilute or reconstitute drugs at the nursing station, distinctive supplementary labels shall be available for the purpose. The notation on the label shall be so made as to be indelible. (III)

d. Dilution and reconstitution of drugs and their labeling shall be done by the pharmacist whenever possible. If not possible, the following shall be carried out only by the licensed nurse:

(1) Specific directions for dilution or reconstitution and expiration date should accompany the drug; (III)

(2) A distinctive supplementary label shall be affixed to the drug container when diluted or reconstituted by the nurse for other than immediate use. (III) The label shall bear the following: resident's name, dosage and strength per unit/volume, nurse's name, expiration date, and date and time of dilution. (III)

58.21(14) Drug safeguards.

a. All prescribed medications shall be clearly labeled indicating the resident's full name, physician's name, prescription number, name and strength of drug, dosage, directions for use, date of issue, and name and address and telephone number of pharmacy or physician issuing the drug. Where unit dose is used, prescribed medications shall, as a minimum, indicate the resident's full name, physician's name, name and strength of drug, and directions for use. Standard containers shall be utilized for dispensing drugs. Paper envelopes shall not be considered standard containers. (III)

b. Medication containers having soiled, damaged, illegible or makeshift labels shall be returned to the issuing pharmacist, pharmacy, or physician for relabeling or disposal. (III)

c. There shall be no medications or any solution in unlabeled containers. (II, III)

d. The medications of each resident shall be kept or stored in the originally received containers. (II, III)

e. Labels on containers shall be clearly legible and firmly affixed. No label shall be superimposed on another label of a drug container. (II, III)

f. When a resident is discharged or leaves the facility, the unused prescription shall be sent with the resident or with a legal representative only upon the written order of a physician. (III)

g. Unused prescription drugs prescribed for residents who are deceased shall be destroyed by a qualified nurse with a witness and notation made on the resident's record, or, if a unit dose system is used, such drugs shall be returned to the supplying pharmacist. (III)

h. Prescriptions shall be refilled only with the permission of the attending physician. (II, III)

i. No medications prescribed for one resident may be administered to or allowed in the possession of another resident. (II)

j. Instructions shall be requested of the Iowa board of pharmacy examiners concerning disposal of unused Schedule II drugs prescribed for residents who have died or for whom the Schedule II drug was discontinued. (III)

k. There shall be a formal routine for the proper disposal of discontinued medications within a reasonable but specified time. These medications shall not be retained with the resident's current medications. Discontinued drugs shall be destroyed by the responsible nurse with a witness and a notation made to that effect or returned to the pharmacist for destruction or resident credit. Drugs listed under the Schedule II drugs shall be disposed of in accordance with the provisions of the Iowa board of pharmacy examiners. (II, III)

l. All medication orders which do not specifically indicate the number of doses to be administered or the length of time the drug is to be administered shall be stopped automatically after a given time period. The automatic stop order may vary for different types of drugs. The physician, in consultation with the pharmacist serving the home, shall institute policies and provide procedures for review and endorsement of stop orders on drugs. This policy shall be conveniently located for personnel administering medications. (II, III)

m. No resident shall be allowed to keep possession of any medications unless the attending physician has certified in writing on the resident's medical record that the resident is mentally and physically capable of doing so. (II)

n. Residents who have been certified in writing by the physician as capable of taking their own medications may retain these medications in their bedroom, but locked storage must be provided. (II)

o. No medications or prescription drugs shall be administered to a resident without a written order signed by the attending physician. (II)

p. A qualified nurse shall:

(1) Establish a medication schedule system which identifies the time and dosage of each medication prescribed for each resident. (II, III)

(2) Establish a medication record containing the information specified above needed to monitor each resident's drug regimen. (II, III)

q. Telephone orders shall be taken by a qualified nurse. Orders shall be written into the resident's record and signed by the person receiving the order. Telephone orders shall be submitted to the physician for signature within 48 hours. (III)

r. A pharmacy operating in connection with a nursing facility shall comply with the provisions of the pharmacy law requiring registration of pharmacies and the regulations of the Iowa board of pharmacy examiners. (III)

s. In a nursing facility with a pharmacy or drug supply, service shall be under the personal supervision of a pharmacist licensed to practice in the state of Iowa. (III)

58.21(15) Drug administration.

a. Injectable medications shall not be administered by anyone other than a qualified nurse or physician. In the case of a resident who has been certified by the resident's physician as capable of taking the resident's own insulin, the resident may inject the resident's own insulin. (II)

b. An individual inventory record shall be maintained for each Schedule II drug prescribed for each resident. (II)

c. The health service supervisor shall be responsible for the supervision and direction of all personnel administering medications. (II)

481—58.22(135C) Rehabilitative services. Rehabilitative services shall be provided to maintain function or improve the resident's ability to carry out the activities of daily living.

58.22(1) *Physical therapy services.*

a. Each facility shall have a written agreement with a licensed physical therapist to provide physical therapy services. (III)

b. Physical therapy shall be rendered only by a physical therapist licensed to practice in the state of Iowa. All personnel assisting with the physical therapy of residents must be under the direction of a licensed physical therapist. (II, III)

c. The licensed physical therapist shall:

(1) Evaluate the resident and prepare a physical therapy treatment plan conforming to the medical orders and goals; (III)

(2) Consult with other personnel in the facility who are providing resident care and plan with them for the integration of a physical therapy treatment program into the overall health care plan; (III)

(3) Instruct the nursing personnel responsible for administering selected restorative procedures between treatments; (III)

(4) Present programs in the facility's in-service education programs. (III)

d. Treatment records in the resident's medical chart shall include:

(1) The physician's prescription for treatment; (III)

(2) An initial evaluation note by the physical therapist; (III)

(3) The physical therapy care plan defining clearly the long-term and short-term goals and outlining the current treatment program; (III)

(4) Notes of the treatments given and changes in the resident's condition; (III)

(5) A complete discharge summary to include recommendations for nursing staff and family. (III)

e. There shall be adequate facilities, space, appropriate equipment, and storage areas as are essential to the treatment or examinations of residents. (III)

58.22(2) *Other rehabilitative services.*

a. The facility shall arrange for specialized and supportive rehabilitative services when such services are ordered by a physician. (III) These may include audiology and occupational therapy.

b. Audiology services shall be under the direction of a person licensed in the state of Iowa by the board of speech pathology and audiology. (II, III)

c. Occupational therapy services shall be under the direction of a qualified occupational therapist who is currently registered by the American Occupational Therapy Association. (II, III)

d. The appropriate professional shall:

(1) Develop the treatment plan and administer or direct treatment in accordance with the physician's prescription and rehabilitation goals; (III)

(2) Consult with other personnel within the facility who are providing resident care and plan with them for the integration of a treatment program into the overall health care plan. (III)

481—58.23(135C) Dental, diagnostic, and other services.

58.23(1) *Dental services.*

a. The nursing facility personnel shall assist residents to obtain regular and emergency dental services. (III)

b. Transportation arrangements shall be made when necessary for the resident to be transported to the dentist's office. (III)

c. Dental services shall be performed only on the request of the resident, responsible relative, or legal representative. The resident's physician shall be advised of the resident's dental problems. (III)

d. All dental reports or progress notes shall be included in the clinical record. (III)

e. Nursing personnel shall assist the resident in carrying out dentist's recommendations. (III)

f. Dentists shall be asked to participate in the in-service program of the facility. (III)

58.23(2) *Diagnostic services.*

a. The nursing facility shall make provisions for promptly securing required clinical laboratory, X-ray, and other diagnostic services. (III)

b. All diagnostic services shall be provided only on the written, signed order of a physician. (III)

c. Agreements shall be made with the local hospital laboratory or independent laboratory to perform specific diagnostic tests when they are required. (III)

d. Transportation arrangements for residents shall be made, when necessary, to and from the source of service. (III)

e. Copies of all diagnostic reports shall be requested by the facility and included in the resident's clinical record. (III)

f. The physician ordering the specific diagnostic service shall be promptly notified of the results. (III)

g. Simple tests such as customarily done by nursing personnel for diabetic residents may be performed in the facility. (III)

58.23(3) *Other services.*

a. The nursing facility shall assist residents to obtain such supportive services as requested by the physician. (III)

b. Transportation arrangements shall be made when necessary. (III)

c. Services could include the need for prosthetic devices, glasses, hearing aids, and other necessary items. (III)

481—58.24(135C) Dietary.

58.24(1) *Organization of dietetic service department.* The facility shall meet the needs of the residents and provide the services listed in this standard. If the service is contracted out, the contractor shall meet all the standards. A written agreement shall be formulated between the facility and the contractor and shall convey to the department the right to inspect the food service facilities of the contractor. (III)

a. There shall be written policies and procedures for the dietetic service department that include staffing, nutrition, menu planning, therapeutic diets, preparation, service, ordering, receiving, storage, sanitation, and hygiene of staff. The policies and procedures shall be kept in a notebook and made available for use in the dietetic service department. (III)

b. There shall be written job descriptions for each position in the dietetic service department. The job descriptions shall be posted or kept in a notebook and made available for use in the dietetic service department. (III)

58.24(2) *Dietary staffing.*

a. The facility shall employ a qualified dietary supervisor who:

(1) Is a qualified dietitian as defined in 58.24(2)*"e"*; or

(2) Is a graduate of a dietetic technician training program approved by the American Dietetic Association; or

(3) Is a certified dietary manager certified by the certifying board for dietary managers of the Dietary Managers Association (DMA) and maintains that credential through 45 hours of DMA-approved continuing education; or

(4) Has completed a DMA-approved course curriculum necessary to take the certification examination required to become a certified dietary manager; or

(5) Has documented evidence of at least two years' satisfactory work experience in food service supervision and who is in an approved dietary manager association program and will successfully complete the program within 12 months of the date of enrollment; or

(6) Has completed or is in the final 90-hour training course approved by the department. (II, III)

b. The supervisor shall have overall supervisory responsibility for the dietetic service department and shall be employed for a sufficient number of hours to complete management responsibilities that include:

(1) Participating in regular conferences with consultant dietitian, administrator and other department heads; (III)

(2) Writing menus with consultation from the dietitian and seeing that current menus are posted and followed and that menu changes are recorded; (III)

(3) Establishing and maintaining standards for food preparation and service; (II, III)

(4) Participating in selection, orientation, and in-service training of dietary personnel; (II, III)

(5) Supervising activities of dietary personnel; (II, III)

(6) Maintaining up-to-date records of residents identified by name, location and diet order; (III)

(7) Visiting residents to learn individual needs and communicating with other members of the health care team regarding nutritional needs of residents when necessary; (II, III)

(8) Keeping records of repairs of equipment in the dietetic service department. (III)

c. The facility shall employ sufficient supportive personnel to carry out the following functions:

(1) Preparing and serving adequate amounts of food that are handled in a manner to be bacteriologically safe; (II, III)

(2) Washing and sanitizing dishes, pots, pans and equipment at temperatures required by procedures described elsewhere; (II, III)

(3) Serving of therapeutic diets as prescribed by the physician and following the planned menu. (II, III)

d. The facility shall not assign personnel duties simultaneously in the kitchen and laundry, housekeeping, or nursing service except in an emergency situation. If such a situation occurs, proper sanitary and personal hygiene procedure shall be followed as outlined under the rules pertaining to hygiene of staff. (II, III)

e. If the dietetic service supervisor is not a licensed dietitian, a consultant dietitian is required. The consultant dietitian shall be licensed by the state of Iowa pursuant to Iowa Code chapter 152A.

f. Consultants' visits shall be scheduled to be of sufficient duration and at a time convenient to:

(1) Record, in the resident's medical record, any observations, assessments and information pertinent to medical nutrition therapy; (I, II, III)

(2) Work with nursing staff on resident care plans; (III)

(3) Consult with the administrator and others on developing and implementing policies and procedures; (III)

(4) Write or approve general and therapeutic menus; (III)

(5) Work with the dietetic supervisor on developing procedures, recipes and other management tools; (III)

(6) Present planned in-service training and staff development for food service employees and others. Documentation of consultation shall be available for review in the facility by the department. (III)

g. In facilities licensed for more than 15 beds, food service personnel shall be on duty for a minimum of a 12-hour span extending from the preparation of breakfast through supper. (III)

58.24(3) *Nutrition and menu planning.*

a. Menus shall be planned and followed to meet nutritional needs of each resident in accordance with the physician's orders. (II, III)

b. Menus shall be planned and served to include foods and amounts necessary to meet the current Recommended Daily Dietary Allowances, 1989 edition, adopted by the Food and Nutrition Board of the National Research Council, National Academy of Sciences. (II)

The food groups listed below and the food groups for menu planning in the 1998 edition of the Simplified Diet Manual, Iowa State University Press, Ames, Iowa, shall be used as a minimum for planning resident menus.

(1) Milk - two or more cups served as beverage or used in cooking;

(2) Meat group - two or more servings of meat, fish, poultry, eggs, cheese or equivalent; at least four to five ounces edible portion per day;

(3) Vegetable and fruit group - four or more servings (two cups). This shall include a citrus fruit or other fruit and vegetable important for vitamin C daily, a dark green or deep yellow vegetable for vitamin A at least every other day, and other fruits and vegetables, including potatoes;

(4) Bread and cereal group - four or more servings of whole-grain, enriched or restored;

(5) Foods other than those listed shall be included to meet daily energy requirements (calories) to add to the total nutrients and variety of meals.

c. At least three meals or their equivalent shall be served daily, at regular hours comparable to normal mealtimes in the community. (II)

(1) There shall be no more than a 14-hour span between a substantial evening meal and breakfast except as provided in subparagraph (3) below. (II, III)

(2) The facility shall offer snacks at bedtime daily. (II, III)

(3) When a nourishing snack is provided at bedtime, up to 16 hours may elapse between a substantial evening meal and breakfast of the following day. The current resident group must agree to this meal span and a nourishing snack must be served. (II)

d. Menus shall include a variety of foods prepared in various ways. The same menu shall not be repeated on the same day of the following week. (III)

e. Menus shall be written at least one week in advance. The current menu shall be located in an accessible place in the dietetic service department for easy use by persons purchasing, preparing and serving food. (III)

f. Records of menus as served shall be filed and maintained for 30 days and shall be available for review by department personnel. When substitutions are necessary, they shall be of similar nutritive value and recorded. (III)

g. A file of tested recipes adjusted to the number of people to be fed in the facility shall be maintained. (III)

h. Alternate foods shall be offered to residents who refuse the food served. (II, III)

58.24(4) *Therapeutic diets.*

a. Therapeutic diets shall be prescribed by the attending physician. A current therapeutic diet manual shall be readily available to attending physicians, nurses and dietetic service personnel. This manual shall be used as a guide for writing menus for therapeutic diets. A licensed dietitian shall be responsible for writing and approving the therapeutic menu and reviewing procedures for preparation and service of food. (III)

b. Personnel responsible for planning, preparing and serving therapeutic diets shall receive instructions on those diets. (III)

58.24(5) *Food preparation and service.*

a. Methods used to prepare foods shall be those which conserve nutritive value and flavor and meet the taste preferences of the residents. (III)

b. Foods shall be attractively served. (III)

c. Foods shall be cut up, chopped, ground or blended to meet individual needs. (II, III)

d. Self-help devices shall be provided as needed. (II, III)

e. Table service shall be attractive. (III)

f. Plasticware, china and glassware that are unsightly, unsanitary or hazardous because of chips, cracks or loss of glaze shall be discarded. (III)

g. All food that is transported through public corridors shall be covered. (III)

h. All potentially hazardous food or beverages capable of supporting rapid and progressive growth of microorganisms that can cause food infections or food intoxication shall be maintained at temperatures of 41°F or below or at 140°F or above at all times, except during necessary periods of preparation. Frozen food shall be maintained frozen. (I, II, III)

i. Potentially hazardous food that is cooked, cooled and reheated for hot holding shall be reheated so that all parts of the food reach a temperature of at least 165°F for 15 seconds. (I, II, III)

j. Food must be reheated to 165°F within no more than two hours after the heating process begins. (I, II, III)

k. Cooked potentially hazardous food shall be cooled:

(1) Within two hours, from 140°F to 70°F; and

(2) Within four hours, from 70°F to 41°F or less. (I, II, III)

58.24(6) *Dietary ordering, receiving, and storage.*

a. All food and beverages shall be of wholesome quality and procured from sources approved or considered satisfactory by federal, state and local authorities. Food or beverages from unlabeled, rusty, leaking, broken or damaged containers shall not be served. (I, II, III)

b. A minimum of at least a one-week supply of staple foods and a three-day supply of perishable foods shall be maintained on the premises to meet the planned menu needs until the next food delivery. Supplies shall be appropriate to meet the requirements of the menu. (III)

c. All milk shall be pasteurized. (III)

d. Milk may be served in individual, single-use containers. Milk may be served from refrigerated bulk milk dispensers or from the original container. Milk served from a refrigerated bulk milk dispenser shall be dispensed directly into the glass or other container from which the resident drinks. (II, III)

e. Records which show amount and kind of food purchased shall be retained for three months and shall be made available to the department upon request. (III)

f. Dry or staple items shall be stored at least six inches (15 cm) above the floor in a ventilated room, not subject to sewage or wastewater backflow, and protected from condensation, leakage, rodents or vermin in accordance with the Food Code, 1999 edition. (III)

g. Pesticides, other toxic substances and drugs shall not be stored in the food preparation or storage areas used for food or food preparation equipment and utensils. Soaps, detergents, cleaning compounds or similar substances shall not be stored in food storage rooms or areas. (II)

h. Food storage areas shall be clean at all times. (III)

i. There shall be a reliable thermometer in each refrigerator, freezer and in storerooms used for food. (III)

j. Foods held in refrigerated or other storage areas shall be appropriately covered. Food that was prepared and not served shall be stored appropriately, clearly identifiable and dated. (III)

58.24(7) *Sanitation in food preparation area.*

a. Unless otherwise indicated in this chapter or 481—Chapter 61, the sanitary provisions as indicated in Chapters 3, 4 and 7 of the 1999 Food Code, U.S. Public Health Service, Food and Drug Administration, Washington, DC 20204, shall apply.

b. Residents shall not be allowed in the food preparation area. (III)

c. The food preparation area shall not be used as a dining area for residents, staff or food service personnel. (III)

d. All food service areas shall be kept clean, free from litter and rubbish, and protected from rodents, animals, roaches, flies and other insects. (II, III)

e. All utensils, counters, shelves and equipment shall be kept clean, maintained in good repair, and shall be free from breaks, corrosion, cracks and chipped areas. (II, III)

f. There shall be effective written procedures established for cleaning all work and serving areas. (III)

g. A schedule of cleaning duties to be performed daily shall be posted. (III)

h. An exhaust system and hood shall be clean, operational and maintained in good repair. (III)

i. Spillage and breakage shall be cleaned up immediately and disposed of in a sanitary manner. (III)

j. Wastes from the food service that are not disposed of by mechanical means shall be kept in leakproof, nonabsorbent, tightly closed containers when not in immediate use and shall be disposed of frequently. (III)

k. The food service area shall be located so it will not be used as a passageway by residents, guests or non-food service staff. (III)

l. The walls, ceilings and floors of all rooms in which food is prepared and served shall be in good repair, smooth, washable, and shall be kept clean. Walls and floors in wet areas should be moisture-resistant. (III)

m. Ice shall be stored and handled in such a manner as to prevent contamination. Ice scoops should be sanitized daily and kept in a clean container. (III)

n. There shall be no animals or birds in the food preparation area. (III)

o. All utensils used for eating, drinking, and preparing and serving food and drink shall be cleaned and disinfected or discarded after each use. (III)

p. If utensils are washed and rinsed in an automatic dishmachine, one of the following methods shall be used:

(1) When a conventional dishmachine is utilized, the utensils shall be washed in a minimum of 140°F using soap or detergent and sanitized in a hot water rinse of not less than 170°F. (II, III)

(2) When a chemical dishmachine is utilized, the utensils shall be washed in a minimum of 120°F using soap or detergent and sanitized using a chemical sanitizer that is automatically dispensed by the machine and is in a concentration equivalent to 50 parts per million (ppm) available chloride. (II, III)

q. If utensils are washed and rinsed in a three-compartment sink, the utensils shall be thoroughly washed in hot water at a minimum temperature of 110°F using soap or detergent, rinsed in hot water to remove soap or detergent, and sanitized by one of the following methods:

(1) Immersion for at least 30 seconds in clean water at 180°F; (II, III)

(2) Immersion in water containing bactericidal chemical at a minimum concentration as recommended by the manufacturer. (II, III)

r. After sanitation, the utensils shall be allowed to drain and dry in racks or baskets on nonabsorbent surfaces. Drying cloths shall not be used. (III)

s. Procedures for washing and handling dishes shall be followed in order to protect the welfare of the residents and employees. Persons handling dirty dishes shall not handle clean dishes without first washing their hands. (III)

t. A mop and mop pail shall be provided for exclusive use in kitchen and food storage areas. (III)

58.24(8) *Hygiene of food service personnel.*

a. Food service personnel shall be trained in basic food sanitation techniques, shall be clean and wear clean clothing, including a cap or a hairnet sufficient to contain, cover and restrain hair. Beards, mustaches and sideburns that are not closely cropped and neatly trimmed shall be covered. (III)

b. Food service personnel shall be excluded from duty when affected by skin infections or communicable diseases in accordance with the facility's infection-control policies. (II, III)

c. Employee street clothing stored in the food service area shall be in a closed area. (III)

d. Food preparation sinks shall not be used for hand washing. Separate hand-washing facilities with soap, hot and cold running water, and single-use towels shall be used properly. (II, III)

e. Persons other than food service personnel shall not be allowed in the food preparation area unless required to do so in the performance of their duties. (III)

f. The use of tobacco shall be prohibited in the kitchen. (III)

481—58.25(135C) Social services program.

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

58.25(2) The program shall be planned and implemented to resolve or reduce personal, family, business, and emotional problems that may interfere with the medical or health care, recovery, and rehabilitation of the individual. (III)

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

481—58.26(135C) Resident activities program.

58.26(1) *Organized activities.* Each nursing facility shall provide an organized resident activity program for the group and for the individual resident which shall include suitable activities for evenings and weekends. (III)

a. The activity program shall be designed to meet the needs and interests of each resident and to assist residents in continuing normal activities within limitations set by the resident's physician. This shall include helping residents continue in their individual interests or hobbies. (III)

b. The program shall include individual goals for each resident. (III)

c. The program shall include both group and individual activities. (III)

d. No resident shall be forced to participate in the activity program. (III)

e. The activity program shall include suitable activities for those residents unable to leave their rooms. (III)

f. The program shall be incorporated into the overall health plan and shall be designed to meet the goals as written in the plan.

58.26(2) *Coordination of activities program.*

a. Each nursing facility shall employ a person to direct the activities program. (III)

b. *†Staffing for the activity program shall be provided on the minimum basis of 35 minutes per licensed bed per week. (II, III)

*Emergency, pursuant to Iowa Code section 17A.5(2)"*b*"(2).
†Objection filed 2/14/79, see insert IAC 3/7/79 following Ch 57.

c. The activity coordinator shall have completed the activity coordinators' orientation course offered through the department within six months of employment or have comparable training and experience as approved by the department. (III)

d. The activity coordinator shall attend workshops or educational programs which relate to activity programming. These shall total a minimum of ten contact hours per year. These programs shall be approved by the department. (III)

e. There shall be a written plan for personnel coverage when the activity coordinator is absent during scheduled working hours. (III)

58.26(3) *Duties of activity coordinator.* The activity coordinator shall:

a. Have access to all residents' records excluding financial records; (III)

b. Coordinate all activities, including volunteer or auxiliary activities and religious services; (III)

c. Keep all necessary records including:

(1) Attendance; (III)

(2) Individual resident progress notes recorded at regular intervals (at least every two months). A copy of these notes shall be placed in the resident's clinical record; (III)

(3) Monthly calendars, prepared in advance. (III)

d. Coordinate the activity program with all other services in the facility; (III)

e. Participate in the in-service training program in the facility. This shall include attending as well as presenting sessions. (III)

58.26(4) *Supplies, equipment, and storage.*

a. Each facility shall provide a variety of supplies and equipment of a nature calculated to fit the needs and interests of the residents. (III) These may include: books (standard and large print), magazines, newspapers, radio, television, and bulletin boards. Also appropriate would be box games, game equipment, songbooks, cards, craft supplies, record player, movie projector, piano, outdoor equipment, etc.

b. Storage shall be provided for recreational equipment and supplies. (III)

c. Locked storage should be available for potentially dangerous items such as scissors, knives, and toxic materials. (III)

481—58.27(135C) Care review committee. Each facility shall have a care review committee in accordance with Iowa Code section 135C.25, which shall operate within the scope of the rules for care review committees promulgated by the department of elder affairs. (II)

58.27(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.

58.27(2) The care review committee shall, upon department request, be responsible for monitoring correction of substantiated complaints.

58.27(3) 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—58.28(135C) Safety. The licensee of a nursing facility shall be responsible for the provision and maintenance of a safe environment for residents and personnel. (III)

58.28(1) *Fire safety.*

a. All nursing facilities shall meet the fire safety rules and regulations as promulgated by the state fire marshal. (I, II)

b. The size of the facility and needs of the residents shall be taken into consideration in evaluating safety precautions and practices.

481—58.50(135C) Family visits. Each resident, if married, shall be ensured privacy for visits by the resident's spouse; if both are residents in the facility, they shall be permitted to share a room if available. (II)

58.50(1) The facility shall provide for needed privacy in visits between spouses. (II)

58.50(2) Spouses who are residents in the same facility shall be permitted to share a room, if available, unless one of their attending physicians documents in the medical record those specific reasons why an arrangement would have an adverse effect on the health of the resident. (II)

58.50(3) Family members shall be permitted to share a room, if available, if requested by both parties, unless one of their attending physicians documents in the medical record those specific reasons why such an agreement would have an adverse effect on the health of the resident. (II)

481—58.51(135C) Choice of physician. Each resident shall be permitted free choice of a physician and a pharmacy, if accessible. The facility may require the pharmacy selected to utilize a drug distribution system compatible with the system currently used by the facility. (II)

481—58.52(135C) Incompetent resident.

58.52(1) Each facility shall provide that all rights and responsibilities of the resident devolve to the resident's responsible party, when a resident is adjudicated incompetent in accordance with state law, or when the attending physician or qualified mental retardation professional has documented in the resident's record the specific impairment that has rendered the resident incapable of understanding these rights. The resident's specific impairment shall be reevaluated annually by the attending physician or qualified mental retardation professional. (II)

58.52(2) The fact that a resident has been adjudicated incompetent does not absolve the facility from advising the resident of these rights to the extent the resident is able to understand them. The facility shall also advise the responsible party, if any, and acquire a statement indicating an understanding of residents' rights. (II)

481—58.53(135C) County care facilities. In addition to Chapter 58 licensing rules, county care facilities licensed as nursing facilities 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 481—56.2(135C).

481—58.54(73GA,ch 1016) Special unit or facility dedicated to the care of persons with chronic confusion or a dementing illness (CCDI unit or facility).

58.54(1) A nursing facility which chooses to care for residents in a distinct part shall obtain a license for a CCDI unit or facility. In the case of a distinct part, this license will be in addition to its ICF license. The license shall state the number of beds in the unit or facility. (III)

a. Application for this category of care shall be submitted on a form provided by the department. (III)

b. Plans to modify the physical environment shall be submitted to the department. The plans shall be reviewed based on the requirements of 481—Chapter 61. (III)

58.54(2) A statement of philosophy shall be developed for each unit or facility which states the beliefs upon which decisions will be made regarding the CCDI unit or facility. Objectives shall be developed for each CCDI unit or facility as a whole. The objectives shall be stated in terms of expected results. (II, III)

58.54(3) A résumé of the program of care shall be submitted to the department for approval at least 60 days before a separate CCDI unit or facility is opened. A new résumé of the program of care shall be submitted when services are substantially changed. (II, III)

The résumé of the program of care shall:

a. Describe the population to be served; (II, III)

b. State philosophy and objectives; (II, III)

c. List admission and discharge criteria; (II, III)

d. Include a copy of the floor plan; (II, III)

e. List the titles of policies and procedures developed for the unit or facility; (II, III)

f. Propose a staffing pattern; (II, III)

g. Set out a plan for specialized staff training; (II, III)

h. State visitor, volunteer, and safety policies; (II, III)

i. Describe programs for activities, social services and families; (II, III) and

j. Describe the interdisciplinary care planning team. (II, III)

58.54(4) Separate written policies and procedures shall be implemented in each CCDI unit or facility. There shall be:

a. Admission and discharge policies and procedures which state the criteria to be used to admit residents and the evaluation process which will be used. These policies shall require a statement from the attending physician agreeing to the placement before a resident can be moved into a CCDI unit or facility. (II, III)

b. Safety policies and procedures which state the actions to be taken by staff in the event of a fire, natural disaster, emergency medical or catastrophic event. Safety procedures shall also explain steps to be taken when a resident is discovered to be missing from the unit or facility and when hazardous cleaning materials or potentially dangerous mechanical equipment is being used in the unit or facility. The facility shall identify its method for security of the unit or facility and the manner in which the effectiveness of the security system will be monitored. (II, III)

c. Program and service policies and procedures which explain programs and services offered in the unit or facility including the rationale. (III)

d. Policies and procedures concerning staff which state minimum numbers, types and qualifications of staff in the unit or facility. (II, III)

e. Policies about visiting which suggest times and ensure the residents' rights to free access to visitors. (II, III)

f. Quality assurance policies and procedures which list the process and criteria which will be used to monitor and to respond to risks specific to the residents. This shall include, but not be limited to, drug use, restraint use, infections, incidents and acute behavioral events. (II, III)

58.54(5) Preadmission assessment of physical, mental, social and behavioral status shall be completed to determine whether the applicant meets admission criteria. This assessment shall be completed by a registered nurse and a staff social worker or social work consultant and shall become part of the permanent record upon admission of the resident. (II, III)

58.54(6) All staff working in a CCDI unit or facility shall have training appropriate to the needs of the residents. (II, III)

a. Upon assignment to the unit or facility, everyone working in the unit or facility shall be oriented to the needs of people with chronic confusion or dementing illnesses. They shall have special training appropriate to their job description within 30 days of assignment to the unit or facility. (II, III) The orientation shall be at least six hours. The following topics shall be covered:

(1) Explanation of the disease or disorder; (II, III)

(2) Symptoms and behaviors of memory-impaired people; (II, III)
(3) Progression of the disease; (II, III)
(4) Communication with CCDI residents; (II, III)
(5) Adjustment to care facility residency by the CCDI unit or facility residents and their families; (II, III)
(6) Inappropriate and problem behavior of CCDI unit or facility residents and how to deal with it; (II, III)
(7) Activities of daily living for CCDI residents; (II, III)
(8) Handling combative behavior; (II, III) and
(9) Stress reduction for staff and residents. (II, III)

b. Licensed nurses, certified aides, certified medication aides, social services personnel, housekeeping and activity personnel shall have a minimum of six hours of in-service training annually. This training shall be related to the needs of CCDI residents. The six-hour training shall count toward the required annual in-service training. (II, III)

58.54(7) There shall be at least one nursing staff person on a CCDI unit at all times. (I, II, III)

58.54(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—58.55(135C) Another business or activity in a facility. A facility is allowed to have another business or activity in a health care facility or in the same physical structure of the facility, if the other business or activity is under the control of and is directly related to and incidental to the operation of the health care facility, or the business or activity is approved by the department and the state fire marshal.

To obtain the approval of the department and the state fire marshal, the facility must submit to the department a written request for approval which identifies the service(s) to be offered by the business and addresses the factors outlined in paragraphs *"a"* through *"j"* of this rule. (I, II, III)

58.55(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.

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)

481—58.56(135C) Respite care services. Respite care services means an organized program of temporary supportive care provided for 24 hours or more to a person in order to relieve the usual caregiver of the person from providing continual care to the person. A nursing facility which chooses to provide respite care services must meet the following requirements related to respite services and must be licensed as a nursing facility.

58.56(1) A nursing facility certified as a Medicaid nursing facility or Medicare skilled nursing facility must meet all Medicaid and Medicare requirements including CFR 483.12, admission, transfer and discharge rights.

58.56(2) A nursing facility which chooses to provide respite care services is not required to obtain a separate license or pay a license fee.

58.56(3) Rule 481—58.40(135C) regarding involuntary discharge or transfer rights, does not apply to residents who are being cared for under a respite care contract.

58.56(4) Pursuant to rule 481—58.13(135C), the facility shall have a contract with each resident in the facility. When the resident is there for respite care services, the contract shall specify the time period during which the resident will be considered to be receiving respite care services. At the end of that period, the contract may be amended to extend that period of time. The contract shall specifically state the resident may be involuntarily discharged while being considered as a respite care resident. The contract shall meet other requirements under 481—58.13(135C), except the requirements under subrule 58.13(7).

58.56(5) Respite care services shall not be provided by a health care facility to persons requiring a level of care which is higher than the level of care the facility is licensed to provide.

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

[Filed 8/6/76, Notice 4/19/76—published 8/23/76, effective 9/27/76]
[Filed without Notice 10/4/76—published 10/20/76, effective 11/24/76]
[Filed emergency 12/21/76—published 1/12/77, effective 1/12/77]
[Filed without Notice 2/4/77—published 2/23/77, effective 3/30/77]
[Filed 8/18/77, Notice 3/9/77—published 9/7/77, effective 10/13/77]
[Filed emergency 9/30/77—published 10/19/77, effective 9/30/77]
[Filed without Notice 10/14/77—published 11/2/77, effective 12/8/77]
[Filed 1/20/78, Notice 12/14/77—published 2/8/78, effective 3/15/78]
[Filed 5/26/78, Notice 3/8/78—published 6/14/78, effective 7/19/78]
[Filed 7/7/78, Notice 5/31/78—published 7/26/78, effective 9/1/78]
[Filed 10/13/78, Notice 9/6/78—published 11/1/78, effective 12/7/78]
[Filed 11/9/78, Notice 6/28/78—published 11/29/78, effective 1/3/79]
[Filed emergency 11/22/78—published 12/13/78, effective 1/3/79]
[Filed 5/20/82, Notice 12/23/81—published 6/9/82, effective 7/14/82]
[Filed without Notice 7/16/82—published 8/4/82, effective 9/8/82]
[Filed 3/11/83, Notice 1/5/83—published 3/30/83, effective 5/4/83]
[Filed 1/10/86, Notice 11/6/85—published 1/29/86, effective 3/5/86*]
[Filed 5/16/86, Notice 1/1/86—published 6/4/86, effective 7/9/86]
[Filed emergency 7/1/86—published 7/16/86, effective 7/1/86]**
[Filed 6/27/86, Notice 3/26/86—published 7/16/86, effective 8/20/86]
[Filed emergency 9/19/86—published 10/8/86, effective 9/19/86]
[Filed 2/6/87, Notice 10/22/86—published 2/25/87, effective 4/1/87]
[Filed 2/6/87, Notice 11/5/86—published 2/25/87, effective 4/1/87]
[Filed 3/12/87, Notice 1/28/87—published 4/8/87, effective 5/13/87]
[Filed emergency 6/25/87—published 7/15/87, effective 7/1/87]
[Filed 10/26/87, Notice 8/26/87—published 11/18/87, effective 12/23/87]
[Filed 2/5/88, Notice 10/7/87—published 2/24/88, effective 3/30/88]◊
[Filed 4/28/88, Notice 12/16/87—published 5/18/88, effective 6/22/88]
[Filed 5/26/88, Notice 4/20/88—published 6/15/88, effective 7/20/88]
[Filed 9/30/88, Notice 8/24/88—published 10/19/88, effective 11/23/88]◊
[Filed 1/5/89, Notice 10/5/88—published 1/25/89, effective 3/1/89]
[Filed 6/23/89, Notice 5/17/89—published 7/12/89, effective 8/16/89]
[Filed 7/20/89, Notice 6/14/89—published 8/9/89, effective 9/13/89]
[Filed 8/16/89, Notices 4/19/89, 7/12/89—published 9/6/89, effective 10/11/89]
[Filed emergency 5/11/90—published 5/30/90, effective 5/11/90]

*Effective date of 470—58.15(2)"c" delayed 70 days by the Administrative Rules Review Committee, IAB 2/26/86.
Effective date of 470—58.15(2)"c" delayed until the expiration of 45 calendar days into the 1987 session of the General Assembly pursuant to Iowa Code section 17A.8(9), IAB 6/4/86.
**See IAB, Inspections and Appeals Department.
◊Three ARCs

[Filed 3/14/91, Notice 9/19/90—published 4/3/91, effective 5/8/91]
[Filed emergency 5/10/91—published 5/29/91, effective 5/10/91]
[Filed emergency 7/17/91—published 8/7/91, effective 7/19/91]
[Filed 1/31/92, Notice 11/13/91—published 2/19/92, effective 7/1/92]
[Filed 3/12/92, Notice 12/11/91—published 4/1/92, effective 5/6/92]
[Filed 1/15/93, Notice 11/25/92—published 2/3/93, effective 3/10/93]
[Filed 3/11/94, Notice 9/15/93—published 3/30/94, effective 5/4/94]
[Filed 5/16/95, Notice 3/15/95—published 6/7/95, effective 7/12/95]
[Filed 7/11/97, Notice 4/23/97—published 7/30/97, effective 9/3/97]
[Filed emergency 7/25/97—published 8/13/97, effective 7/25/97]
[Filed emergency 11/14/97—published 12/3/97, effective 11/14/97]
[Filed 11/14/97, Notice 8/13/97—published 12/3/97, effective 1/7/98]
[Filed 3/31/98, Notice 12/3/97—published 4/22/98, effective 5/27/98]
[Filed 7/9/98, Notice 4/22/98—published 7/29/98, effective 9/2/98]
[Filed 1/21/99, Notice 10/7/98—published 2/10/99, effective 3/17/99]
[Filed 11/12/99, Notice 10/6/99—published 12/1/99, effective 1/5/00]

CHAPTER 59
SKILLED NURSING FACILITIES

[Prior to 7/15/87, Health Department[470] Ch 59]
Rescinded IAB 12/1/99, effective 1/5/00

CHAPTER 85
TROTLINES
85.1(481A) Trotlines where permitted

CHAPTER 86
TURTLES
86.1(481A,482) Taking

CHAPTER 87
MUSSEL REGULATIONS
87.1(481A) Commercial regulations

CHAPTER 88
FISHING TOURNAMENTS
88.1(462A,481A) Definition
88.2(462A,481A) Permit required
88.3(462A,481A) Application procedures
88.4(462A,481A) Permit conditions
88.5(462A,481A) Reports

CHAPTER 89
AQUACULTURE
89.1(481A) Approved aquaculture species
89.2(481A) Importation permit
89.3(481A) Disease-free certification

CHAPTER 90
Reserved

CHAPTER 91
WATERFOWL AND COOT HUNTING SEASONS
91.1(481A) Ducks (split season)
91.2(481A) Coots (split season)
91.3(481A) Geese
91.4(481A) Closed areas
91.5(481A) Canada goose hunting within closed areas
91.6(481A) Youth waterfowl hunt

CHAPTER 92
MIGRATORY GAME BIRDS
92.1(481A) General
92.2(481A) Duck stamp
92.3(481A) Hunting methods
92.4(481A) Restrictions applicable to possession, tagging, and record-keeping requirements
92.5(481A) Transportation within the state or between states
92.6(481A) Wounded, live migratory game birds
92.7(481A) Harvest information program (HIP)

CHAPTER 93
COMMERCIAL USE OF CAPTIVE-REARED WATERFOWL
93.1(481A) General
93.2(481A) Required markings
93.3(481A) Definitions
93.4(484B) Marked for shooting
93.5(481A) Commercial sale of captive-reared waterfowl by a taxidermist

CHAPTER 94
NONRESIDENT DEER HUNTING
94.1(483A) Licenses
94.2(483A) Season dates
94.3(483A) Shooting hours
94.4(483A) Limits
94.5(483A) Zones open to hunting
94.6(483A) License quotas
94.7(483A) Method of take
94.8(483A) Application procedures
94.9(483A) Transportation tag

CHAPTER 95
Reserved

CHAPTER 96
PHEASANT, QUAIL AND GRAY (HUNGARIAN) PARTRIDGE HUNTING SEASONS
96.1(481A) Pheasant season
96.2(481A) Gray (Hungarian) partridge season
96.3(481A) Quail season

CHAPTER 97
COMMON SNIPE, VIRGINIA RAIL AND SORA, WOODCOCK AND RUFFED GROUSE HUNTING SEASONS
97.1(481A) Common snipe season
97.2(481A) Virginia rail and sora season
97.3(481A) Woodcock season
97.4(481A) Ruffed grouse season

CHAPTER 98
WILD TURKEY SPRING HUNTING

RESIDENT WILD TURKEY SPRING HUNTING

98.1(481A) General
98.2(481A) Method of take
98.3(481A) Application procedure
98.4(481A) Transportation tag
98.5 to 98.9 Reserved

NONRESIDENT WILD TURKEY SPRING HUNTING

98.10(483A) General
98.11(483A) Zones open to hunting
98.12(483A) License quotas
98.13(483A) Means and method of take
98.14(483A) Application procedure
98.15(483A) Transportation tag

CHAPTER 99
WILD TURKEY FALL HUNTING

99.1(481A) General
99.2(481A) Areas open to hunting
99.3(481A) Means and method of take
99.4(481A) Application procedure
99.5(481A) License quotas
99.6(481A) Transportation tag

CHAPTER 100
CROW AND PIGEON REGULATIONS

100.1(481A) Crow season
100.2(481A) Pigeons

CHAPTER 101
FALCONRY REGULATIONS

101.1(481A) Falconry regulations
101.2(481A) Facilities and equipment
101.3(481A) Taking and possession provision
101.4(481A) Annual reports
101.5(481A) Other provisions
101.6(481A) Compliance

CHAPTER 102
FALCONRY REGULATIONS FOR HUNTING GAME

102.1(481A) General
102.2(481A) Migratory bird regulations
102.3(481A) Small game
102.4(481A) Means and methods of take
102.5(481A) Exclusions

CHAPTER 103
MOBILE RADIO TRANSMITTERS

103.1(481A) Definitions
103.2(481A) Falconry
103.3(481A) Hunting dogs

CHAPTER 104
Reserved

CHAPTER 105
DEER POPULATION MANAGEMENT AREAS

105.1(481A) Purpose
105.2(481A) Definitions
105.3(481A) Designated areas
105.4(481A) Conditions

CHAPTER 106
DEER HUNTING

106.1(481A) Licenses
106.2(481A) Season dates
106.3(481A) Shooting hours
106.4(481A) Limits
106.5(481A) Areas open to hunting
106.6(481A) License quotas
106.7(481A) Method of take
106.8(481A) Application procedures
106.9(481A) Transportation tag
106.10(481A) Youth deer and severely disabled hunts
106.11(481A) Deer depredation management
106.12(481A) Eligibility for free landowner/tenant deer licenses

CHAPTER 107
RABBIT AND SQUIRREL HUNTING

107.1(481A) Cottontail rabbit season
107.2(481A) Jackrabbit season
107.3(481A) Squirrel season

CHAPTER 108
MINK, MUSKRAT, RACCOON, BADGER, OPOSSUM, WEASEL, STRIPED SKUNK, FOX (RED AND GRAY), BEAVER, COYOTE, OTTER AND SPOTTED SKUNK SEASONS

108.1(481A) Mink, muskrat and weasel
108.2(481A) Raccoon, badger, opossum and striped skunk
108.3(481A) Red and gray fox
108.4(481A) Beaver
108.5(481A) Coyote
108.6(481A) Otter and spotted skunk
108.7(481A) Trapping restrictions

CHAPTER 109
GROUNDHOG SEASON

109.1(481A) Groundhog

CHAPTER 110
TRAPPING LIMITATIONS

110.1(481A) Public roadside limitations—snares, body-gripping, and conibear type traps
110.2(481A) Snares
110.3(481A) Body-gripping and conibear type traps
110.4(481A) Foothold and leghold traps
110.5(481A) Removal of animals from traps and snares
110.6(481A) Trap tag requirements
110.7(481A) Colony traps

CHAPTER 111
SCIENTIFIC COLLECTING AND WILDLIFE REHABILITATION

111.1(481A) Definitions
111.2(481A) Scientific collector's license
111.3(481A) Wildlife salvage permit
111.4(481A) Educational project permit
111.5(481A) Wildlife rehabilitation permit
111.6(481A) Application qualifications
111.7(481A) Evaluation committee
111.8(481A) Disposition of animals
111.9(481A) General conditions for permits

CHAPTER 112
HUNTING PRESERVES

112.1(484B) Definitions
112.2(484B) Hunting preserve operator's license
112.3(484B) Land leases required
112.4(484B) Boundary signs required
112.5(484B) Fencing required—ungulates
112.6(484B) Records and annual report
112.7(484B) Game bird transportation tags
112.8(484B) Ungulate transportation tags
112.9(484B) Processed game birds
112.10(484B) Processed ungulates
112.11(484B) Health requirements—game birds and ungulates
112.12(484B) General conditions for permits

CHAPTER 41
BOATING NAVIGATION AIDS
[Prior to 12/31/86, Conservation Commission[290] Ch 31]

571—41.1(462A) Definitions.

"A display area" is the area on a sign or buoy needed for display of a waterway marker symbol.

"Buoy" is any device designed to float which is anchored in the water and which is used to convey a message.

"Regulatory marker" is a waterway marker which has no equivalent in the U.S. Coast Guard system of navigational aids.

"Sign" is any device for carrying a message which is attached to another object such as a piling, buoy, structure or the land itself.

"State aid to navigation" is a waterway marker which is the equivalent of a U.S. Coast Guard aid to navigation.

"Symbols" are geometric figures such as a diamond, circle, rectangle, etc., used to convey a basic message.

"Waterway marker" is any device designed to be placed in, on, or near the water to convey an official message to a boat operator on matters which may affect health, safety, or well being, except that such devices of the U.S. or any agency of the United States are excluded from the meaning of this definition.

571—41.2(462A) Waterway markers. Waterway markers used on the waters of this state shall be as follows:

41.2(1) *State aids to navigation.*

a. A red-topped white buoy, red buoy or sign shall indicate that side of a channel to be kept to the right of a vessel when entering the channel from the main water body or when proceeding upstream.

b. A black-topped white buoy, black buoy or sign shall indicate that side of a channel to be kept to the left of a vessel when entering the channel from the main water body or when proceeding upstream.

c. A black and white vertically striped buoy or sign shall indicate the center of a navigable waterway.

d. Buoys or signs in *"a"* and *"b"* above shall normally be used in pairs and only for the purpose of marking a clearly defined channel.

e. A red and white vertically striped buoy or sign shall indicate boats should not pass between buoy and nearest shore.

f. State aids to navigation shall be numbered or lettered for identification. Red buoys and signs marking channels shall be identified with even numbers, and black buoys and signs marking channels shall be identified with odd numbers, the numbers increasing from the main water body or proceeding upstream. Buoys and signs indicating the center of a waterway will be identified by letters of the alphabet. All numbers and letters used to identify state aids to navigation shall be preceded by the letters "IA".

g. Letters and numerals used with state aids to navigation shall be white, in block characters of good proportion and spaced in a manner which will provide maximum legibility. Such letters and numerals shall be at least six inches in height.

h. The shapes of state aids to navigation shall be compatible with the shapes established by U.S. Coast Guard regulations for the equivalent U.S. Coast Guard aids to navigation.

i. Where reflectorized materials are used, a red reflector will be used on a red buoy, and a green reflector on a black buoy.

41.2(2) *Regulatory markers.*

a. A diamond shape of international orange with white center shall indicate danger. The nature of the danger may be indicated by words or well-known abbreviations in black letters inside the diamond shape, or above or below it, or both, on white background.

b. A diamond shape of international orange with a cross of the same color within it against a white center without qualifying explanation shall indicate a zone from which all vessels are excluded.

c. A circle of international orange with white center will indicate a control or restriction. The nature of the control or restriction shall be indicated by words, numerals, or well-known abbreviations in black letters inside the circle. Additional explanation may be given above or below it in black letters on white background.

d. A rectangular shape of international orange with white center will indicate information, other than a danger, control or restriction, which may contribute to health, safety or well-being. The message will be presented within the rectangle in black letters.

e. Letters or numerals used with regulatory markers shall be black, in block characters of good proportion, spaced in a manner which will provide maximum legibility, and of a size which will provide the necessary degree of visibility.

571—41.3(462A) Authority to place markers.

41.3(1) No waterway marker shall be placed on, in, or near the waters of the state unless such placement is authorized by the agency or political subdivision of the state exercising jurisdiction, with respect to regulation of boating, over the area where placed, except that the provisions of this section shall not apply to private aids to navigation under the jurisdiction of the U.S. Coast Guard.

41.3(2) Such agency or political subdivision of the state will, prior to authorizing placement, obtain the necessary clearances of federal and state agencies exercising regulatory authority over the area concerned.

41.3(3) The agency or political subdivision of the state authorizing the placement of a waterway marker will inform the department of natural resources of the following:

a. Exact location of the marker, expressed in distance and direction from one or more fixed objects whose precise location is known.

b. The description and purpose of the marker including its identifying number, if any.

571—41.4(462A) Maintenance of waterway markers.

41.4(1) Waterway markers will be maintained in proper condition or be replaced or removed.

41.4(2) Zoned areas shall extend not less than 50 feet nor more than 400 feet from shore.

41.4(3) Buoys delineating the restricted speed zone shall be placed no more than 400 feet apart through the length of the affected portion of the channel.

This rule is intended to implement the provisions of Iowa Code sections 462A.17, 462A.26, 462A.31, and 462A.32.

571—41.5 and **41.6** Reserved.

571—41.7(462A) Display of waterway markers.

41.7(1) A waterway marker may be displayed as a sign or a fixed support, as a buoy bearing a symbol on its surface, or as a sign mounted on a buoy.

41.7(2) When a buoy is used to carry a symbol on its surface, it will be white, with bands of international orange on the top, and at the bottom above the water line.

41.7(3) A buoy whose sole purpose is to carry a sign above it will be marked with three bands of international orange alternating with two bands of white, each band occupying approximately one-fifth of the total area of the buoy above the water line, except where the sign itself carries orange bands; however, nothing in these rules shall be construed to prohibit the mounting of a sign on a buoy which has been placed for a purpose other than that of carrying a sign.

41.7(4) When symbols are placed on signs, a suitable white background may be used outside the symbol.

571—41.8(462A) Specifications for waterway markers.

41.8(1) The size of a display area shall be as required by circumstances, except that no display area shall be smaller than 1 foot in height. The size shall increase in increments of 6 inches; provided, however, that this specification for increase in increments shall not apply to markers in existence prior to the adoption of this rule.

41.8(2) The thickness of the symbol outline shall be one-tenth of the height of the display area.

41.8(3) The outside width of the diamond, the inner diameter of the circle, and the average of the inside and outside widths of a square shall be two-thirds of the display area height.

41.8(4) The sides of the diamond shall slope at a 35 degree angle from the vertical on a plane surface. Appropriate adjustments for curvature may be made when applied to a cylindrical surface.

41.8(5) Materials. Waterway markers shall be made of materials which will retain, despite weather and other exposures, the characteristics essential to their basic significance, such as color, shape, legibility and position. Reflectorized materials may be used.

571—41.9(462A) Waterway marking devices. All waters under the jurisdiction of the natural resource commission.

41.9(1) Mooring buoys shall be white with a 2-inch blue reflectorized band clearly visible above the water; the buoy shall extend a minimum of 12 inches above the surface of the water, and shall have at least 1 square foot of surface visible from any direction.

41.9(2) Placement of mooring buoys shall be within 250 feet of shore, except under certain circumstances the natural resource commission may require them to be placed at a lesser distance. Requirements for mooring buoys may be waived by the director under special circumstances.

41.9(3) Permanent race course marker buoys shall be white with a ball of international orange, of at least 12 inches in diameter. The buoy shall extend a minimum of 2 feet above the surface of the water and shall be at least 16 inches in diameter, and shall be lighted during periods of low visibility, and during the hours of darkness.

41.9(4) Markers such as mooring buoys and race course markers will be processed in the same manner as waterway markers, and authorization for their placement will be obtained from the agency or political subdivision of the state exercising jurisdiction with respect to regulation of boating, and such agency or political subdivision will ensure that proper clearances for their placement are obtained from state and federal agencies exercising regulatory authority over the area concerned.

41.9(5) Such markers shall not be of a color, shape, configuration or marking which could result in their confusion with any federal or state aid to navigation or any state regulatory marker, and shall not be placed where they will obstruct navigation, cause confusion or constitute a hazard.

571—41.10(462A) The diver's flag.

41.10(1) A red flag with a white diagonal running from the upper left hand corner to the lower right hand corner (from mast head to lower outside corner) and known as the "diver's flag" shall, when displayed on the water, indicate the presence of a diver in the water in the immediate area.

41.10(2) Recognition of this flag by regulation will not be construed as conferring any rights or privileges on its users, and its presence in a water area will not be construed in itself as restricting the use of the water area so marked.

41.10(3) Operators of vessels will, however, exercise precaution commensurate with conditions indicated.

41.10(4) This flag shall be displayed only when diver activities are in progress, and its display in a water area when no diver activities are in progress in that area will constitute a violation of this rule and of Iowa Code chapter 462A.

[Filed 6/21/62; amended 1/11/66]
[Filed 2/6/84, Notice 12/21/83—published 2/29/84, effective 4/5/84]
[Filed without Notice 12/12/86—published 12/31/86, effective 2/4/87]

CHAPTER 42
BOATING ACCIDENT REPORTS
[Prior to 12/31/86, Conservation Commission[290] Ch 32]

571—42.1(462A) Accident report. In addition to provisions in Iowa Code section 462A.7(2), a written report is required in the case of loss of consciousness, disability in excess of 24 hours, and the disappearance of any person from on board a vessel under circumstances which suggest any possibility of death or injury.

571—42.2(462A) Procedure. These reports shall be filed in writing within 48 hours of the accident with the department of natural resources using forms provided by the department.

571—42.3(462A) Contents. The report shall include the following information:

1. The number or names of the vessels involved, or both.
2. The locality where the accident occurred.
3. The date and time where the accident occurred.
4. The weather and lake or river conditions at time of accident.
5. The name, address, age, and boating experience of the operator of the reporting vessel.
6. The name and address of the operator of the other vessel involved.
7. The names and addresses of the owners of vessels or other property involved.
8. The names and addresses of any person or persons involved or killed.
9. The nature and extent of injury to any person or persons.
10. A description of damage to any property (including vessels) and estimated cost of repairs.
11. A description of the accident (including opinions as to the causes).
12. The length, width, depth, year built, propulsion, horsepower, fuel and construction of the reporting vessel.
13. Names and addresses and telephone numbers of known witnesses.
14. The specific number of persons on board the reporting vessel at the time of the accident.
15. The date of birth, cause of death and swimming ability of any victim.
16. The date of birth of any injured person(s).
17. Manufacturer's hull identification number.
18. Whether the vessel was a rented craft.
19. The type, accessibility and use of personal flotation devices.
20. If fire extinguishers were used, the type and number used.
21. Signature of person making report.

This rule is intended to implement Iowa Code section 462A.7.

[Filed 9/13/66; amended 7/27/73]
[Filed without Notice 12/12/86—published 12/31/86, effective 2/4/87]
[Filed 11/12/99, Notice 9/8/99—published 12/1/99, effective 1/5/00]

CHAPTER 43
MOTORBOAT NOISE

[Prior to 12/31/86, Conservation Commission[290] Ch 36]

571—43.1(462A) Definitions. *"A scale"* means the physical scale marked "A" graduated in decibels on a sound level meter which meets the requirements of the American National Standards Institute, Incorporated, publication 51.4—1961 General Purpose Sound Level Meters.

571—43.2(462A) Sound level limitation. A motorboat shall not operate on waters of this state under the jurisdiction of the natural resource commission, without suitable and effective muffling devices which limit total motorboat noise to not more than 86 decibels as measured on the "A" scale at a distance of 50 feet or greater distance.

571—43.3(462A) Serviceability. All muffling devices used on motorboats shall be in good working order and in constant operation to prevent excessive or unusual noise.

This rule is intended to implement Iowa Code section 462A.11.

[Filed 5/9/80, Notice 2/20/80—published 5/28/80, effective 7/4/80]
[Filed without Notice 12/12/86—published 12/31/86, effective 2/4/87]

CHAPTER 44
BOATING, SPECIAL EVENTS
[Prior to 12/31/86, Conservation Commission[290] Ch 35]

571—44.1(462A) Registration exemption. Vessels entered in special events as defined in Iowa Code section 462A.16 shall not be required to be registered as stated in 462A.4 and 462A.5, subject to the following regulations.

44.1(1) *Vessel and participant list.* Sponsors of the special event shall maintain a list of the names and addresses of all persons participating in the event and a description of each vessel in the event.

44.1(2) *Vessels identified.* Each vessel in the special event will be labeled with an identifying number or letter, clearly visible, and such will be recorded with the names and addresses of vessel passengers on the list as provided for in 44.1(1).

44.1(3) *Exemption period.* Any vessel entered into a special event may be exempted from state registration requirements for the full 24-hour period of each day covered by the permit to conduct such event and as issued under Iowa Code section 462A.16.

571—44.2(462A) Sponsoring organizations. The individuals or organizations responsible for sponsoring a special event are responsible to assure regulations of this chapter are fully complied with.

This rule is intended to implement Iowa Code section 462A.16.

[Filed 11/2/84, Notice 9/26/84—published 11/21/84, effective 1/1/85]
[Filed without Notice 12/12/86—published 12/31/86, effective 2/4/87]

TITLE V
MANAGEMENT AREAS AND PRACTICES

CHAPTER 51
GAME MANAGEMENT AREAS

[Prior to 12/31/86, Conservation Commission[290] Chs 1,2,4,8,9,24]

571—51.1(481A) Definitions.

"Blind" means a constructed place of ambush or concealment for the purpose of hunting, observing, or photographing any species of wildlife.

"Commission" means the natural resource commission.

"Decoy" means a bird, or animal, or a likeness of one, used to lure game within shooting range.

"Department" means the department of natural resources.

"Director" means the director of the department of natural resources or a designee.

"Handicapped person" means an individual commonly termed a paraplegic or quadriplegic, with paralysis or a physical condition of the lower half of the body with the involvement of both legs, usually due to disease or injury to the spinal cord; a person who is a simple or double amputee of the legs; or a person with any other physical affliction which makes it impossible to ambulate successfully without the use of a motor vehicle.

571—51.2(481A) Jurisdiction. All lands and waters under the jurisdiction of the department are established as game management areas under the provisions of Iowa Code section 481A.6.

571—51.3(481A) Use of firearms.

51.3(1) *Restrictions.* The use or possession of firearms on certain game management areas is restricted.

a. Target shooting, for the purposes of this rule, is defined as the discharge of a firearm for any reason other than the taking of, or attempting to take, any game birds, game animals, or furbearers.

b. Target shooting shall occur only on the designated and posted shooting range.

c. Any person target shooting with any type of handgun or any type of rifle, or shooting shotgun slugs through a shotgun, must fire through one of the firing tubes, if provided, or at the firing points on the rifle or pistol range.

d. It is a violation of these rules to place any target on the top of the earthen backstop or to fire at any target placed on top of the backstop.

e. The shotgun range, if provided, is restricted to the use of shotguns and the shooting of shotshells only.

f. Target shooting shall occur only between the hours of sunrise and sunset.

g. No alcoholic beverages are allowed on the shooting range or parking area.

h. Target shooting is restricted to legal firearms and shall not be done with any fully automatic pistol, rifle, or shotgun of any kind. No armor-piercing ammunition is permitted.

i. Targets are restricted to paper or cardboard targets or metal silhouette-type targets. No glass, plastic containers, appliances, or other materials may be used. Targets must be removed from the area after use or must be disposed of in trash receptacles if provided.

j. All requirements listed in this rule shall apply to the following shooting ranges.

(1) Badger Creek Area - Madison County.
(2) Banner Mine Area - Warren County.
(3) Bays Branch Area - Guthrie County.
(4) Hawkeye Wildlife Area - Johnson County.
(5) Hull Wildlife Area - Mahaska County.
(6) Mines of Spain - Dubuque County.

(7) Ocheyedan Wildlife Area - Clay County.
(8) Princeton Wildlife Area - Scott County.
(9) Spring Run Wildlife Area - Dickinson County.

k. In addition to the requirements listed, the following shooting ranges have specific restrictions.

(1) Lake Darling Recreation Area - Washington County. Hunting, trapping and the use of weapons of any kind, except for the use of bow and arrow to take rough fish and except as provided in 571—subrule 61.6(3) and 571—Chapter 105, are prohibited.

(2) McIntosh Wildlife Area - Cerro Gordo County. The use or possession of firearms, except shotguns shooting shot only, is prohibited.

(3) Oyens Shooting Range - Plymouth County. The range is closed to the public except between 9 a.m. and sunset. Law enforcement firearms training and qualification of local, county, state or federal officers shall have priority over general public use of the range. Shotguns shooting birdshot may be fired outside the firing tubes, but within the designated range area. General shooting by the public shall take place on a first-come, first-served basis.

51.3(2) Reserved.

571—51.4(481A) Dogs prohibited—exception. Dogs shall be prohibited on all state-owned game management areas, as established under authority of Iowa Code section 481A.6, between the dates of March 15 and July 15 each year; except that, training of dogs shall be permitted on designated training areas. Field and retriever meets shall be conducted at designated sites. A permit as provided in Iowa Code section 481A.22 must be secured for field and retriever meets.

The permit shall show the exact designated site of said meet and all dogs shall be confined to that site.

571—51.5(481A) Use of blinds and decoys on game management areas.

51.5(1) *Stationary blinds.* The construction and use of stationary blinds on all game management areas are restricted as follows:

a. Construction. Any person may construct a stationary blind using only the natural vegetation found on the area. No trees or parts of trees other than willows may be cut for use in constructing a blind. No other man-made materials of any type may be used for building or providing access to a stationary blind.

b. Use of blinds. The use of any stationary blind which is constructed in violation of 51.5(1)*"a"* is prohibited.

c. Ownership of blinds. Any person who constructs or uses a stationary blind shall not have any proprietary right-of-ownership to the blind.

51.5(2) *Portable blinds.* The construction and use of portable blinds on game management areas shall be restricted as follows:

a. Construction. A portable blind may be constructed of any natural or man-made material, as long as it is a self-contained unit capable of being readily moved from one site to another.

b. Prohibited use. Portable blinds shall be prohibited from one-half hour after sunset until midnight each day. Portable blinds which are built on, or are part of, a boat shall be considered as removed from an area when the boat and blind are tied up or moored at an approved access site. No boat shall be anchored away from shore and left unattended unless it is attached to a legal buoy.

c. Exception—tree blinds. Portable blinds placed in trees and used for purposes other than hunting waterfowl may be left on an area for a continuous period of time beginning seven days prior to the open season for hunting deer or turkey and ending seven days after the final day of that open season. Portable blinds left on game management areas do not guarantee the owner exclusive use of the blind when unattended, or exclusive use of the site.

d. Protection of trees. The use of any spike, nail, pin, or other object which is driven or screwed into a tree is prohibited.

51.5(3) *Use of decoys.* The use of decoys on any game management area is restricted as follows:

Decoys are prohibited from one-half hour after sunset until midnight each day. Decoys shall be considered as removed from an area when they are picked up and placed in a boat, vehicle or other container at an approved access site.

571—51.6(481A) Trapping on game management areas.

51.6(1) *Marking trap sites.* No one shall place on any game management area any trap, stake, flag, marker, or any other item or device to be used for trapping furbearers, or to mark or otherwise claim any site for trapping furbearers, except during the open season for taking furbearers other than coyote.

51.6(2) Reserved.

571—51.7(481A) Motor vehicle restrictions. The use of motor vehicles on all game management areas is restricted.

51.7(1) *Roads and parking lots.* Except as otherwise provided in these rules, motor vehicles are prohibited on a game management area except on constructed and designated roads and parking lots.

51.7(2) *Handicapped persons.* Handicapped persons may use certain motor vehicles on game management areas, according to the restrictions set out in this rule, in order that they might enjoy such uses as are available to others.

a. Definitions. For purposes of this subrule, 51.7(2), the following definition shall apply: "Motor vehicle" means any self-propelled vehicle having at least three wheels and registered as a motor vehicle under Iowa Code chapter 321.

b. Permits. Each handicapped person must have a permit issued by the director in order to use motor vehicles on game management areas. Such permits will be issued without charge. Applicants must submit certificates from their doctors stating that the applicants meet the criteria describing handicapped persons. Nonhandicapped companions of permit holders are not covered under the conditions of the permit.

c. Approved areas. A permit holder must contact the technician or wildlife biologist of the specific area(s) that the permit holder wishes to use annually. The technician or wildlife biologist will determine which areas or portions of areas will not be open to use by permittees, in order to protect the permittee from hazards or to protect certain natural resources of the area. The technician or wildlife biologist will assist by arranging access to the area and by designated specific sites on the area where the motor vehicle may be used, and where it may not be used. The technician or wildlife biologist will provide a map of the area showing the sites where use is permitted and bearing the signature of the technician or wildlife biologist and the date.

d. Exclusive use. The issuance of a permit does not imply that the permittee has exclusive use of an area. Permittees shall take reasonable care so as not to unduly interfere with the use of the area by others.

e. Prohibited acts. Except as provided in subrule 51.7(1), the use of a motor vehicle on any game management area by a person without a valid permit, or at any site not approved on a signed map, is prohibited. Permits and maps must be carried by the permittee at any time the permittee is using a motor vehicle on a game management area, and must be exhibited to any department employee or law enforcement official upon request.

f. Shooting from motor vehicle. Except where prohibited by law, a handicapped person meeting the conditions of this rule may shoot from a stationary motor vehicle.

571—51.8(481A) Employees exempt. Restrictions in rules 51.3(481A) to 51.7(481A) shall not apply to department personnel, law enforcement officials, or other authorized persons engaged in research, management, or enforcement when in performance of their duties.

571—51.9(481A) Use of nontoxic shot on wildlife areas. It shall be unlawful to hunt any migratory game bird or resident game or furbearers, except deer and turkeys, or target shoot with a shotgun while having in one's possession any shot other than nontoxic shot approved by the U.S. Fish and Wildlife Service on the following wildlife areas:

County	Wildlife Area
Boone	Harrier Marsh
Buena Vista	All state and federal areas except Bluebird Access
Cerro Gordo	All state and federal areas
Clay	All state and federal areas except Burr Access, Dry Mud Lake, Little Sioux, Highbridge, Fen Valley, and the Ocheyedan wildlife area target shooting range
Dickinson	All state and federal areas except the Spring Run target shooting range
Emmet	All state and federal areas except Birge Lake, Grass Lake, Ryan Lake, and the East Des Moines River Access
Greene	All state and federal areas except Rippey Access and McMahon Access
Guthrie	McCord Pond, Lakin Slough and Bays Branch, except the target shooting range at Bays Branch
Hamilton	Little Wall Lake, Gordon Marsh and Bauer Slough
Hancock	All state and federal areas except Schuldt and Goodell
Humboldt	All state and federal areas except Bradgate Access and Willows Access
Kossuth	All state and federal areas except Seneca Access
Osceola	All state and federal areas
Palo Alto	All state and federal areas
Pocahontas	All state and federal areas except Kalsow Prairie
Polk	Paul Errington Marsh
Sac	All state and federal areas except White Horse Access and Sac City Access
Winnebago	All state and federal areas
Worth	All state and federal areas except Brights Lake
Wright	All state and federal areas except White Tail Flats

These rules are intended to implement Iowa Code sections 456A.24(2)*"a"* and 481A.6.

[Filed 9/11/62; amended 5/14/75]
[Filed 7/13/65]
[Filed 3/8/66]
[Filed 8/12/70]
[Filed 9/14/75]
[Filed 6/5/81, Notice 4/1/81—published 6/24/81, effective 7/29/81]
[Filed 10/7/81, Notice 9/2/81—published 10/28/81, effective 12/2/81]
[Filed 2/9/83, Notice 11/24/82—published 3/2/83, effective 4/6/83]
[Filed 12/2/83, Notice 10/26/83—published 12/21/83, effective 2/1/84]
[Filed 7/10/85, Notice 4/24/85—published 7/31/85, effective 9/4/85]
[Filed without Notice 12/12/86—published 12/31/86, effective 2/4/87]
[Filed 5/13/88, Notice 3/23/88—published 6/1/88, effective 7/6/88]
[Filed 7/19/90, Notice 5/30/90—published 8/8/90, effective 9/12/90]
[Filed 2/15/91, Notice 12/26/90—published 3/6/91, effective 4/10/91]
[Filed emergency 10/4/91 after Notice 8/7/91—published 10/30/91, effective 10/4/91]
[Filed 6/4/93, Notice 4/28/93—published 6/23/93, effective 7/28/93]
[Filed 5/20/94, Notice 3/30/94—published 6/8/94, effective 7/13/94]
[Filed 8/9/96, Notice 6/5/96—published 8/28/96, effective 10/2/96]
[Filed 2/21/97, Notice 1/1/97—published 3/12/97, effective 4/16/97]
[Filed 5/29/98, Notice 3/11/98—published 6/17/98, effective 7/22/98]
[Filed 5/14/99, Notice 3/10/99—published 6/2/99, effective 7/7/99]
[Filed 11/12/99, Notice 9/8/99—published 12/1/99, effective 1/5/00]

CHAPTER 81
FISHING REGULATIONS
[Prior to 12/31/86, Conservation Commission[290] Ch 108]

571—81.1(481A) Seasons, territories, daily bag limits, possession limits, and length limits.

	INLAND WATERS OF THE STATE				BOUNDARY RIVERS
KIND OF FISH	OPEN SEASON	DAILY BAG LIMIT	POSSESSION LIMIT	MINIMUM LENGTH LIMITS	MISSISSIPPI RIVER MISSOURI RIVER BIG SIOUX RIVER
Rock Sturgeon	Closed	0	0		Same as inland waters
Paddlefish*	Continuous	2	4	None	Same as inland waters
Yellow Perch	Continuous	25	50	None	Same as inland waters except no bag or possession limit in the Mississippi and Missouri Rivers.
Trout	Continuous	5	10	None*	Same as inland waters
Catfish*	Continuous	8 Lakes 15 Streams	30	None	Same as inland waters except no bag or possession limit in Mississippi River
Black Bass (Largemouth Bass) (Smallmouth Bass) (Spotted Bass)	Continuous	3 In Aggregate	6	See below*	Continuous open season; aggregate daily bag limit 5, aggregate possession limit 10. See below*
Combined Walleye, Sauger and Saugeye	Continuous*	5*	10*	None*	Continuous open season; aggregate daily bag limit 10 (no more than 6 walleye), aggregate possession limit 20 (no more than 12 walleye), except aggregate daily bag limit 4, aggregate possession limit 8, in the Big Sioux River. See below*
Northern Pike	Continuous*	3	6	None	Continuous open season; daily bag limit 5; possession limit 10, except daily bag limit 6, possession limit 12, in the Big Sioux River.
Muskellunge or Hybrid Muskellunge	Continuous*	1	1	40"	Same as inland waters
All other fish species	Continuous	None	None	None	Same as inland waters

Frogs (except Bullfrogs)	Continuous	48	96	None	Same as inland waters
Bullfrogs (Rana Catesbeiana)	Continuous	12	12	None	Same as inland waters

*Also see 81.2(481A), Exceptions.

571—81.2(481A) Exceptions to seasons and limits, set in 81.1(481A).

81.2(1) *Exception closed season.* In Lakes West Okoboji, East Okoboji, and Spirit Lake, there shall be a closed season on walleye, muskellunge, tiger muskie, and northern pike beginning February 15 each year. The annual opening for walleye and northern pike in these three lakes shall be the first Saturday in May. The annual opening for muskellunge and tiger muskie in these three lakes shall be May 21.

81.2(2) *Black bass.* A 15-inch minimum length limit shall apply on black bass in all public lakes except as otherwise posted. On federal flood control reservoirs, a 15-inch minimum length limit shall apply on black bass at Coralville, Rathbun, Saylorville, and Red Rock. All black bass caught from Lake Wapello, Davis County, and Brown's Lake, Jackson County, must be immediately released alive. A 22-inch minimum length limit shall apply on black bass in Green Valley Lake, Union County. A 12-inch minimum length limit shall apply on black bass in all interior streams, river impoundments, and the Missouri River including chutes and backwaters of the Missouri River where intermittent or constant flow from the river occurs. A 14-inch minimum length limit shall apply to the Mississippi River including chutes and backwaters where intermittent or constant flow from the river occurs. All black bass caught from the following stream segments must be immediately released alive:

1. Middle Raccoon River, Guthrie County, extending downstream from below Lennon Mills Dam at Panora as posted to the dam at Redfield.
2. Maquoketa River, Delaware County, extending downstream from below Lake Delhi Dam as posted to the first county gravel road bridge.
3. Cedar River, Mitchell County, extending downstream from below the Otranto Dam as posted to the bridge on County Road T26 south of St. Ansgar.
4. Upper Iowa River, Winneshiek County, extending downstream from the Fifth Street bridge in Decorah as posted to the Upper Dam.

81.2(3) *Walleye.* A 14-inch minimum length limit shall apply on walleye in Lakes West Okoboji, East Okoboji, Spirit Lake, Upper Gar, Minnewashta, and Lower Gar in Dickinson County, and Clear Lake in Cerro Gordo County. A 15-inch minimum length limit shall apply on walleye in Storm Lake, Buena Vista County. No more than one walleye above 20 inches in length may be taken per day from the above lakes except in Clear Lake and Storm Lake where no more than one walleye above 22 inches in length may be taken per day. A 15-inch minimum length limit shall apply on walleye in Black Hawk Lake, Sac County. The daily bag limit for walleye in the above lakes shall be three with a possession limit of six. A 15-inch minimum length limit shall apply on walleye in the Mississippi River.

81.2(4) *Paddlefish.* Paddlefish snagging is permitted in all waters of the state, except that there shall be no open season in the Missouri River and Big Sioux River, nor in any tributary of these streams within 200 yards immediately upstream of its confluence with the Missouri or Big Sioux Rivers.

81.2(5) *Special trout regulations.* A 14-inch minimum length limit shall apply on brown trout, rainbow trout, and brook trout in Spring Branch Creek, Delaware County, from the spring source to County Highway D5X as posted, and on brown trout only in portions of Bloody Run Creek, Clayton County, where posted. All trout caught from the posted portion of Waterloo Creek, Allamakee County, Hewitt and Ensign Creeks (Ensign Hollow), Clayton County, and South Pine Creek, Winneshiek County, and all brown trout caught from French Creek, Allamakee County, must be immediately released alive. Fishing in the posted area of Spring Branch Creek, Bloody Run Creek, Waterloo Creek, Hewitt and Ensign Creeks (Ensign Hollow), South Pine Creek, and French Creek shall be by artificial lure only. Artificial lure means lures that do not contain or have applied to them any natural or synthetic substances designed to attract fish by the sense of taste or smell.

81.2(6) *Exception border lakes.* In Little Spirit Lake, Dickinson County; Iowa and Tuttle (Okamanpedan) Lakes, Emmet County; Burt (Swag) Lake, Kossuth County; and Iowa Lake, Osceola County, the following shall apply:

a. Walleye daily bag and possession limit six;

b. Northern pike daily bag and possession limit three;

c. Largemouth and smallmouth bass daily bag and possession limit six;

d. Channel catfish daily bag and possession limit eight. Open season on the above fish shall be the Saturday nearest May 1 to February 15 each year.

e. Yellow perch, white bass, and sunfish daily bag and possession limit 30, and crappie daily bag and possession limit 15. There is a continuous open season on these species.

f. Spears and bow and arrow may be used to take carp, buffalo, dogfish, gar, sheepshead, and carpsucker from sunrise to sunset during the period from the first Saturday in May to February 15 each year in the above lakes.

81.2(7) *DeSoto Bend Lake.* All fishers shall conform with federal refuge regulations as posted under the authority of Section 33.19 of Title 50 CFR. The text of the rules will be contained on the signs as posted.

81.2(8) *General restriction.* Anglers must comply with the most restrictive set of regulations applicable to the water on which they are fishing. Where length limits apply, fish less than the legal length must be immediately released into the water from which they were caught.

81.2(9) *Catfish.* For the purpose of this rule, stream catfish bag and possession limits apply at the federal flood control impoundments of Rathbun Lake, Red Rock Lake, Saylorville Lake, and Coralville Lake.

81.2(10) *Identification of catch.* No person shall transport or possess on any waters of the state any fish unless (a) the species of any such fish can be readily identified and a portion of the skin (at least 1 square inch) including scales is left on all fish or fillets and (b) the length of fish can be determined when length limits apply. "On any waters of the state" includes from the bank or shoreline in addition to wading and by boat.

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.67 and 481A.76.

[Filed emergency 1/9/76—published 1/26/76, effective 1/9/76]
[Filed 2/1/77, Notice 12/15/76—published 2/23/77, effective 3/30/77]
[Filed emergency 1/13/78—published 2/8/78, effective 1/13/78]
[Filed 3/15/78, Notice 2/8/78—published 4/5/78, effective 5/10/78]
[Filed 1/9/79, Notice 11/29/78—published 2/7/79, effective 3/14/79]
[Filed 10/10/79, Notice 9/5/79—published 10/31/79, effective 1/1/80]
[Filed 10/8/80, Notice 9/3/80—published 10/29/80, effective 1/1/81]
[Filed 10/7/81, Notice 8/5/81—published 10/28/81, effective 1/1/82]
[Filed 10/7/82, Notice 9/1/82—published 10/27/82, effective 1/1/83]
[Filed 11/4/83, Notice 9/28/83—published 11/23/83, effective 1/1/84]
[Filed 10/5/84, Notice 8/29/84—published 10/24/84, effective 1/1/85]
[Filed 10/4/85, Notice 7/31/85—published 10/23/85, effective 1/1/86]

[Filed 10/17/86, Notice 8/27/86—published 11/5/86, effective 1/1/87]
[Filed without Notice 12/12/86—published 12/31/86, effective 2/4/87]
[Filed 10/16/87, Notice 8/26/87—published 11/4/87, effective 1/1/88]
[Filed 10/14/88, Notice 8/24/88—published 11/2/88, effective 1/1/89]
[Filed 9/15/89, Notice 7/26/89—published 10/4/89, effective 1/1/90]
[Filed emergency 12/7/90 after Notice 10/3/90—published 12/26/90, effective 1/1/91]
[Filed 11/8/91, Notice 8/21/91—published 11/27/91, effective 1/1/92]
[Filed 11/6/92, Notice 9/2/92—published 11/25/92, effective 1/1/93]
[Filed 11/5/93, Notice 9/1/93—published 11/24/93, effective 12/29/93]
[Filed 10/20/95, Notice 8/30/95—published 11/8/95, effective 12/13/95]
[Filed 11/15/96, Notice 8/28/96—published 12/4/96, effective 1/10/97]
[Filed 11/14/97, Notice 9/10/97—published 12/3/97, effective 1/7/98]
[Filed 11/12/99, Notice 9/8/99—published 12/1/99, effective 1/5/00]

j. Zone 10. Beginning at the point where U.S. Highway 63 crosses the Minnesota-Iowa state line; thence along U.S. Highway 63 to state Highway 3; thence along state Highway 3 to U.S. Highway 169; thence along U.S. Highway 169 to the Minnesota-Iowa state line; thence along the Minnesota-Iowa state line to the point of beginning.

94.5(2) *Bow season.* Bow and arrow deer licenses will be valid only in the zone designated on the license.

94.5(3) *Regular gun season.* Regular gun season deer licenses will be valid only in the zone designated on the license.

94.5(4) *Special muzzleloader season.* Special muzzleloader deer licenses will be valid only in the zone designated on the license.

94.5(5) *Closed areas.* There shall be no open season for hunting deer on the county roads immediately adjacent to or through Union Slough National Wildlife Refuge, Kossuth County, where posted accordingly.

571—94.6(483A) License quotas. A limited number of deer licenses will be issued in zones as follows:

94.6(1) *Zone license quotas.* Nonresident license quotas are as follows:

	Any Sex		Antlerless
	All Methods	Bow	
Zone 1.	240	84	
Zone 2.	240	84	
Zone 3.	600	210	
Zone 4.	1200	420	
Zone 5.	1500	525	
Zone 6.	780	273	
Zone 7.	360	126	
Zone 8.	240	84	
Zone 9.	600	210	
Zone 10.	240	84	
Total	6000	2100	1500 statewide

94.6(2) *Quota applicability.* The license quota issued for each zone will be the quota for all bow, regular gun and special muzzleloader licenses combined. No more than 6,000 any sex licenses will be issued for all methods of take combined, for the entire state. Of the 6,000 licenses, no more than 35 percent in any zone can be bow licenses. A maximum of 1,500 antlerless-only licenses, regardless of weapon, will be issued for the entire state.

571—94.7(483A) Method of take. Permitted weapons and devices vary according to the type of season.

94.7(1) *Bow season.* Except as provided in 571—15.5(481A), only recurve, compound or longbows with broadhead arrows will be permitted in taking deer during the bow season. Arrows with chemical or explosive pods are not permitted.

94.7(2) *Regular gun season.* Only 10-, 12-, 16-, or 20-gauge shotguns, shooting single slugs only, and flintlock or percussion cap lock muzzleloaded rifles or muskets of not less than .44 nor larger than .775 caliber, shooting single projectiles only, and handguns as described in 571—subrule 106.7(3), will be permitted in taking deer during the regular gun season.

94.7(3) *Special muzzleloader season.* Flintlock or percussion cap lock muzzleloaded rifles or muskets of not less than .44 nor larger than .775 caliber, shooting single projectiles only, bows as described in 94.7(1), and handguns as described in 106.7(3), will be permitted in taking deer during the special muzzleloader seasons.

94.7(4) *Prohibited weapons and devices.* The use of dogs, domestic animals, salt or bait, rifles other than muzzleloaded, handguns except as provided in 94.7(3), crossbows except as otherwise provided, automobiles, aircraft, or any mechanical conveyances or device including electronic calls is prohibited except that paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. "Bait" means grain, fruit, vegetables, nuts, hay, salt or mineral blocks or any other natural food materials, or by-products of such materials transported to or placed in an area for the intent of attracting wildlife. Bait does not include food placed during normal agricultural activities. "Paraplegic" means an individual with paralysis of the lower half of the body with involvement of both legs, usually due to disease of or injury to the spinal cord.

It shall be unlawful for a person, while hunting deer, to have on their person a rifle other than a muzzleloading rifle that meets the requirements of 571—subrule 106.7(3).

94.7(5) *Discharge of firearms from highway.* No person shall discharge a shotgun shooting slugs or muzzleloader from a highway during the regular gun seasons in all counties and parts of counties north of Highway 30 and west of Highway 63. A "highway" means the way between property lines open to the public for vehicle traffic as defined in Iowa Code section 321.1(78).

571—94.8(483A) Application procedures. All applications for nonresident deer hunting licenses shall be made on forms provided by the department of natural resources and returned to the department of natural resources office in Des Moines, Iowa. No one shall submit more than one application. Applications for nonresident deer hunting licenses must be accompanied by the appropriate license fee. The nonresident license fee shall be $150.50. Party applications with no more than four individuals will be accepted. Applications received in the natural resources office in Des Moines, Iowa, by 4:30 p.m. on the second Friday in June will be processed. If applications received are in excess of the license quota for any hunting zone, a drawing will be conducted to determine which applicants shall receive licenses. If licenses are still available in any zone, licenses will be issued as applications are received until quotas are filled or the last Friday in September, whichever occurs first. Any incomplete or improperly completed application or any application not meeting the above conditions will not be considered as a valid application.

The department may develop media/telecommunication options that would allow for additional methods of obtaining a deer license. Methods and deadlines may be determined by the department as a part of the alternative methods developed.

571—94.9(483A) Transportation tag. A transportation tag bearing the license number of the licensee, year of issuance, and date of kill properly shown shall be visibly attached to the carcass of each deer, in such a manner that the tag cannot be removed without mutilating or destroying the tag, within 15 minutes of the time the deer is killed or before the carcass of the deer is moved in any manner, whichever first occurs. This tag shall be proof of possession and shall remain affixed to the carcass until such time as the animal is processed for consumption. The head, and antlers if any, shall remain attached to all deer while being transported by any means whatsoever from the place where taken to the processor or commercial preservation facility, or until the deer has been processed for consumption.

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.1 and 483A.8.

[Filed emergency 8/11/89—published 8/23/89, effective 8/11/89]
[Filed 5/11/90, Notice 3/7/90—published 5/30/90, effective 8/1/90]
[Filed 5/10/91, Notice 3/6/91—published 5/29/91, effective 8/1/91]
[Filed 5/8/92, Notice 3/4/92—published 5/27/92, effective 7/6/92]
[Filed emergency 4/9/93 after Notice 2/17/93—published 4/28/93, effective 4/9/93]
[Filed emergency 5/20/94 after Notice 3/2/94—published 6/8/94, effective 5/20/94]
[Filed 2/9/95, Notice 12/7/94—published 3/1/95, effective 4/5/95]
[Filed 2/9/96, Notice 1/3/96—published 2/28/96, effective 4/10/96]
[Filed 12/13/96, Notice 11/6/96—published 1/1/97, effective 2/5/97]
[Filed emergency 11/14/97 after Notice 9/10/97—published 12/3/97, effective 11/14/97]
[Filed 2/20/98, Notice 12/31/97—published 3/11/98, effective 4/15/98]
[Filed 2/19/99, Notice 12/2/98—published 3/10/99, effective 4/14/99]
[Filed emergency 11/12/99 after Notice 9/8/99—published 12/1/99, effective 11/12/99]

CHAPTER 95
NONRESIDENT WILD TURKEY FALL HUNTING

Rescinded, IAB 5/30/90, effective 7/4/90
See 571—Chapter 99

CHAPTER 98
WILD TURKEY SPRING HUNTING
[Prior to 12/31/86, Conservation Commission[290] Ch 111]

RESIDENT WILD TURKEY SPRING HUNTING

571—98.1(481A) General. Wild turkey may be taken during the spring season subject to the following rules:

98.1(1) *License.* All hunters must have in possession a spring wild turkey hunting license valid for the current year when hunting wild turkey. No one, while hunting wild turkey, shall carry or have in possession any license or transportation tag issued to another hunter. A hunter having a license valid for one of the spring turkey hunting periods may accompany, call for, or otherwise assist any other hunter who has a valid turkey hunting license for any of the spring hunting periods, except that the hunter doing the assisting may not shoot a turkey or carry a firearm or bow unless the hunter has a valid license with an unused tag for the current season. If a turkey is taken, it must be tagged with the tag issued to the hunter who shot the turkey. Two types of licenses will be issued.

a. Combination shotgun-or-archery licenses will be issued by zone and period and will be valid in the designated zone and for the designated period only. No one shall apply for or obtain more than two combination shotgun-or-archery licenses. Hunters who obtain one or two combination shotgun-or-archery licenses, whether free or paid, may not apply for or obtain an archery-only license.

b. Archery-only licenses will be valid statewide and shall be valid during all hunting periods open for spring turkey hunting. No one may apply for or obtain more than two archery-only licenses. Hunters purchasing one or two archery-only licenses may not apply for or obtain a combination shotgun-or-archery license.

98.1(2) *Daily bag and possession limits.* Daily bag limit, one bearded (or male) wild turkey. Possession limit and season limit, one bearded (or male) wild turkey per license.

98.1(3) *Shooting hours.* Shooting hours shall be from one-half hour before sunrise to sunset.

571—98.2(481A) Method of take.

98.2(1) *Permitted weapons.* Wild turkey may be taken in accordance with the type of license issued as follows:

a. Combination shotgun-or-archery license. Wild turkey may be taken by shotgun or muzzleloading shotgun not smaller than 20-gauge and shooting only shot sizes 2 or 3 nontoxic shot or 4, 5, 6, 7½, or 8 lead or nontoxic shot; and by longbow, recurve or compound bow shooting broadhead or blunthead (minimum diameter 9/16 inch) arrows only. No person may have shotshells containing shot of any size other than 2 or 3 nontoxic shot or 4, 5, 6, 7½, or 8 lead or nontoxic shot on their person while hunting wild turkey.

b. Archery-only license. Wild turkey may be taken by longbow, recurve or compound bow shooting broadhead or blunthead (minimum diameter 9/16 inch) arrows only.

98.2(2) *Prohibited devices.* The use of live decoys, dogs, horses, motorized vehicles, aircraft, bait, crossbows, except as otherwise provided, and the use or aid of recorded or electronically amplified bird calls or sounds, or recorded or electronically amplified imitations of bird calls or sounds is prohibited, except that paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. "Paraplegic" means an individual afflicted with paralysis of the lower half of the body with the involvement of both legs, usually due to disease of or injury to the spinal cord.

98.2(3) *Zones.* Persons with a spring turkey hunting license may take wild turkey in designated areas in accordance with the type of license issued. Persons with an archery-only license may take wild turkey statewide. Persons with a combination shotgun-or-archery license may take wild turkey in one of four zones described as follows:

a. Zone 1. Zone 1 is all units of Stephens State Forest west of U.S. Highway 65 in Clarke and Lucas counties only.

b. Zone 2. Zone 2 is Shimek State Forest in Lee and Van Buren counties only.

c. Zone 3. Zone 3 is Yellow River State Forest in Allamakee county only.

d. Zone 4. Zone 4 is all of Iowa except for those areas described by Zones 1, 2 and 3.

98.2(4) *Exceptions.* Rescinded IAB 12/1/99, effective 1/5/00.

98.2(5) *Hunting periods.* Hunting periods will be established in accordance with the type of license issued.

a. Combination shotgun-or-archery licenses. Consecutive hunting periods are 4, 5, 7, and 19 days, respectively, with the first hunting period beginning on the Monday closest to April 13.

b. Archery-only licenses. The hunting period shall be 35 days beginning on the Monday closest to April 13.

571—98.3(481A) Application procedure. All applications for spring wild turkey hunting licenses must be made on forms provided by the department of natural resources and returned to the office in Des Moines, Iowa, with a remittance of $22.50 per license. Only one individual may apply on a single application form.

98.3(1) *Application periods.* Applications for spring wild turkey hunting licenses shall be received and accepted as follows:

a. Combination shotgun-or-archery licenses. Applications for all combination shotgun-or-archery licenses will be received and accepted beginning the second Monday in January through the second Friday in February, or if they bear a valid and legible U.S. Postal Service postmark applied during that period. Licenses that are incomplete or improperly completed, do not meet the above conditions, or are received after the application period will not be considered valid. A hunter may submit up to two applications during the application period, provided that at least one application is for hunting period four in Zone 4, and that $22.50 is submitted with each application. Applicants for Zones 1, 2 or 3 may apply for one choice of zone and hunting period on an application, and may, at the applicant's discretion, choose to accept a license for hunting period four in Zone 4 if the applicant's first choice is denied. No other second choice will be allowed. Applications that are complete except for a zone designation will be assigned to Zone 4. Applications for Zones 1, 2 or 3 that are complete except for a hunting period designation shall be rejected and returned to the applicant. Hunters who apply for more than one combination shotgun-or-archery license in a combination of zones, hunting periods or license types that is not permitted will have the second application received assigned to hunting period four in Zone 4.

If applications for Zones 1, 2 or 3 have been received in excess of the license quota for any zone or hunting period, a drawing will be conducted to determine which applicants receive licenses. If the quota for any hunting period in Zones 1, 2 or 3 has not been filled, licenses shall be issued in the order in which applications are received beginning the second Monday in March and shall continue for five consecutive days or until the quota has been met, whichever first occurs. If a second application period is necessary to fill quotas, only applications for paid licenses for those hunting periods in Zones 1, 2 or 3 with licenses still available will be accepted. Hunters who have not previously applied for a license, were unsuccessful in the first drawing or who have already received one combination shotgun-or-archery license for hunting period four in Zone 4 may apply for one license in any of the hunting periods for which licenses are still available.

b. Archery-only license. Applications for archery-only licenses shall be received and accepted from the second Monday in January through the first Friday in March.

c. Alternate application options. The department may develop media/telecommunication options that would allow for additional methods of obtaining a turkey license. Methods and deadlines may be determined by the department as part of the alternative methods developed.

98.3(2) *License quotas.* Separate quotas will be established for each license type.

a. Combination shotgun-or-archery licenses. A limited number of combination shotgun-or-archery hunting licenses will be issued for each hunting period in Zones 1, 2 and 3. There shall be no limit on shotgun-or-archery licenses in any hunting period in Zone 4. The same quota shall apply to Zones 1, 2 and 3 in all four hunting periods. The maximum number of combination shotgun-or-archery licenses which will be issued in each zone for the designated hunting period(s) is as follows:

(1) Zone 1. 65.
(2) Zone 2. 125.
(3) Zone 3. 80.
(4) Zone 4. No limit.

b. Archery-only licenses. The number of archery-only licenses shall not be limited.

98.3(3) *Application forms.* Applications for special turkey hunting licenses, as provided for in Iowa Code section 481A.38, shall be on forms furnished by the department, and shall be received at the department of natural resources office no later than the second Friday in March.

98.3(4) *Landowner-tenant licenses.* A landowner or tenant may obtain a free combination shotgun-or-archery license or a free archery-only license. If a free shotgun-or-archery license is obtained for hunting period four in Zone 4, an application may be submitted for a paid shotgun-or-archery license for any zone and hunting period. If a free shotgun-or-archery license is obtained for any hunting period other than hunting period four in Zone 4, the paid shotgun-or-archery application must be for hunting period four in Zone 4. If a free archery-only license is obtained, a paid archery-only license may be purchased during the archery-only application period, but no shotgun-or-archery license may be applied for or obtained. The free license must be applied for on the landowner application form. Nonresident landowners are not eligible for a free wild turkey hunting license.

571—98.4(481A) Transportation tag. A transportation tag bearing license number of licensee, year of issuance, and date of kill properly shown shall be visibly attached to the carcass of each wild turkey in such a manner that the tag cannot be removed without mutilating or destroying the tag before the carcass can be transported from the place of kill. The tag shall be proof of possession of the carcass by above-mentioned licensee.

Rules 98.1(481A) to 98.4(481A) are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.1, and 483A.7.

571—98.5(481A) Harvest information requirements. Rescinded IAB 12/1/99, effective 1/5/00.

571—98.6 to **98.9** Reserved.

NONRESIDENT WILD TURKEY SPRING HUNTING

571—98.10(483A) General. Wild turkey may be taken during the spring season subject to the following:

98.10(1) *License.* All hunters must have in possession a valid nonresident spring wild turkey hunting license and show proof they have paid the current year's habitat fee when hunting wild turkey. No one, while hunting turkey, shall carry or have in possession any license or transportation tag issued to another hunter. Licenses will be issued by zone and period and will be valid in the designated zone and period only. No one shall obtain more than one nonresident spring wild turkey hunting license.

98.10(2) *Seasons.* Bearded (or male) wild turkey may be taken only by the use of shotguns, muzzleloading shotguns, and bow and arrow during the first, third or fourth hunting periods as defined in 98.2(5), paragraph *"a."* No nonresident hunting licenses will be issued for the second hunting period.

98.10(3) *Daily, possession and season limits.* The daily bag limit is one bearded (or male) wild turkey; the possession and season limit is one bearded (or male) wild turkey.

98.10(4) *Shooting hours.* Shooting hours shall be from one-half hour before sunrise to sunset each day.

571—98.11(483A) Zones open to hunting. Licenses will be valid only in designated areas as follows:

1. Zone 1. Zone 1 is all units of Stephens State Forest in Clarke and Lucas counties west of U.S. Highway 65.
2. Zone 2. Zone 2 is the Shimek State Forest in Lee and Van Buren counties only.
3. Zone 3. Zone 3 is the Yellow River Forest in Allamakee county only.
4. Zone 4. Zone 4 is that portion of Iowa bounded on the north by Interstate Highway 80 and on the west by U.S. Highway 59, with the exception of the areas described as Zone 1 and Zone 2.
5. Zone 5. Zone 5 is that portion of Iowa bounded on the north by U.S. Highway 20 and on the east by U.S. Highway 59.
6. Zone 6. Zone 6 is that portion of Iowa lying east of U.S. Highway 63 and north of Interstate Highway 80, with the exception of that area described as Zone 3.
7. Zone 7. Zone 7 is that portion of Iowa bounded on the north by U.S. Highway 20, on the west by U.S. Highway 59, on the south by Interstate Highway 80, and on the east by U.S. Highway 63.

571—98.12(483A) License quotas. A limited number of wild turkey hunting licenses will be issued in each zone in each season as follows:

1. Zone 1. Closed.
2. Zone 2. Closed.
3. Zone 3. Closed.
4. Zone 4. 325.
5. Zone 5. 95.
6. Zone 6. 200.
7. Zone 7. 46.

571—98.13(483A) Means and method of take.

98.13(1) *Permitted weapons.* Wild turkey may be taken only with shotguns and muzzleloading shotguns not smaller than 20-gauge and shooting shot sizes 4, 5, 6, 7½, and 8 only; or with recurve, compound or longbows with broadhead or blunthead (minimum diameter 9/16 inch) arrows only. No person may have shotshells containing shot of any size other than 4, 5, 6, 7½, or 8 on their person while hunting wild turkey.

98.13(2) *Prohibited devices.* The use of live decoys, dogs, horses, motorized vehicles, aircraft, bait, crossbows, except as otherwise provided, and the use or aid of recorded or electronically amplified bird calls or sounds, or recorded or electronically amplified imitations of bird calls or sounds is prohibited, except that paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. "Paraplegic" means an individual afflicted with paralysis of the lower half of the body with the involvement of both legs, usually due to disease of or injury to the spinal cord.

571—98.14(483A) Application procedure. Applications for any of the three spring wild turkey hunting periods must be made by telephoning 1-800-367-1188 from the second Monday in January through the last Friday in January. If applications are received in excess of the license quota for any hunting zone or period, a drawing shall be conducted to determine which applicants shall receive licenses. If licenses are still available for any hunting zone or period, licenses will be issued as applications are received until quotas are filled or the second Friday in March, whichever occurs first. Party applications with no more than four individuals will be accepted. No one shall submit more than one application. Incomplete or improperly completed applications, applications not meeting the above conditions, or applications received prior to or after the application period shall not be considered valid applications. The nonresident license fee shall be $75.50.

571—98.15(483A) Transportation tag. A transportation tag bearing license number of licensee, year of issuance and date of kill properly shown shall be visibly attached to the carcass of each wild turkey in such a manner that the tag cannot be removed without mutilating or destroying the tag before carcass can be transported from the place of kill. The tag shall be proof of possession of the carcass by the licensee.

571—98.16(483A) Harvest information requirements. Rescinded IAB 12/1/99, effective 1/5/00.

Rules 98.10(483A) to 98.15(483A) are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.1 and 483A.7.

[Temporary, filed 11/7/75—published 12/1/75, effective 11/7/75]
[Filed emergency 11/18/76—published 12/15/76, effective 11/18/76]
[Filed 12/9/77, Notice 11/2/77—published 12/28/77, effective 2/1/78]
[Filed 12/7/78, Notice 10/18/78—published 12/27/78, effective 1/31/79]
[Filed 12/5/79, Notice 10/31/79—published 12/26/79, effective 1/30/80]
[Filed 11/7/80, Notice 9/17/80—published 11/26/80, effective 1/1/81]
[Filed 11/6/81, Notice 9/30/81—published 11/25/81, effective 1/1/82]
[Filed 11/5/82, Notice 9/29/82—published 11/24/82, effective 1/1/83]
[Filed 11/10/83, Notice 9/28/83—published 12/7/83, effective 1/11/84]
[Filed 11/2/84, Notice 9/26/84—published 11/21/84, effective 1/1/85]
[Filed emergency 2/26/85—published 3/13/85, effective 2/26/85]
[Filed 11/14/85, Notice 9/25/85—published 12/4/85, effective 1/8/86]
[Filed 11/14/86, Notice 9/24/86—published 12/3/86, effective 1/7/87]
[Filed without Notice 12/12/86—published 12/31/86, effective 2/4/87]
[Filed 11/13/87, Notice 9/23/87—published 12/2/87, effective 1/6/88]
[Filed 11/10/88, Notice 9/21/88—published 11/30/88, effective 1/4/89]
[Filed emergency 12/8/89 after Notice 10/4/89—published 12/27/89, effective 12/8/89]
[Filed emergency 2/12/90 after Notice 12/27/89—published 3/7/90, effective 2/12/90]
[Filed emergency 12/7/90 after Notice 10/3/90—published 12/26/90, effective 12/7/90]

[Filed 11/8/91, Notice 10/2/91—published 11/27/91, effective 1/1/92]
[Filed 11/6/92, Notice 9/30/92—published 11/25/92, effective 1/1/93]
[Filed 11/5/93, Notice 9/29/93—published 11/24/93, effective 12/29/93]
[Filed 11/18/94, Notice 9/28/94—published 12/7/94, effective 1/11/95]
[Filed 11/16/95, Notice 9/27/95—published 12/6/95, effective 1/10/96]
[Filed 11/15/96, Notice 10/9/96—published 12/4/96, effective 1/10/97]
[Filed 11/14/97, Notice 10/8/97—published 12/3/97, effective 1/7/98]
[Filed 11/13/98, Notice 10/7/98—published 12/2/98, effective 1/6/99]
[Filed 11/12/99, Notice 9/8/99—published 12/1/99, effective 1/5/00]

106.11(2) *Eligibility.* Producers growing typical agricultural crops (such as corn, soybeans, hay and oats and tree farms and other forestlands under a timber management program) and producers of high-value horticultural crops (such as Christmas trees, fruit or vegetable crops, nurseries, and commercial nut growers) shall be eligible to enter into depredation management agreements if these crops sustain excessive damage.

a. The producer may be the landowner or a tenant, whoever has cropping rights to the land.

b. Excessive damage is defined as crop losses exceeding $1,000 in a single growing season, or the likelihood that damage will exceed $1,000 if preventive action is not taken, or a documented history of at least $1,000 damage annually in previous years.

106.11(3) *Depredation management plans.* Upon request from a producer, field employees of the wildlife bureau will inspect and identify the type and amount of crop damage sustained from deer. If damage is not excessive, technical advice will be given to the producer on methods to reduce or prevent future damage. If damage is excessive and the producer agrees to participate, a written depredation management plan will be developed by the field employee in consultation with the producer.

a. The goal of the management plan will be to reduce damage below excessive levels within a specified time period through a combination of producer-initiated preventive measures and the issuance of deer depredation permits.

(1) Depredation plans written for producers of typical agricultural crops may require preventive measures such as harassment of deer with pyrotechnics and cannons, guard dogs, temporary fencing, allowing more hunters, increasing the take of antlerless deer, and other measures that may prove effective.

(2) Depredation plans written for producers of high-value horticultural crops may include all of these measures, plus permanent fencing where necessary. Fencing will not be required if the cost of a fence exceeds $1,000.

(3) Depredation permits to shoot deer may be issued to temporarily reduce deer numbers until long-term preventive measures become effective. Depredation permits will not be used as a long-term solution to deer damage problems.

b. Depredation management plans will normally be written for a three-year period with progress reviewed annually by the department and the producer.

(1) The plan will become effective when signed by the field employee of the wildlife bureau and the producer.

(2) Plans may be modified or extended if mutually agreed upon by the department and the producer.

(3) Depredation permits will not be issued after the initial term of the management plan if the producer fails to implement preventive measures outlined in the plan.

106.11(4) *Depredation permits.* Three types of permits may be issued under a depredation management plan.

a. Deer depredation licenses. Deer depredation licenses may be sold to hunters for the regular deer license fee to be used during one or more legal hunting seasons. Depredation licenses will be available to producers of agricultural and horticultural crops.

(1) Depredation licenses will be issued in blocks of five licenses up to the number specified in the management plan.

(2) Depredation licenses may be sold to individuals designated by the producer as having permission to hunt. No individual may obtain more than two depredation licenses. Licenses will be sold by designated department field employees.

(3) Depredation licenses issued to the producer or producer's family member may be the one free license for which the producer family is eligible annually.

(4) Depredation licenses will be valid only for antlerless deer, unless otherwise specified in the management plan, regardless of restrictions that may be imposed on regular deer hunting licenses in that county.

(5) Hunters may keep any deer legally tagged with a depredation license.

(6) All other regulations for the hunting season specified on the license will apply.

b. Deer shooting permits. Permits for shooting deer outside an established hunting season may be issued to producers of high-value horticultural crops when damage cannot be controlled in a timely manner during the hunting seasons (such as late summer buck rubs in an orchard and winter browsing in a Christmas tree plantation), and to other agricultural producers and on areas such as airports where public safety may be an issue.

(1) Deer shooting permits will be issued at no cost to the applicant.

(2) The applicant or one or more designees approved by the department may take all the deer specified on the permit.

(3) Permits available to producers of high-value horticultural crops will allow taking deer from August 1 through March 31. Permits issued for August 1 through August 31 shall be valid only for taking antlered deer. Permits issued for September 1 through March 31 may be valid for taking antlered deer, antlerless deer or any deer, depending on the nature of the damage. Permits available to other agricultural producers will allow taking deer from September 1 through October 31.

(4) Permits issued due to public safety concerns may be used for taking any deer, as necessary, to address unpredictable intrusion which could jeopardize public safety. Permits may be issued for an entire year (January 1 through December 31) if the facility involved maintains a deerproof fence.

(5) The times, dates, place and other restrictions on shooting of deer will be specified on the permit.

(6) Antlers from all deer recovered must be turned over to the conservation officer to be disposed of according to department rules.

(7) Shooters must wear blaze orange and comply with all other applicable laws and regulations pertaining to shooting and hunting.

c. Agricultural depredation permits. Agricultural depredation permits will be issued to a resident landowner or designated tenant who has sustained at least $1,000 of damage to agricultural crops if they are cooperating with the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) to reduce crop damage by deer or have an approved DNR deer depredation plan.

(1) Agricultural depredation permits will be issued to the resident landowner or designated tenant at no cost and shall be valid only on the farm unit where the damage is occurring.

(2) Permits issued to the resident landowner or designated tenant shall allow the taking of antlerless deer from September 1 through November 30. The number of permits issued to individual landowners or tenants will be determined by a department depredation biologist and will be part of the deer depredation management plan.

(3) Deer taken on these permits must be taken by the resident landowner or the designated tenant only.

(4) Times, places, and other restrictions will be specified on the permit.

(5) Shooters must wear blaze orange and comply with all other applicable laws and regulations.

d. Deer depredation licenses and shooting permits will be valid only on the land where damage is occurring or the immediately adjacent property. Other parcels of land in the farm unit not adjacent to the parcels receiving damage will not qualify.

e. Depredation licenses, agricultural depredation permits and shooting permits will be issued in addition to any other licenses for which the hunters may be eligible.

f. Depredation licenses and shooting permits will not be issued if the producer restricts the legal take of deer from the property sustaining damage by limiting hunter numbers below levels required to control the deer herd.

106.11(5) *Disposal.* It shall be the producer's responsibility to see that all deer are field dressed, tagged with a DNR salvage tag, and removed immediately from the field. Dead deer must be handled for consumption, and the producer must coordinate disposal of deer offered to the public through the local conservation officer. Charitable organizations will have the first opportunity to take deer offered to the public. No producer can keep more than two deer taken under special depredation permits. By express permission from a DNR enforcement officer, the landowner may dispose of deer carcasses through a livestock sanitation facility.

571—106.12(481A) Eligibility for free landowner/tenant deer licenses.

106.12(1) *Who qualifies for free deer hunting license.* Owners or tenants of a farm unit, or a member of an owner's or tenant's family that resides with the owner or tenant, are eligible for free deer licenses. The owner or tenant does not have to reside on the farm unit but must be actively engaged in farming it. Nonresident landowners do not qualify.

106.12(2) *Who qualifies as a tenant.* A "tenant" is a person other than the landowner who is actively engaged in the operation of the farm. The tenant may be a member of the landowner's family, including the landowner's spouse or child in some circumstances, or a third party not a family member. The tenant does not have to reside on the farm unit.

106.12(3) *What "actively engaged in farming" means.* Landowners and tenants are "actively engaged in farming" if they personally participate in decisions about farm operations and those decisions, along with external factors such as weather and market prices, determine their profit or loss for the products they produce. Tenants qualify if they farm land owned by another and pay rent in cash or kind. A farm manager or other third party that operates a farm for a fee or a laborer that works on the farm for a wage and is not a family member does not qualify as a tenant.

106.12(4) *Landowners who qualify as active farmers.* These landowners:

a. Are the sole operator of a farm unit (along with immediate family members), or

b. Make all farm operations decisions, but contract for custom farming or hire labor to do some or all of the work, or

c. Participate annually in farm operations decisions such as negotiations with federal farm agencies or negotiations about cropping practices on specific fields that are rented to a tenant, or

d. Raise specialty crops such as orchards, nurseries, or tree farms that do not necessarily produce annual income but require annual operating decisions about maintenance or improvements, or

e. May have portions of the farm enrolled in a long-term land retirement program such as the Conservation Reserve Program (CRP) as long as other farm operations occur annually, or

f. Place their entire cropland in the CRP or other long-term land retirement program with no other active farming operation occurring on the farm.

106.12(5) *Landowners who do not qualify.* These landowners:

a. Use a farm manager or other third party to operate the farm, or

b. Cash rent the entire farm to a tenant who is responsible for all farm operations including following preapproved operations plans.

106.12(6) *Where free licenses are valid.* Free licenses are valid only on that portion of the farm unit that is in a zone open to deer hunting. A "farm unit" is all parcels of land that are operated as a unit for agricultural purposes and are under lawful control of the landowner or tenant. Individual parcels of land do not need to be adjacent to one another to be included in the farm unit. "Agricultural purposes" includes but is not limited to field crops, livestock, horticultural crops (e.g., nurseries, orchards, truck farms, or Christmas tree plantations), and land managed for timber production.

106.12(7) *How many free licenses may be obtained.* The maximum number of free licenses per farm unit is two, one for the landowner (or family member) and one for the tenant (or family member). If there is no tenant, the landowner's family may obtain only one license. A tenant or the tenant's family is entitled to only one free license even if the tenant farms land for more than one landowner.

571—106.13(481A) Special late season deer hunt. Rescinded IAB 6/17/98, effective 7/22/98.

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.24.

[Filed 7/16/75]
[Filed emergency 6/11/76—published 6/28/76, effective 6/11/76]
[Filed emergency 6/13/77—published 7/13/77, effective 6/13/77]
[Filed emergency 9/1/77—published 9/21/77, effective 9/1/77]
[Filed 6/8/78, Notice 3/8/78—published 6/28/78, effective 8/2/78]
[Filed 6/5/79, Notice 3/7/79—published 6/27/79, effective 8/1/79]
[Filed 6/6/80, Notice 3/5/80—published 6/25/80, effective 7/30/80]
[Filed 6/5/81, Notice 3/4/81—published 6/24/81, effective 7/29/81]
[Filed 6/3/82, Notice 3/3/82—published 6/23/82, effective 7/28/82]
[Filed 6/3/83, Notice 3/30/83—published 6/22/83, effective 8/1/83]
[Filed emergency after Notice 6/13/84, Notice 2/29/84—published 7/4/84, effective 6/15/84]
[Filed 5/31/85, Notice 2/27/85—published 6/19/85, effective 7/24/85]
[Filed emergency 8/16/85—published 9/11/85, effective 8/16/85]
[Filed 6/11/86, Notice 2/26/86—published 7/2/86, effective 8/6/86]
[Filed without Notice 12/12/86—published 12/31/86, effective 2/4/87]
[Filed 6/11/87, Notice 3/11/87—published 7/1/87, effective 8/10/87]
[Filed 5/13/88, Notice 2/24/88—published 6/1/88, effective 7/6/88]
[Filed 6/10/88, Notice 2/24/88—published 6/29/88, effective 8/10/88]
[Filed 5/12/89, Notice 3/8/89—published 5/31/89, effective 7/5/89]
[Filed 5/11/90, Notice 3/7/90—published 5/30/90, effective 7/4/90]
[Filed 5/10/91, Notice 3/6/91—published 5/29/91, effective 7/3/91]
[Filed 5/8/92, Notice 3/4/92—published 5/27/92, effective 7/6/92]
[Filed emergency 12/4/92—published 12/23/92, effective 12/4/92]
[Filed emergency 3/12/93—published 3/31/93, effective 3/12/93]
[Filed 5/7/93, Notice 3/31/93—published 5/26/93, effective 7/6/93]
[Filed 5/20/94, Notice 3/2/94—published 6/8/94, effective 7/13/94]
[Filed emergency 5/15/95—published 6/7/95, effective 5/15/95]
[Filed 5/15/95, Notice 3/1/95—published 6/7/95, effective 7/14/95]
[Filed 8/11/95, Notice 6/7/95—published 8/30/95, effective 10/4/95]
[Filed 5/15/96, Notice 2/28/96—published 6/5/96, effective 7/15/96]
[Filed emergency 12/13/96 after Notice 11/6/96—published 1/1/97, effective 12/13/96]
[Filed 5/15/97, Notice 3/12/97—published 6/4/97, effective 7/14/97]
[Filed 8/22/97, Notice 6/4/97—published 9/10/97, effective 10/15/97]
[Filed 9/19/97, Notice 7/16/97—published 10/8/97, effective 11/12/97]
[Filed 5/29/98, Notice 3/11/98—published 6/17/98, effective 7/22/98]
[Filed 5/14/99, Notice 3/10/99—published 6/2/99, effective 7/7/99]
[Filed emergency 9/13/99—published 10/6/99, effective 9/13/99]
[Filed emergency 11/12/99 after Notice 9/8/99—published 12/1/99, effective 11/12/99]

CHAPTER 109
GROUNDHOG SEASON

[Previously Ch 17, renumbered IAC 2/1/84]
[Prior to 12/31/86, Conservation Commission[290] Ch 113]

571—109.1(481A) Groundhog. Open season for groundhog (woodchuck) shall be from June 15 through October 31 of each year. Entire state open. No daily bag or possession limit.

This rule is intended to implement Iowa Code chapter 481A.

[Filed emergency 6/11/76—published 6/28/76, effective 6/11/76]
[Filed 1/5/84, Notice 11/23/83—published 2/1/84, effective 3/7/84]
[Filed without Notice 12/12/86—published 12/31/86, effective 2/4/87]

CHAPTER 110
TRAPPING LIMITATIONS
[Prior to 12/31/86, Conservation Commission[290] Ch 114]

571—110.1(481A) Public roadside limitations—snares, body-gripping, and conibear type traps. No person shall set or maintain any snare, body-gripping, or conibear type trap within any public road right-of-way within 200 yards of buildings inhabited by human beings unless a resident of the dwelling adjacent to the public road right-of-way has given permission or unless the body-gripping or conibear type trap is completely under water or at least one-half of the loop of a snare is under water. Nothing in this rule shall be construed as limiting the use of foothold traps or box-type live traps in public road rights-of-way.

571—110.2(481A) Snares.

110.2(1) *Placement.* No person shall set or maintain any snare in any public road right-of-way so that the snare when fully extended can touch any fence. Snares may not be attached to a drag.

110.2(2) *Loop size.* No snare when set will have a loop larger than 8 inches in horizontal measurement except for snares set with at least one-half of the loop underwater or snares set on private land other than roadsides within 30 yards of a pond, lake, drainage ditch, creek, stream or river shall not have a loop larger than 11 inches in horizontal measurement.

110.2(3) *Deer locks.* All snares must have a functional deer lock that will not allow the snare loop to close smaller than 2½ inches in diameter.

110.2(4) *Mechanical snares.* It shall be illegal to set any mechanically powered snare designed to capture an animal by the neck or body unless such snares are placed completely underwater.

571—110.3(481A) Body-gripping and conibear type traps. No person shall set or maintain any body-gripping or conibear type trap on any public road right-of-way within 5 feet of any fence.

571—110.4(481A) Foothold and leghold traps. No person shall set or maintain on land any foothold or leghold trap with metal-serrated jaws, metal-toothed jaws or a spread inside the set jaws of greater than 7 inches.

571—110.5(481A) Removal of animals from traps and snares. All animals or animal carcasses caught in any type of trap or snare, except those which are placed entirely underwater and designed to drown the animal immediately, must be removed from the trap or snare by the trap or snare user immediately upon discovery and within 24 hours of the time the animal is caught.

571—110.6(481A) Trap tag requirements. All traps and snares, whether set or not, possessed by a person who can reasonably be presumed to be trapping shall have a metal tag attached plainly labeled with the user's name and address.

571—110.7(481A) Colony traps. All colony traps must be set entirely under water.

These rules are intended to implement Iowa Code sections 481A.38 and 481A.92.

[Filed 9/5/85, Notice 7/3/85—published 9/25/85, effective 10/30/85]
[Filed 6/11/86, Notice 4/23/86—published 7/2/86, effective 8/6/86]*
[Filed without Notice 12/12/86—published 12/31/86, effective 2/4/87]
[Filed 6/9/88, Notice 3/23/88—published 6/29/88, effective 8/29/88]
[Filed 8/17/90, Notice 6/27/90—published 9/5/90, effective 10/10/90]
[Filed 6/5/92, Notice 4/29/92—published 6/24/92, effective 7/29/92]
[Filed 5/7/93, Notice 3/31/93—published 5/26/93, effective 6/30/93]
[Filed 8/11/95, Notice 3/1/95—published 8/30/95, effective 10/4/95]
[Filed 11/12/99, Notice 10/6/99—published 12/1/99, effective 1/5/00]

*Effective date of Ch 114 delayed 70 days by the Administrative Rules Review Committee at its meeting held July 31, 1986.
Effective date delayed until the adjournment of the 1987 Session of the General Assembly pursuant to Iowa Code section 17A.8(9) as amended by 1986 Iowa Acts, Senate File 2175, section 2039, by the Administrative Rules Review Committee at its meeting held August 21, 1986.

581—21.9(97B) Appeals.

21.9(1) *Procedures.*

a. A party who wishes to appeal a decision by IPERS other than a special service classification shall, within 30 days after notification was mailed to the party's last-known address, file with IPERS a notice of appeal in writing setting forth:

(1) The name, address, and social security number of the applicant;

(2) A reference to the decision from which the appeal is being made;

(3) The fact that an appeal from the decision is being made; and

(4) The grounds upon which the appeal is based.

Upon receipt of the appeal, IPERS shall conduct an internal review of the facts and circumstances involved, in accordance with its appeal review procedure. IPERS shall issue a final agency decision which becomes final unless within 30 days of issuance the member files a notice of further appeal. Upon receipt of notification of further appeal, IPERS shall inform the department of inspections and appeals of the filing of the appeal and of relevant information pertaining to the case in question. In determining the date that an appeal or any other document is filed with IPERS or the department of inspections and appeals, the following shall apply: An appeal or any other document delivered by mail shall be deemed to be filed on the postmark date; an appeal or any other document delivered by any other means shall be deemed to be filed on the date of receipt. The department of inspections and appeals shall hold a hearing on the case and shall affirm, modify, or reverse the decision by IPERS.

b. Members shall file appeals of their special service classifications with their respective employers, using the appeal procedures of such employers. The appeal procedures for department of corrections employees shall be specified in rules adopted by the personnel division of the Iowa department of personnel. IPERS shall have no jurisdiction over special service classification appeals.

21.9(2) *The determination of appeals.* Following the conclusion of a hearing of an appeal, the administrative law judge within the department of inspections and appeals shall announce the findings of fact. The decision shall be in writing, signed by the administrative law judge, and filed with IPERS, with a copy mailed to the appellant. Such decision shall be deemed final unless, within 30 days after the issuance date of such decision, further appeal is initiated. The issuance date is the date that the decision is signed by the administrative law judge.

21.9(3) *Appeal board.* A party appealing from a decision of an administrative law judge shall file a notice with the employment appeal board of the Iowa department of inspections and appeals, petitioning the appeal board for review of the administrative law judge's decision. In determining the date that a notice of appeal or any other document is filed with the employment appeal board, and subject to applicable exceptions adopted by the employment appeal board in IAC [486], the following shall apply: an appeal or any other document delivered by mail shall be deemed to be filed as of the postmark date; an appeal or any other document delivered by any other means shall be deemed to be filed as of the date that it is received.

21.9(4) *Judicial review.* The appeal board's decision shall be final and without further review 30 days after the decision is mailed to all interested parties of record unless within 20 days a petition for rehearing is filed with the appeal board or within 30 days a petition for judicial review is filed in the appropriate district court. The department, in its discretion, may also petition the district court for judicial review of questions of law involving any of its decisions. Action brought by the department for judicial review of its decisions shall be brought in the district court of Polk County, Iowa.

21.9(5) *Contested case procedure.* Appeals of decisions by IPERS that are heard by the department of inspections and appeals shall be conducted pursuant to the rules governing contested case hearings adopted by the department of inspections and appeals under 481—Chapter 10.

This rule is intended to implement Iowa Code sections 97B.16, 97B.20, 97B.20A, 97B.20B, 97B.27 and 97B.29.

*Removed in error IAC Supplement 10/6/99; reinserted IAC Supplement 12/1/99.

581—21.10(97B) Beneficiaries.

21.10(1) Designation of beneficiaries. To designate a beneficiary, the member must complete an IPERS designation of beneficiary form, which must be filed with IPERS. The designation of a beneficiary by a retiring member on the application for monthly benefits is accepted by IPERS in lieu of a completed designation form. IPERS may consider as valid a designation of beneficiary form filed with the member's employer prior to the death of the member, even if that form was not forwarded to IPERS prior to the member's death. If a retired member is reemployed in covered employment, the most recently filed beneficiary form shall govern the payment of all death benefits for all periods of employment. Notwithstanding the foregoing sentence, a reemployed IPERS Option 4 retiree may name someone other than the member's contingent annuitant as beneficiary, but only for death benefits accrued during the period of reemployment and only if the contingent annuitant has died or has been divorced from the member. If a reemployed IPERS Option 4 retiree dies without filing a new beneficiary form, the death benefits accrued for the period of reemployment shall be paid to the member's contingent annuitant, unless the contingent annuitant has died or been divorced from the member. If the contingent annuitant has been divorced from the member, any portion of the death benefits awarded in a qualified domestic relations order (QDRO) shall be paid to the contingent annuitant as alternate payee, and the remainder of the death benefits shall be paid to the member's estate, or the member's heirs if no estate is probated.

21.10(2) Change of beneficiary. The beneficiary may be changed by the member by filing a new designation of beneficiary form with IPERS. The latest dated designation of beneficiary form on file shall determine the identity of the beneficiary. Payment of a refund to a terminated member cancels the designation of beneficiary on file with IPERS.

21.10(3) Payments to a beneficiary. Before death benefit payments can be made, application in writing must be submitted to IPERS with a copy of the member's death certificate, together with information establishing the claimant's right to payment. A named beneficiary must complete IPERS' application for death benefits based on the deceased member's account.

21.10(4) Where the designated beneficiary is an estate, trust, church, charity or other like organization, payment of benefits shall be made in a lump sum only.

21.10(5) Rescinded IAB 7/5/95, effective 8/9/95.

*Removed in error IAC Supplement 10/6/99; reinserted IAC Supplement 12/1/99.

CHAPTER 203
STANDARDS FOR CERTIFICATE OF NEED REVIEW

CHAPTER 204
UNIFORM REPORTING REQUIREMENTS

CHAPTER 70
LEAD PROFESSIONAL CERTIFICATION

641—70.1(135) Applicability. Prior to March 1, 2000, this chapter applies to all persons who are certified lead professionals in Iowa. Beginning March 1, 2000, this chapter applies to all persons who are lead professionals in Iowa. While this chapter requires lead professionals to be certified and establishes specific requirements for how to perform lead-based paint activities if a property owner, manager, or occupant chooses to undertake them, nothing in this chapter requires a property owner, manager, or occupant to undertake any particular lead-based paint activity.

641—70.2(135) Definitions.

"Adequate quality control" means a plan or design which ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or paint film samples. Adequate quality control also includes provisions for representative sampling.

"Approved course" means a course that has been approved by the department for the training of lead professionals.

"Certified elevated blood lead (EBL) inspection agency" means an agency that has met the requirements of 641—70.5(135) and that has been certified by the department.

"Certified elevated blood lead (EBL) inspector/risk assessor" means a person who has met the requirements of 641—70.5(135) for certification or interim certification and who has been certified by the department.

"Certified lead abatement contractor" means a person who has met the requirements of 641—70.5(135) for certification or interim certification and who has been certified by the department.

"Certified lead abatement worker" means a person who has met the requirements of 641—70.5(135) and who has been certified by the department.

"Certified lead inspector/risk assessor" means a person who has met the requirements of 641—70.5(135) for certification or interim certification and who has been certified by the department.

"Certified lead professional" means a person who has been certified by the department as a lead inspector/risk assessor, elevated blood lead (EBL) inspector/risk assessor, lead abatement contractor, lead abatement worker, project designer, or visual risk assessor.

"Certified project designer" means a person who has met the requirements of 641—70.5(135) for certification or interim certification and who has been certified by the department.

"Certified visual risk assessor" means a person who has met the requirements of 641—70.5(135) and who has been certified by the department.

"Child-occupied facility" means a building, or portion of a building, constructed prior to 1978, visited by the same child under the age of six years, on at least two different days within any week (Sunday through Saturday period, provided that each day's visit lasts at least three hours and the combined weekly visits last at least six hours). Child-occupied facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms.

"Clearance levels" means values that indicate the maximum amount of lead permitted in dust on a surface following completion of an abatement activity. These values are 100 micrograms per square foot on floors, 500 micrograms per square foot on window sills, and 800 micrograms per square foot on window troughs.

"Common area" means a portion of the building that is generally accessible to all occupants. This includes, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

"Component" or *"building component"* means specific design or structural elements or fixtures of a building, residential dwelling, or child-occupied facility that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as ceilings, crown moldings, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built-in cabinets, columns, beams, bathroom vanities, countertops, and air conditions; and exterior components such as painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, latticework, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, windowsills or stools and troughs, casing, sashes and wells, and air conditioners.

"Containment" means a process to protect workers and the environment by controlling exposures to the lead-contaminated dust and debris created during an abatement.

"Course agenda" means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.

"Course test" means an evaluation of the overall effectiveness of the training which shall test the trainees' knowledge and retention of the topics covered during the course.

"Course test blueprint" means written documentation identifying the proportion of course test questions devoted to each major topic in the course curriculum.

"Department" means the Iowa department of public health.

"Deteriorated paint" means paint that is cracking, flaking, chipping, peeling, or otherwise separating from the substrate of a building component.

"Discipline" means one of the specific types or categories of lead-based paint activities identified in this chapter for which individuals may receive training from approved courses and become certified by the department. For example, "lead inspector/risk assessor" is a discipline.

"Distinct painting history" means the application history, as indicated by its visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

"Documented methodologies" means methods or protocols used to sample for the presence of lead in paint, dust, and soil.

"Elevated blood lead (EBL) child" means any child who has had one venous blood lead level greater than or equal to 20 micrograms per deciliter or at least two venous blood lead levels of 15 to 19 micrograms per deciliter.

"Elevated blood lead (EBL) inspection" means an inspection to determine the sources of lead exposure for an elevated blood lead (EBL) child and the provision within ten working days of a written report explaining the results of the investigation to the owner and occupant of the residential dwelling or child-occupied facility being inspected and to the parents of the elevated blood lead (EBL) child.

"Encapsulant" means a substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating (with or without reinforcement materials) or an adhesively bonded coating material.

"Encapsulation" means the application of an encapsulant.

"Enclosure" means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

"Firm" means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs or offers to perform lead-based paint activities.

"Guest instructor" means an individual designated by the training program manager or principal instructor to provide instruction specific to the lecture, hands-on work activities, or work practice components of a course.

"Hands-on skills assessment" means an evaluation which tests the trainees' ability to satisfactorily perform the work practices and procedures identified in 641—70.6(135), as well as any other skill taught in a training course.

"Hazardous waste" means any waste as defined in 40 CFR 261.3.

"Interim controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including repairing deteriorated lead-based paint, specialized cleaning, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

"Lead abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards in a residential dwelling or child-occupied facility. Abatement includes, but is not limited to, (1) the removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil and (2) all preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures. Lead abatement specifically includes, but is not limited to, (1) projects for which there is a written contract or other documentation, which provides that an individual will be conducting activities in or to a residential dwelling or child-occupied facility that shall result in or are designed to permanently eliminate lead-based paint hazards, (2) projects resulting in the permanent elimination of lead-based paint hazards, (3) projects resulting in the permanent elimination of lead-based paint hazards that are conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint abatement, and (4) projects resulting in the permanent elimination of lead-based paint that are conducted in response to an abatement order. Abatement does not include renovation, remodeling, landscaping, or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

"Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or more than 0.5 percent by weight.

"Lead-based paint activities" means, in the case of target housing and child-occupied facilities, lead inspection, elevated blood lead (EBL) inspection, lead hazard screen, risk assessment, lead abatement, and visual risk assessment.

"Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-based paint that is deteriorated or present in accessible surfaces, friction surfaces, and impact surfaces that would result in adverse human health effects.

"Lead-contaminated dust" means surface dust in residential dwellings or child-occupied facilities that contains in excess of 100 micrograms per square foot on floors, 500 micrograms per square foot on windowsills, and 800 micrograms per square foot on window troughs.

"Lead-contaminated soil" means bare soil on residential real property and on the property of a child-occupied facility that contains lead in excess of 400 parts per million for areas where child contact is likely and in excess of 2,000 parts per million if child contact is not likely.

"Lead hazard screen" means a limited risk assessment activity that involves limited paint and dust sampling.

"Lead inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and a determination of the existence, nature, severity, and location of lead-based paint hazards in a residential dwelling or child-occupied facility and the provision of a written report explaining the results of the investigation and options for reducing lead-based paint hazards to the person requesting the lead inspection.

"Lead professional" means a person who conducts lead abatement, lead inspections, elevated blood lead (EBL) inspections, lead hazard screens, risk assessments, or visual risk assessments.

"Living area" means any area of a residential dwelling used by at least one child under the age of six years, including, but not limited to, living rooms, kitchen areas, dens, playrooms, and children's bedrooms.

"Multifamily dwelling" means a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

"Occupant protection plan" means a plan developed by a certified lead abatement contractor prior to the commencement of lead abatement in a residential dwelling or child-occupied facility that describes the measures and management procedures that will be taken during lead abatement to protect the building occupants from exposure to any lead-based paint hazards.

"Permanently covered soil" means soil which has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch, and other landscaping materials are not considered permanent covering.

"Principal instructor" means the individual who has the primary responsibility for organizing and teaching a particular course.

"Recognized laboratory" means an environmental laboratory recognized by the U.S. Environmental Protection Agency pursuant to Section 405(b) of the federal Toxic Substance Control Act as capable of performing an analysis for lead compounds in paint, soil, and dust.

"Reduction" means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

"Refresher training course" means a course taken by a certified lead professional to maintain certification in a particular discipline.

"Residential dwelling" means (1) a detached single-family dwelling unit, including the surrounding yard, attached structures such as porches and stoops, and detached buildings and structures including, but not limited to, garages, farm buildings, and fences, or (2) a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or part, as the home or residence of one or more persons.

"Risk assessment" means an investigation to determine the existence, nature, severity, and location of lead-based paint hazards in a residential dwelling or child-occupied facility and the provision of a written report explaining the results of the investigation and options for reducing lead-based paint hazards to the person requesting the risk assessment.

"State certification examination" means a discipline-specific examination approved by the department to test the knowledge of a person who has completed an approved training course and is applying for certification in a particular discipline. The state certification examination may not be administered by the provider of an approved course.

"Target housing" means housing constructed prior to 1978 with the exception of housing for the elderly or for persons with disabilities and housing which does not contain a bedroom, unless at least one child under the age of six years resides or is expected to reside in the housing for the elderly or persons with disabilities or housing which does not contain a bedroom.

"Training hour" means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, or hands-on experience.

"Training manager" means the individual responsible for administering an approved course and monitoring the performance of principal instructors and guest instructors.

"Training program" means a person or organization sponsoring a lead professional training course.

"Visual inspection for clearance testing" means the visual examination of a residential dwelling or a child-occupied facility following an abatement to determine whether or not the abatement has been successfully completed.

"Visual risk assessment" means a visual assessment to determine the presence of deteriorated paint or other potential sources of lead-based paint hazards in a residential dwelling or child-occupied facility and the provision of a written report explaining the results of the assessment to the person requesting the visual risk assessment.

"X-ray fluorescence analyzer (XRF)" means an instrument that determines lead concentrations in milligrams per square centimeter (mg/cm^2) using the principle of x-ray fluorescence.

641—70.3(135) Certification. Prior to March 1, 2000, lead professionals may be certified by the department. Beginning March 1, 2000, lead professionals must be certified by the department in the appropriate discipline before they conduct lead abatement, lead inspections, elevated blood lead (EBL) inspections, lead hazard screens, risk assessments, and visual risk assessments, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person other than the owner or a member of the owner's immediate family while these activities are being performed. In addition, elevated blood lead (EBL) inspections shall be conducted only by certified elevated blood lead (EBL) inspector/risk assessors employed by or under contract with a certified elevated blood lead (EBL) inspection agency. Lead professionals shall not state that they have been certified by the state of Iowa unless they have met the requirements of rule 70.5(135) and been issued a certificate by the department. Prior to March 1, 2000, elevated blood lead (EBL) inspection agencies may be certified by the department. Beginning March 1, 2000, elevated blood lead (EBL) inspection agencies must be certified by the department. Elevated blood lead (EBL) inspection agencies shall not state that they have been certified by the state of Iowa unless they have met the requirements of rule 70.5(135) and been issued a certificate by the department.

641—70.4(135) Course approval and standards. Prior to March 1, 1999, lead professional training courses for initial certification and refresher training may be approved by the department. Beginning March 1, 1999, lead professional training courses for initial certification and refresher training must be approved by the department. Training programs shall not state that they have been approved by the state of Iowa unless they have met the requirements of rule 70.4(135) and been issued a letter of approval by the department.

70.4(1) Training courses shall meet the following requirements:

a. The training course shall employ a training manager who has the following qualifications:

(1) A bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, or a related field; or two years of experience in managing a training program specializing in environmental hazards.

(2) Demonstrated experience, education, or training in lead professional activities, including lead inspection, lead abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

b. The training manager shall designate a qualified principal instructor for each course who has the following qualifications:

(1) Demonstrated experience, education, or training in teaching workers or adults.

(2) Certification as a lead inspector/risk assessor, elevated blood lead (EBL) inspector/risk assessor, or lead abatement contractor.

(3) Demonstrated experience, education, or training in lead professional activities, including lead inspection, lead abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

c. The principal instructor shall be responsible for the organization of the course and oversight of the teaching of all course material. The training manager may designate guest instructors as needed to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

d. The training program shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment as needed.

e. The training manager shall maintain the validity and integrity of the hands-on skills assessment to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in subrules 70.4(3) to 70.4(9).

f. The training manager shall maintain the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics.

g. The course test shall be developed in accordance with the test blueprint submitted with the course approval application.

h. The training program shall issue unique course completion certificates to each individual who passes the course. The course completion certificate shall include:

(1) The name and address of the individual and a unique identification number.

(2) The name of the particular course that the individual completed.

(3) Dates of course completion and test passage.

(4) The name, address, and telephone number of the training program.

i. The training manager shall develop and implement a quality control program. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

(1) Procedures for periodic revision of training materials and the course test to reflect changes in regulations and recommended practices.

(2) Procedures for the training manager to conduct an annual review of the competency of the principal instructor.

j. The training program shall offer courses that teach the work practice standards for conducting lead-based paint activities contained in rule 70.6(135) and other standards developed by the department. These standards shall be taught in the appropriate courses to provide trainees with the knowledge needed to perform the lead-based paint activities they are responsible for conducting.

k. The training manager shall ensure that the training program complies at all times with all requirements in this rule.

l. The training manager shall allow the department to audit the training program to verify the contents of the application for approval and for reapproval.

m. The training program shall maintain, and make available to the department, upon request, the following records:

(1) All documents specified in paragraph 70.4(2)*"f."*

(2) Current curriculum/course materials and documents reflecting any changes made to these materials.

(3) The course test blueprint and the course test.

(4) Information regarding how the hands-on assessment is conducted including, but not limited to, who conducts the assessment, how the skills are graded, what facilities are used, and the pass/fail rate.

(5) The quality control plan as described in paragraph 70.4(1)*"i."*

(6) Results of the students' hands-on skills assessments and course tests and a record of each student's course completion certificate.

(7) Any other materials that have been submitted to the department as part of the program's application for approval.

n. The training program shall retain all required records at the address specified on the training program approval application for a minimum of six years.

o. The training program shall notify the department in writing within 30 days of changing the address specified on its training program approval application or transferring the records from that address.

70.4(2) If a training program desires approval of a course by the department, the training program shall apply to the department for approval of the course at least 90 days before the initial offering of the course. The application shall include:

a. Training program name, contact person, address, and telephone number.

b. Course dates and times.

c. Course location, including a description of the facilities and equipment to be used for lecture and hands-on training.

d. Course agenda, including approximate times allotted to each training segment.

e. A copy of each reference material, text, student and instructor manuals, and audio-visual material used in the course.

f. The name(s) and qualifications of the training manager, principal instructor(s), and guest instructor(s). The following documents shall be submitted as evidence that training managers and principal instructors have the education, work experience, training requirements, or demonstrated experience required by subrule 70.4(1):

(1) Official transcripts or diplomas as evidence of meeting the education requirements.

(2) Résumés, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

(3) Certificates from lead-specific training courses, as evidence of meeting the training requirements.

g. A copy of the course test blueprint.

h. A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course.

i. Maximum class size.

j. A copy of the quality control plan for the course.

k. A nonrefundable fee of $200.

70.4(3) To be approved for the training of lead inspector/risk assessors prior to March 1, 1999, a course must be at least 24 training hours with a minimum of 8 hours devoted to hands-on training activities. Beginning March 1, 1999, a course must be at least 40 training hours with a minimum of 12 hours devoted to hands-on training activities. Lead inspector/risk assessor training courses shall cover at least the following subjects (requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course):

a. Role and responsibilities of an inspector/risk assessor.

b. Background information on lead and its adverse health effects, how children and adults are exposed to lead, and how to prevent lead exposure in children and adults.

c. Background information on federal, state, and local regulations and guidance that pertain to lead-based paint and lead-based paint activities.

d. Lead-based paint inspection methods, including selection of rooms and components for sampling or testing to determine if a property is free of lead-based paint as specified in the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development), and methods to determine if lead-based paint hazards are present in a property.*

e. Paint, dust, and soil sampling methodologies.*

f. Clearance standards and testing, including random sampling.*

g. Collection of background information to perform a risk assessment.

h. Sources of environmental lead contamination such as paint, surface dust and soil, and water.

i. Visual inspection to identify lead-based paint hazards.*

j. Lead hazard screen protocol.

k. Visual risk assessment protocol.

l. Sampling for other sources of lead exposure.*

m. Interpretation of lead-based paint and other lead sampling results, including all applicable federal, state, and local guidance or regulations pertaining to lead-based paint hazards.*

n. Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards.

o. Preparation of the final inspection report.

p. Record keeping.

q. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course.

70.4(4) To be approved for the training of elevated blood lead (EBL) inspector/risk assessors prior to March 1, 1999, a course must be at least 32 training hours with a minimum of 8 hours devoted to hands-on training activities. Beginning March 1, 1999, a course must be at least 48 training hours with a minimum of 12 hours devoted to hands-on training activities. Elevated blood lead (EBL) inspector/risk assessor training courses shall cover at least the following subjects (requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course):

a. Role and responsibilities of an elevated blood lead (EBL) inspector/risk assessor.

b. Background information on lead and its adverse health effects, how children and adults are exposed to lead, and how to prevent lead exposure in children and adults.

c. Background information on federal, state, and local regulations and guidance that pertain to lead-based paint and lead-based paint activities.

d. Lead-based paint inspection methods, including selection of rooms and components for sampling or testing to determine if a property is free of lead-based paint as specified in the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development), and methods to determine if lead-based paint hazards are present in a property.*

e. Paint, dust, and soil sampling methodologies.*

f. Clearance standards and testing, including random sampling.*

g. Collection of background information to perform a risk assessment.

h. Sources of environmental lead contamination such as paint, surface dust and soil, and water.

i. Visual inspection to identify lead-based paint hazards.*

j. Approved methods for conducting lead-based paint abatement and interim controls.*

k. Prohibited methods for conducting lead-based paint abatement and interim controls.

l. Interior dust abatement and cleanup.*

m. Soil and exterior dust abatement and cleanup.*

n. Clearance standards and testing, including random sampling.

o. Cleanup and waste disposal.

p. Record keeping.

q. Role and responsibilities of a project designer.

r. Development and implementation of an occupant protection plan for large-scale abatement projects.

s. Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large-scale abatement projects.

t. Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale abatement projects.

u. Clearance standards and testing for large-scale abatement projects.

v. Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large-scale abatement projects.

w. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course.

70.4(9) To be approved for refresher training of visual risk assessors, lead abatement contractors, lead abatement workers, and project designers, a course must be at least 8 training hours. To be approved for refresher training of lead inspector/risk assessors who completed an approved 24-hour training course or elevated blood lead (EBL) inspector/risk assessors who completed an approved 32-hour training course, a course must be at least 8 training hours to meet the recertification requirements of subrule 70.5(3). To be approved for refresher training of lead inspector/risk assessors and elevated blood lead (EBL) inspector/risk assessors to meet the recertification requirements of subrule 70.5(5), a course must be at least 16 training hours. All refresher courses shall cover at least the following topics:

a. A review of the curriculum topics of the initial certification course for the appropriate discipline as listed in subrules 70.4(3) to 70.4(8).

b. An overview of current safety practices relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

c. Current laws and regulations relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

d. Current technologies relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

e. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course.

70.4(10) Approvals of training courses shall expire three years after the date of issuance. The training manager shall submit the following at least 90 days prior to the expiration date for a course to be reapproved:

a. Sponsoring organization name, contact person, address, and telephone number.

b. A list of the courses for which reapproval is sought.

c. A description of any changes to the training staff, facility, equipment, or course materials since the approval of the training program.

d. A statement signed by the training manager stating that the training program complies at all times with rule 70.4(135).

e. A nonrefundable fee of $200.

70.4(11) The department shall consider a request for approval of a training course that has been approved by a state or tribe authorized by the U.S. Environmental Protection Agency.

a. The course shall be approved if it meets the requirements of rule 70.4(135).

b. If the course does not meet all of the requirements of rule 70.4(135), the department shall inform the training provider of additional topics and training hours that are needed to meet the requirements of rule 70.4(135).

641—70.5(135) Certification, interim certification, and recertification.

70.5(1) A person wishing to become a certified lead professional shall apply on forms supplied by the department. The applicant must submit:

a. A completed application form.

b. A certificate of completion of an approved course for the discipline in which the applicant wishes to become certified.

c. A person wishing to become a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall provide documentation of successful completion of the manufacturer's training course or equivalent for the X-ray fluorescence (XRF) analyzer that the inspector/risk assessor will use to conduct lead inspections.

d. Documentation that the applicant meets the additional experience and education requirements in subrule 70.5(2) for the discipline in which the applicant wishes to become certified. The following documents shall be submitted as evidence that the applicant has the education and work experience required by subrule 70.5(2):

(1) Official transcripts or diplomas as evidence of meeting the education requirements.

(2) Résumés, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

e. Beginning March 1, 2000, to become certified as a lead inspector/risk assessor, elevated blood lead (EBL) inspector/risk assessor, lead abatement contractor, or project designer, a certificate showing that the applicant has passed the state certification examination in the discipline in which the applicant wishes to become certified.

f. A $50 nonrefundable fee.

g. A person may receive interim certification from the department as a lead inspector/risk assessor, elevated blood lead (EBL) inspector/risk assessor, lead abatement contractor, or project designer by submitting the items required by paragraphs 70.5(1)*"a"* to *"d"* and *"f"* to the department. If the applicant completed an approved course prior to September 1, 1999, the interim certification shall expire on March 1, 2000. If the applicant completed an approved course on or after September 1, 1999, the interim certification shall expire six months from the date of completion of an approved course. An interim certification must be upgraded to a certification by submitting a certificate to the department showing that the applicant has passed the state certification examination as required by paragraph 70.5(1)*"e."* Interim certification is equivalent to certification.

70.5(2) Beginning September 1, 1999, to become certified by the department as a lead professional, an applicant must meet the education and experience requirements for the appropriate discipline:

a. Lead inspector/risk assessors and elevated blood lead (EBL) inspector/risk assessors must meet one of the following requirements:

(1) Bachelor's degree and one year of related experience (e.g., lead, environmental health, public health, housing inspection, building trades).

(2) Associate's degree and two years of related experience (e.g., lead, environmental health, public health, housing inspection, building trades).

(3) High school diploma and three years of related experience (e.g., lead, environmental health, public health, housing inspection, building trades).

(4) Certification as an industrial hygienist, professional engineer, registered architect, registered sanitarian, registered environmental health specialist, or registered nurse.

b. Lead abatement contractors must meet one of the following requirements:

(1) One year of experience as a certified lead abatement worker.

(2) Two years of related experience or education (e.g., lead, housing inspection, building trades, property management and maintenance).

c. No additional education or experience is required for lead abatement workers.

d. Visual risk assessors must meet one of the following requirements:

(1) Associate's degree.

(2) High school diploma and one year of related experience (e.g., lead, environmental health, public health, housing inspection, building trades).

(3) Certification as an industrial hygienist, professional engineer, registered architect, registered sanitarian, registered environmental health specialist, or registered nurse.

e. Project designers must meet one of the following requirements:

(1) Bachelor's degree in engineering, architecture, or a related profession, and one year of experience in building construction and design or a related field.

(2) Four years of experience in building construction and design or a related field.

70.5(3) Certifications issued prior to September 1, 1999, shall expire on February 29, 2000. By March 1, 2000, lead professionals certified prior to September 1, 1999, must be recertified by submitting the following:

a. A completed application form.

b. For lead inspector/risk assessors, a certificate showing the completion of additional training hours in an approved course to meet the total training hours required by subrule 70.4(3) and the completion of an 8-hour refresher course.

c. For elevated blood lead (EBL) inspector/risk assessors, a certificate showing the completion of additional training hours in an approved course to meet the total training hours required by subrule 70.4(4) and the completion of an 8-hour refresher course.

d. Documentation that the applicant meets the experience and education requirements in subrule 70.5(2) for the discipline in which the applicant wishes to become certified. The following documents shall be submitted as evidence that the applicant has the education and work experience required by subrule 70.5(2):

(1) Official transcripts or diplomas as evidence of meeting the education requirements.

(2) Résumés, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

e. For lead abatement contractors, lead abatement workers, project designers, and visual risk assessors, if the date on which the applicant completed an approved training course is three years or more before the date of recertification, a certificate showing that the applicant has successfully completed an approved refresher training course for the appropriate discipline.

f. A certificate showing that the applicant has passed the state certification examination in the discipline in which the applicant wishes to become certified.

g. A $50 nonrefundable fee.

70.5(4) An agency wishing to become a certified elevated blood lead (EBL) inspection agency shall apply on forms supplied by the department. The agency must submit:

a. A completed application form.

b. Documentation that the agency has the authority to require the repair of lead hazards identified through an elevated blood lead (EBL) inspection.

c. Documentation that the agency employs or has contracted with a certified elevated blood lead (EBL) inspector/risk assessor to provide environmental case management of all elevated blood lead (EBL) children in the agency's service area, including follow-up to ensure that lead-based paint hazards identified as a result of elevated blood lead (EBL) inspections are corrected.

70.5(5) Beginning March 1, 2000, individuals certified as lead professionals must be recertified each year. To be recertified, lead professionals must submit the following:

a. A completed application form.

b. A $50 nonrefundable fee.

c. Every three years, a certificate showing that the applicant has successfully completed an approved refresher training course for the appropriate discipline. If the applicant completed an approved training program prior to March 1, 2000, the initial refresher training course must be completed no more than three years after the date on which the applicant completed an approved training program.

70.5(6) The department shall approve the state certification examinations for the disciplines of lead inspector/risk assessor, elevated blood lead (EBL) inspector/risk assessor, lead abatement contractor, and project designer. The state certification examination may not be administered by the provider of an approved course.

a. An individual may take the state certification examination no more than three times within six months of receiving a certificate of completion from an approved course.

b. If an individual does not pass the state certification examination within six months of receiving a certificate of completion from an approved course, the individual must retake the appropriate approved course before reapplying for certification.

641—70.6(135) Work practice standards for conducting lead-based paint activities in target housing and child-occupied facilities.

70.6(1) Prior to March 1, 2000, when performing any lead-based paint activity described as an inspection, elevated blood lead (EBL) inspection, lead hazard screen, risk assessment, visual risk assessment, or lead abatement, a certified individual must perform that activity in compliance with the appropriate requirements below. Beginning March 1, 2000, all lead-based paint activities shall be performed according to the work practice standards in rule 70.6(135) and a certified individual must perform that activity in compliance with the appropriate requirements below.

70.6(2) A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor must conduct lead inspections according to the following standards. Beginning March 1, 2000, lead inspections shall be conducted only by a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor.

a. When conducting an inspection, the certified lead inspector/risk assessor shall use the documented methodologies, including selection of rooms and components for sampling or testing, specified in Chapter 7 of the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development).

b. Paint shall be sampled using adequate quality control by X-ray fluorescence or by laboratory analysis using a recognized laboratory to determine the presence of lead-based paint on a surface.

c. If lead-based paint is identified through an inspection, the certified lead inspector/risk assessor must conduct a visual inspection to determine the presence of lead-based paint hazards and any other potential lead hazards.

d. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall prepare a written report for each residential dwelling or child-occupied facility inspected and shall provide a copy of this report to the person requesting the inspection. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall maintain a copy of each written report for no fewer than three years. The inspection report shall include, at least:

(1) Date of each inspection;

(2) Address of building;

(3) Date of construction;

(4) Apartment numbers (if applicable);

(5) The name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;

(6) Name, signature, and certification number of each certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor conducting the investigation;

(7) Name, address, and telephone number of each laboratory conducting an analysis of collected samples;

(8) Each testing method and device and sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any X-ray fluorescence (XRF) device;

(9) Specific locations of each painted component tested for the presence of lead-based paint;

(10) The results of the inspection expressed in terms appropriate to the sampling method used;

(11) A description of the location, type, and severity of identified lead-based paint hazards, and any other potential lead hazards; and

(12) A description of interim controls and abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

70.6(3) A certified elevated blood lead (EBL) inspector/risk assessor must conduct elevated blood lead (EBL) inspections according to the following standards. Beginning March 1, 2000, elevated blood lead (EBL) inspections shall be conducted only by a certified elevated blood lead (EBL) inspector/risk assessor.

a. When conducting an elevated blood lead (EBL) inspection, the certified elevated blood lead (EBL) inspector/risk assessor shall use the documented methodologies, including selection of rooms and components for sampling or testing, specified in Chapter 7 of the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development).

b. Paint shall be sampled using adequate quality control by X-ray fluorescence or by laboratory analysis using a recognized laboratory to determine the presence of lead-based paint on a surface.

c. If lead-based paint is identified through an inspection, the certified elevated blood level (EBL) inspector/risk assessor must conduct a visual inspection to determine the presence of lead-based paint hazards and any other potential lead hazards.

d. A certified elevated blood lead (EBL) inspector/risk assessor shall prepare a written report for each residential dwelling or child-occupied facility where an elevated blood lead (EBL) inspection has been conducted and shall provide a copy of this report to the owner and the occupant of the dwelling. The report shall include, at least:

(1) Date of each elevated blood lead (EBL) inspection;

(2) Address of building;

(3) Date of construction;

(4) Apartment numbers (if applicable);

(5) The name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;

(6) Name, signature, and certification number of each certified elevated blood lead (EBL) inspector/risk assessor conducting the investigation;

(7) Name, address, and telephone number of each laboratory conducting an analysis of collected samples;

(8) Each testing method and device and sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any X-ray fluorescence (XRF) device;

(9) Specific locations of each painted component tested for the presence of lead-based paint;

(10) The results of the inspection expressed in terms appropriate to the sampling method used;

(11) A description of the location, type, and severity of identified lead-based paint hazards, and any other potential lead hazards; and

(12) A description of interim controls and abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

e. A certified elevated blood lead (EBL) inspector/risk assessor shall maintain a written record for each residential dwelling or child-occupied facility where an elevated blood lead (EBL) inspection has been conducted for no fewer than ten years. The record shall include, at least:

(1) A copy of the written report required by paragraph 70.6(3)*"d."*

(2) Blood lead test results for the elevated blood lead (EBL) child.

(3) A record of conversations held with the owners and occupants of each residential dwelling or child-occupied facility prior to, during, and after the EBL inspection.

(4) Records of follow-up visits made to each residential dwelling or child-occupied facility where lead-based paint hazards are identified to ensure that lead-based paint hazards are safely repaired.

70.6(4) A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor must conduct lead hazard screens according to the following standards. Beginning March 1, 2000, lead hazard screens shall be conducted only by a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor.

a. Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child under the age of six years shall be collected.

b. A visual inspection of the residential dwelling or child-occupied facility shall be conducted to determine if any deteriorated paint is present and to locate at least two dust sampling locations.

c. If deteriorated paint is present, each surface with deteriorated paint which is determined to have a distinct painting history must be tested for the presence of lead.

d. In residential dwellings, two composite dust samples shall be collected. One sample shall be collected from the floors and the other from the window well and window trough in rooms, hallways, or stairwells where at least one child under the age of six years is most likely to come in contact with dust.

e. In multifamily dwellings and child-occupied facilities, a composite dust sample shall also be collected from common areas where at least one child under the age of six years is likely to come in contact with dust.

f. Dust samples shall be collected using the documented methodologies specified in the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development). Dust samples shall be analyzed by a recognized laboratory to determine the level of lead.

g. Paint shall be sampled using adequate quality control by X-ray fluorescence or by laboratory analysis using a recognized laboratory to determine the presence of lead-based paint on a surface.

h. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall prepare a written report for each residential dwelling or child-occupied facility where a lead hazard screen is conducted and shall provide a copy of this report to the person requesting the lead hazard screen. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall maintain a copy of each written report for no fewer than three years. The report shall include, at least:

(1) Date of each lead hazard screen;

(2) Address of building;

(3) Date of construction;

(4) Apartment numbers (if applicable);

(5) The name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;

(6) Name, signature, and certification number of each certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor conducting the investigation;

(7) Name, address, and telephone number of each recognized laboratory conducting an analysis of collected samples;

(8) Results of the visual inspection;

(9) Each testing method and device and sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any X-ray fluorescence (XRF) device;

(10) Specific locations of each painted component tested for the presence of lead-based paint;

(11) All results of laboratory analysis of collected paint, dust, and soil samples;

(12) Any other sampling results;

(13) Background information collected regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child under the age of six years; and

(14) Recommendations, if warranted, for a follow-up lead inspection or risk assessment, and, as appropriate, any further actions.

70.6(5) A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor must conduct risk assessments according to the following standards. Beginning March 1, 2000, risk assessments shall be conducted only by a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor.

a. Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child under the age of six years shall be collected.

b. A visual inspection for risk assessment shall be undertaken to locate the existence of deteriorated paint and other potential lead hazards and to assess the extent and causes of the paint deterioration.

c. If deteriorated paint is present, each surface with deteriorated paint which is determined to have a distinct painting history must be tested for the presence of lead.

d. Accessible, friction, and impact surfaces having a distinct painting history shall be tested for the presence of lead.

e. In residential dwellings, dust samples shall be collected from the windowsill, window trough, and floor in all living areas where at least one child is most likely to come in contact with dust. Dust samples may be either composite or single-surface samples.

f. In multifamily dwellings and child-occupied facilities, dust samples shall also be collected from common areas adjacent to the sampled residential dwellings or child-occupied facility and in other common areas where the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor determines that at least one child under the age of six years is likely to come in contact with dust. Dust samples may be either composite or single-surface samples.

g. In child-occupied facilities, dust samples shall be collected from the window well, window trough, and floor in each room, hallway, or stairwell utilized by one or more children, under the age of six years, and in other common areas where the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor determines that at least one child under the age of six years is likely to come in contact with dust. Dust samples may be either composite or single-surface samples.

h. Soil samples shall be collected in exterior play areas and drip line/foundation areas where bare soil is present.

i. Dust samples, soil, and paint samples shall be collected using the documented methodologies specified in the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development). Dust and soil samples shall be analyzed by a recognized laboratory to determine the level of lead.

j. Paint shall be sampled using adequate quality control by X-ray fluorescence or by laboratory analysis using a recognized laboratory to determine the presence of lead-based paint on a surface.

k. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall prepare a written report for each residential dwelling or child-occupied facility where a risk assessment is conducted and shall provide a copy of the report to the person requesting the risk assessment. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall maintain a copy of the report for no fewer than three years. The report shall include, at least:

(1) Date of each risk assessment;

(2) Address of building;

(3) Date of construction;

(4) Apartment numbers (if applicable);

(5) The name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;

(6) Name, signature, and certification number of each certified lead inspector/risk assessor conducting the investigation;

(7) Name, address, and telephone number of each recognized laboratory conducting an analysis of collected samples;

(8) Results of the visual inspection;

(9) Each testing method and device and sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any X-ray fluorescence (XRF) device;

(10) Specific locations of each painted component tested for the presence of lead-based paint;

(11) All results of laboratory analysis of collected paint, dust, and soil samples;

(12) Any other sampling results;

(13) Background information collected regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child under the age of six years;

(14) To the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint hazards;

(15) A description of the location, type, and severity of identified lead-based paint hazards, and any other potential lead hazards; and

(16) A description of interim controls and abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

70.6(6) A certified lead abatement contractor or certified lead abatement worker must conduct lead abatement according to the following standards. Beginning March 1, 2000, lead abatement shall be conducted only by a certified lead abatement contractor or a certified lead abatement worker.

a. A certified lead abatement contractor must be on site during all work site preparation and during the postabatement cleanup of work areas. At all other times when lead abatement is being conducted, the certified lead abatement contractor shall be on site or available by telephone, pager, or answering service, and be able to be present at the work site in no more than two hours.

b. A certified lead abatement contractor shall ensure that lead abatement is conducted according to all federal, state, and local requirements.

c. A certified lead abatement contractor shall notify the department at least seven days prior to the commencement of lead abatement in a residential dwelling or child-occupied facility.

d. A certified lead abatement contractor or a certified project designer shall develop an occupant protection plan for all lead abatement projects prior to starting lead abatement and shall implement the occupant protection plan during the lead abatement project. The occupant protection plan shall be unique to each residential dwelling or child-occupied facility. The occupant protection plan shall describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards.

e. Approved methods must be used to conduct lead abatement and prohibited work practices must not be used to conduct lead abatement. The following are prohibited work practices:

(1) Open-flame burning or torching of lead-based paint.

(2) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint unless used with High Efficiency Particulate Air (HEPA) exhaust control that removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency.

(3) Uncontained water blasting of lead-based paint.

(4) Dry scraping or dry sanding of lead-based paint except in conjunction with the use of a heat gun or around electrical outlets.

(5) Operating a heat gun at a temperature at or above 1100 degrees Fahrenheit.

f. Soil abatement shall be conducted using one of the following methods:

(1) If soil is removed, the lead-contaminated soil shall be replaced with soil that is not lead-contaminated.

(2) If soil is not removed, the lead-contaminated soil shall be permanently covered.

g. Postabatement clearance procedures shall be conducted by a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor using the following procedures:

(1) Following an abatement, a visual inspection shall be performed to determine if deteriorated paint surfaces or visible amounts of dust, debris, or residue are still present. If deteriorated paint surfaces or visible amounts of dust, debris, or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures.

(2) Following the visual inspection and any required postabatement cleanup, clearance sampling for lead-contaminated dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite dust sampling.

(3) Dust samples shall be collected a minimum of one hour after the completion of final postabatement cleanup activities.

(4) Dust samples shall be collected using the documented methodologies specified in the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development). Dust samples shall be analyzed by a recognized laboratory to determine the level of lead.

(5) The following postabatement clearance activities shall be conducted as appropriate based upon the extent or manner of abatement activities conducted in the residential dwelling or child-occupied facility:

1. After conducting an abatement with containment between abated and unabated areas, one dust sample shall be taken from one windowsill and window trough (if available) and one dust sample shall be taken from the floor of no fewer than four rooms, hallways, or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are fewer than four rooms, hallways, or stairwells within the containment area, then all rooms, hallways, and stairwells shall be sampled.

2. After conducting an abatement with no containment, two dust samples shall be taken from no fewer than four rooms, hallways, or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one windowsill and window trough (if available) and one dust sample shall be taken from the floor of each room, hallway, or stairwell selected. If there are fewer than four rooms, hallways, or stairwells within the containment area, then all rooms, hallways, and stairwells shall be sampled.

3. Following an exterior abatement, a visual inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surface shall be found to be cleaned of visible dust and debris. In addition, a visual inspection shall be conducted to determine the presence of paint chips on the drip line or next to the foundation below any exterior surface abated. If visible dust, debris, or paint chips are present, they must be removed from the site and properly disposed of according to all applicable federal, state, and local standards.

(6) The rooms, hallways, and stairwells selected for sampling shall be selected using the documented methodologies specified in the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development).

(7) The certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall compare the residual lead level as determined by the laboratory analysis from each dust sample with applicable clearance levels for lead in dust on floors and window troughs. If the residual lead levels in a dust sample exceed the clearance levels, then all the components represented by the failed dust sample shall be recleaned and retested until clearance levels are met.

h. In a multifamily dwelling with similarly constructed and maintained residential dwellings, random sampling for the purpose of clearance may be conducted if the following conditions are met:

(1) The certified lead abatement contractors and certified lead abatement workers who abate or clean the dwellings do not know which residential dwellings will be selected for the random sampling.

(2) A sufficient number of residential dwellings are selected for dust sampling to provide a 95 percent level of confidence that no more than 5 percent or 50 of the residential dwellings (whichever is smaller) in the randomly sampled population exceed the appropriate clearance levels.

(3) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to the procedures found in paragraph 70.6(6)*"g."*

i. The certified lead abatement contractor or a certified project designer shall prepare an abatement report containing the following information:

(1) Starting and completion dates of the lead abatement project.

(2) The name and address of each certified lead abatement contractor and certified lead abatement worker conducting the abatement.

(3) The occupant protection plan required by paragraph 70.6(6)*"d."*

(4) The name, address, and signature of each certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor conducting clearance sampling, the date on which the clearance testing was conducted, and the results of all postabatement clearance testing and all soil analyses, if applicable.

(5) The name and address of each laboratory that conducted the analysis of clearance samples and soil samples.

(6) A detailed written description of the lead abatement project, including lead abatement methods used, locations of rooms and components where lead abatement occurred, reasons for selecting particular lead abatement methods, and any suggested monitoring of encapsulants or enclosures.

(7) Maintain all reports and plans required in this subrule for a minimum of three years.

(8) Provide a copy of all reports required by this subrule to the building owner who contracted for the lead abatement.

70.6(7) A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified visual risk assessor must conduct visual risk assessments according to the following standards. Beginning March 1, 2000, visual risk assessments shall be conducted only by a certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified visual risk assessor.

a. Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child under the age of six years shall be collected.

b. A visual inspection for risk assessment shall be undertaken to locate the existence of deteriorated paint and other potential lead hazards and to assess the extent and causes of the paint deterioration.

c. A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified visual risk assessor shall prepare a written report for each residential dwelling or child-occupied facility where a visual risk assessment is conducted and shall provide a copy of the report to the person requesting the visual risk assessment. A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified visual risk assessor shall maintain a copy of the report for no fewer than three years. The report shall include, at least:

(1) Date of each visual risk assessment;

(2) Address of building;

(3) Date of construction;

(4) Apartment numbers (if applicable);

(5) The name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;

(6) Name, signature, and certification number of each certified visual risk assessor, certified lead inspector/risk assessor, or certified elevated blood lead (EBL) inspector/risk assessor conducting the visual risk assessment;

(7) Specific locations of painted components identified as likely to contain lead-based paint and likely to be lead-based paint hazards; and

(8) Information for the owner and occupants on how to reduce lead hazards in the residential dwelling or child-occupied facility.

70.6(8) A certified elevated blood lead (EBL) inspection agency shall maintain the written records for all elevated blood lead (EBL) inspections conducted by persons that the agency employs or contracts with to provide elevated blood lead (EBL) inspections in the agency's service area.

70.6(9) A person may be certified as a lead inspector/risk assessor, visual risk assessor, or elevated blood lead (EBL) inspector/risk assessor and as a lead abatement contractor or lead abatement worker. However, a person who is certified both as a lead inspector/risk assessor, visual risk assessor, or elevated blood lead (EBL) inspector/risk assessor and as a lead abatement contractor or lead abatement worker shall not provide both lead inspection or visual risk assessment and lead abatement services at the same site unless a written consent or waiver, following full disclosure by the person, is obtained from the owner or manager of the site.

70.6(10) Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in this rule shall be collected by persons certified as a lead inspector/risk assessor or an elevated blood lead (EBL) inspector/risk assessor. These samples shall be analyzed by a recognized laboratory.

70.6(11) Composite dust sampling shall be conducted only in the situations specified in subrules 70.6(4) to 70.6(6). If composite sampling is conducted, it shall meet the following requirements:

a. Composite dust samples shall consist of at least two subsamples.

b. Every component that is being tested shall be included in the sampling.

c. Composite dust samples shall not consist of subsamples from more than one type of component.

641—70.7(135) Firms. Firms that perform or offer to perform lead-based paint activities shall employ only appropriately certified employees to conduct lead-based paint activities, and the firm and its employees shall follow the work practice standards in 641—70.6(135) for conducting lead-based paint activities.

641—70.8(135) Enforcement.

70.8(1) The department may enter premises or facilities where violations of the provisions regarding lead-based paint activities may occur for the purpose of conducting inspections.

70.8(2) The department may enter premises or facilities where training programs conduct business.

70.8(3) The department may take samples and review records as part of the lead-based paint activities inspection process.

70.8(4) The following are considered to be in violation of this chapter:

a. Failure or refusal to comply with any requirements of rules 70.3(135) to 70.6(135).

b. Failure or refusal to establish, maintain, provide, copy, or permit access to records or reports as required by rules 70.3(135) to 70.6(135).

c. Failure or refusal to permit entry or inspection as described in subrules 70.8(1) to 70.8(3).

d. Obtaining certification through fraudulent representation.

e. Failing to obtain certification from the department and performing work requiring certification at a job site.

f. Fraudulently obtaining certification and engaging in any lead-based paint activities requiring certification.

g. Violators are subject to civil penalties pursuant to Iowa Code section 135.105A.

641—70.9(135) Denial, suspension or revocation of certification and denial, suspension, revocation, or modification of course approval.

70.9(1) The department may deny an application for certification, or may suspend or revoke a certification, when it finds that the applicant or certified lead professional has committed any of the following acts:

a. Obtained documentation of training through fraudulent means.

b. Gained admission to and completed an accredited training program through misrepresentation of admission requirements.

c. Obtained certification through misrepresentation of certification requirements or related documents dealing with education, training, professional registration, or experience.

d. Performed work requiring certification at a job site without having proof of certification.

e. Permitted the duplication or use of the individual's own certificate by another.

f. Performed work for which certification is required, but for which appropriate certification has not been received.

g. Failed to follow the standards of conduct required by rule 70.6(135).

h. Failed to comply with federal, state, or local lead-based paint statutes and regulations.

70.9(2) The department may deny, suspend, revoke, or modify the approval for a course when it finds that the training program, training manager, or other person with supervisory authority over the course has:

a. Misrepresented the contents of a training course to the department or to the student population.

b. Failed to submit required information or notifications in a timely manner.

c. Failed to maintain required records.

d. Falsified approval records, instructor qualifications, or other information or documentation related to course approval.

e. Failed to comply with the training standards and requirements in rule 70.4(135).

f. Made false or misleading statements to the department in its application for approval or reapproval which the department relied upon in approving the application.

70.9(3) Complaints. Complaints regarding a certified lead professional or an approved course shall be submitted in writing to the Iowa Department of Public Health, Lead Poisoning Prevention Program, 321 East 12th Street, Des Moines, Iowa 50319-0075. The complainant shall provide:

a. The name of the certified lead professional and the specific details of the action(s) by the certified lead professional that did not comply with the rules, or

b. The name of the sponsoring person or organization of an approved course and the specific way(s) that an approved course did not comply with the rules.

70.9(4) Appeals.

a. Notice of denial, suspension or revocation of certification, or denial, suspension, revocation, or modification of course approval shall be sent to the affected individual or organization by restricted certified mail, return receipt requested, or by personal service. The affected individual or organization shall have a right to appeal the denial, suspension or revocation.

b. An appeal of a denial, suspension or revocation shall be submitted by certified mail, return receipt requested, within 30 days of the receipt of the department's notice to the Iowa Department of Public Health, Lead Poisoning Prevention Program, 321 East 12th Street, Des Moines, Iowa 50319-0075. If such a request is made within the 30-day time period, the notice of denial, suspension or revocation 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 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, suspension or revocation. If no appeal is submitted within 30 days, the denial, suspension or revocation shall become the department's final agency action.

c. Upon receipt of an appeal that meets contested case status, the appeal shall be transmitted to the department of inspections and appeals within five working days of receipt pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the denial, suspension or revocation is based shall be provided to the department of inspections and appeals.

d. 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.

e. 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. The 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 paragraph 70.9(4)*"f."*

f. 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 appeal shall state the reason for appeal.

g. Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing or submission to the director. The record shall include the following:

(1) All pleadings, motions, and rulings.

(2) All evidence received or considered and all other submissions by recording or transcript.

(3) A statement of all matters officially noticed.

(4) All questions and offers of proof, objection, and rulings thereon.

(5) All proposed findings and exceptions.

(6) The proposed findings and order of the administrative law judge.

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

i. 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.

j. 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 to the Iowa Department of Public Health, Lead Poisoning Prevention Program, 321 East 12th Street, Des Moines, Iowa 50319-0075.

k. 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.

70.9(5) Public notification.

a. The public shall be notified of the suspension, revocation, modification, or reinstatement of course approval through appropriate mechanisms.

b. The department shall maintain a list of courses for which the approval has been suspended, revoked, modified, or reinstated.

641—70.10(135) Waivers. Rules in this chapter are not subject to waiver or variance pursuant to 641—Chapter 178 or any other provision of law.

These rules are intended to implement Iowa Code section 135.105A.

[Filed emergency 9/16/96—published 10/9/96, effective 9/16/96]
[Filed 1/9/97, Notice 10/9/96—published 1/29/97, effective 3/5/97]
[Filed emergency 5/16/97 after Notice 4/9/97—published 6/4/97, effective 5/16/97]
[Filed 1/23/98, Notice 10/22/97—published 2/11/98, effective 3/19/98]
[Filed 11/10/98, Notice 9/9/98—published 12/2/98, effective 1/6/99]
[Filed emergency 9/17/99—published 10/6/99, effective 9/17/99]
[Filed 11/12/99, Notice 10/6/99—published 12/1/99, effective 1/5/00]◊

◊Two ARCs

CHAPTER 73
SPECIAL SUPPLEMENTAL NUTRITION 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 Nutrition 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, as amended through January 1, 1999, and any additional amendments) 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 contract agencies administering WIC programs. 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: Chief, Bureau of Nutrition and WIC, 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) Definitions.

"Applicant" means a person applying for the WIC program, but not yet a participant of the WIC program.

"Breastfeeding women" means women up to one year postpartum who are breastfeeding their infants.

"Certification" means the implementation of criteria and procedures to assess and document each applicant's eligibility for the program.

"Children" means persons who have had their first birthday but have not yet attained their fifth birthday.

"Competent professional authority" or *"CPA"* means an individual on the staff of the contract agency 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 categories:

1. A dietician licensed by the Iowa board of dietetic examiners;
2. An individual who has been issued a temporary dietetic license by the Iowa board of dietetic examiners;
3. A physician, registered nurse or licensed physician assistant.

"Contract agency" means a private, nonprofit or public agency that has a contract with the department to provide WIC services and receives funds from the department for that purpose.

"Department" means the Iowa department of public health.

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

"Division director" means the director of the division of family and community health, Iowa department of public health.

"Family" means a group of related or nonrelated individuals who are living together as one economic unit, except that residents of a homeless facility or an institution shall not all be considered as members of a single family.

"HAWK-I" means healthy and well kids in Iowa and is the health insurance program in Iowa, as authorized in Title XXI of the Social Security Act.

"Health professional" means an individual who is licensed to provide health care or social services within the individual's scope of practice.

"Health services" means ongoing, routine pediatric and obstetric care (such as infant and child care and prenatal and postpartum examinations) or referral for treatment.

"Hearing officer" means the contract agency director, health professional, community leader or impartial citizen who is designated to hear the appeal of a participant, and is not to be confused with the statutory definition of a hearing officer, which is an administrative law judge.

"Infants" means persons under one year of age.

"Nutritional risk" means: (a) detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements; (b) other documented nutritionally related medical conditions; (c) dietary deficiencies that impair or endanger health; or (d) conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions.

"Nutrition education" means individual or group education sessions and the provision of information and educational materials designed to improve health status, achieve positive change in dietary habits, and emphasize relationships between nutrition and health, all in keeping with the individual's personal, cultural, and socioeconomic preferences.

"Participants" means pregnant women, breastfeeding women, postpartum women, infants and children who are receiving supplemental foods under the program, and the breastfed infants of participant breastfeeding women.

"Postpartum women" means women up to six months postpregnancy.

"Pregnant women" means women determined to have one or more embryos or fetuses in utero.

"Program" means the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) authorized by Section 17 of the Child Nutrition Act of 1966.

"Vendor" means a retail outlet that provides supplemental food to WIC program participants.

641—73.6(135) Staffing of contract agencies.

73.6(1) Rescinded IAB 10/9/96, effective 11/13/96.

73.6(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.

73.6(3) Contract agencies shall maintain on file documentation of qualifications for any individual employed or under contract as a licensed dietitian or nutrition educator.

73.6(4) All contract agencies shall employ at least one licensed dietitian to provide services for participants determined to be at high risk. Nutrition educators employed by a contract agency shall be supervised by a licensed dietitian.

73.6(5) Rescinded IAB 10/9/96, effective 11/13/96.

73.6(6) Contract agencies shall submit the license number of each dietitian hired within 30 days of employment.

73.6(7) Proposed staffing patterns within contract agencies shall be subject to approval from the department following review in accord with established statewide WIC staff patterns.

641—73.7(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:

73.7(1) *Application.* The WIC Certification Forms shall be completed by every family at the initial certification. The only exception is the pre-certification of Priority II infants, with referral data, whose parent/custodian is allowed a maximum of six weeks to complete the forms. Certification forms are signed and dated by the applicant or the parent/custodian.

If an individual indicates on the Health Services Application, Form 470-2927, that the individual wishes to also apply for Medicaid, child health, or maternal health services, the contract agency shall forward the appropriate copy to the indicated agency within two working days. If the individual appears to qualify for HAWK-I, the individual will be given the HAWK-I enrollment form.

73.7(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 provide the contract agency written declaration of their income as part of each certification process. Contract agencies may verify income in accord with procedures outlined in the Iowa WIC Policy and Procedure Manual.

73.7(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 contract agency's offices. A visit to another program 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. Blood work data used for determining nutritional risk shall be collected no more than 90 days before or after the date of certification.

d. Priority II infants pre-certified with referral data require a full certification within six weeks of the infant's birth.

73.7(4) *Medical equipment.*

a. Medical equipment used in conducting WIC clinics shall be subject to approval by the department.

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.

73.7(5) *Documentation of medical information.* Medical documentation in individual participant records shall be as described in the Iowa WIC Policy and Procedure Manual.

73.7(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.

73.7(7) *Transfer of participant information.* All medical and nonmedical information collected on a program participant, if transferred to other contract agencies, to the department, or retained as confidential shall be handled in accord with procedures described in the Iowa WIC Policy and Procedure Manual.

641—73.8(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.

73.8(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. Claiming food checks. Enrolled participants are required to appear in person to claim checks when they have appointments to certify or have nutrition education contacts. Missed attendance may entitle contract agencies to deny that month's benefit. If a written statement is provided to the contract agency, a proxy may pick up checks not more than twice during a single certification period. Under limited circumstances, a permanent proxy may be approved by the contract agency.

c. Adherence to standards for use of the food check. 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) Not accept money in exchange for unused checks or portions of the food allotment.

(6) Attempt to redeem checks only with a WIC-contracted vendor.

73.8(2) *Responsibilities of contract agencies.*

a. Loss or theft of checks. The contract 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. Mailing of checks to participants is allowed when inclement weather prevents participants from coming to a distribution site. Any mailing of WIC checks on a clinicwide basis must have prior approval from the state.

c. Use of manual checks. Manually written checks shall be issued only when:

(1) Computer checks arrive damaged or mutilated, or are lost or stolen after being issued to participant.

(2) Computer checks are not available due to error in entering participant data, delay or loss in shipping, or a need to change the food package.

d. Training/monitoring of WIC vendors. The contract agency shall communicate information regarding the Iowa WIC program to vendors, as instructed by the department. Monitoring and training of vendors and annual securement of contracts shall be carried out in accord with department 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 contract agency on or before the clinic day of the participant's inability to appear at the clinic. Each contract agency shall establish written guidelines for assessing the adequacy of reasons presented for inability to appear and shall establish written procedures for alternative 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 department.

73.8(3) *Responsibilities of department.* Provision of foods through retail grocers and special purpose vendors 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 vendors (retail grocers and special purpose vendors) may be limited and that all vendors 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 73.8(4) and meet the minimum review points in 73.8(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, compliance buys, or educational buy monitoring as defined in 73.8(5).

d. Determining when compliance buying activities are necessary to verify 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 as required.

e. Providing written notice to vendors of program violations and sanctions.

73.8(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. Grocery vendor agreement. To qualify for a grocery vendor agreement with the Iowa WIC program, a retail outlet 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.

(3) The vendor must stock the following varieties and minimum quantities of WIC approved foods:

1. A minimum of two boxes of each of six varieties of cold, ready-to-eat cereals and two boxes of one variety of hot cereal from the current WIC approved food list.
2. A minimum of 15 46-ounce containers of 100 percent fruit or vegetable juice and 10 12-ounce containers of frozen 100 percent fruit or vegetable juice from the current WIC approved food list. This shall include an assortment of at least three approved canned or bottled (plastic only) varieties of orange, pineapple, grapefruit, apple, grape, vegetable, or tomato, and two frozen varieties of orange, pineapple, grapefruit, grape or apple.
3. A minimum of four gallons of whole fluid milk and four gallons of either low fat, reduced fat, or fat-free fluid milk, and two 1-pound packages each of two approved varieties of cheese.
4. A minimum of two 1-pound bags of edible dried beans or peas, any variety.
5. A minimum of two containers, 18-ounce size or less, of 100 percent peanut butter.
6. A minimum of five dozen large fresh eggs, white or brown.

7. A minimum of four pounds of raw full-size or baby carrots.
8. A minimum of eight cans of tuna, 6-ounce minimum size.
9. Upon request by a participant, a minimum of 31 cans of 13-ounce concentrated infant formula as specified, or the equivalent amount of powdered formula, plus 24 ounces of dry infant cereal.

The specific brands of products that are included on the WIC approved food list shall be made available to the vendor at the time of application and prior to renewal of each agreement.

The variety and quantity in stock are defined as including both inventory on display and in on-premises storage, but not inventory on order from suppliers.

(4) A vendor shall charge a price to WIC participants that is equal to or less than the price charged to all other customers. The prices charged to WIC participants for the average of all WIC items, as reported on the application, at the time of on-site review, and throughout the agreement period, shall not exceed 105 percent of the average prices of all other WIC vendors in the same city or metropolitan area. For purposes of the comparison, a metropolitan area is defined as including the principal city or cities and all contiguous incorporated areas. The vendor's average price for any category of WIC items, as reported on the application, at the time of the on-site review, and throughout the agreement period, shall not exceed 115 percent of the average for the same category by all other WIC vendors in the city or metropolitan area. Categories refer to the groupings of items identified in subparagraph (3), "1" to "9." For purposes of making the price comparisons, the average price for all other WIC vendors in the area shall be computed from the most recent Price Assessment Reports on file from those vendors. If a vendor intends to comply with this provision by charging WIC participants a lower price than the price charged to other customers, the WIC price for each approved item must be identified on the package or shelf front.

(5) There must be a minimum of five current WIC participants residing in the same ZIP code area as the vendor.

(6) The vendor must not have had a Food Stamp Program disqualification or civil monetary penalty imposed within the 12 months preceding the date of the application or reauthorization.

(7) The vendor must not have had a WIC program suspension imposed or a WIC application denied within the six-month period preceding the date of the application.

(8) The vendor must accept training on WIC program regulations prior to signing an agreement and must agree to provide training to all employees who will handle WIC food checks prior to accepting any checks.

(9) The vendor must agree to adhere to all provisions of the WIC Grocery Vendor Agreement and Instruction Booklet.

b. Special purpose vendor. To qualify as a special purpose vendor, a retail outlet shall meet all of the following criteria:

(1) The vendor may be primarily a retailer of any type of merchandise but shall be authorized to provide only specified infant formula in exchange for WIC food checks.

(2) The vendor must be able to provide the specified formula within 48 hours; 72 hours if a weekend or holiday is involved.

(3) The prices charged WIC participants must be equal to or less than the prices charged all other customers. The average price of each brand of infant formula sold to WIC participants as reported must not exceed the average price of the same brands of infant formula charged by all authorized WIC grocery vendors in the same city or metropolitan area, as defined above.

(4) The vendor shall meet the criteria in subparagraphs (2), (5), (6), (7), and (8) for grocery vendors as specified above.

(5) The vendor must agree to adhere to all provisions of the WIC Special Purpose Agreement and Instruction Booklet.

The department shall review each vendor application within five working days of receipt and determine if the information provided indicates that the retail outlet meets the selection criteria. If the application shows that the vendor does not meet one or more of the criteria, the department shall deny the application. If the vendor's application indicates that the vendor would qualify, the department or contract agency shall make an on-site visit to verify that the information provided in the application is correct, to provide training, and sign the agreement. If the contract agency or department determines during the on-site visit that the vendor does not qualify, the contract agency or department shall not sign the agreement. Within five working days of disapproving an application or agreement, the department will advise the vendor in writing of the reasons for denial of the application and the procedure for appeal. During the on-site visit, the contract agency representative is acting as an agent of the department and has the authority to approve or deny an application.

A vendor that is denied an agreement, either at the application review level or at the on-site review, is required to wait six months prior to submitting a new application. The department may, at its discretion, request a vendor to resubmit an application prior to completing its review if the application has not been completed to the extent that a determination of eligibility can be made.

c. Reauthorization. If ownership of an authorized vendor changes during the agreement period, the agreement becomes void. The new owner must file an application and be approved prior to accepting WIC checks. Vendor agreements are valid only for the period of time specified and a vendor may not continue accepting checks past the expiration date unless a new agreement is signed. When a currently authorized vendor makes application for a subsequent agreement, an agreement shall be signed only if the vendor has a score of at least 40 review points. A vendor that meets the minimum qualifications for new vendors is awarded 100 review points. Points assessed during the previous 24 months for administrative and procedural violations under 73.19(2)*"b"* are then subtracted to determine the final score.

Vendors with a current WIC agreement are not required to complete a new written application each year if the information in their original application is substantially unchanged. The department may request a new application from any vendor prior to offering a new agreement if it has reason to believe the information in the original is no longer correct or the vendor may no longer be eligible for an agreement.

The department shall send the vendor written notice at least 30 days prior to the expiration of the agreement that it does not intend to offer the vendor a new agreement if the minimum review points are not met or if any of the following conditions are in effect:

1. The vendor has failed to submit any of the preceding year's Price Assessment Reports by the specified dates.
2. The vendor has not cashed any WIC checks for at least two consecutive months. This provision does not apply to special purpose vendors.
3. Any of the selection criteria listed in 73.8(4)*"a"* and *"b"* above are no longer met.

Expiration of a WIC agreement is not subject to appeal. A vendor who is not offered a new agreement by the department has the right to file a new application. If that application is denied, the vendor has the right to appeal.

Contract 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 contract 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 department or contract agency.

e. Validity of checks. The WIC vendor shall be responsible for ensuring that:

(1) The participant countersignature required on the food check is completed in the vendor's presence, and that both signatures on the food check 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 department 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 15 days of the date of receipt;

(9) The costs of foods purchased by WIC participants do not exceed charges to other customers for the same foods;

(10) The vendor's authorizing number is stamped with the state-issued vendor stamp on the face of the check prior to its being presented for payment.

f. Cooperation during monitorings. Contracted WIC vendors shall cooperate with department and contract agency staff who are present on site to monitor the store's WIC activities.

g. Reimbursement to the program. Vendors determined by the department to have collected more moneys than the true value of food items received shall make reimbursement to the department.

73.8(5) *Vendor monitoring.* To maintain program integrity and accountability for federal or state program funds, the department and contract agencies shall conduct ongoing monitoring of authorized vendors, both through on-site visits and through indirect means. A random sample of 10 percent of vendors receives on-site monitoring every year. Vendors that change ownership during the year, or apply during the contract period, receive an on-site visit prior to signing an agreement. 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 contract agency staff under the direction of the department. Depending on the nature and severity of violations noted, the department 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, department or contract 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 90 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 department or contract 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 Iowa WIC Policy and Procedure Manual.

b. Electronic monitoring is examination of indicators tracked in the vendor computer database. It allows the analysis of data collected via computer from the contract agencies and the state's bank, from which patterns indicating compliance with or deviation from established patterns for Iowa WIC vendors emerge. Data is collected daily and reviewed on an ongoing basis. Trends identified can necessitate another type of monitoring, depending on the nature of each exception.

c. 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, examination of electronic monitoring indicators, volume of WIC redemptions, number of identified errors, participant complaints, and review of store policies on returned items. High-risk monitoring may be performed by the department or by contract agency staff under the direction of the department. Educational buying shall be included whenever possible.

d. Compliance buys may be used for any vendors. Compliance buys include covert activities used to document grounds for suspension from the program and may include purchase of unauthorized items. Compliance buys 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 buy documenting program violations, the department shall issue the vendor a notice of violation points assessed or suspension.

The department also monitors vendor performance through in-office review of information. Such information, specifically the total amount of WIC redemptions, 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—73.9(135) Food package. The authorized supplemental foods shall be prescribed for participants by a licensed dietitian in the contract agency from food packages outlined in 7 CFR 246.10 and in accord with the following rules.

73.9(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 contract 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 73.9(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 participant preferences, to accommodate household conditions such as lack of refrigeration or other special needs and problems of homeless or transient participants, and to recommend or prescribe specific forms of the allowable WIC foods based upon a participant's nutritional needs or goals.

c. Additional contract agency tailoring policies shall be submitted to the department for approval before being implemented. Tailoring policies based on reasons such as age or category of participant will not be approved.

73.9(2) *Tailoring to meet individual nutrition needs.* Food packages are individually tailored to meet the needs of specific participants. The following administrative adjustments by the department and nutrition tailoring guidelines for contract agencies are followed in tailoring food packages.

a. Infants, 0-12 months:

(1) Administrative adjustments. Ready-to-feed formula is provided only when the caretaker is unable to prepare formula of the proper dilution from powder or concentrate, or in other special situations as determined by the licensed dietitian. In circumstances of contaminated water supply, ready-to-feed formula can be issued on a month-to-month basis until an alternative source of water is found. The provision of ready-to-feed formula requires documentation of the special situation in the nutrition care plan in the participant's file. Due to cost, only regular juice is provided as part of the infant food package.

(2) Nutrition tailoring. Infants are defined as breastfed, supplemented, or formula-fed. A breastfed infant does not receive any formula from WIC. A supplemented infant may receive up to seven pounds of powdered formula per month. A formula-fed infant receives eight pounds of powdered or 403 ounces of concentrate formula per month. A breastfeeding mother of an infant who does not receive any formula from WIC is eligible to receive an enhanced food package containing additional quantities and types of WIC authorized foods. The mother of a supplemented infant may remain eligible because she is still breastfeeding. Food packages for the mother and infant are tailored appropriately to their feeding patterns.

Federal regulations require the issuance of 20 Kcal per ounce, iron-fortified infant formula (formula containing at least 10 milligrams of iron per liter) to infants under 12 months of age. The provision of cow's milk in lieu of formula is not allowed. Formulas concentrated above 20 Kcal/ounce or specially formulated in other ways can be provided when a physician determines that an infant has a medical condition which contraindicates the use of a formula as described above. The department reserves the right to add or decline to add formulas to the state's approved list.

Infant formula that is not fortified with iron to this level (low iron) may be provided without prior approval by the department for documented cases of hemolytic anemia or hemochromatosis. Other requests for low-iron formula will be evaluated by a licensed dietitian at the contract agency on a case-by-case basis.

Juice and infant cereal are provided to infants beginning the month the infant becomes six months of age.

b. Special children and women:

(1) Administrative adjustments—none

(2) Nutrition tailoring—none

c. Children (1-5 years) and pregnant, breast-feeding, or postpartum women:

(1) Administrative adjustments. No sliced, shredded, grated, or string cheese is provided due to cost. Approved fluid juice shall be packaged in a 46-ounce container. Approved frozen juice shall be packaged in a 12-ounce container.

The food package is adjusted to accommodate the special needs of homeless and transient participants. Nonrefrigerated orange or grapefruit juice in small serving containers may be provided. The reason for providing single-serving containers must be documented in the nutrition care plan. No tuna in cans containing less than 6 ounces is allowed due to cost. No frozen or canned carrots will be allowed in the enhanced food package for breast-feeding women. Fresh carrots will be provided due to their widespread availability and acceptability.

(2) Nutrition tailoring. No American cheese is allowed due to its high sodium and fat content. Cheese may be substituted for milk up to a normal maximum of two pounds per month. If a participant cannot or will not drink milk, up to four pounds of cheese may be substituted for milk. If more than two pounds is provided, the reason for providing the additional cheese must be documented in the nutrition care plan for the participant.

Food quantities are not tailored for children who participate in Head Start or other child feeding programs. A limit may not be established on the number of participants per household who can receive peanut butter in lieu of dried beans.

73.9(3) *Criteria for approving products for inclusion in the WIC food package.*

a. A product shall meet the federal regulations governing the WIC food package.

b. Variety in the food package is encouraged to increase the likelihood of products being used as well as to allow participants to exercise responsibility in shopping.

c. Changes to the approved food list are made once a year, taking effect on October 1. Inquiries from food companies about new and continuing products must be received annually between November 1 and February 1 to be guaranteed consideration.

d. Cereals shall meet federal guidelines for sugar and iron content and shall also meet the following conditions:

(1) They shall be carried by one of the six largest distributors to vendors in the state.

(2) The product form and marketing approach shall be consistent with the promotion of good nutrition and education.

(3) If a group of cereals from one manufacturer have similar names and package designs and some do not qualify, the department reserves the right to not approve those types that would otherwise qualify, to reduce the potential for confusion by retail vendors and participants.

(4) Ready-to-eat cold cereals are ranked by the six major distributors to Iowa WIC vendors based on volume of total sales. Hot cereals are ranked in the same way. Multiple varieties of a single brand of cereal shall be considered as one brand for the purposes of constructing this ranking. The state office compiles data from all distributors to develop an overall ranking or ranked list. The top 19 cold cereals and the top 2 hot cereals that qualify are selected. This process includes both name-brand and private-label cereals.

(5) Product shall have been available in retail stores in Iowa for one year prior to the effective date of inclusion in the approved food list.

e. Juices shall meet the federal guidelines for vitamin C content and all of the following conditions:

(1) Juices shall be 100 percent juice and contain no added sugar, sweeteners or artificial sweeteners.

(2) Fluid juice shall be packaged in a 46-ounce container. Frozen juice shall be marketed in 12-ounce containers.

(3) The brand shall be carried by one of the six largest distributors in the state.

(4) The product form and marketing approach shall be consistent with the promotion of good nutrition and education.

(5) If a group of juices from one manufacturer have similar names and package designs and some do not qualify, the department reserves the right to not approve those types that would otherwise qualify, to reduce the potential for confusion by retail vendors and participants. Canned and frozen varieties of juice with the same brand name will be evaluated separately.

(6) Calcium-fortified juices shall not be approved.

(7) Product shall have been available in retail stores in Iowa for one year prior to the effective date of inclusion in the approved food list.

(8) Frozen juices must be single flavors of juice.

f. The following conditions apply to dairy products:

(1) To qualify, brands of unflavored whole, low fat, reduced fat, or fat-free milk marketed in Iowa must contain or be fortified with vitamins A and D to meet the federal standards. The department reserves the right to disqualify brands that significantly exceed the average price of other brands or which are marketed as providing additional health benefits.

(2) Fluid milk with added bacterial cultures or enzymes, including but not limited to sweet acidophilus or lactose-reduced milk, may qualify. Brands are approved by the department on a case-by-case basis.

(3) All brands of natural cheese qualify. The cheese shall be in block form (not shredded, sliced, grated or string) and shall have no added flavors (smoke flavoring, peppers, wine, etc.).

(4) No brands of reduced fat or "lite" cheese are approved.

g. All brands of dried beans or peas are approved whether packaged or purchased in bulk, however, no mixes are allowed.

h. Any brand of peanut butter qualifies as long as it does not contain other ingredients such as jelly. Brands may be either refrigerated or nonrefrigerated. No peanut butter spreads are permitted.

i. Eggs shall be fresh, Grade A large or smaller chicken eggs. Specialty eggs, including those with health or nutrition claims or significantly higher prices, shall not be approved.

j. Any brand of tuna qualifies if it is either water- or oil-packed, chunked, solid, or flaked, and is in six-ounce minimum-size cans. Tuna packaged with other items such as crackers or relish may not be purchased.

k. Carrots must be raw and fresh, not canned or frozen; may be either peeled or unpeeled; and may be either full-size or baby carrots.

l. Commercial infant formula shall meet the following conditions:

(1) It shall have registered with the Food and Drug Administration as complying with the legal definition of infant formula.

(2) It shall comply with the calorie and iron content prescribed by the federal WIC regulations, except as provided for in subrule 73.9(2).

(3) It has been approved by the USDA for use in the WIC program.

(4) The product form and marketing approach shall be consistent with the promotion of good nutrition and education.

(5) All of the formula marketed under that label shall meet all standards. If a similar, nonqualifying formula is marketed along with a qualifying formula, participants may be easily confused. Therefore, the qualifying formula shall not be approved.

(6) "Special formulas," as described in the regulations, must be approved by the USDA.

(7) Rescinded IAB 12/1/99, effective 11/12/99.

m. In addition to the criteria specified above, the department reserves the right to further restrict the number of brands of any products in order to contain the cost of the food package through competitive procurement of rebate contracts or other similar means.

641—73.10(135) Education.

73.10(1) *Nutrition education for WIC participants.*

a. Nutrition education is provided as a benefit to all women and to parents of all children enrolled in the program.

b. A minimum of two nutrition education contacts shall be offered to each woman participant or the parent/guardian of children participating in WIC during each certification period.

c. Nutrition education shall be based on information obtained through the diet and health histories and shall be tailored to the specific nutrition need of the participant.

d. All pregnant women enrolled in WIC shall receive education on the benefits of breastfeeding.

e. Education in normal nutrition, i.e., education in nutrition for life-cycle stages, shall be provided by licensed dietitians or nutrition educators who are on the staff of or under contract to the contract agency.

f. Participants who are at high risk, as defined in the Iowa WIC Policy and Procedure Manual, shall receive counseling and a nutrition plan of care developed by a licensed dietitian. The plan of care shall be documented in the participant record and shall include scheduling a minimum of one individual education contact by a licensed dietitian.

g. The department shall make nutrition education materials and resources available at no cost to contract agencies. The department reserves the right to review and approve or disapprove any printed materials or lesson plans developed by contract agencies.

h. To the extent that time and resources are available, nutrition education may be provided to applicants who are not eligible to receive other WIC services.

73.10(2) *Education of contract agency personnel.* Agencies accepting WIC funds shall be responsible for ensuring that all agency staff or contractors are adequately trained for their responsibilities. At a minimum, training shall include the components described in the Iowa WIC Policy and Procedure Manual.

Continuing education is an allowable WIC administrative expense for contract agency staff and contractors who provide nutrition education, subject to approval through the annual grant application process.

641—73.11(135) Health services. The WIC program shall serve in the arrangement of ongoing health services for its participants. Health services are defined to include ongoing, routine pediatric and obstetrical care, and referral for diagnosis and treatment of any other condition. Contract agencies not able to provide such health services directly shall enter into written agreements with other public health agency(ies) or private physician to ensure availability of health services.

73.11(1) *Written agreements.*

a. Contract for services. Contract agencies shall maintain an annual written, contractual agreement with any health agency performing WIC health assessments, whether for fee or exchange of service.

b. Memorandum of understanding. Contract agencies shall maintain a current memorandum of understanding with any health agency designated to provide ongoing health services to WIC participants.

73.11(2) *Referral procedures.* The contract 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 releasing medical or other personal information, including name, to an outside agency, the contract 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. Procedures for responding to a subpoena are made in accord with the Iowa WIC Policy and Procedure Manual.

b. The referral form. A standard referral form, as provided by the department, 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—73.12(135) Appeals and fair hearings—local agencies and vendors.

73.12(1) *Right of appeal.* A local agency or a vendor shall have a right to appeal when a local agency's or 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 contract agencies, a minimum of 60 days' advance notice will be given before the effective date of the action.

73.12(2) *Request for hearing.* An appeal is brought by filing a written request for a 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 ten days of receipt of notification of the adverse action. The written request for hearing shall state the adverse action being appealed.

73.12(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 that may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

73.12(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. If necessary, parties will be provided at least two opportunities to have the hearing rescheduled.

73.12(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.

73.12(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.

73.12(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 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(8).

73.12(8) *Appeal to director.* Any appeal to the director for review of the proposed decision and order of the ALJ shall be filed in writing and mailed to the Director, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the ALJ's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the ALJ. Any request for an appeal shall state the reason for appeal.

73.12(9) *Record of hearing.* Upon receipt of an appeal request, the ALJ 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(10) *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(11) *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 decision of the department who has exhausted all administrative remedies may petition for judicial review pursuant to Iowa Code chapter 17A.

73.12(12) *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.

641—73.13(135) Right to appeal—participant.

73.13(1) *Right of appeal.* A WIC participant shall have the right to appeal whenever a decision or action of the department or contract agency results in the individual's denial of participation, suspension, or termination from the WIC program. All hearings shall be conducted in accordance with these rules.

73.13(2) *Notification of appeal rights and right to hearing.* Each program participant shall be notified in writing of the participant's right to appeal and the procedures for requesting a hearing at the time of application (on Certification Form) and at the time of denial of eligibility or termination from the program (on Denial or Termination of Eligibility Form). Appeal and hearing notices shall also be written, posted, and immediately available at contract agencies to explain the method by which a hearing is requested, and that the participant may present arguments at the hearing either personally or through a representative such as a relative, friend, legal counsel, or other spokesperson.

73.13(3) *Request for hearing.* A request for hearing by an individual or the individual's parent, guardian, or other representative must be made in writing. The request for hearing shall be made to the contract agency within 90 days from the date the individual receives notice of the decision or action that is the subject of appeal.

73.13(4) *Receipt of benefits during appeal.* Participants who are involuntarily terminated from the WIC program prior to the end of the standard certification period shall continue to receive program benefits while the decision to terminate is under administrative appeal, provided that subsequent certifications are completed as required. Participants who are terminated because of categorical ineligibility (e.g., a child over five years of age) shall not continue to receive benefits during the administrative appeal period. Participants who are terminated at the end of a certification period for failure to reapply, following notice of expiration of certification, shall not continue to receive benefits during the administrative appeal period. Applicants who are denied program benefits at the initial certification or at subsequent recertifications, due to a finding of ineligibility, shall not receive benefits during the administrative appeal period.

73.13(5) *Hearing officer.* The hearing officer shall be impartial, shall not have been directly involved in the initial determination of the action being contested, and shall not have a personal stake in the decision. If the party filing the appeal objects prior to a scheduled hearing to a contract agency director serving as a hearing officer in a case involving the director's own agency, another hearing officer shall be selected and, if necessary, the hearing shall be rescheduled as expeditiously as possible. Contract agencies may seek the assistance of the state WIC office in the appointment of a hearing officer.

73.13(6) *Notice of hearing.* The hearing officer shall schedule the time, place and date of the hearing as expeditiously as possible. Parties shall receive notice of the hearing at least ten days in advance of the scheduled hearing. The hearing shall be accessible to the party requesting the hearing. The hearing shall be scheduled within three weeks from the date the contract agency received the request for a hearing, or as soon as possible thereafter, unless a later date is agreed upon by the parties.

73.13(7) *Conduct of hearing.* The hearing shall be conducted in accordance with federal regulations found at 7 CFR Section 246.23. Copies of these regulations are available from the contract agency and the department. At a minimum, the party requesting the hearing or the party's representative shall have the opportunity to:

a. Examine, prior to and during the hearing, the documents and records presented to support the decision under appeal;

b. Be assisted or represented by an attorney or other person at the party's own expense;

c. Bring witnesses;

d. Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses;

e. Submit evidence to establish all pertinent facts and circumstances in the case;

f. Advance arguments without undue interference.

73.13(8) *Decision.* Decisions of the hearing officer shall be in writing and shall be based on evidence presented at the hearing. The decision shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and pertinent regulations or policy. The decision shall be issued within 45 days of the receipt of the request for a hearing, unless a longer period is agreed upon by the parties.

73.13(9) *Appeal of decision to the department.* If either party to a hearing receives an unfavorable decision, that decision may be appealed to the department. Such appeals must be made within 15 days of the mailing date of the decision. Appeals shall be sent to the Division Director, Division of Family and Community Health, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

73.13(10) *Contested case.* Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the Iowa 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 that may be provided by the aggrieved party shall also be provided to the Iowa department of inspections and appeals.

73.13(11) *Hearing.* Parties shall receive notice of the hearing in advance. The administrative law judge shall schedule the time, place and date of the hearing so that the hearing is held as expeditiously as possible. The hearing shall be conducted according to the procedural rules of the Iowa department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code.

73.13(12) *Decision of administrative law judge.* The administrative law judge's decision shall be issued within 60 days from the date of request for hearing. 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 decision 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 73.13(13).

73.13(13) *Appeal to director.* 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, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, 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.

73.13(14) *Record of hearing.* 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 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 administrative law judge.

73.13(15) *Decision of director.* An appeal to the director shall be based on the record of the hearing before the administrative law judge. The decision and order of the director becomes the department's final decision upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

73.13(16) *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 decision of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

73.13(17) *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.

73.13(18) *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 and continue pending further review should an appeal to district court be filed. If a final decision is in favor of the contract agency, benefits shall be terminated, if still being received, as soon as administratively possible after the issuance of the decision. Benefits denied during an administrative appeal period may not be awarded retroactively following a final decision in favor of a person applying for benefits.

641—73.14(135) State monitoring of contract agencies. The department shall review contract agency operations through use of reports and documents submitted, state-generated data processing reports, and on-site visits for evaluation and technical assistance.

73.14(1) *On-site visits.* Department staff shall visit contract agencies whenever necessary, to review operations and ensure compliance with state and federal regulations.

73.14(2) *Request for written reports.* The department may request written progress reports from contract agencies within specified times.

73.14(3) *Qualifications of department reviewers.* At minimum, one of the persons from the department responsible for reviewing a contract agency shall be a licensed dietitian.

641—73.15(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 contract migrant service agency within the state to provide or assist in the provision of service to this population.

641—73.16(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, Executive Order #11246 of 1965 as amended by Executive Order #11375 of 1967, and the Americans With Disabilities Act of 1991 to ensure the rights of all individuals under this program.

641—73.17(135) Audits. Each contract agency shall ensure an audit of the WIC program within the agency at least every two years, to be conducted by a private certified public accountant or in accord with applicable Office of Management and Budget Circulars: A-128, Audits of State and Local Governments, and A-133, Audits of Institutions of Higher Education and Other Nonprofit Institutions. Each audit shall cover all unaudited periods through the end of the previous grant year. The department's audit guide shall be followed to ensure an audit that meets federal and state requirements.

641—73.18(135) Reporting. Completion of grant applications, budgets, expenditure reports and written responses to the department's monitoring for the WIC program shall be conducted by contract agencies in compliance with the formats and procedures outlined by the department in the Iowa WIC Policy and Procedure Manual, as specified in the contract entered into by the department and the contract agency.

641—73.19(135) Program violation. Participants or vendors are subject to the sanctions outlined below if determined by contract agency or department staff to be guilty of abusing the program or its regulations.

73.19(1) *Participant violation.* Violations may be detected by contract agency staff, by vendors, or by department staff. Information obtained by the department is forwarded to the contract 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 contract agency 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 a check (e.g., changing last valid date, food item or quantity).	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 contract 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.

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 fewer 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 contract 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 contract agency shall maintain a master list of all participant violation notices, suspensions, and statements of restitution. The participant's notice of violation must also indicate when it is a second offense.

73.19(2) *Vendor violations.* There are three types of sanctions that 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 printed on face of check.

(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 that do not rise to the level of fraud against 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 department'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 45 violation points within the first year or 90 violation points within a single agreement period is a major violation subject to a one-year suspension of the WIC agreement for that vendor.

The assignment of violation points does not limit the department'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.	5
2. Redeeming five checks more than 15 days after receipt within the agreement period.	5
3. Accepting five checks with no date stamp within the agreement period.	5
4. Refusal to accept valid WIC checks from participants.	10
5. Abusive or discriminatory treatment of WIC participants, such as requiring WIC participants to use special checkout lanes or provide extra identification.	10
6. Insufficient number of brands or types in a single food group.	5
7. Insufficient quantity of a single food group.	5
8. No stock in a single food group.	5
9. Insufficient number of brands or types in two food groups.	10
10. Insufficient quantity in two food groups.	10
11. No stock in two or more food groups.	10
12. Insufficient number of brands or types in three or more food groups.	10
13. Insufficient quantity in three or more food groups.	15
14. No stock in three or more food groups. (For 6 to 14, food groups are as defined in 73.8(4)*"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 department 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.	10
21. Issuing "rain checks" or credit in exchange for WIC checks.	10
22. Stocking out-of-date, stale, or moldy WIC foods, per type.	10
23. Failure to submit vendor price assessment reports as requested.	10
24. For vendors that have special WIC prices, failure to post WIC prices on the shelf or on the package.	15
25. Failure to complete check properly, including filling in correct amount and date of purchase, and verifying matching signatures.	15
26. Contacting WIC participants in an attempt to recover funds not paid by WIC.	15
27. Charging prices to WIC participants that are more than 105 percent of the average prices of all other WIC vendors in the same city or metropolitan area.	15
28. Providing false information on the price assessment report.	15

29.	Failure to train all employees and ensure their knowledge regarding WIC program procedures set forth in the vendor's current agreement and in the current publication of the Iowa WIC program's vendor instruction booklet.	10
30.	Requiring WIC participant to purchase a particular brand when other WIC approved brands are available.	10
31.	Not allowing WIC participants to use discount coupons or promotional specials to reduce the WIC check amount.	10
32.	Requiring other cash purchases to redeem WIC checks.	15
33.	Failure to allow purchase of up to the full amount of WIC foods authorized on the check if such foods are available and desired by the WIC participant.	20

c. Suspensions for chronic violations, fraud, or abuse.

Items 1 to 6 are Class I offenses and result in a one-year suspension. Items 7 to 14 are Class II offenses and result in a two-year suspension. Items 15 to 17 are Class III offenses and result in a three-year suspension.

1. Accumulation of 45 violation points within the first year or 90 violation points within a single agreement period.

2. Allowing purchase of nonapproved and nonsimilar food items in exchange for WIC checks.

3. Failure to provide access to store premises or in any manner to hinder, impede or misinform authorized WIC personnel in the act of conducting an on-site education, monitoring or investigation visit.

4. Loss of Iowa department of inspections and appeals license.

5. Violation of the rules and provisions of the USDA Food Stamp Program or other state WIC program, resulting in a loss of vendor authorization or in a civil monetary penalty. The suspension period for such offenses shall equal the time period of disqualification from the other USDA program or one full year, whichever is greater.

6. Submitting for payment a WIC check redeemed by another authorized vendor.

7. Charging WIC participants more than non-WIC customers or charging WIC participants more than the current shelf price.

8. Charging for items not received by the WIC participant or for foods provided in excess of those listed on the check.

9. Allowing purchase of nonfood items with a WIC check.

10. Receiving, transacting or redeeming WIC checks outside of authorized channels.

11. Claiming reimbursement for the sale of a quantity of a specific food item which exceeds the store's documented inventory of that food item for a specified period of time.

12. Accepting WIC food checks from unauthorized persons.

13. Threatening or verbally abusing WIC participants or authorized WIC program personnel in the conduct of legitimate WIC program transactions.

14. Two or more incidents of Class I violations within a single agreement period (whether or not the first instance resulted in a sanction).

15. Trafficking or exchanging cash or credit for WIC checks.

16. Submission for payment of WIC checks known to have been lost or stolen.

17. Participation with other individuals including but not limited to WIC employees, vendors, and participants, in systematic efforts to submit false claims for reimbursement of improper WIC checks.

d. The following items do not have a point value, but shall result in or extend a suspension period:

1. Failure to return WIC vendor stamp(s) to the WIC program within ten days of effective date of suspension, or expiration of agreement following denial of subsequent application, shall result in a 30-day extension of a suspension period.

2. Failure to submit a WIC price assessment report after the second request will result in termination of the agreement.

3. For each month in which a vendor accepts WIC checks during a suspension period, the suspension period shall be extended by 30 days.

e. The above sanctions notwithstanding, the state of Iowa reserves the right to seek civil and criminal prosecution of WIC vendors for any and all instances of dealing in stolen or lost checks, trading cash and other inappropriate commodities for checks, or cases in which there exists evidence of a clear business practice to improperly obtain WIC funds, or other practices meeting the definition of fraud as defined in 7 CFR 246 or the Iowa Code.

f. A minimum of 15 days' notice is provided prior to all suspensions. When the department determines that a Class I, II, or III offense has occurred, a suspension letter with supporting documentation is prepared for the WIC director's signature. The suspension letter identifies the specific offense from paragraph *"c"* of this subrule that the vendor is charged with and the procedures for filing an appeal.

g. The department is responsible for issuing all warning and suspension letters. Contract agencies are informed of all vendor correspondence regarding violations. In situations where participant violations are also involved, the contract agency is responsible for follow-up, as detailed in subrule 73.19(1).

h. Federal food stamp regulations require automatic disqualification from the food stamp program for vendors suspended by the WIC program for certain types of violations. For offenses numbered 7, 8, 9, 10, 11, 12, and 15 in paragraph *"c"* above, notice will be sent to the United States Department of Agriculture for appropriate action.

i. The department shall disqualify a vendor who has been disqualified from the food stamp program. The disqualification shall be for the same length of time as the food stamp program disqualification, may begin at a later date than the food stamp program disqualification, and shall not be subject to administrative or judicial review under the WIC program.

j. The department shall permanently disqualify a vendor convicted of trafficking in food instruments or selling firearms, ammunition, explosives, or controlled substances (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)) in exchange for food instruments. A vendor shall not be entitled to receive any compensation for revenues lost as a result of such violation. The department may impose a civil money penalty (CMP) in lieu of a disqualification for this violation when it determines, in its sole discretion, and documents in accordance with the Federal Register, Volume 64, Number 52, Thursday, March 18, 1999, paragraph 246.12 (k)(8) that:

(1) Disqualification of the vendor would result in inadequate participant access; or

(2) The vendor had, at the time of the violation, an effective policy and program in effect to prevent trafficking; and the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.

k. The department shall use the civil money penalty formula in accordance with the Federal Register, Volume 64, Number 52, Thursday, March 18, 1999, paragraph 246.12 (k)(8) to determine the CMP.

l. Money received by the state WIC agency as a result of civil money penalties or fines assessed against a vendor and any interest charged in the collection of these penalties and fines shall be considered as program income.

641—73.20(135) Data processing. All contract agencies shall comply with the instructions outlined in the Iowa WIC Policy and Procedure Manual for use of the automated data processing system in provision of WIC checks and monitoring of WIC services. No contract agency is exempted from adherence to any portion of these instructions.

641—73.21(135) Outreach. Outreach efforts within the Iowa WIC program shall be directed toward extension of services to the neediest Iowans of high priority by reason of their WIC status (see 7 CFR 246.1(d)3). The department and contract agencies shall share responsibility for the conduct of outreach efforts.

73.21(1) *Contract agency responsibilities.* Contract agencies shall conduct any or all of the following outreach activities annually:

a. Employ outreach worker(s).

b. Submit for publication a minimum of two newspaper articles on WIC in the local community.

c. Distribute WIC brochures to numerous community organizations and offices.

d. Hold informational meetings for county social service departments, including food stamp program staff, drug/alcohol abuse counseling services, family investment program staff, and child abuse staff; and for 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.

73.21(2) Reserved.

641—73.22(135) Caseload management. The statewide caseload (number of participants) shall be managed by the department 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:

73.22(1) A contract agency shall maintain a waiting list only when the department determines that sufficient funds are not available to meet demand.

73.22(2) When a waiting list has been authorized, contract 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.

73.22(3) When insufficient funds are available to serve all priority categories, the department shall provide instructions to contract agencies regarding which priority categories may continue to be certified.

73.22(4) When necessitated by federal funding restrictions, the department reserves the right to terminate or temporarily suspend benefits for categories of participants prior to the end of their certification period. 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—73.23(135) Grant application procedures for contract agencies. Private, nonprofit or public agencies wishing to provide WIC services shall file a letter of intent to make application to the department no later than April 1 of the competitive year. Applications shall be to administer WIC services for a specified project period, as defined in the request for proposal, with an annual continuation application. The contract period shall be from October 1 to September 30 annually. All materials submitted as part of the grant application are considered public records in accordance with Iowa Code chapter 22, after a notice of award is made by the department. Notification of the availability of funds and grant application procedures will be provided in accordance with the department rules found in 641—Chapter 176.

Contract agencies are selected on the basis of the grant applications submitted to the department. The department will consider only 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: Chief, Bureau of Nutrition and WIC, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, (515)281-4913.

641—73.24(135) Participant rights. The special supplemental nutrition 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 contract agency or department regarding the applicant's or participant's eligibility for the program.

These rules are intended to implement federal law 42 U.S.C. Section 1786, and Iowa Code sections 10A.202(1)*"h"* and 135.11(1).

[Filed emergency 11/17/82—published 12/8/82, effective 12/8/82]
[Filed emergency 5/16/83—published 6/8/83, effective 5/31/83]
[Filed 11/18/83, Notice 8/17/83—published 12/7/83, effective 1/13/84]
[Filed emergency 7/27/84—published 8/15/84, effective 7/27/84]
[Filed emergency 1/10/85 after Notice 8/15/84—published 1/30/85, effective 1/10/85]
[Filed 5/17/85, Notice 2/13/85—published 6/5/85, effective 7/11/85]
[Filed emergency 5/30/85—published 6/19/85, effective 5/30/85]
[Filed emergency 7/1/86—published 7/16/86, effective 7/1/86]*
[Filed emergency 9/19/86—published 10/8/86, effective 9/19/86]
[Filed emergency 7/10/87—published 7/29/87, effective 7/10/87]
[Filed 2/4/88, Notice 11/18/87—published 2/24/88, effective 3/30/88]**
[Filed emergency 5/13/88—published 6/1/88, effective 6/1/88]
[Filed 9/15/89, Notice 7/12/89—published 10/4/89, effective 11/8/89]
[Filed 5/11/90, Notice 2/7/90—published 5/30/90, effective 7/4/90]
[Filed 11/9/90, Notice 8/22/90—published 11/28/90, effective 1/2/91]
[Filed 3/13/92, Notice 1/22/92—published 4/1/92, effective 5/6/92]
[Filed 3/13/92, Notice 2/5/92—published 4/1/92, effective 5/6/92]
[Filed 1/14/94, Notice 12/8/93—published 2/2/94, effective 3/9/94]
[Filed 1/11/96, Notice 11/8/95—published 1/31/96, effective 3/6/96]
[Filed 9/16/96, Notice 7/31/96—published 10/9/96, effective 11/13/96]
[Filed 1/9/97, Notice 12/4/96—published 1/29/97, effective 3/5/97]
[Filed emergency 11/12/99 after Notice 6/16/99—published 12/1/99, effective 11/12/99]

*See IAB, Inspections and Appeals Department.
**Effective date delayed 70 days by the Administrative Rules Review Committee at its March 8, 1988, meeting.

CHAPTER 201
ORGANIZED DELIVERY SYSTEMS
LICENSURE AND REGULATION

641—201.1(135,75GA,ch158) Purpose and scope. The following rules developed by the department of public health govern the organization and regulation of organized delivery systems, also referred to as accountable health plans, pursuant to the authority set forth by the Seventy-fifth General Assembly in Senate File 380, which can also be found in chapter 158 of the 1993 Iowa Acts. It is the intent of these rules to allow for flexibility in the formation of organized delivery systems while ensuring accountability for the cost, quality and access to health care for those they serve. This chapter shall apply to all organized delivery systems operating in this state or providing coverage to Iowa residents. This chapter is not intended to apply to entities that fall under the regulation of the division of insurance.

641—201.2(135,75GA,ch158) Definitions.

"Accountable health plan (AHP)" means a type of organized delivery system.

"Commissioner" means the commissioner of insurance.

"Coverage decision" means a final adverse decision based on medical necessity. This definition does not include a denial of coverage for a service or treatment specifically listed in plan or evidence of coverage documents as excluded from coverage.

"Department" means the department of public health.

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

"Emergency medical condition" means a medical condition that manifests itself by symptoms of sufficient severity, including but not limited to severe pain, that an ordinarily prudent person, possessing average knowledge of medicine and health, could reasonably expect the absence of immediate medical attention to result in one of the following:

1. Placing the health of the individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.
2. Serious impairment to bodily function.
3. Serious dysfunction of a bodily organ or part.

"Emergency services" means covered inpatient and outpatient health care services that are furnished by a health care provider who is qualified to provide the services that are needed to evaluate or stabilize an emergency medical condition.

"Enrollee" means an individual, or an eligible dependent, who receives health care benefits coverage through an organized delivery system.

"Essential community providers" means those publicly funded health care providing organizations which the director deems to be vital to a local health care delivery system to ensure that all vulnerable populations in Iowa have assured access to health care.

"Independent review entity" means a reviewer or entity, certified by the commissioner pursuant to Iowa Code section 514J.6 [1999 Iowa Acts, chapter 41, section 12].

"Organized delivery system (ODS)" means an organization with defined governance that is responsible for delivering or arranging to deliver the full range of health care services covered under a standard benefit plan and is accountable to the public for the cost, quality and access of its services and for the effect of its services on their health. The organization operating as an ODS shall assume risk and be subject to solvency standards as found in 201.12(135,75GA,ch158).

"Primary care" means essential, community-based health care services that are coordinated, comprehensive, accountable and accessible on a first contact and on an ongoing basis. Primary care includes diagnosis and treatment, prevention, maintenance, management of chronic problems, and linkages for specialized care.

"Standard benefit plan" means, at a minimum, the same benefit plan that is required of small group insurers under Iowa Code chapter 513B.

"Utilization review" means a program or process by which an evaluation is made of the necessity, appropriateness, and efficiency of the use of health care services, procedures, or facilities given or proposed to be given to an individual within this state. Such evaluation does not apply to requests by an individual or provider for a clarification, guarantee, or statement of an individual's health insurance coverage or benefits provided under a health insurance policy, nor to claims adjudication. Unless it is specifically stated, verification of benefits, preauthorization, or a prospective or concurrent utilization review program or process shall not be construed as a guarantee or statement of insurance coverage or benefits for any individual under a health insurance policy.

641—201.3(135,75GA,ch158) Application. An ODS shall not operate in Iowa without an approved application from the department. An application on forms provided by the department accompanied by a filing fee of $2,000 (a portion of this fee is for the solvency review) payable to the department, shall be completed by an authorized representative of the organized delivery system. The application shall be submitted in duplicate. An application shall not be deemed to be filed until all information necessary to properly process said application has been received by the department; this includes information that addresses rules 201.4(135,75GA,ch158) through 201.15(135,75GA,ch158). The application shall set forth or be accompanied by the following:

1. A copy of the basic organizational document of the applicant such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents and all of its amendments.
2. A copy of the bylaws, rules or similar document, if any, regulating the governance and the conduct of the internal affairs of the applicant.
3. A list of names, addresses and official position of the persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers of a corporation and the partners or members if a partnership or association.
4. A copy of the form of evidence of coverage.
5. A copy of the form of the group contract, if any, which is to be issued to employers, unions, trustees or other organizations.
6. Financial statements showing the applicant's current assets, liabilities and sources of financial support. If the applicant's financial affairs are audited by an independent certified public accountant, a copy of the applicant's most recent regular certified financial statement shall satisfy this requirement unless the department directs that additional financial information is required.
7. A description of the proposed method of marketing the plan, a financial plan which includes a three-year projection of operating results anticipated, and a statement as to the sources of funding.
8. A statement describing the geographic area to be served.
9. A description of the complaint procedures to be utilized.
10. A sample copy of the provider contract for risk-bearing providers.

641—201.4(135,75GA,ch158) Governing body. An organized delivery system shall have a basic written organizational document setting forth its scheme of organization and establishing a governing body appropriate to its form of organization. The governing body shall be responsible for matters of policy and operation.

201.4(1) The ODS shall provide for enrollee representation on the governing body. The organizational document shall describe what this representation shall be and the method the ODS proposes to use to achieve enrollee representation.

201.4(2) Advisory committee. An ODS shall have an enrollee advisory committee to the board. The majority of the members of this advisory committee shall be enrollees with no official capacity within the ODS.

641—201.5(135,75GA,ch158) Service area/geographic access.

201.5(1) An organized delivery system shall establish its own service area subject to approval by the department. The department shall approve only service areas where the county was used as the basic building block.

201.5(2) The ODS's plan of operation shall address the capability of the ODS to serve an enrollee residing anywhere in the service area.

201.5(3) ODSs shall cover emergency care to enrollees who are traveling outside the ODS's service area. The ODS may impose copayments or deductibles for such care to the extent permitted by the enrollee's policy and may require the enrollee to return to the service area for continuing treatment as soon as the enrollee's condition reasonably permits such travel.

201.5(4) An ODS shall provide geographic access to its enrollees within its service area as follows:

a. Primary care shall be available within 30 minutes' travel time.

b. Primary inpatient hospital care shall be available within 60 minutes' travel time. Inpatient hospital services at a secondary or tertiary level may be made available at a referral center exceeding the 60-minute limit and may be located outside the service area.

c. The above requirements do not require that care be provided within the state of Iowa.

201.5(5) A licensed ODS wishing to expand its service area shall seek approval from the department for the expansion. The ODS shall submit evidence that the requirements of subrules 201.5(1) through 201.5(4) can be met for the additional counties.

641—201.6(135,75GA,ch158,78GA,ch41) Provider network and contracts; treatment and services.

201.6(1) Each ODS shall have flexibility in establishing a provider network to achieve the balance of providers which best meets the needs of its enrollees. An ODS may determine its own standards and criteria by which it determines which providers will be included in its network. These standards and criteria shall be public and the ODS shall be held accountable for abiding by the standards and criteria. An ODS shall establish an internal first level provider appeal process.

201.6(2) An ODS shall not use the design of its provider network as a means for discouraging enrollment from high-risk or special needs populations.

201.6(3) Each ODS shall provide data to the department on the utilization of all providers by its enrollees, by provider type. This information shall be disseminated as part of the ODS report card.

201.6(4) A list of available ODS providers, which shall be updated at least once a year, shall be provided to enrollees on request.

201.6(5) An ODS shall be encouraged to establish working relationships with essential community providers. The department shall provide for the identification of essential community providers within the service area of each ODS. The director shall establish criteria for essential community provider designation. The criteria shall focus on:

a. Whether the provider has a demonstrated record of service to impoverished or medically underserved populations which face language, ethnic, or cultural barriers to health care access or which have health care needs that are not being met by other providers in the geographic area; and

b. Whether the provider is an entity who serves all patients regardless of ability to pay and who charges for services on an income-based sliding fee schedule.

201.6(6) Emergency services. Emergency services, as defined in rule 201.2(135,75GA,ch158), shall be provided by the ODS, either through its own facilities or through guaranteed arrangements with other providers, on a 24-hour basis.

a. A physician and sufficient other licensed and ancillary personnel shall be readily available at all times to render such services.

b. Since ODSs are not required to contract with every emergency care provider in an area, ODSs shall make every effort to inform enrollees of participating providers.

c. Reimbursement to a provider of emergency services shall not be denied by any ODS without review of the patient's medical history, presenting symptoms, and admitting or initial as well as final diagnosis, submitted by the provider, in determining whether, by definition, emergency services could reasonably have been expected to be provided.

d. Reimbursement for emergency services shall not be denied solely on the grounds that services were performed by a noncontracted provider. Coverage for emergency services is subject to the terms and conditions of the health plan or contract.

e. If reimbursement for emergency services is denied, the enrollee may file a complaint with the ODS as outlined in rule 201.7(135,75GA,ch158). Upon denial of reimbursement for emergency services, the ODS shall notify the enrollee and the provider that they may register a complaint with the department.

f. Prior authorization for emergency services shall not be required. All services necessary to evaluate and stabilize an emergency medical condition shall be considered covered emergency services.

201.6(7) All provider contracts shall contain the following provisions:

a. (Provider), or its assignee or subcontractor, hereby agrees that in no event, including, but not limited to, nonpayment by the ODS, ODS insolvency or breach of this agreement, shall (provider), or its assignee or subcontractor, bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against subscriber/enrollee or persons other than the ODS acting on their behalf for services provided pursuant to this agreement. This provision shall not prohibit collection of supplemental charges or copayments on an ODS's behalf made in accordance with the terms of (applicable agreement) between an ODS and subscriber/enrollee.

b. (Provider), or its assignee or subcontractor, further agrees that (1) this provision shall survive the termination of this agreement regardless of the cause giving rise to termination and shall be construed to be for the benefit of the ODS subscriber/enrollee and that (2) this provision supersedes any oral or written contrary agreement now existing or hereafter entered into between (provider) and subscriber/enrollee or persons acting on their behalf.

201.6(8) Prohibition of interference with medical communications.

a. An ODS shall not prohibit, penalize, or otherwise restrict a participating provider from advising an enrollee of the ODS about the health status of the enrollee or medical care or treatment of the enrollee's condition or disease, regardless of whether benefits for such care or treatment are provided under the plan, if the provider is acting within the lawful scope of practice.

b. An ODS shall not penalize a provider because the provider, in good faith, reports to state or federal authorities any act or practice by the ODS that, in the opinion of the provider, jeopardizes patient health or welfare.

c. An ODS shall not prohibit, penalize, or otherwise restrict a provider from advocating on behalf of a covered individual within a review or grievance process established by the organized delivery system.

201.6(9) Continuity of care—pregnancy.

a. An ODS that terminates its contract with a participating health care provider shall continue to provide coverage under the contract to a covered person in the second or third trimester of pregnancy for continued care from such health care provider. Such persons may continue to receive such treatment or care through postpartum care related to the child birth and delivery. Payment for covered benefits and benefit levels shall be according to the terms and conditions of the contract.

b. A covered person who makes an involuntary change in health plans may request that the new health plan cover the services of the covered person's physician specialist who is not a participating health care provider under the new health plan, if the covered person is in the second or third trimester of pregnancy. Continuation of such coverage shall continue through postpartum care related to the child birth and delivery. Payment for covered benefits and benefit level shall be according to the terms and conditions of the new health plan contract.

c. An ODS that terminates the contract of a participating health care provider for cause shall not be liable to pay for health care services provided by the health care provider to a covered person following the date of termination.

201.6(10) Continuity of care—terminal illness.

a. If an ODS terminates its contract with a participating health care provider, a covered individual who is undergoing a specified course of treatment for a terminal illness or a related condition, with the recommendation of the covered individual's treating physician licensed under Iowa Code chapter 148, 150, or 150A, may continue to receive coverage for treatment received from the covered individual's physician for the terminal illness or a related condition, for a period of up to 90 days. Payment for covered benefits and benefit level shall be according to the terms and conditions of the contract.

b. A covered person who makes a change in health plans involuntarily may request that the new health plan cover services of the covered person's treating physician licensed under Iowa Code chapter 148, 150, or 150A, who is not a participating health care provider under the new health plan, if the covered person is undergoing a specified course of treatment for a terminal illness or a related condition. Continuation of such coverage shall continue for up to 90 days. Payment for covered benefits and benefit levels shall be according to the terms and conditions of the contract.

c. Notwithstanding paragraphs *"a"* and *"b"* above, an ODS that terminates the contract of a participating health care provider for cause shall not be required to cover health care services provided by the health care provider to a covered person following the date of termination.

201.6(11) Experimental treatment review. An ODS that limits coverage for experimental medical treatment, drugs, or devices, shall develop and implement a procedure to evaluate experimental medical treatments.

a. A description of the procedure must be submitted to the division of insurance in writing and include, at a minimum:

(1) The process used to determine whether the ODS will provide coverage for new medical technologies and new uses of existing technologies;

(2) A requirement for review of information from appropriate government regulatory agencies and published scientific literature concerning new medical technologies, new uses of existing technologies, and the use of external experts in making decisions; and

(3) A process for a person covered under a plan or contract to request an appeal of a denial of coverage because the proposed treatment is experimental.

b. An evaluation of a particular treatment shall not be required more than once a year.

c. An ODS shall include appropriately licensed or qualified professionals in the evaluation process.

d. An ODS that limits coverage for experimental treatment, drugs, or devices shall clearly disclose such limitations in a contract, policy, or certificate of coverage.

201.6(12) Utilization review requirements. An organized delivery system that provides health benefits to a covered individual residing in this state shall not conduct utilization review, either directly or indirectly, under a contract with a third party who does not meet the requirements established for accreditation by the Utilization Review Accreditation Commission, National Committee on Quality Assurance, or another national accreditation entity recognized and approved by the commissioner. This subrule does not apply to any utilization review performed solely under contract with the federal government for review of patients eligible for services under any of the following:

1. Title XVIII of the federal Social Security Act.
2. The civilian health and medical program of the uniformed services.
3. Any other federal employee health benefit plan.

641—201.7(135,75GA,ch158) Complaints. Each ODS shall provide in its bylaws for a system to resolve and record complaints.

201.7(1) The complaint system shall provide for the resolution of the following kinds of complaints:

a. Complaints about the quality of health care services provided by the ODS.

b. Complaints about the availability of health care services.

c. Complaints relating to enrollee participation in the operation of the ODS.

d. Complaints relating to reimbursement.

201.7(2) An ODS shall submit to the department an annual report in a form prescribed by the department which shall include:

a. A description of the procedures of the complaint system.

b. The total number of complaints handled through the complaint system and a compilation of reasons underlying the complaints filed in accord with 201.7(1).

c. The number, amount and disposition of malpractice claims settled during the year by the ODS and any of its providers.

641—201.8(135,75GA,ch158) Accountability. Accountability measures shall be in place to ensure access and quality of care. Each ODS shall provide information to the department on measures of quality, access, member satisfaction, membership and utilization, finance, and management. The department shall publish annually, by November 1 of each year, the indicators that will be required for the reporting year in a document that shall be shared with all licensed ODSs as well as all applicants. Indicators shall be based upon nationally recognized, documented standards.

201.8(1) *Quality.* The department shall establish indicators to measure the quality of care provided by an ODS.

201.8(2) *Access.* The department shall establish indicators of access to care within an ODS. At least one of the indicators shall be the ratio of primary care providers to enrollees by category of provider.

201.8(3) *Member satisfaction.* The following shall be reported by the ODS to demonstrate member satisfaction.

a. Percent of members indicating overall satisfaction with plan from a member survey.

b. Submission of a copy of the member satisfaction survey used by the ODS.

201.8(4) *Membership and utilization.* Indicators of utilization shall be established by the department for costs, frequency of procedures, inpatient and outpatient services. Indicators of membership shall include the following:

a. Member months stratified by age, gender, residence, and purchaser.

b. Disenrollments by month stratified by age, gender, residence, and purchaser.

201.8(5) *Finance.* Indicators of financial stability and solvency shall be reported according to the standard established in rules 201.12(135,75GA,ch158) and 201.13(135,75GA,ch158).

201.8(6) *Management practices.* Management practices shall be described for the following areas:

a. Credentialing. The ODS shall describe its credentialing process as provided for in 201.6(1).

b. Points of service. The ODS shall provide information on the location of providers, including primary care providers, specialty providers, and hospitals, as provided for in 201.5(4).

c. Quality assessment and improvement activities.

d. Case management.

e. Risk management.

f. Community needs assessments.

g. Relationships with essential community providers.

h. Efforts to address the needs of underserved populations and geographic areas.

641—201.9(135,75GA,ch158) Reporting.

201.9(1) An ODS shall, as part of the application for licensure, submit documentation of ability to comply or plans to achieve compliance with the reporting of the accountability requirements.

201.9(2) Narrative information shall be submitted in report format as specified by the department. Until such time that the data for the calculation of the indicators is available from the Community Health Management Information System (CHMIS), the ODS shall submit the calculated indicator, including documentation of the numerator and denominator used, to the department.

201.9(3) Reports shall be based upon calendar year information. Narrative information shall be submitted within 90 days of the close of the reporting period. Indicator reports shall be submitted within 45 days of the end of each quarter.

201.9(4) The department or its subcontractor shall have the right to validate reports, including record review and site visits. Reasonable costs related to this review shall be the responsibility of the ODS.

641—201.10(135,75GA,ch158) Evaluation. The department shall adopt nationally recognized benchmarks for indicators of quality and access. The department shall seek input and advice from the provider community on the indicators and benchmarks. These benchmarks will include minimum performance standards for identifying ODSs with deficit performance. The department shall establish criteria for issuing provisional licenses and corrective plans of action. Evaluation criteria shall be published annually with the indicators and shall be based upon established criteria. Utilization, member satisfaction, and management information shall be reported as submitted without established benchmarks.

641—201.11(135,75GA,ch158) Annual report. The department shall publish annually a report comparing all ODSs licensed in the state on all information contained in 201.8(135,75GA,ch158). The report shall also include comparisons by geographic area.

641—201.12(135,75GA,ch158) Finance and solvency. Solvency oversight shall be conducted by the division of insurance under an agreement with the department with examination fees paid as provided for in 201.3(135,75GA,ch158). For purposes of finance and solvency, including investments as detailed in 201.13(135,75GA,ch158), the ODS submits to the jurisdiction of the insurance division.

201.12(1) *Accounting system.* Statutory accounting principles shall apply to ODSs to ensure the accurate and complete reporting of financial information. Any premium or assessment amount that is not paid within three months of the due date shall be assumed uncollectible for financial statement purposes and in considering the amount of assessments and dividends.

201.12(2) *Unencumbered funds.* ODSs shall maintain at all times unencumbered funds that are the greater of:

a. $1 million; or

b. Three times its average monthly claims for third-party providers. Average monthly expenditure is defined as liabilities incurred, including those which are outstanding. In addition to the requirements set forth above, the required unencumbered funds may be increased when, in the insurance commissioner's judgment, it is necessary to do so to protect the enrollees of the ODS.

201.12(3) *Bond requirement.* ODSs shall obtain a surety bond designating the commissioner of insurance as beneficiary in the event of the insolvency of the ODS in the amount and form acceptable to the commissioner of insurance.

201.12(4) *Financially impaired or insolvent ODSs.* The provisions of Iowa Code chapter 507C shall apply to ODSs, which shall be considered insurers for the purposes of chapter 507C. All HMOs and ODSs in the state operating within the service area of the ODS will provide a 30-day open enrollment in the event of insolvency of the ODS with no underwriting or preexisting conditions imposed. The open enrollment plan shall be actuarially equivalent to the standard benefit plan adopted by the small group reinsurance board.

201.12(5) *Examination.* The commissioner of insurance shall make an examination of the affairs of any ODS and its providers as often as the commissioner deems necessary for the protection of the interests of the residents of Iowa, but not less frequently than once every five years. Iowa Code chapter 507 shall be applicable to the examination of ODSs. The expense of such examination shall be assessed against the ODS in the same manner that insurers are assessed for examinations pursuant to chapter 507. ODS providers shall agree to fully cooperate with the insurance commissioner in providing access to books and records necessary for the commissioner to perform the examination process.

201.12(6) *Annual financial statement.* An ODS shall annually, on or before March 1 of each year, file with the commissioner of insurance an annual financial statement, covering the preceding calendar year, in a form prescribed by the commissioner. Such statement shall be verified by at least two of the ODS's principal officers. The ODS shall also file at this time an independent actuarial opinion certifying the adequacy of the ODS unencumbered funds. The commissioner may also request quarterly filings.

641—201.13(135,75GA,ch158) Investment.

201.13(1) All ODS assets, including unencumbered funds referenced in subrule 201.12(2), shall be invested only in securities or other investments as follows:

a. All investments made pursuant to this subrule shall have investment qualities and characteristics such that the speculative elements are not predominant.

b. Financial terms relating to an ODS have the meanings assigned to them under statutory accounting methods.

c. Investments shall be valued in accordance with the valuation procedures established by the National Association of Insurance Commissioners, unless the commissioner requires or finds another method of valuation reasonable under the circumstances.

d. If an investment qualifies under more than one subrule, the ODS may elect to hold the investment under the subrule of its choice.

201.13(2) An ODS's investments shall be held in its own name or the name of its nominee, except as follows:

a. Investments may be held in the name of a clearing corporation or of a custodian bank or in the name of the nominee of either on the following conditions:

(1) The clearing corporation, custodian bank, or nominee must be legally authorized to hold the particular investment for the account of others.

(2) When the investment is evidenced by a certificate and held in the name of a custodian bank or the nominee of a custodian bank, a written agreement shall provide that certificates so deposited shall at all times be kept separate and apart from other deposits with the depository, so that at all times they may be identified as belonging solely to the ODS making the deposit.

(3) If a clearing corporation is to act as depository, the investment may be merged or held in bulk in the name of the clearing corporation or its nominee with other investments deposited with the clearing corporation by any other person, if a written agreement between the clearing corporation and the ODS provides that adequate evidence of the deposit is to be obtained and retained by the ODS or a custodian bank.

b. An ODS may loan stocks or obligations held by it under this rule to a broker-dealer registered under the federal Securities Exchange Act of 1934 or to a member bank. The loan must be evidenced by a written agreement which provides all of the following:

(1) That the loan shall be fully collateralized by cash or obligations issued or guaranteed by the United States or any agency or an instrumentality of the United States and that the collateral shall be adjusted as necessary each business day during the term of the loan to maintain the required collateralization in the event of market value changes in the loaned securities or collateral.

(2) That the loan may be terminated by the ODS at any time and that the borrower shall return the loaned stocks or obligations within five business days after termination.

(3) That the ODS shall have the right to retain the collateral or use the collateral to purchase investments equivalent to the loaned securities if the borrower defaults under the terms of the agreement and that the borrower shall remain liable for any losses and expenses incurred by the association due to default that are not covered by the collateral.

c. An ODS may participate through a member bank in the United States federal reserve book entry system, and the records of the member bank shall at all times show that the investments are held for the ODS or for specific accounts of the ODS.

d. An investment may consist of an individual interest in a pool of obligations or a fractional interest in a single obligation if the certificate of participation or interest or the confirmation of participation or interest in the investment is issued in the name of the ODS, the name of the custodian bank, or the nominee of either, and, if the interest as evidenced by the certificate or confirmation is, if held by a custodian bank, kept separate and apart from the investments of others so that at all times the participation may be identified as belonging solely to the ODS making the investment.

e. Transfers of ownership of investments held as described in subparagraph 201.13(2)*"a"*(3) and paragraphs 201.13(2)*"c"* and *"d"* may be evidenced by bookkeeping entry on the books of the issuer of the investment, its transfer or recording agent, or the clearing corporation without physical delivery of a certificate evidencing the ODS's investment.

201.13(3) Except as provided in paragraph 201.13(2)*"e,"* if an investment is not evidenced by a certificate, adequate evidence of the ODS's investment shall be obtained from the issuer or its transfer or recording agent and retained by the ODS, a custodian bank, or clearing corporation. Adequate evidence, for purposes of this subrule, means a written receipt or other verification issued by the depository or issuer or a custodian bank which shows that the investment is held for the ODS.

201.13(4) Except as otherwise permitted by this rule, an ODS licensed under this chapter shall only invest in the following:

a. United States government obligations. Obligations issued or guaranteed by the United States or an agency or instrumentality of the United States.

b. Certain development bank obligations. Obligations issued or guaranteed by the international bank for reconstruction and development, the Asian development bank, the inter-American development bank, the export-import bank, the world bank, or any United States government-sponsored organization of which the United States is a member, if the principal and interest is payable in United States dollars. An ODS shall not invest more than 5 percent of its total admitted assets in the obligations of any one of these banks or organizations and shall not invest more than a total of 10 percent of its total admitted assets in the obligations authorized by this subrule.

c. State obligations. Obligations issued or guaranteed by a state, a political subdivision of a state, or an instrumentality of a state.

d. Canadian government obligations. Obligations issued or guaranteed by Canada, by an agency or province of Canada, by a political subdivision of such province, or by an instrumentality of any of those provinces or political subdivisions.

e. Corporate and business trust obligations. Obligations issued, assumed, or guaranteed by a corporation or business trust organized under the laws of the United States or a state, or the laws of Canada or a province of Canada, provided that a company shall not invest more than 5 percent of its admitted assets in the obligations of any one corporation or business trust. Investments shall be made only in investment grade bonds.

f. Stocks. Common stocks, common stock equivalents, mutual fund shares securities convertible into common stocks or common stock equivalents, or preferred stocks issued or guaranteed by a corporation incorporated under the laws of the United States or a state, or the laws of Canada or a province of Canada. Aggregate investments in non-dividend-paying stocks shall not exceed 5 percent of unencumbered funds.

(1) Stocks purchased under this lettered paragraph shall not exceed 50 percent of unencumbered funds. With the approval of the commissioner of insurance, an ODS may invest any amount in common stocks, preferred stocks, or other securities of one or more subsidiaries provided that after such investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) An ODS shall not invest more than 10 percent of its unencumbered funds in the stocks of any one corporation.

g. Home office real estate. Funds may be invested in a home office building, at the direction of the board of directors and with the prior approval of the commissioner of insurance. An ODS shall not invest more than 25 percent of its total admitted assets in such real estate. With the prior approval of the commissioner, an ODS may exceed the real estate investment limitation to effectuate a merger with, or the acquisition of, another ODS.

641—201.14(135,75GA,ch158) Rating practices. An ODS shall use the rate restrictions and regulations applicable to each market segment. All form filings shall include an actuarial certification by a fellow in the society of actuaries (FSA) attesting to the adequacy and fairness of the rates.

641—201.15(135,75GA,ch158) Name. No name other than that certified by the department may be used. The name of an ODS or AHP must clearly identify the entity as an ODS or AHP and all literature published by the ODS or AHP must identify its status as an ODS or AHP.

641—201.16(135,75GA,ch158) Change in organizational documents or control.

201.16(1) Changes to bylaws, articles of incorporation and any other document that would affect the operation and governance of the ODS shall be filed with the department at least 30 days prior to their proposed implementation date.

201.16(2) An ODS which desires to transfer ownership or control of more than 10 percent of ownership interest in the ODS shall not do so without first submitting a proposed plan to the department for review.

641—201.17(135,75GA,ch158) Appeal. A decision by the department to deny an application for licensure as an ODS may be appealed following the procedures in 641—Chapter 173.

641—201.18(135,78GA,ch41) External review. This rule is intended to implement the provisions of 1999 Iowa Acts, chapter 41, to provide a uniform process for enrollees of organized delivery systems to appeal a final adverse coverage decision based on medical necessity. This rule applies to any ODS that issues health plans or policies delivered in the state of Iowa. At the time of a coverage decision, an organized delivery system shall notify the enrollee in writing of the right to have the coverage decision reviewed under the external review process established pursuant to 1999 Iowa Acts, chapter 41, by the division of insurance. The request for an external review shall meet the requirements of the commissioner contained at 191—Chapter 76.

641—201.19 Reserved.

641—201.27(135,75GA,ch158) Decision.

201.27(1) *Approval or disapproval.* The department shall issue a written decision approving or disapproving the application within 45 days after receipt of the application or, in the case of a contested hearing, within 10 days of receipt of the administrative law judge's recommendation. The department may condition approval on a modification of all or part of the proposed arrangement to eliminate any restriction on competition that is not reasonably related to the goals of reducing cost or improving access or quality. The department may also establish conditions for approval that are reasonably necessary to protect against abuses of private economic power and to ensure that the arrangement is appropriately supervised and regulated by the state.

201.27(2) *Findings of fact.* The department's decision shall make specific findings of fact concerning the cost, access, and quality criteria, and identify one or more of those criteria as the basis for the decision.

201.27(3) *Data for supervision.* A decision approving an application shall require the periodic submission of specific data relating to cost, access, and quality, and to the extent feasible, identify objective standards of cost, access, and quality by which the success of the arrangement will be measured. However, if the department determines that the scope of a particular proposed arrangement is such that the arrangement is certain to have neither a positive nor negative impact on one or two of the criteria, the department's decision need not require the submission of data or establish an objective standard relating to those criteria.

641—201.28(135,75GA,ch158) Appeal. After the department has rendered a decision, the applicant or any other person aggrieved may appeal the decision to the district court within 30 days after receipt of the department's decision. The appeal is governed by Iowa Code chapter 17A. The department's determination, under subrule 201.25(1), of which procedure to use may not be raised as an issue on appeal.

641—201.29(135,75GA,ch158) Supervision after approval.

201.29(1) *Active supervision.* The department shall actively supervise, monitor, and regulate approved arrangements, as described below.

201.29(2) *Procedures.* The department shall review data submitted periodically by the applicant. The department's order shall set forth the time schedule for the submission of data, which shall be at least once a year. The department's order must identify the data that must be submitted, although the department may subsequently require the submission of additional data or alter the time schedule. Upon review of the data submitted, the department shall notify the applicant of whether the arrangement is in compliance with the department's order. If the arrangement is not in compliance with the department's order, the department shall identify those respects in which the arrangement does not conform to the department's order.

An applicant receiving notification that an arrangement is not in compliance has 30 days in which to respond with additional data. The response may include a proposal and a time schedule by which the applicant shall bring the arrangement into compliance with the department's order. If the arrangement is not in compliance and the department and the applicant cannot agree to the terms of bringing the arrangement into compliance, the matter shall be set for a contested case hearing.

The department shall publish notice in the Iowa Administrative Bulletin two years after the date of an order approving an application, and at two-year intervals thereafter, soliciting comments from the public concerning the impact that the arrangement has had on cost, access, and quality. The department may request additional oral and written information from the applicant or from any other source.

641—201.30(135,75GA,ch158) Revocation.

201.30(1) *Conditions.* The department may revoke a certificate of public advantage only if:

a. The arrangement is not in substantial compliance with the terms of the application;

b. The arrangement is not in substantial compliance with the conditions of approval;

c. The arrangement is not in substantial compliance with 641—Chapter 201;

d. The arrangement has not and is not likely to substantially achieve the improvements in cost, access, or quality identified in the approval order as the basis for the department's approval of the arrangement; or

e. The conditions in the marketplace have changed to such an extent that competition would promote reductions in cost and improvements in access and quality better than does the arrangement at issue. In order to revoke on the basis that conditions in the marketplace have changed, the department's order shall identify specific changes in the marketplace and articulate why those changes warrant revocation.

201.30(2) *Notice.* The department shall begin a proceeding to revoke approval by providing written notice to the applicant describing in detail the basis for the proposed revocation. Notice of the proceeding shall be published in the Iowa Administrative Bulletin. The notice shall invite the submission of written comments to the department, with a copy to the applicant. Comments must be received by the department within 20 days of the publication of the notice.

201.30(3) *Procedure.* A proceeding to revoke an approval shall be conducted as a contested case proceeding upon the written request of the applicant. Contested cases regarding revocations shall be heard by an administrative law judge who shall issue a written recommendation to the department and shall follow the procedures in 641—Chapter 5. Decisions of the department in a proceeding to revoke approval are subject to judicial review under Iowa Code chapter 17A.

201.30(4) *Alternatives to revocation preferred.* In deciding whether to revoke an approval, the department shall take into account the hardship that the revocation may impose on the applicant and any potential disruption of the market as a whole. The department shall not revoke an approval if the arrangement can be modified, restructured, or regulated so as to remedy the problem upon which the revocation proceeding is based. The applicant may submit proposals for alternatives to revocation. Before approving an alternative to revocation that involves modifying or restructuring an arrangement, the department shall publish notice in the Iowa Administrative Bulletin that any person may comment on the proposed modification or restructuring within 20 days after publication of the notice. The department shall not approve the modification or restructuring until the comment period has concluded. An approved, modified, or restructured arrangement shall be subject to appropriate supervision under rule 201.29(135,75GA,ch158).

201.30(5) *Impact of revocation.* An applicant that has had its approval revoked is not required to terminate the arrangement. The applicant cannot be held liable under state or federal antitrust law for acts that occurred while the approval was in effect, except to the extent that the applicant failed to substantially comply with the terms of the approval. The applicant is fully subject to state and federal antitrust law after the revocation becomes effective and may be held liable for acts that occur after the revocation.

These rules are intended to implement 1993 Iowa Acts, chapter 158, section 3.

[Filed emergency 6/17/94—published 7/6/94, effective 6/17/94]
[Filed 9/23/94, Notice 7/6/95—published 10/12/94, effective 11/16/94]
[Filed 3/18/98, Notice 12/31/97—published 4/8/98, effective 5/13/98]
[Filed 11/12/99, Notice 10/6/99—published 12/1/99, effective 1/5/00]

TITLE V
PROFESSIONAL STANDARDS

CHAPTER 25
CONTINUING EDUCATION
[Prior to 5/18/88, Dental Examiners, Board of[320]]

650—25.1(153) Definitions. For the purpose of these rules on continuing education, definitions shall apply:

"Advisory committee." An advisory committee on continuing education shall be formed to review and advise the board with respect to applications for approval of sponsors or activities and requests for postapproval of activities. Its members shall be appointed by the board and consist of a member of the board, two licensed dentists with expertise in the area of professional continuing education, and two licensed dental hygienists with expertise in the area of professional continuing education. The advisory committee on continuing education may tentatively approve or deny applications or requests submitted to it pending final approval or disapproval of the board at its next meeting.

"Approved program or activity" means a continuing education program activity meeting the standards set forth in these rules which has received advanced approval by the board pursuant to these rules.

"Approved 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 approved sponsor, all continuing education activities of such person or organization may be deemed automatically approved provided they meet the continuing education guidelines of the board.

"Board" means the board of dental examiners.

"Continuing dental education" consists of education activities designed to review existing concepts and techniques and to update knowledge on advances in dental and medical sciences. The objective is to improve the knowledge, skills, and ability of the individual to deliver the highest quality of service to the public and professions.

Continuing dental education should favorably enrich past dental education experiences. Programs should make it possible for practitioners to attune dental practice to new knowledge as it becomes available. All continuing dental education should strengthen the skills of critical inquiry, balanced judgment and professional technique.

"Hour" of continuing education means one unit of credit which shall be granted for each hour of contact instruction and shall be designated as a "clock hour." This credit shall apply to either academic or clinical instruction.

"Licensee" means any person licensed to practice dentistry or dental hygiene in the state of Iowa.

650—25.2(153) Continuing education requirements for licensees.

25.2(1) Beginning January 1, 1979, each person licensed to practice dentistry or dental hygiene in this state shall complete during each calendar year a minimum of 15 hours of continuing education approved by the board. Compliance with the requirement of continuing education is a prerequisite for license renewal in each subsequent license renewal year.

Beginning January 1, 1984, each person licensed to practice dentistry or dental hygiene in this state shall complete during the biennium ending December 31, 1985, and each biennium thereafter a minimum of 30 hours of continuing education approved by the board.

25.2(2) For the license renewal period beginning July 1, 1992, the continuing education compliance period shall extend from January 1, 1990, through June 30, 1992. For all subsequent license renewal periods the continuing education compliance period shall be the 24-month period ending on the June 30 immediately preceding the July 1 commencement date of the license renewal period.

25.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity, either previously approved by the board or which otherwise meets the requirement herein and is approved by the board pursuant to subrule 25.3(5).

25.2(4) It is the responsibility of each licensee to finance the costs of continuing education. All fees for continuing education courses shall be remitted by licensee directly to the sponsor or as the board may otherwise direct.

25.2(5) Every licensee shall maintain a record of all courses attended by keeping the certificates of attendance for four years after the end of the year of attendance. The board reserves the right to require any licensee to submit the certificates of attendance for the continuing education courses attended as further evidence of compliance for any year no more than four years previously.

25.2(6) Licensees are responsible for obtaining proof of attendance forms when attending courses. Clock hours must be verified by the sponsor with the issuance of proof of attendance forms to the licensee.

25.2(7) Each licensee shall file a signed continuing education reporting form reflecting a minimum of 30 continuing education credit hours in compliance with this chapter. Such report shall be filed with the board at the time of application for renewal of a dental or dental hygiene license.

25.2(8) No carryover of credits from one biennial period to the next will be allowed.

25.2(9) Licensees shall complete training relating to the identification and reporting of child abuse and dependent adult abuse pursuant to the requirements set forth by Iowa Code section 232.69(3) and chapter 235B.

25.2(10) A licensed dental hygienist shall furnish evidence of a valid annual certification for cardiopulmonary resuscitation which shall be credited toward the dental hygienist's continuing education requirement for renewal of a license. Such evidence shall be filed at the time of renewal of the license. Credit hours awarded shall not exceed six continuing education credit hours per biennium. Valid annual certification means certification by an organization on an annual basis or, if that certifying organization requires certification on a less frequent basis, evidence that the hygienist has been properly certified for each year covered by the license renewal period.

650—25.3(153) Approval of programs and activities. A continuing education activity shall be qualified for approval if the board determines that:

25.3(1) It constitutes an organized program of learning (including a workshop or symposium) which contributes directly to the professional competency of the licensee; and

25.3(2) It pertains to common subjects or other subject matters which relate integrally to the practice of dentistry or dental hygiene which are intended to refresh and review, or update knowledge of new or existing concepts and techniques; and

25.3(3) It is conducted by individuals who have a special education, training and experience by reason of which said individuals should be considered experts concerning the subject matter of the program. The program must include a manual or written outline which substantively pertains to the subject matter of the program.

25.3(4) Activity types acceptable for continuing dental education credit may include:

a. Attendance at a multiday convention-type meeting. A multiday, convention-type meeting is held at a national, state, or regional level and involves a variety of concurrent educational experiences directly related to the practice of dentistry. Effective July 1, 2000, attendees shall receive three hours of credit with the maximum allowed six hours of credit per biennium. Prior to July 1, 2000, attendees shall receive five hours of credit with the maximum allowed ten hours of credit per biennium. Four hours of credit shall be allowed for presentation of an original table clinic at a convention-type meeting as verified by the sponsor when the subject matter conforms with 25.3(7). Attendees at the table clinic session of a dental or dental hygiene convention shall receive two hours of credit as verified by the sponsor.

b. Postgraduate study relating to health sciences shall receive 15 credits per semester hour.

c. Successful completion of Part II of the National Board Examination for dentists, or the National Board Examination for dental hygienists, if taken five or more years after graduation will result in 15 hours credit.

d. Computer CD-ROM programs that are interactive and require branching, navigation, participation and decision making on the part of the viewer are allowed a maximum of 12 hours per biennium.

e. Credit may be given for other continuing education activities upon request and approval by the Iowa board of dental examiners.

25.3(5) Prior approval of activities. An organization or person other than an approved sponsor, which desires prior approval of a course, program or other continuing education activity or who desires to establish approval of the activity prior to attendance, shall apply for approval to the board at least 90 days in advance of the commencement of the activity on a form provided by the board. The board shall approve or deny the application. The application shall state the dates, subjects offered, total hours of instruction, names and qualifications of speakers and other pertinent information. Applications may include the following:

a. Original presentation of continuing dental education courses shall result in credit double that which the participant receives. Credit will not be granted for repeating presentations within the biennium. Credit is not given for teaching which represents part of the licensee's normal academic duties as a full-time or part-time faculty member or consultant.

b. Publications of scientific articles in professional dental and dental hygiene related journals shall result in a maximum of 5 hours per article; maximum of 20 hours per biennium.

c. Home study activities shall result in a maximum of 6 hours credit per biennium; licensee must submit a written report of activity. Activity may include television viewing, video programs, correspondence work or research.

25.3(6) Postapproval of activities. A licensee seeking credit for attendance and participation in an educational activity which was not conducted by an approved sponsor nor otherwise approved may submit to the board, within 60 days after completion of such activity, its dates, subjects, instructors, and their qualifications, the number of credit hours and proof of attendance therefor. Within 90 days after receipt of such application the board shall advise the licensee in writing by ordinary mail whether the activity is approved and the number of hours allowed therefor. All requests may be reviewed by the advisory committee on continuing education prior to final approval or denial by the board. A licensee not complying with the requirements of this paragraph may be denied credit for such activity.

25.3(7) Subject matter acceptable for continuing dental education credit:

a. In order for specific course subject material to be acceptable for credit, the stated course objectives, overall curriculum design or course outlines shall clearly establish conformance with the following criteria:

(1) The subject matter is of value to dentistry and directly applicable to oral health care.

(2) The information presented enables the dental professional to enhance the dental health of the public.

(3) The dental professional is able to apply the knowledge gained within the professional capacity of the individual.

(4) The dental science courses include, but are not limited to, those within the eight recognized dental specialty areas and topics such as geriatric dentistry, hospital dentistry, oral diagnosis, oral rehabilitation and preventative dentistry.

b. Nonacceptable subject matter includes personal development, business aspects of practice, personnel management, government regulations, insurance, collective bargaining, and community service presentations. While desirable, those subjects are not applicable to the dental and dental hygiene skills, knowledge, and competence as expressed in the legislation. Therefore, such courses will receive no credit toward relicensure. The board may deny credit for any course. Courses in patient treatment record keeping, risk management, and OSHA regulations are acceptable subject matter.

650—25.4(153) Approval of sponsors.

25.4(1) An organization or person not previously approved by the board, which desires approval as a sponsor of courses, programs, or other continuing education activities, shall apply for approval to the board stating its education history for the preceding two years, including approximate dates, subjects offered, total hours of instruction presented, and names and qualifications of instructors. All applications shall be reviewed by the advisory committee on continuing education prior to final approval or denial by the board.

25.4(2) Prospective sponsors must apply to the board of dental examiners using a "Sponsor Approval Form" in order to obtain approved sponsor status. Board-approved sponsors must file a sponsor recertification record report biennially.

25.4(3) The person or organization sponsoring continuing education activities shall make a written record of the Iowa licensees in attendance and send a signed copy of such attendance record to the board office upon completion of the activity, but in no case later than July 1 of even-numbered years. The report shall be sent to the Iowa Board of Dental Examiners, Executive Hills West, 1209 East Court, Des Moines, Iowa 50319.

25.4(4) Sponsors must be formally organized and adhere to board rules for planning and providing continuing dental education activities. Programs sponsored by individuals or institutions for commercial or proprietary purposes, especially programs in which the speaker advertises or urges the use of any particular dental product or appliance, may be recognized for credit on a prior approval basis only. When courses are promoted as approved continuing education courses which do not meet the requirements as defined by the board, the sponsor will be required to refund the registration fee to the participants. Approved sponsors may offer noncredit courses provided the participants have been informed that no credit will be given. Failure to meet this requirement may result in loss of approved sponsor status.

650—25.5(153) Review of programs. The board on its own motion or at the recommendation of the advisory committee on continuing education may monitor or review any continuing education program already approved by the board and upon evidence of significant variation in the program presented from the program approved may disapprove all or any part of the approved hours granted to the program.

650—25.6(153) Hearings. In the event of denial, in whole or in part, of any application for approval of a continuing education program or credit for continuing education activity, the applicant or licensee shall have the right, within 20 days after the sending of the notification of the denial by ordinary mail, to request a hearing which shall be held within 60 days after receipt of the request for hearing. The hearing shall be conducted by the board or a qualified hearing officer designated by the board. If the hearing is conducted by a hearing officer, the hearing officer shall submit a transcript of the hearing with the proposed decision of the hearing officer. The decision of the board or decision of the hearing officer after adoption by the board shall be final.

650—25.7(153) Waivers, extensions and exemptions. The board may, in individual cases involving physical disability or illness, grant waivers of the minimum education requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application shall be made on forms provided by the board and signed by the licensee and a physician licensed by the board of medical examiners. Waivers of the minimum educational requirements may be granted by the board for any period of time not to exceed one calendar year. In the event that the physical disability or illness upon which a waiver has been granted continues beyond the period of the waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of the waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by methods prescribed by the board.

Extensions or exemptions of continuing education requirements will be considered by the board on an individual basis.

A dentist or dental hygienist licensed to practice in this state shall be deemed to have complied with the continuing education requirements of this state during periods that the person serves honorably on active duty in the military services, or for periods that the person practices dentistry or dental hygiene in another state or district having a continuing education requirement for dentistry or dental hygiene and meets all requirements of that state or district for practice therein, or for periods that the dentist or dental hygienist is a government employee working in the person's licensed specialty and assigned to duty outside the United States, or for other periods of active practice and absence from the state approved by the board.

650—25.8(153) Exemptions for inactive practitioners. A licensee who is not engaged in the practice in the state of Iowa, residing in or out of the state of Iowa, may be granted a waiver of compliance and obtain a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not engage in the practice of dentistry or dental hygiene in Iowa without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon the form provided by the board.

650—25.9(153) Reinstatement of inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with these regulations and obtained a certificate of exemption shall, prior to engaging in the practice of dentistry or dental hygiene in the state of Iowa, satisfy the following requirements for reinstatement:

25.9(1) Submit written application for reinstatement to the board upon forms provided by the board; and

25.9(2) Furnish in the application evidence of one of the following:

a. The full-time practice of dentistry or dental hygiene in another state of the United States or the District of Columbia and completion of continuing education for each year of inactive status substantially equivalent in the opinion of the board to that required under the rules; or

b. Completion of a total number of hours of accredited continuing education computed by multiplying 15 by the number of years a certificate of exemption shall have been in effect for such applicant; or

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

d. The licensee may petition the board to determine the continuing education credit hours required for reinstatement of their Iowa license.

25.9(3) Applications must be filed with the board along with the following:

a. Certification by the state board of dentistry or equivalent authority in which applicant has engaged in the practice of dentistry or dental hygiene that the applicant has not been the subject of final or pending disciplinary action.

b. Statement as to any claims, complaints, judgments or settlements made with respect to the applicant arising out of the alleged negligence or malpractice in rendering professional services as a dentist or dental hygienist.

650—25.10(153) Noncompliance with continuing dental education requirements. It is the licensee's personal responsibility to comply with these rules. The license of individuals not complying with the continuing dental education rules may be subject to disciplinary action by the board.

Inquiries relating to acceptability of continuing dental education activities, approval of sponsors, or exemptions should be directed to: Advisory Committee on Continuing Dental Education, Iowa Board of Dental Examiners, Executive Hills West, 1209 East Court, Des Moines, Iowa 50319.

650—25.11(153) Dental hygiene continuing education. The dental hygiene committee, in its discretion, shall make recommendations to the board for approval or denial of requests pertaining to dental hygiene education. The dental hygiene committee may utilize the continuing education advisory committee as needed. The board's review of the dental hygiene committee recommendation is subject to 650—Chapter 5. The following items pertaining to dental hygiene shall be forwarded to the dental hygiene committee for review.

1. Dental hygiene continuing education requirements and requests for approval of programs, activities and sponsors.
2. Requests by dental hygienists for waivers, extensions and exemptions of the continuing education requirements.
3. Requests for exemptions from inactive dental hygiene practitioners.
4. Requests for reinstatement from inactive dental hygiene practitioners.
5. Appeals of denial of dental hygiene continuing education and conduct hearings as necessary.

These rules are intended to implement Iowa Code section 147.10.

[Filed 8/23/78, Notice 6/28/78—published 9/20/78, effective 10/25/78]
[Filed emergency 12/16/83—published 1/4/84, effective 12/16/83]
[Filed emergency 2/24/84 after Notice 1/4/84—published 3/14/84, effective 2/24/84]
[Filed 12/12/85, Notice 9/11/85—published 1/1/86, effective 2/5/86]
[Filed 4/28/88, Notice 3/23/88—published 5/18/88, effective 6/22/88]
[Filed 3/16/90, Notice 12/27/89—published 4/4/90, effective 5/9/90]
[Filed 4/3/91, Notice 2/20/91—published 5/1/91, effective 6/5/91]
[Filed 1/29/93, Notice 11/25/92—published 2/17/93, effective 3/24/93]
[Filed 5/1/97, Notice 2/26/97—published 5/21/97, effective 6/25/97]
[Filed 10/17/97, Notice 8/13/97—published 11/5/97, effective 12/10/97]
[Filed 1/22/99, Notice 11/18/98—published 2/10/99, effective 3/17/99]
[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]
[Filed 11/12/99, Notice 8/11/99—published 12/1/99, effective 1/5/00]

MEDICAL EXAMINERS BOARD[653]

[Prior to 5/4/88, see Health Department[470], Chs 135 and 136, renamed Medical Examiners Board[653] under the "umbrella" of Public Health Department[641] by 1986 Iowa Acts, ch 1245]

653—10.6(17A) Meetings and examinations. The board shall meet at least six times per year. Dates and location of board meetings may be obtained from the board's office.

Except as otherwise provided by statute, all board meetings shall be open and the public shall be permitted to attend the meetings.

653—10.7 Rescinded IAB 5/17/89, effective 6/21/89.

653—10.8(17A,147) Petition to promulgate, amend or repeal a rule.

10.8(1) An interested person or other legal entity may petition the board requesting the promulgation, amendment or repeal of a rule.

10.8(2) The petition shall be in writing, signed by or on behalf of the petitioner and contain a detailed statement of:

a. The rule that the petitioner is requesting the board to promulgate, amend or repeal. Where amendment of an existing rule is sought, the rule shall be set forth in full with the matter proposed to be deleted therefrom enclosed in brackets and proposed additions thereto shown by underlining or boldface.

b. Facts in sufficient detail to show the reasons for the proposed action.

c. All propositions of law to be asserted by petitioner.

10.8(3) The petition shall be in typewritten or printed form, captioned BEFORE THE IOWA STATE BOARD OF MEDICAL EXAMINERS and shall be deemed filed when received by the executive director.

10.8(4) Upon receipt of the petition the executive director shall:

a. Within ten days mail a copy of the petition to any parties named therein. Such petition shall be deemed served on the date of mailing to the last known address of the party being served.

b. Shall advise petitioner that petitioner has 30 days within which to submit written views.

c. May schedule oral presentation of petitioner's view if the board so directs.

d. Shall, within 60 days after date of submission of the petition, either deny the petition or initiate rule-making proceedings in accordance with Iowa Code chapter 17A.

10.8(5) In the case of a denial of a petition to promulgate, amend or repeal a rule, the board or its executive director shall issue an order setting forth the reasons in detail for denial of the petition. The order shall be mailed to the petitioner and all other persons upon whom a copy of the petition was served.

653—10.9(17A) Public hearings. Prior to adoption, amendment or repeal of any rule, the board shall give notice of intended action by causing said notice to be published in the Iowa Administrative Code. Written comments relating to the proposed action by the board may be submitted to the board at its official address no later than 20 days after the notice has been published. The administrative rules review committee may, under the provisions of Iowa Code section 17A.8(6), on its own motion or on written request by any individual or group, review this proposed action at a regular or special meeting where the public or interested persons may be heard. A public hearing shall be scheduled prior to the adoption, amendment or repeal of any rule(s) provided the request for hearing is in writing, received no later than 20 days after the notice has been published and the request for hearing is made by: 25 interested persons, a governmental subdivision, an agency, an association of 25 persons, or upon the discretion of the board.

10.9(1) The chairperson of the board or a presiding officer appointed by the board shall preside over the public hearing.

a. The date, time and location of the public hearing shall be set by the board. The appropriate individuals, governmental subdivisions, agencies or associations making the request shall be notified of said date, time and location of hearing by certified mail.

b. Any individual(s) may present either written or oral comments pertinent to the rule(s) for which the public hearing has been scheduled. Any individual(s) desiring to make written comments shall submit these comments to the presiding officer prior to the hearing date. Any individual(s) desiring to make an oral presentation shall submit a written request to the board prior to the hearing date.

c. The authority of the chairperson of the board or presiding hearing officer during the public hearing includes:

(1) Setting a ten-minute time limit on oral presentations if necessary.

(2) Excluding any individual(s) who may be either disruptive or obstructive to the hearing; and

(3) Ruling that the oral presentation or discussion is not pertinent to the hearing.

d. The conduct of the chairperson of the board or presiding officer during the public hearing shall include but need not be limited to:

(1) Open the hearing and receive appearances.

(2) Enter the notice of hearing into the public record.

(3) Review rule(s) under adoption, amendment or repeal and provide rationale for the proposed action by the board.

(4) Receive oral presentations.

(5) Read into the official public record written comments which have been submitted.

(6) Inform those individuals present that within 30 days of the date of hearing, the board shall issue a written statement of the principal reasons for and against the rule it adopted, incorporating therein the reasons either for accepting or overruling considerations urged against the rule.

(7) Adjourn the hearing.

Rules 10.1(17A,147) to 10.9(17A) are intended to implement Iowa Code sections 17A.3, 17A.4, 17A.7, 21.3 and 21.5.

10.10(6) *Service and filing of petitions and other papers.*

a. When service required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

b. Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Board of Medical Examiners, 1209 East Court, Executive Hills West, Des Moines, Iowa 50319. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board of medical examiners.

c. Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided by 653—12.19(17A).

10.10(7) *Consideration.* Upon request by petitioner, the board of medical examiners must schedule a brief and informal meeting between the original petitioner, all intervenors, and the board of medical examiners, a member of the board, or a member of the staff of the board, to discuss the questions raised. The board may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.

10.10(8) *Action on petition.*

a. Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the board of medical examiners or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

b. The date of issuance of an order or of a refusal to issue an order is as defined in 653—subrule 12.11(1).

10.10(9) *Refusal to issue order.*

a. The board of medical examiners shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

(1) The petition does not substantially comply with the required form.

(2) The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.

(3) The board does not have jurisdiction over the questions presented in the petition.

(4) The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.

(5) The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

(6) The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

(7) There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

(8) The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

(9) The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

(10) The petitioner requests the board to determine whether a statute is unconstitutional on its face.

b. A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

c. Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

10.10(10) *Contents of declaratory order—effective date.* In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

10.10(11) *Copies of orders.* A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

10.10(12) *Effect of a declaratory order.* A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the board of medical examiners, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board of medical examiners. The issuance of a declaratory order constitutes final agency action on the petition.

This rule is intended to implement Iowa Code section 17A.9 as amended by 1998 Iowa Acts, chapter 1202.

[Filed 11/20/51; amended 5/13/64]
[Filed 2/5/79, Notice 11/29/78—published 2/21/79, effective 3/29/79]
[Filed without Notice 2/14/80—published 3/5/80, effective 4/9/80]
[Filed 3/13/81, Notice 1/7/81—published 4/1/81, effective 5/6/81]
[Filed emergency after Notice 4/28/83, Notice 2/2/83—published 5/25/83, effective 4/28/83]
[Filed 7/15/83, Notice 6/8/83—published 8/3/83, effective 9/7/83]
[Filed emergency 4/15/88—published 5/4/88, effective 4/15/88]
[Filed 4/25/89, Notice 2/22/89—published 5/17/89, effective 6/21/89]
[Filed 8/2/90, Notice 5/30/90—published 8/22/90, effective 9/26/90]
[Filed 1/10/94, Notice 11/24/93—published 2/2/94, effective 3/9/94]
[Filed 4/1/94, Notice 2/2/94—published 4/27/94, effective 6/1/94]
[Filed 5/2/97, Notice 3/12/97—published 5/21/97, effective 6/25/97]
[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]
[Filed 11/10/99, Notice 9/22/99—published 12/1/99, effective 1/5/00]

b. Completion of a total number of hours of accredited continuing education computed by multiplying 20 by the number of years a certificate of exemption shall have been in effect for such applicant; or

c. Successful completion of an approved examination conducted within one year immediately prior to the submission of such application for reinstatement.

653—11.19(272C) Exemptions for active practitioners. A physician licensed under this rule shall be exempt from the continuing education requirements for:

11.19(1) Periods that the licensee serves honorably on active duty in the military;

11.19(2) Periods that the licensee is a resident of another state or district having a continuing education requirement for the profession and the licensee meets all requirements of that state or district for practice therein;

11.19(3) Periods that the licensee is a government employee working in the licensee's specialty and assigned to duty outside the United States; or

11.19(4) For other periods of active practice and absence from the state approved by the board.

653—11.20(272C) Physical disability or illness. The board may, in individual cases involving physical disability or illness, grant waivers of the minimum education requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor shall be made on forms provided by the board and signed by the licensee and attending physician. Waiver of the minimum educational requirements may be granted by the board for any period of time not to exceed one calendar year. In the event that the physical disability or illness upon which a waiver has been granted continues beyond the period of waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion of all of the minimum educational requirements waived by such methods as may be prescribed by the board.

653—11.21(272C) Noncompliance. A licensee who in the opinion of the board does not satisfy the requirements for license renewal stated in this chapter will be placed on probationary status and notified of the fact within 30 days after the renewal date. Within 90 days after such notification, the licensee must submit evidence to the board demonstrating that the deficiencies have been satisfied. If the deficiencies are not made up within the specified period of time, the licensee's license will be classified as lapsed without further hearing.

653—11.22(147) Licenses. When the board issues a license to practice, it shall record the licensee's name, license number and other identifying information in the board's computer records, in keeping with the intent of Iowa Code section 147.5. These computer files shall be backed up weekly with off-site storage of the backup files. Computer record keeping will be done in lieu of prior technology, a handwritten record book and cross-referenced licenses.

653—11.23 to **11.29** Reserved.

653—11.30(147) License renewal. A permanent license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy shall expire biennially on the first day of the birth month of the licensee and may be renewed as determined by the board without examination upon application of the licensee. Licenses of persons born in even-numbered years shall expire in even-numbered years, and licenses of persons born in odd-numbered years shall expire in odd-numbered years. Application for license renewal shall be made in writing accompanied by the required fee not later than the expiration date. Renewal certificates shall be displayed along with the original license in the primary location of practice.

11.30(1) Each licensee shall be sent a renewal notice by mail at least 60 days prior to the expiration date of the license. A penalty of $50 per calendar month shall be assessed by the board after the expiration date of the license. The penalty, however, shall not exceed $200. Failure of a licensee to renew a license within four months following its expiration date shall cause the license to lapse and shall invalidate it. A licensee whose license has lapsed and become invalid is prohibited from the practice of medicine and surgery, osteopathic medicine and surgery or osteopathy until the license is reinstated in accordance with rule 11.32(147).

11.30(2) An issued permanent license shall be valid for a period not to exceed two years and two months as determined by the board in accordance with the physician's birth month and year.

11.30(3) The renewal fee for a permanent license issued during a calendar year shall be prorated on a monthly basis according to the date of issue and the physician's month and year of birth.

11.30(4) Licensees shall notify the board of any change in their home address or the address of their place of practice, within 30 days of making an address change.

653—11.31(147) Fees. The following fees shall be collected by the board and shall not be refunded except by board action in unusual instances such as documented illness of the applicant, death of the applicant, inability of the applicant to comply with the rules of the board, or withdrawal of the application provided such withdrawal is received in writing by the cancellation date specified by the board. Examination fees shall be nontransferable from one examination to another. Refunds of examination fees shall be subject to a nonrefundable administrative fee of $75 per application. The administrative fee shall be deducted by the board or its designated testing service prior to actual refund.

11.31(1) For a license to practice medicine and surgery or osteopathic medicine and surgery issued upon the basis of an examination given by the board prior to January 1, 1987, $350. For a license to practice medicine and surgery or osteopathic medicine and surgery issued upon the basis of an examination given by the board between January 1, 1987, and May 31, 1991, $525. For a license to practice medicine and surgery or osteopathic medicine and surgery issued upon the basis of an examination given by the board subsequent to May 31, 1991, $300.

11.31(2) For a license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy issued by endorsement, $300.

11.31(3) For a renewal of a license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy, $200 per biennial period or a prorated portion thereof for a period of less than two years as determined by the board to facilitate biennial renewal according to month and year of birth.

11.31(4) Upon written request, the board may provide the following information about the status of licensees or examinees for the designated fees:

a. Written verification that a licensee in this state is licensed.

(1) For a certified statement verifying licensure including the board seal or a letter of good standing, $25;

(2) For verification of licensure status not requiring certified statements or letters of up to ten licensees, $15;

(3) For an unlimited number of verifications of licensure status in a 12-month period, an annual subscription fee of $2000. After June 30, 1994, the annual subscription fee shall be submitted prior to July 31.

653—11.34(147,148,150) Licensure denied—appeal procedure. An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a notice of the appeal and request for hearing upon the executive director not more than 30 days following the date of the mailing of the notification of licensure denial to the applicant or, not more than 30 days following the date upon which the applicant was served notice if notification was made in the manner of service of an original notice. The request for hearing as outlined herein shall specifically delineate the facts to be contested and determined at the hearing.

653—11.35(147,148,150) Licensure denied—hearing. If an applicant who has been denied licensure by the board appeals the licensure denial and requests a hearing pursuant to 11.34(147,148,150), the hearing and subsequent procedures shall be pursuant to the process outlined in 653—subrules 12.50(13) to 12.50(32) inclusive.

These rules are intended to implement Iowa Code chapters 147, 148, 150, 150A and 272C.

[Filed 2/5/79, Notice 11/29/78—published 2/21/79, effective 3/29/79]
[Filed 2/27/81, Notice 1/7/81—published 3/18/81, effective 4/22/81]
[Filed 4/9/82, Notice 2/3/82—published 4/28/82, effective 6/2/82]
[Filed 6/14/82, Notice 4/28/82—published 7/7/82, effective 8/11/82]
[Filed 11/5/82, Notice 9/29/82—published 11/24/82, effective 12/29/82]
[Filed emergency after Notice 4/28/83, Notice 2/2/83—published 5/25/83, effective 4/28/83]
[Filed 9/9/83, Notice 8/3/83—published 9/28/83, effective 11/2/83]
[Filed 1/13/84, Notice 12/7/83—published 2/1/84, effective 3/7/84]
[Filed emergency 3/8/85—published 3/27/85, effective 3/8/85]
[Filed emergency 8/9/85—published 8/28/85, effective 8/9/85]
[Filed 5/30/86, Notice 3/26/86—published 6/18/86, effective 7/23/86]
[Filed emergency 7/25/86—published 8/13/86, effective 7/25/86]
[Filed 9/3/86, Notice 7/16/86—published 9/24/86, effective 10/29/86]
[Filed 10/1/86, Notice 8/13/86—published 10/22/86, effective 11/26/86]
[Filed 1/23/87, Notice 12/17/86—published 2/11/87, effective 3/18/87]
[Filed 9/2/87, Notice 7/29/87—published 9/23/87, effective 10/28/87]
[Filed emergency 4/15/88—published 5/4/88, effective 4/15/88]
[Filed 4/25/89, Notice 2/22/89—published 5/17/89, effective 6/21/89]
[Filed 5/11/90, Notice 3/7/90—published 5/30/90, effective 6/6/90]
[Filed 8/2/90, Notice 5/30/90—published 8/22/90, effective 9/26/90]
[Filed 1/2/91, Notice 11/14/90—published 1/23/91, effective 2/27/91]
[Filed 6/7/91, Notice 5/1/91—published 6/26/91, effective 7/31/91]
[Filed 4/24/92, Notice 2/19/92—published 5/13/92, effective 6/17/92]
[Filed 11/19/93, Notice 10/13/93—published 12/8/93, effective 1/12/94]
[Filed 1/10/94, Notice 11/24/93—published 2/2/94, effective 3/9/94]
[Filed 4/1/94, Notice 2/2/94—published 4/27/94, effective 6/1/94]
[Filed 2/23/96, Notice 9/27/95—published 3/13/96, effective 4/17/96]
[Filed 2/23/96, Notice 1/3/96—published 3/13/96, effective 4/17/96]
[Filed 10/4/96, Notice 4/24/96—published 10/23/96, effective 11/27/96]
[Filed 12/13/96, Notice 10/23/96—published 1/1/97, effective 2/5/97]
[Filed 5/2/97, Notice 3/12/97—published 5/21/97, effective 6/25/97]
[Filed 12/1/97, Notice 9/24/97—published 12/17/97, effective 1/21/98]
[Filed 6/12/98, Notice 4/8/98—published 7/1/98, effective 8/5/98]
[Filed 11/10/99, Notice 9/22/99—published 12/1/99, effective 1/5/00]

12.4(5) The inability of a physician to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy with reasonable skill and safety by reason of illness; drunkenness; excessive use of alcohol, drugs, narcotics, chemicals or other type of material on a continuing basis; excessive use of alcohol, drugs, narcotics, chemicals or other type of material in a manner which may impair a physician's ability to practice the profession with reasonable skill and safety; or as a result of a mental or physical condition.

12.4(6) Being convicted of a felony in the courts of this state or another state, territory, or country, including the courts of the United States, as defined in Iowa Code section 148.6(2)*"b."*

12.4(7) Fraud in representations as to skill or ability. Fraud in representations as to skill or ability includes, but is not limited to, a physician having made misleading, deceptive or untrue representations as to the physician's competency to perform professional services for which the physician is not qualified to perform by training or experience.

12.4(8) Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a physician in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation and includes statements which may consist of, but are not limited to:

a. Inflated or unjustified expectations of favorable results;

b. Self-laudatory claims that imply that the physician is a skilled physician engaged in a field or specialty of practice for which the physician is not qualified;

c. Representations that are likely to cause the average person to misunderstand; or

d. Extravagant claims or claims of extraordinary skills not recognized by the medical profession.

12.4(9) Willful or repeated violations of the provisions of these rules or the provisions of Iowa Code chapters 147, 148, and 272C. Willful or repeated violations of the provisions of these rules and Iowa Code chapters 147, 148, and 272C include, but are not limited to, a physician's having intentionally or repeatedly violated a lawful rule or regulation promulgated by the board of medical examiners or violated a lawful order of the board in a disciplinary hearing or has violated the provisions of Title IV, Code of Iowa.

12.4(10) Violating a statute or law of this state, another state, or the United States, without regard to its designation as either felony or misdemeanor, which statute or law relates to the practice of medicine.

12.4(11) Failure to report a license revocation, suspension or other disciplinary action taken by a licensing authority of another state, an agency of the United States government, territory or other country within 30 days of the final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

12.4(12) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreement to restrict the practice of medicine and surgery, osteopathic medicine and surgery or osteopathy entered into in another state, district, territory or country, including the United States.

12.4(13) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice medicine and surgery, osteopathic medicine and surgery or osteopathy.

12.4(14) Being guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine and surgery, osteopathic medicine and surgery or osteopathy in which proceeding actual injury to a patient need not be established; or the committing by a physician of an act contrary to honesty, justice or good morals, whether the same is committed in the course of the physician's practice or otherwise, and whether committed within or without this state.

12.4(15) Willful or repeated violation of lawful rule or regulation adopted by the board.

12.4(16) Violating a lawful order of the board, previously entered by the board in a disciplinary or licensure hearing, or violating the terms and provisions of a consent agreement or informal settlement between a licensee and the board.

12.4(17) Being adjudged mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license unless the board orders otherwise.

12.4(18) Making suggestive, lewd, lascivious or improper remarks or advances to a patient.

12.4(19) Indiscriminately or promiscuously prescribing, administering or dispensing any drug for other than lawful purpose.

a. Self-prescribing or self-dispensing controlled substances.

b. Prescribing or dispensing controlled substances to members of the licensee's immediate family for an extended period of time.

(1) Prescribing or dispensing controlled substances to members of the licensee's immediate family is allowable for an acute condition or on an emergency basis when the physician conducts an examination, establishes a medical record, and maintains proper documentation.

(2) Immediate family includes spouse or life-partner, natural or adopted children, grandparent, parent, sibling, or grandchild of the physician; and natural or adopted children, grandparent, parent, sibling, or grandchild of the physician's spouse or life-partner.

12.4(20) Knowingly submitting a false report of continuing education or failure to submit the annual report of continuing education.

12.4(21) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

12.4(22) Failure to comply with a subpoena issued by the board.

12.4(23) Failure to file the reports required by rule 12.2(272C) concerning acts or omissions committed by another licensee.

12.4(24) Willful or repeated gross malpractice.

12.4(25) Willful or gross negligence.

12.4(26) Obtaining any fee by fraud or misrepresentation.

12.4(27) Failure to meet the acceptable and prevailing standard of care when delegating or supervising medical services provided by another physician, health care practitioner, or other individual who is collaborating with or acting as an agent, associate, or employee of the physician responsible for the patient's care, whether or not injury results.

12.4(28) Violating any of the grounds for the revocation or suspension of a license listed in Iowa Code section 147.55, 148.6 or 272C.10.

12.4(29) Failure to comply with the recommendations issued by the Centers for Disease Control of the United States Department of Health and Human Services for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures, or with the recommendations of the expert review panel established pursuant to Iowa Code section 139C.2(3), and applicable hospital protocols established pursuant to Iowa Code section 139C.2(1).

12.4(30) Noncompliance with a support order or with a written agreement for payment of support as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 252J. Disciplinary proceedings initiated under this subrule shall follow the procedures set forth in Iowa Code chapter 252J and 653—Chapter 15.

12.4(31) Student loan default or noncompliance with an agreement for payment of a student loan obligation as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 261 and rule 653—16.2(261).

12.4(32) Failure to transfer medical records to another physician in a timely fashion when legally requested to do so by the subject patient or by a legally designated representative of the subject patient.

12.4(33) Improper management of medical records, including failure to maintain timely, accurate, and complete medical records.

12.4(34) Failure to comply with an order of the board requiring a physician to submit to evaluation under Iowa Code section 148.6(2)*"h"* or 272C.9(1).

12.4(35) In a case which has been referred by the impaired physician review committee (IPRC) to the board, a violation of the terms of an initial agreement with the IPRC or an impaired physician recovery contract entered into with the IPRC.

12.4(36) Unprofessional conduct.

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

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

(4) The board may assess as costs the meal and lodging expenses necessarily incurred by witnesses testifying at the request of the state of Iowa. Meal and lodging costs shall not exceed the reimbursement employees of the state of Iowa receive for these expenses under the department of revenue and finance guidelines in effect on July 1, 1993.

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

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

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

d. Medical examination fees. All costs of physical or mental examinations ordered by the board pursuant to Iowa Code section 272C.9(1) as part of an investigation of a pending complaint or as a sanction following a contested case shall be paid directly by the licensee.

12.43(4) *Certification of reimbursable costs.* Within ten days after conclusion of a contested case hearing and before issuance of any final decision assessing costs, the executive director/designated staff person shall certify any reimbursable costs to the board. The executive director shall calculate the specific costs, certify the cost calculated, and file the certification as part of the record in the contested case. A copy of the certification shall be served on each party of record at the time of the filing.

12.43(5) *Assessment of fees and costs.* A final decision of the board imposing disciplinary action against a licensee shall include the amount of any fee assessed, which shall not exceed $75. If the board also assesses costs against the licensee, the final decision shall include a statement of costs delineating each category of costs and the amount assessed. The board shall specify the time period in which the fees and costs must be paid by the licensee.

a. A party shall file an objection to any fees or costs imposed in a final decision in order to exhaust administrative remedies. An objection shall be filed in the form of an application for rehearing pursuant to Iowa Code section 17A.16(2).

b. The application shall be resolved by the board consistent with the procedures for ruling on an application for rehearing. Any dispute regarding the calculations of any fees or costs to be assessed may be resolved by the board upon receipt of the parties' written objections.

12.43(6) *Payment of fees and costs.* All fees and costs assessed pursuant to this subrule shall be made in the form of a check or money order made payable to the state of Iowa and delivered by the licensee to the department of public health.

12.43(7) *Failure to make payment.* Failure of a licensee to pay any fees and costs within the time specified in the board's decision shall constitute a violation of an order of the board and shall be grounds for disciplinary action.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapters 147, 148 and 272C.

[Filed 2/5/79, Notice 11/29/78—published 2/21/79, effective 3/29/79]
[Filed without Notice 2/14/80—published 3/5/80, effective 4/9/80]
[Filed 10/10/80, Notice 8/20/80—published 10/29/80, effective 12/3/80]
[Filed 6/14/82, Notice 4/28/82—published 7/7/82, effective 8/11/82]
[Filed 9/9/83, Notice 8/3/83—published 9/28/83, effective 11/2/83*]
Filed 3/9/84, Notice 1/18/84—published 3/28/84, effective 5/2/84]
[Filed 10/19/84, Notice 8/29/84—published 11/7/84, effective 12/12/84**]
[Filed emergency 4/15/88—published 5/4/88, effective 4/15/88]
[Filed 10/28/88, Notice 6/15/88—published 11/16/88, effective 12/21/88]
[Filed 7/21/89, Notice 5/17/89—published 8/9/89, effective 9/13/89]
[Filed 8/2/90, Notice 5/30/90—published 8/22/90, effective 9/26/90]
[Filed 4/1/94, Notice 2/2/94—published 4/27/94, effective 6/1/94]
[Filed 11/3/94, Notice 9/28/94—published 11/23/94, effective 12/28/94]
[Filed 12/14/95, Notice 8/30 95—published 1/3/96, effective 2/7/96]
[Filed 2/23/96, Notice 9/27/95—published 3/13/96, effective 4/17/96]
[Filed 2/23/96, Notice 1/3/96—published 3/13/96, effective 4/17/96]
[Filed 5/2/97, Notice 3/12/97—published 5/21/97, effective 6/25/97]
[Filed 5/2/97, Notice 3/26/97—published 5/21/97, effective 6/25/97]
[Filed 2/2/98, Notice 11/5/97—published 2/25/98, effective 4/1/98]
[filed 6/12/98, Notice 4/22/98—published 7/1/98, effective 8/5/98]
[Filed 2/5/99, Notice 12/2/98—published 2/24/99, effective 3/31/99]
[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]
[Filed 11/10/99, Notice 9/22/99—published 12/1/99, effective 1/5/00]

*Effective date of subrule 135.204(10) [renumbered 12/4(10), IAC 5/4/88] delayed by the Administrative Rules Review Committee 70 days from November 2, 1983.
**Effective date of rules 135.206, 135.207 and 135.208 [renumbered 12.6, 12.7 and 12.8, IAC 5/4/88] delayed by the Administrative Rules Review Committee 70 days from December 12, 1984. Delay lifted by committee on January 9, 1985.

FIRE SAFETY RULES FOR SCHOOL AND COLLEGE BUILDINGS

661—5.650(100) General requirements and definitions.

5.650(1) Every building or structure designed for school or college occupancy shall be provided with exits sufficient to permit the prompt escape of students and teachers in case of fire or other emergency. The design of exits and other safeguards shall be such that reliance for safety to life in case of fire or other emergencies will not depend solely on any single safeguard; additional safeguards shall be provided for life safety in case any single safeguard is ineffective due to some human or mechanical failure.

5.650(2) Every building or structure shall be so constructed, arranged, equipped, maintained and operated as to avoid undue danger to lives and safety of its occupants from fire, smoke, fumes or resulting panic during the period of time reasonably necessary for escape from the building or structure in case of fire or other emergency.

5.650(3) Exits shall be provided of kinds, numbers, location and capacity appropriate to the individual building or structure, with due regard to the character of the occupancy, the number of persons exposed, the fire protection available and the height and type of construction of the building or structure, to afford all occupants convenient facilities for escape.

5.650(4) Fire escapes, where specified, shall be installed and the design and use of materials shall be in accordance with subrule 5.101(4).

5.650(5) All changes or alterations to be made in any school or college building shall conform with the applicable provisions of rules 661—5.650(100) through 661—5.799 and before any construction of new or additional installation is undertaken, drawings and specifications thereof made to scale shall be submitted to the state fire marshal for approval. Within a reasonable time (normally ten working days) after receipt of the drawings and specifications, the state fire marshal shall cause the same to be examined and if they conform as submitted or modified with the requirements of this division, the state fire marshal shall signify approval of the application either by endorsement thereon or by attachment thereto. If the drawings and specifications do not conform with applicable requirements of this division, the state fire marshal shall notify the applicant accordingly.

5.650(6) Each school building of two or more classrooms, not having a principal or superintendent on duty, shall have a teacher appointed by the school officials to supervise school fire drills and be in charge in event of fire or other emergency. This subrule shall not apply to college buildings.

5.650(7) Compliance with these rules shall not be construed as eliminating or reducing the necessity for other provisions for fire safety of persons using a school or college building under normal occupancy conditions nor shall any provision of these rules be construed as requiring or permitting any conditions that may be hazardous under normal occupancy conditions.

5.650(8) Drills. Each school and college shall conduct fire and tornado drills as required by Iowa Code section 100.31. Each school or college shall conduct four fire and four tornado drills yearly while school is in session, with two drills of each type between July 1 and December 31 and two drills of each type between January 1 and June 30. All drills shall be documented and such documentation shall be made available to the state fire marshal or other authorized person conducting a fire safety inspection of the school or college.

5.650(9) Definitions. The following definitions apply to rules 661—5.650(100) through 661—5.799.

Approved. Approved is defined as being acceptable to the state fire marshal. Any equipment or device which bears the seal of the Underwriters Laboratories, Inc., Factory Mutual Laboratory, American Standards Association, or the American Gas Association shall be accepted as approved.

Basement. A usable or unused floor space not meeting the definition of a story or first story.

Classroom. Any room originally designed, or later suitably adapted, to accommodate some form of group instruction on a day-by-day basis, excluding such areas as auditoriums, gymnasiums, lunchrooms, libraries, multipurpose rooms, study halls and similar areas. Storage and other service areas opening into and serving as an adjunct to a particular classroom shall be considered as part of that classroom area.

College building. For the purpose of these rules, college buildings are those used for instruction of levels higher than grade 12 by six or more persons for four or more hours per day or more than 12 hours per week and which are not school buildings.

Elementary school. An elementary school shall be those buildings that include prekindergarten through sixth grade.

Existing. Existing shall mean any school or college building or addition in use prior to February 1, 2000, or for which plans have received approval from the state fire marshal prior to February 1, 2000, other than buildings which received approval prior to February 1, 2000, to proceed with construction using the Life Safety Code with amendments as the basis for fire safety.

Exit. An exit is a way to get from the interior of a building or structure to the open air outside at the ground level. It may comprise vertical and horizontal means of travel such as doorways, stairways, ramps, corridors, passageways and fire escapes. An exit begins at any doorway or other point from which occupants may proceed to the exterior of the building or structure with reasonable safety under emergency conditions.

Fire alarm system. A fire alarm system shall be an electrically energized system approved by the state fire marshal, using component parts approved by the Underwriters Laboratories, Inc., and providing facilities of a type to warn the occupants of an existence of fire so that they may escape or to facilitate the orderly conduct of fire exit drills.

First story. The lowest story in a building which qualifies as a story, as defined herein, except that a floor level in a building having only one floor level shall be classified as a first story, provided such floor level is not more than 4 feet below grade for more than 50 percent of the total perimeter, or not more than 8 feet below grade at any point.

Interior finish. See Table No. 5-C following 661—5.105(100).

Level of exit discharge. The level or levels with direct access to grade which do not involve the use of stairs or ramps. The level with the fewest steps shall be the level of exit discharge when no level exists directly to grade. In the event of a dispute, the state fire marshal shall determine which level is the level of exit discharge.

New construction. Those buildings for which plans receive approval from the state fire marshal on or after February 1, 2000, or for which approval was granted by the fire marshal prior to February 1, 2000, to proceed with construction using the Life Safety Code with amendments. New construction includes additions to, renovations of, and reconstruction of existing buildings.

NFPA. NFPA means the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. Reference to NFPA standards, pamphlets, and appendices are to publications of the National Fire Protection Association.

Portable classroom building. A building designed and constructed so that it can be disassembled and transported to another location, or transported to another location without disassembling.

School buildings. For the purpose of these rules, school buildings are those used for gatherings of groups of six or more persons for more than 12 hours per week or 4 hours in any one day for the purpose of instruction prekindergarten through the twelfth grade. These occupancies are distinguished from other types of occupancies in that the same occupants are regularly present and are subject to discipline and control. School occupancies include: schools, academies, and kindergartens.

Story. That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused underfloor space is more than 6 feet above grade for more than 50 percent of the total perimeter or is more than 12 feet above grade at any point, such usable or unused underfloor space shall be considered as a story.

EXISTING SCHOOL BUILDINGS

661—5.651(100) Application. Rules 661—5.651(100) to 661—5.667(100) apply to existing school buildings.

661—5.652(100) Exits and occupancy load.

5.652(1) The occupancy load shall be determined on the following basis:

a. The square feet of floor space for persons in school buildings shall be one person for each 40 square feet of gross area.

b. In the case of individual classrooms in schools, there shall be 20 square feet of classroom space for each student.

c. In gymnasiums and auditoriums, the capacity for seating shall be on the basis of 6 square feet net per person.

5.652(2) Exits shall be provided of kinds, numbers, location and capacity appropriate to the individual building and as required in Table No. 5-A following rule 661—5.105(100).

5.652(3) Exits shall be so arranged and maintained as to provide free and unobstructed egress from all parts of every building or structure at all times when the building or structure is occupied. No locks or fasteners to prevent free escape from the inside of any building shall be installed.

5.652(4) Exits shall be clearly visible or routes to reach them shall be conspicuously indicated in such manner that every occupant of every educational building who is physically and mentally capable will readily know the direction of the escape from any point and each path of escape in its entirety shall be so arranged or marked that the way to a place of safety outside is unmistakable.

5.652(5) Where artificial illumination is needed, electric exit signs or directional indicators shall be installed and adequate lighting provided for all corridors and passageways.

5.652(6) Where additional outside stairs or fire escapes are required by law, they shall be 44 inches wide and shall extend to the ground. Platforms for outside stairs or fire escapes shall have a minimum dimension of 44 inches. Outside stairs and fire escapes shall be constructed in accordance with 661—5.101(4). Fire escapes shall not be permitted on new construction.

5.652(7) There shall be a minimum of two means of exit remote from each other from each floor of every school building. The traveled distance from any point to an exit shall not exceed 150 feet measured along the line of travel. In sprinklered buildings, the distance may be increased to 200 feet.

5.652(8) Every room with a capacity of 50 persons or over and having more than 1,000 square feet of floor area shall have at least two doorways as remote from each other as practicable. Such doorways shall provide access to separate exits but may open onto a common corridor leading to separate exits in opposite directions.

5.652(9) Each elementary classroom shall have a secondary avenue of escape. This may be a door leading directly outside the building, a window [see 5.655(100)], another door to an alternate corridor or a connecting door to a second room and thence to a secondary route of escape. In one-room classroom buildings the second exit shall be a door remote from the door used for normal entrance.

5.652(10) Rooms normally occupied by preschool, kindergarten or first grade pupils shall not be located above or below the level of exit discharge. Rooms normally occupied by second grade pupils shall not be located more than one story above the level of exit discharge.

661—5.653(100) Corridors.

5.653(1) Corridors used as means of access to exits, and corridors used for discharge from exits, shall provide a clearance of at least 6 feet in width, except in the case of buildings constructed prior to the effective date of this rule. Room doors or locker doors swinging into corridors shall not, at any point in the swing, reduce the clear effective width of the corridor to less than 6 feet, nor shall drinking fountains or other equipment, fixed or movable, be so placed as to obstruct the required minimum 6-foot width.

5.653(2) Open clothing storage.

a. Where clothes are hung exposed in exit corridors, they shall be separated by partitions of sheet metal or equivalent material. Partitions shall be placed at 6-foot intervals, be a minimum of 18 inches in depth, extend at least 1 foot above the coat hooks and within 8 inches of the floor.

b. Where open clothing is hung in exit corridors as described in paragraph *"a,"* an automatic fire detection system shall be installed in the corridor. Sprinkler systems may be installed in lieu of the automatic detection system.

5.653(3) Rescinded IAB 12/1/99, effective 2/1/00.

5.653(4) Except as permitted in 5.653(2), no combustible materials shall be stored in exit corridors.

5.653(5) The walls of corridors, used for exit facilities, shall be solid partitions of noncombustible finish material.

5.653(6) Where borrowed light panels of clear glass are used in exit corridors, the requirements of 5.667(100) shall apply, except that clear glass windows in doors and transoms may be permitted in existing buildings when nonhazardous activities are carried on in the classroom.

5.653(7) Any single corridor or combination of corridors having an unbroken length of 300 feet or more shall be divided into sections by smoke barriers consisting of smoke stop doors. Doors may be of ordinary solid wood type not less than 1¾-inch thick with clear wired glass panels. Such doors shall be of self-closing type and may be either single or double. They shall close the opening completely with only such clearance as is reasonably necessary for proper operation. Underwriters Laboratories, Inc., listed electromagnetic holders may be used to hold these doors open provided they are hooked into the fire alarm system and a smoke detector is located at a strategic point near the doors.

5.653(8) There shall be no dead end in any corridor or hall more than 20 feet beyond the exit.

661—5.654(100) Doors.

5.654(1) Building entrance and exit doors and the doors of all classrooms shall open outward.

5.654(2) Doors shall be provided for main exit facilities leading to a platform connecting with either outside stairs or fire escapes. Doors leading to outside stairways or fire escapes shall have a minimum width of 40 inches, except that on existing buildings where it is not practical to install a door of 40-inch width, a narrower door at least 30 inches in width may be installed.

5.654(3) The main exit and entrance doors and doors leading to fire escapes shall be equipped with panic-type latches that cannot be locked against the exit.

5.654(4) Doors protecting stairways and doors leading to fire escapes or outside stairs may have wire glass panes installed providing that the size of any single pane does not exceed 900 square inches.

5.654(5) Doors protecting vertical openings or fire doors installed where protection of hazardous rooms or areas are required shall be equipped with door closers and shall not be blocked open. Underwriters Laboratories, Inc., listed electromagnetic holders may be used to hold these doors open provided they are hooked into the fire alarm system and a smoke detector is located at a strategic point near the doors.

5.654(6) Classroom doors.

a. Classroom doors of not less than 30 inches in width may be used. Replacement doors must be a minimum of 1¾-inch solid core wood.

b. School buildings designed without doors to classrooms shall meet the requirements of rule 661—5.667(100).

5.654(7) Boiler-, furnace- or fuel-room doors, communicating to other building areas, shall be 1½-hour rated doors and frames, normally closed and hung to swing into the boiler room.

5.654(8) Doors to storage of combustibles off corridors shall be at least 1¾-inch solid core wood.

5.654(9) Doors from classrooms to corridors may have closeable louvers up to 24 inches above the floor. No other louvers or openable transoms shall be permitted in corridor partitions.

661—5.655(100) Windows.

5.655(1) Windows below or within 10 feet of an outside stairway or fire escape shall have panes of wire glass.

5.655(2) Emergency rescue or ventilation.

a. Every room or space used for classroom or other educational purposes or subject to normally scheduled student occupancy shall have at least one outside window for emergency rescue or ventilation. Such window shall be openable from the inside without the use of tools and provide a clear opening of not less than 20 inches in width, 24 inches in height and 5.7 square feet in area. The bottom of the opening shall be not more than 44 inches above the floor.

EXCEPTION 1: Buildings protected throughout by an approved automatic sprinkler system.

EXCEPTION 2: Rooms or spaces that have a door leading directly to the outside of the building.

EXCEPTION 3: Existing awning or hopper-type windows with a clear opening of 600 square inches may be continued in use.

EXCEPTION 4: Doors that allow travel between adjacent classrooms and, when used to travel from classroom to classroom, provide direct access to exits in both directions or direct access to an exit in one direction and to a separate smoke compartment that provides access to another exit in the other direction.

EXCEPTION 5: Buildings protected by an approved automatic fire detection system.

b. Reserved.

661—5.656(100) Stairway enclosures and floor cutoffs.

5.656(1) In buildings of more than one story, stairs shall be enclosed with protected noncombustible construction except those in accordance with 5.656(2). Doors shall be 1¾-inch solid wood construction, or better, with wire glass allowable.

5.656(2) In buildings of two stories with no basement, where such buildings are fire-resistive construction throughout, or fire-resistive first story and noncombustible or heavy timber second story, the stairs need not be enclosed, provided, *(a)* all exit-way finish is Class A (flame spread rating not exceeding 25), *(b)* no open storage of wardrobe, books, or furniture in exit ways or spaces common to them and *(c)* the stairs from the second floor lead directly to an outside door or vestibule leading to the outside of the building.

5.656(3) Rescinded IAB 12/1/99, effective 2/1/00.

5.656(4) Stairway enclosures or the protection of vertical openings shall be the equivalent of wood studding with gypsum lath and plaster on both sides. The doors shall be at least 1¾-inch solid core wood doors, with maximum 900 square inch glass panels allowable.

5.656(5) Stairways from boiler, furnace or fuel rooms, communicating to other building areas, shall be enclosed at top and bottom. The entire stair enclosure shall be noncombustible construction. The doors (other than to the boiler room) may be 1¾-inch solid wood with a maximum of 900 square inches of wired glass allowable.

5.656(6) Except as provided elsewhere in this section, interior stairways used as exits shall be enclosed. The construction of the enclosure shall be in accordance with the provisions of 5.656(1).

5.656(7) Cutoffs between floors for stairways not used as exit facilities shall use the same type of construction as provided in 5.656(1).

661—5.657(100) Interior finishes.

5.657(1) Interior finish shall be Class A in exit and Class A or B in access to exits. See Table No. 5-C following 661—5.105(100).

5.657(2) Whenever the fire marshal determines the fire hazard is great enough, Class A materials for room finishes shall be used in science laboratories, shop areas and such other areas as the fire marshal shall designate, in addition to those areas designated by 5.657(1).

5.657(3) Ceiling finishes not meeting the requirements of 5.657(1) may be corrected by the use of a fire-retardant treatment.

661—5.658(100) Construction.

5.658(1) Types of construction as defined in the National Fire Protection Association Pamphlet No. 220, Standard Types of Building Construction, 1961.

a. Fire resistive.

b. Heavy timber.

c. Noncombustible.

d. Ordinary.

e. Wood frame.

5.658(2) Noncombustible, ordinary or wood frame construction may be modified by using materials giving one-hour or greater fire protection.

5.658(3) Types of construction permitted:

a. One-story buildings and one-story wings on multistory buildings may be any of the types designated in 5.658(1), or combinations thereof, but with ordinary or wood frame construction, protected materials shall be used.

b. One-room portable classroom buildings may be of lesser construction provided the interior finish of the classrooms complies with 5.657(2) and 5.657(3) as use requires. Only noncombustible types of insulation may be used in such instances and each building shall be a minimum of 20 feet from another building.

c. Two-story buildings may be constructed of fire-resistive or protected noncombustible materials throughout, or the first story may be constructed of fire-resistive or protected noncombustible materials with the second story having either heavy timber or noncombustible materials.

d. Buildings of more than two stories shall be fire-resistive throughout.

5.658(4) Construction of the floor located above a basement shall be of fire-resistive or protected noncombustible materials.

5.658(5) Construction of the floor located above a crawl space or a pipe tunnel shall be of fire-resistive or noncombustible materials except in portable one-room classroom buildings an Underwriters Laboratories, Inc., approved fire-retardant paint may be used.

5.658(6) Portable classroom buildings shall maintain a minimum of 20 feet distance from another building if complying with 5.658(3)*"b."* One-room portable classroom buildings located 20 feet or less between adjacent walls shall have not less than a one-hour, fire-rated separation. All portable classroom buildings with raised floors shall be skirted to the ground with material equal to the siding of the building.

5.658(7) Boiler rooms, furnace rooms or fuel rooms which have no stories located above may be constructed of fire-resistive, noncombustible, protected heavy timber or protected ordinary materials.

5.658(8) Boiler rooms, furnace rooms or fuel rooms with building above shall be of two-hour, fire-resistive construction.

661—5.659(100) Fire alarm systems.

5.659(1) Buildings having two or more classrooms shall be equipped with a fire alarm system. Alarm stations shall be provided on each floor and so located that the alarm station is not more than 75 feet from any classroom door within the building. Minimum detection shall be corridor smoke detection, at a maximum spacing of 30 feet on centers, and heat detection in any hazardous areas. This minimum detection shall be installed by July 1, 2001. Horns or bells that provide a distinctive sound different from other bell systems shall be provided that will give audible warning to all occupants of the building in case of a fire or other emergency. A test device shall be provided for the purpose of conducting fire drills and tests of the alarm system. One-room classroom buildings placed in a complex of other classrooms shall be connected to the central alarm system.

5.659(2) Underwriters Laboratories, Inc., equipment and component parts shall be used in the installation of the fire alarm system. The electrical energy for the fire alarm system shall be on a separate circuit and shall be taken off the utility service to the school building ahead of the entrance disconnect. Fire alarm system shall be maintained in accordance with NFPA Pamphlet 72, National Fire Alarm Code, 1996 edition.

5.659(3) Whenever the fire marshal determines it advisable, the fire marshal may require that the fire alarm system be extended or designed to provide automatic fire detection devices in unsupervised areas, boiler rooms, storerooms or shop areas.

661—5.660(100) Electrical wiring.

5.660(1) Electrical wiring shall have enough circuits to provide adequate service without the need of overfusing the circuits.

5.660(2) The electrical wiring and component parts shall be properly maintained and serviced so as to eliminate the overheating or shorting that could cause a fire.

5.660(3) New or replacement electrical wiring installed after February 1, 2000, shall be in metal raceways.

5.660(4) All exit lights shall be connected ahead of the service disconnect.

661—5.661(100) Heating equipment.

5.661(1) Heating equipment shall be installed, where applicable, in rooms constructed in accordance with 5.658(6) and 5.658(7).

5.661(2) Installation for any heating equipment shall be in accordance with the manufacturer's instruction and conditions of safe operation.

5.661(3) Acceptable evidence for complying with 5.661(2) shall be labeling or listed equipment by Underwriters Laboratories, Inc., The American Gas Association Testing Laboratories, or approval of the state fire marshal.

5.661(4) Oil burning equipment shall be installed, maintained and operated in accordance with rule 661—5.350(101).

5.661(5) All gas burning equipment shall be installed and maintained in accordance with rule 661—5.250(101). Gas piping shall comply with NFPA Standard 54, Natural Fuel Gas Code, 1992 edition. Gas service lines into buildings shall be brought out of the ground before entering the building and shall be equipped with a shutoff valve outside the building. Gas piping shall not run in enclosed space without proper venting.

5.661(6) Floor-mounted flame heating equipment shall not be allowed to be installed in any classroom.

661—5.662(100) Gas piping. Rescinded IAB 12/1/99, effective 2/1/00.

661—5.663(100) Fire extinguishers.

5.663(1) Each building shall be equipped with fire extinguishers, in compliance with NFPA Standard 10, Installation of Portable Fire Extinguishers, 1998 edition.

5.663(2) Rescinded IAB 12/1/99, effective 2/1/00.

661—5.664(100) Basement, underground and windowless classrooms.

5.664(1) Basement classrooms may be used provided there is compliance with either paragraphs *"a"* and *"d,"* or compliance with paragraphs *"b," "c," "d"* and *"e"* below.

a. Direct approved egress door from classrooms to the outside.

b. Classroom doors open into a corridor that leads directly outside.

c. Inside stairs from basement corridors, serving basement classrooms, shall not communicate with other stories above.

d. Doors from basement classroom corridors, to other areas of the basement, shall be at least 1¾-inch solid core wood and equipped with door closers.

e. Buildings, unless of fire-resistive construction, using the basement area for classroom purposes, shall have sprinkler or automatic alarm systems in the entire basement area.

5.664(2) Underground or windowless school buildings constructed after October 17, 1969, and in use prior to February 1, 2000, or for which plans have been approved by the state fire marshal prior to February 1, 2000, shall be provided with:

a. Complete approved, automatic sprinkler systems.

b. Approved automatic smoke venting facilities in addition to automatic sprinkler protection.

c. An approved-type emergency exit lighting system, if no natural lighting is provided.

d. Where required exit from underground structures involves upward travel, such as ascending stairs or ramp, such upward exits shall be cut off from main floor areas. If the area contains any combustible contents or combustible interior finish, it shall be provided with outside vented smoke traps or other means to prevent the exit serving as a flue for smoke from any fire in the area served by the exit, thereby making the exit impassable.

e. Every windowless building shall be provided with outside access panels on each floor level, designed for fire department access from ladders for purposes of ventilation and rescue of trapped occupants.

5.664(3) Reserved.

5.664(4) to **5.664(7)** Rescinded IAB 12/1/99, effective 2/1/00.

661—5.665(100) Fire hazard safeguards.

5.665(1) Ventilating ducts discharging into attics of combustible construction shall be blocked off, protected with fire dampers or extended in a standard manner through the roof. Any light and ventilation shaft, chute, or other vertical opening between stories shall be protected as required for stairways.

5.665(2) Cooking ranges and other cooking appliances in food service area kitchens shall be provided with ventilating hoods, grease filters, and shall be vented to the outside in an approved manner.

5.665(3) Discarded furniture, furnishings or other combustible material shall not be stored or allowed to accumulate in attics or concealed spaces. Designated storage space shall be provided for equipment that may be used periodically throughout the school year and necessary to the school operation or curriculum schedule.

5.665(4) Space under stairways shall not be used for storage unless the storage area is lined with material that will provide a one-hour, fire-resistant rating and provided with a tight-fitting door that has a comparable fire-resistant rating. Except when removing or storing stock, the door shall be kept closed and locked.

5.665(5) Wastepaper baling and storage shall be in a room without ignition hazards and separated from other parts of the building by fire-resistant construction. Storage of paint products and flammable liquids shall be in a fire-resistive room or approved metal cabinet.

5.665(6) Decorative materials.

a. No furnishings, decorations, wall coverings, paints, etc., shall be used which are of a highly flammable character or which in the amounts used will endanger egress due to rapid spread of fire or formation of heavy smoke or toxic gases.

b. Highly flammable finishes such as lacquer and shellac are not permitted.

c. Draperies, curtains, loosely attached wall coverings, cloth hangings and similar materials shall be noncombustible or flame-proof in corridor exit ways and assembly occupancies. In other areas up to 10 percent of the wall area may have combustible coverings and hangings.

5.665(7) Spray finishing operations shall not be conducted except in a room designed for the purpose, protected with an approved automatic extinguishing system, and separated vertically and horizontally from such occupancies by construction having not less than two-hour fire resistance. NFPA Standard No. 33, Spray Finishing, 1995 edition, shall apply to construction and operation of all paint spray booths.

661—5.666(100) Automatic sprinklers.

5.666(1) Where automatic sprinkler protection is provided, other requirements of these regulations may be modified to such extent as permitted by other provisions in this section.

5.666(2) Automatic sprinkler systems shall be of standard, approved types so installed and maintained as to provide complete coverage for all portions of the premises protected, except insofar as partial protection is specified in other paragraphs of this section.

5.666(3) Automatic sprinkler systems for schools shall be those designed to protect occupancy classifications that are considered light hazard occupancies.

5.666(4) Automatic sprinkler systems shall be provided with water flow alarm devices to give warning of operation of the sprinkler due to fire, and such alarm devices shall be installed so as to give warning throughout the entire school building. The sprinkler alarm detection may be connected to the fire alarm system required by state law.

5.666(5) Partial automatic sprinkler systems shall provide complete protection in the basement and other hazardous areas. Above the basement area, stairwells and corridors shall be sprinklered. Nonhazardous classrooms are not required to be sprinklered for partial systems.

5.666(6) Water supplies.

a. All automatic sprinklers installed in school buildings shall be provided with adequate and reliable water supplies.

b. Public water supplies for sprinkler systems in schools shall have a minimum of 4-inch service pipe providing a minimum of 500 gallons of water per minute and shall have at least 15 pounds pressure at the highest sprinkler head.

c. Where public water supply is not available and a pressure supply tank is used, the tank shall be a minimum of 6,000 gallons capacity. The pressure tank shall operate at an air pressure adequate to discharge all of the water in the tank.

5.666(7) All automatic sprinkler systems required by these regulations shall be maintained in a reliable operating condition at all times in accordance with NFPA Standard No. 13, Installation of Sprinkler Systems, 1996 edition.

5.666(8) In buildings of ordinary or better construction, stairway enclosures shall not be required if protected by a partial or standard sprinkler system. Basement cutoffs of vertical openings are required. This modification of open stairways is permitted only in buildings that do not exceed a basement and two full stories.

661—5.667(100) Open plan buildings.

5.667(1) An "open plan building" is defined as any building where there are no permanent solid partitions between rooms or between rooms and corridors that are used for exit facilities.

5.667(2) Open plan buildings shall have enclosed stairways and any other vertical openings between floors protected in accordance with 5.666(1).

5.667(3) Open plan buildings shall not exceed 30,000 square feet in undivided area. Solid walls or smoke stop partitions shall be provided at intervals not to exceed 300 feet. Such walls or partitions shall have doors of a type that are at least 1¾-inch solid core wood doors and the partitions shall be the equivalent of one-hour construction.

5.667(4) Any cafeterias, gymnasiums or auditoriums shall be separated from the rest of the building by solid walls and no exits from other parts of the building shall require passing through such assembly areas.

5.667(5) Open plan buildings that do not have a direct exit door from each classroom to the outside shall be protected by a complete automatic fire detection system.

5.667(6) A sprinkler system may be installed in lieu of an automatic fire detection system in an open plan building.

5.667(7) Distance of travel to the nearest exit in an open plan building shall not exceed 100 feet from any point except that in a sprinklered building the distance may be increased to 150 feet.

Rules 5.650(100) to 5.667(100) are intended to implement Iowa Code section 100.35.

[Filed 12/19/60]
[Filed 6/22/62; amended 4/6/65, 10/17/69]
[Filed emergency 9/6/85—published 9/25/85, effective 9/6/85]
[Filed 4/1/88, Notice 9/23/87—published 4/20/88, effective 5/25/88]
[Filed 3/16/90, Notice 12/13/89—published 4/4/90, effective 5/9/90]
[Filed 8/25/92, Notice 5/13/92—published 9/16/92, effective 11/1/92]
[Filed 11/9/99, Notice 4/21/99—published 12/1/99, effective 2/1/00]

661—5.668 to **5.674** Reserved.

NEW SCHOOL BUILDINGS

661—5.675(100) New school buildings. This rule applies to new school buildings.

5.675(1) Chapters 10-1 through 10-5 of the NFPA Life Safety Code 101, 1994 edition, along with referenced appendices and chapters are hereby adopted by reference as the rules governing school buildings, additions, alterations and renovations for which plans are approved by the fire marshal division on or after February 1, 2000, with the following amendments:

a. Delete 10-1.4.4 and 10-1.4.5.

b. Add 10-1.6.1 as follows:

10-1.6.1 Portable classroom buildings shall be located a minimum distance of 20 feet from another building, or shall have not less than a one-hour, fire-rated separation. All portable classroom buildings with raised floors shall be skirted to the ground with material equal to the siding of the building. Portable classroom buildings placed in a complex of other classrooms shall be connected to the central alarm system.

c. Delete 10-2.2.2.2 and replace it with the following:

10-2.2.2.2 Panic hardware or fire exit hardware. Any door in a required means of egress from an area having an occupant load of 50 or more persons shall be permitted to be provided with a latch or lock only if it is panic hardware or fire exit hardware complying with 5-2.1.7.

d. Add Exception No. 4 to 10-2.11.1 to read as follows:

Exception No. 4: Fire-resistive or noncombustible buildings protected throughout by a complete fire detection system.

e. Delete 10-3.2.3 and replace it with the following:

10-3.2.3 Doors to janitor closets shall be permitted to have ventilating louvers when the room is protected by an automatic sprinkler system in accordance with 7-7.1.2.

f. Delete 10-3.4.1 and replace it with the following:

10-3.4.1 General. Educational occupancies shall be provided with a fire alarm system and partial smoke detection system in accordance with Section 7-6.

g. Delete 10-3.4.2.2 and replace it with the following:

10-3.4.2.2 In buildings provided with smoke detection or automatic sprinkler protection, the operation of the smoke detection or the sprinkler system shall automatically activate the fire alarm system in addition to the initiation means required in 10-3.4.2.1.

h. Add 10-3.5.1 as follows:

10-3.5.1 Portable fire extinguishers shall be provided and located such that the maximum travel distance from any location in the building to a fire extinguisher is 75 feet. Where provided portable fire extinguishers shall be installed and maintained as specified in 7-7.4.1.

5.675(2) Every school building with two or more classrooms shall have a fire and tornado warning system. Equipment must be approved by a nationally recognized testing laboratory and the state fire marshal.

5.675(3) Delete 31-3.1 from LSC.

[Filed 11/9/99, Notice 4/21/99—published 12/1/99, effective 2/1/00]

661—5.676 to **5.699** Reserved.

NEW COLLEGE BUILDINGS

661—5.700(100) to **5.714(100)** Rescinded IAB 12/1/99, effective 2/1/00. See 661—5.775(100).

[Filed April 6, 1965; amended October 17, 1969]

[Filed 4/1/88, Notice 9/23/87—published 4/20/88, effective 5/25/88]

[Filed 11/9/99, Notice 4/21/99—published 12/1/99, effective 2/1/00]

661—5.715 to **5.748** Reserved.

EXISTING COLLEGE BUILDINGS

661—5.749(100) Application. Rules 661—5.749(100) to 661—5.765(100) apply to existing college buildings.

661—5.750(100) Exits.

5.750(1) Exits shall be provided of kinds, numbers, location and capacity appropriate to the individual building or structure, with due regard to the character of the occupancy, the number of persons exposed, the fire protection available, and the height and type of construction of the building or structure, to afford all occupants convenient facilities for escape.

5.750(2) The occupancy load, for the purpose of determining the required exits and the required space for classroom use, shall be determined on the following basis.

a. The square feet of floor space for persons in college buildings shall be one person for each 40 square feet of gross area.

b. In gymnasiums and auditoriums, the capacity for seating shall be on the basis of 6 square feet net per person.

5.750(3) Exits shall be so arranged and maintained as to provide free and unobstructed egress from all parts of every existing college building or structure at all times when the building or structure is occupied. No locks or fasteners to prevent free escape from the inside of any building shall be installed.

5.750(4) Exits shall be clearly marked, routes to reach them shall be conspicuously indicated and each path of escape in its entirety shall be so arranged or marked so that the way to a place of safety outside is unmistakable.

5.750(5) Where artificial illumination is needed, electric exit signs or directional indicators shall be installed and adequate lighting provided for all corridors and passageways.

5.750(6) Where additional outside stairs or fire escapes are required by law, they shall be 44 inches wide and shall extend to the ground. Platforms for outside stairs or fire escapes shall have a minimum dimension of 44 inches. Outside stairs and fire escapes shall be constructed in accordance with 5.101(4).

5.750(7) There shall be a minimum of two means of exit remote from each other from each floor. The traveled distance from any point to an exit shall not exceed 150 feet measured along the line of travel.

EXCEPTION: In sprinklered buildings, the traveled distance from any point to an exit may be 200 feet measured along the line of travel.

5.750(8) Every room with a capacity of 50 persons or over and having more than 1,000 square feet of floor area shall have at least two doorways as remote from each other as practicable. Such doorways shall provide access to separate exits but may open onto a common corridor leading to separate exits in opposite directions.

5.750(9) Where exits do not comply with the requirements of this rule and in which hazardous conditions exist because of the number, width, construction or location of exits, the fire marshal may order additional exits to ensure adequate safety of the occupants but under no condition may outside fire escapes exceed 50 percent of the required stairs.

661—5.751(100) Corridors.

5.751(1) Corridors used as means of access to exits, and corridors used for discharge from exits, shall provide a clearance of at least 6 feet in width, except in the case of buildings constructed prior to May 6, 1965. Room doors or locker doors swinging into corridors shall not, at any point in the swing, reduce the clear effective width of the corridor to less than 6 feet, nor shall drinking fountains or other equipment, fixed or movable, be so placed as to obstruct the required minimum 6-foot width.

5.751(2) Open clothing storage.

a. Where clothes are hung exposed in exit corridors, they shall be separated by partitions of sheet metal or equivalent material. Partitions shall be placed at 6-foot intervals, be a minimum of 18 inches in depth, extend at least 1 foot above the coat hooks and within 8 inches of the floor.

b. Where open clothing is hung in exit corridors as described above, an automatic fire detection system shall be installed in the corridor. Sprinkler systems may be installed in lieu of the automatic detection system.

5.751(3) Except as permitted in 5.751(2), no combustible materials shall be stored in exit corridors.

5.751(4) The walls of corridors, used for exit facilities, shall be solid partitions of noncombustible finish material.

5.751(5) Where borrowed light panels of clear glass are used in exit corridors, the requirements of 5.765(100) shall apply, except that clear glass windows in doors and transoms may be permitted in existing buildings when nonhazardous activities are carried on in the classroom.

5.751(6) Any single corridor or combination of corridors having an unbroken length of 300 feet or more shall be divided into sections by smoke barriers consisting of smoke stop doors. Doors may be of ordinary solid wood type not less than 1¾ inches thick with clear wired glass panels. Such doors shall be of self-closing type and may be either single or double. They shall close the opening completely with only such clearance as is reasonably necessary for proper operation. Underwriters Laboratories, Inc. listed electromagnetic holders may be used to hold these doors open provided they are hooked into the fire alarm system and a smoke detector is located at a strategic point near the doors.

5.751(7) There shall be no dead end in any corridor or hall more than 20 feet beyond the exit.

661—5.752(100) Doors.

5.752(1) Building entrance and exit doors and the doors of all classrooms shall open outward.

5.752(2) Doors shall be provided for main exit facilities leading to a platform connecting with either outside stairs or fire escapes. Doors leading to outside stairways or fire escapes shall have a minimum width of 40 inches, except that where it is not practical to install a door of 40-inch width, a narrower door at least 30 inches in width may be installed.

5.752(3) The main exit and entrance doors and doors leading to fire escapes shall be equipped with a latching device that cannot be locked against the exit.

5.752(4) Doors protecting stairways and doors leading to fire escapes or outside stairs may have wire-glass panes installed providing that the size of any single pane does not exceed 900 square inches.

5.752(5) Doors protecting vertical openings or fire doors installed where protection of hazardous rooms or areas is required shall be equipped with door closers and shall not be blocked open. Underwriters Laboratories, Inc. listed electromagnetic holders may be used to hold these doors open provided they are hooked into the fire alarm system and a smoke detector is located at a strategic point near the doors.

5.752(6) Classroom doors.

a. Doors of not less than 30 inches in width may be used. Doors must be a minimum of 1¾-inch solid core wood.

b. Buildings designed without doors to classrooms shall meet the requirements of rule 5.765(100).

5.752(7) Boiler, furnace or fuel room doors, communicating to other building areas, shall be 1½-hour rated doors and frames, normally closed and hung to swing into the boiler room.

5.752(8) Doors to storage of combustibles off corridors shall be at least 1¾-inch solid core wood.

5.752(9) Doors from classrooms to corridors may have closeable louvers up to 24 inches above the floor. No other louvers or openable transoms shall be permitted in corridor partitions.

661—5.753(100) Windows. Windows below or within 10 feet of an outside stairway or fire escape shall have panes of wire glass.

661—5.754(100) Stairway enclosures and floor cutoffs.

5.754(1) In buildings of more than one story, stairs shall be enclosed with protected noncombustible construction except those in accordance with 5.754(2). Doors shall be 1¾-inch solid wood construction, or better, with wire glass allowable.

5.754(2) In buildings of two stories with no basement where such buildings are fire-resistive construction throughout, or fire-resistive first story and noncombustible or heavy timber second story, the stairs need not be enclosed, provided:

a. All exit-way finish is Class A (flame spread rating not exceeding 25),

b. There is no open storage of wardrobe, books or furniture in exit ways or spaces common to them, and

c. Stairs from the second floor lead directly to an outside door or vestibule leading to the outside of the building.

5.754(3) Stairway enclosures or the protection of vertical openings shall be the equivalent of wood studding with gypsum lath and plaster on both sides. The doors shall be at least 1¾-inch solid core wood doors, with maximum 900 square inch glass panels allowable.

5.754(4) Stairways from boiler, furnace or fuel rooms, communicating to other building areas, shall be enclosed at top and bottom. The entire stair enclosure shall be noncombustible construction. The doors (other than to the boiler room) may be 1¾-inch solid wood with maximum of 900 square inches of wired glass allowable.

5.754(5) Except as provided elsewhere in this rule, interior stairways used as exits shall be enclosed. The construction of the enclosure shall be in accordance with the provisions of 5.754(1).

5.754(6) Cutoffs between floors for stairways not used as exit facilities shall use the same type of construction as provided in 5.754(1).

5.754(7) Where building layout or construction makes it impractical to comply with rule 5.754(100), the fire marshal shall make an analysis of the building and may then order remedial construction or installation of fire detection or equipment which will correct hazardous conditions.

661—5.755(100) Interior finishes.

5.755(1) Interior finish shall be Class A in exit and Class A or B in access to exits. See Table No. 5-C following 661—5.105(100).

5.755(2) Whenever the fire marshal determines the fire hazard is great enough, Class A materials for room finishes shall be used in science laboratories, shop areas, and such other areas as the fire marshal shall designate, in addition to those areas designated by 5.755(1).

661—5.756(100) Construction. All additions shall comply with rule 661—5.775(100).

661—5.757(100) Fire alarm systems.

5.757(1) All schools having two or more classrooms shall be equipped with a fire alarm system. Alarm stations shall be provided on each floor and so located that the alarm station is not more than 75 feet from any classroom door within the building. Horns or bells that provide a distinctive sound different from other bell systems shall be provided that will give audible warning to all occupants of the building in case of a fire or other emergency. A test device shall be provided for the purpose of conducting fire drills and tests of the alarm system. One-room classroom buildings placed in a complex of other classrooms shall be connected to the central alarm system.

5.757(2) Underwriters Laboratories, Inc. equipment and component parts shall be used in the installation of the fire alarm system. The electrical energy for the fire alarm system shall be on a separate circuit and shall be taken off the utility service to the school building ahead of the entrance disconnect.

5.757(3) Whenever the fire marshal determines it advisable, the fire marshal may require that the fire alarm system be extended or designed to provide automatic fire detection devices in unsupervised areas, boiler rooms, storerooms or shop areas.

661—5.758(100) Electrical wiring.

5.758(1) The electrical wiring of any educational building shall have enough circuits to provide adequate service without the need of overfusing the circuits.

5.758(2) The electrical wiring and component parts shall be properly maintained and serviced so as to eliminate the overheating or shorting that could cause a fire.

5.758(3) New or replacement electrical wiring installed on or after February 1, 2000, shall be in metal raceways.

5.758(4) All exit lights shall be connected ahead of the service disconnect.

661—5.759(100) Heating equipment.

5.759(1) Heating equipment shall be installed, where applicable, in rooms constructed in accordance with the following requirements:

a. Boiler rooms, furnace rooms, or fuel rooms which have no stories located above shall be constructed of fire-resistive, noncombustible, protected heavy timber, or protected ordinary materials.

b. Boiler rooms, furnace rooms, or fuel rooms with one or more stories above shall be of two-hour, fire-resistive construction.

EXCEPTION: Heating equipment in one- or two-room portable classroom buildings is not required to have fire-rated separation.

5.759(2) Installation for any heating equipment shall be in accordance with the manufacturer's instruction and conditions of safe operation.

5.759(3) Acceptable evidence for complying with subrule 5.759(1) shall be labeled or listed equipment by Underwriters Laboratories, Inc., The American Gas Association Testing Laboratories, or approval of the state fire marshal.

5.759(4) Oil burning equipment shall be installed, maintained and operated in accordance with rule 661—5.350(101).

5.759(5) All gas burning equipment shall be installed and maintained in accordance with rule 661—5.250(101).

5.759(6) Floor-mounted flame heating equipment shall not be allowed to be installed in any classroom.

661—5.760(100) Gas piping.

5.760(1) Gas piping shall be in accordance with rule 661—5.250(101).

5.760(2) All gas service lines into buildings shall be brought out of the ground before entering the building and shall be equipped with a shutoff valve outside the building.

5.760(3) Gas piping cannot run in enclosed space without proper venting.

661—5.761(100) Fire extinguishers.

5.761(1) Each college building shall be equipped with fire extinguishers of a type, size, and number approved by the state fire marshal.

5.761(2) NFPA Standard No. 10, Installation of Portable Fire Extinguishers, 1994 edition, is applicable. Vaporizing extinguishers containing halogenated hydrocarbon extinguishing agents shall not be approved except in accordance with rule 661—5.40(17A,80,100).

661—5.762(100) Basements. Basement classrooms may be used provided there is compliance with paragraph "1" or "2" and compliance with paragraphs "3," "4" and "5":

1. Direct approved egress door from classrooms to the outside.
2. Classroom doors open into a corridor that leads directly outside.
3. Inside stairs from basement corridors, serving basement classrooms, shall not communicate with other stories above unless of fire-resistive construction.
4. Doors from basement classroom corridors, to other areas of the basement, shall be Class B and equipped with door closers except that solid frames and solid core wood doors, not less than 1¾ inches thick, shall be permitted.
5. Buildings, unless of fire-resistive construction, using the basement area for classroom purposes, shall have sprinkler or automatic alarm systems in the entire basement area.

661—5.763(100) Fire hazard safeguards.

5.763(1) Ventilating ducts discharging into attics of combustible construction shall be blocked off, protected with fire dampers or extended in a standard manner through the roof.

5.763(2) Cooking ranges and other cooking appliances in food service area kitchens shall be provided with ventilating hoods, grease filters, and shall be vented to the outside in an approved manner.

5.763(3) Discarded furniture, furnishings or other combustible material shall not be stored or allowed to accumulate in attics or concealed spaces. Designated storage space shall be provided for equipment that may be used periodically throughout the school year and necessary to the college operation or curriculum schedule.

5.763(4) Space used for storage under stairways shall not be allowed unless the storage area is lined with material that will provide a one-hour, fire-resistant rating and provided with a tight-fitting door that has a comparable fire-resistant rating. Except when removing or storing stock, the door shall be kept closed and locked.

5.763(5) Wastepaper baling and storage shall be in a room without ignition hazards and separated from other parts of the building by fire-resistant construction.

5.763(6) Storage of paint products and flammable liquids shall be in a fire-resistive room or approved metal cabinet.

5.763(7) Decorative materials.

a. No furnishings, decorations, wall coverings, paints, etc., shall be used which are of a highly flammable character or which in amounts used will endanger egress due to rapid spread of fire or formation of heavy smoke or toxic gases.

b. Highly flammable finishes such as lacquer and shellac are not permitted.

c. Draperies, curtains, loosely attached wall coverings, cloth hangings and similar materials shall be noncombustible or flameproof in corridor exit ways and assembly occupancies. In other areas up to 10 percent of the wall area may have combustible coverings and hangings.

5.763(8) Spray finishing operations shall not be conducted except in a room designed for the purpose, protected with an approved automatic extinguishing system, and separated vertically and horizontally from such occupancies by construction having not less than two-hour fire resistance. NFPA Standard No. 33, Spray Finishing, 1995 edition, shall be applicable for construction and operation of all paint spray booths.

661—5.764(100) Automatic sprinklers.

5.764(1) Subrules 5.764(2) to 5.764(9) shall apply, if upon inspection by the fire marshal a building or area is deemed hazardous for life safety and a sprinkler system installation is ordered.

5.764(2) Where automatic sprinkler protection is provided, other requirements of these rules may be modified to such extent as permitted by other provisions in 5.764(100).

5.764(3) Automatic sprinkler systems shall be of standard, approved types so installed and maintained as to provide complete coverage for all portions of the premises protected, except insofar as partial protection is specified in other subrules of 5.764(100).

5.764(4) Automatic sprinkler systems for college buildings shall be those designed to protect occupancy classifications that are considered light hazard occupancies.

5.764(5) Automatic sprinkler systems shall be provided with water flow alarm devices to give warning of operation of the sprinkler due to fire, and such alarm devices shall be installed so as to give warning throughout the entire building. The sprinkler alarm detection may be connected to the fire alarm system required by state law.

5.764(6) Partial automatic sprinkler systems shall provide complete protection in basement and other hazardous areas. Above the basement area, stairwells and corridors shall be sprinklered. Nonhazardous classrooms are not required to be sprinklered for partial systems.

5.764(7) Water supplies.

a. All automatic sprinklers installed in college buildings shall be provided with adequate and reliable water supplies.

b. Public water supplies for sprinkler systems in college buildings shall have a minimum of 4-inch service pipe providing a minimum of 500 gallons of water per minute and shall have at least 15 pounds pressure at the highest sprinkler head.

c. Where public water supply is not available and a pressure supply tank is used, the tank shall be a minimum of 6,000 gallons capacity. The pressure tank shall operate at an air pressure adequate to discharge all of the water in the tank.

5.764(8) All automatic sprinkler systems required by these regulations shall be maintained in a reliable operating condition at all times and such periodic inspections and tests as are necessary shall be made to ensure proper maintenance.

5.764(9) In buildings of ordinary or better construction, stairway enclosures will not be required if protected by a partial or standard sprinkler system. Basement cutoffs of vertical openings will be required. This modification of open stairways is permitted only in buildings that do not exceed a basement and two full stories.

661—5.765(100) Open plan buildings.

5.765(1) In buildings where the design of the building lends itself to the classification of an open plan building, the requirements for fire safety of subrules 5.764(2) to 5.764(9) shall apply.

5.765(2) This will include regulations for all buildings where there are no permanent solid partitions between rooms or between rooms and corridors that are used for exit facilities.

5.765(3) Open plan buildings shall have enclosed stairways and any other vertical openings between floors protected in accordance with subrule 5.754(1).

5.765(4) Open plan buildings shall not exceed 30,000 square feet in undivided area. Solid walls or smoke stop partitions shall be provided at intervals not to exceed 300 feet. Such walls or partitions shall have doors of a type that are at least 1¾-inch solid core wood doors and the partitions shall be the equivalent of one-hour construction.

5.765(5) Any cafeterias, gymnasiums or auditoriums shall be separated from the rest of the building by solid walls and no exits from other parts of the building shall require passing through such assembly areas.

5.765(6) Open plan buildings that do not have a direct exit door from each classroom to the outside shall be protected by a complete automatic fire detection system.

5.765(7) A sprinkler system may be installed in lieu of an automatic fire detection system in an open plan building.

5.765(8) Distance of travel to the nearest exit in an open plan building shall not exceed 100 feet from any point.

EXCEPTION: In a sprinklered building, the distance may be increased to 150 feet.

[Filed 12/19/60; amended 6/22/62]
[Filed 4/6/65; amended 10/17/79]
[Filed 4/1/88, Notice 9/23/87—published 4/20/88, effective 5/25/88]
[Filed 11/9/99, Notice 4/21/99—published 12/1/99, effective 2/1/00]

661—5.766 to **5.774** Reserved.

NEW COLLEGE BUILDINGS

661—5.775(100) New college buildings. Subsection 10-1.1.2 of the NFPA Life Safety Code 101, 1994 edition, along with referenced appendices and chapters, is hereby adopted by reference as the rules governing college buildings, additions, alterations and renovations for which plans are approved by the state fire marshal on or after February 1, 2000, with the following amendments:

1. Add 10-1.1.2.1 to read as follows:

10-1.1.2.1 Panic hardware or fire exit hardware. Any door in a required means of egress from an area having an occupant load of 50 or more persons shall be permitted to be provided with a latch or lock only if it is panic hardware or fire exit hardware complying with 5-2.1.7.

2. Add 10-1.1.2.2 to read as follows:

10-1.1.2.2 Fire alarms. A fire alarm system and partial smoke detector system shall be provided in accordance with Section 7-6.

[Filed April 6, 1965; amended October 17, 1969]
[Filed 4/1/88, Notice 9/23/87—published 4/20/88, effective 5/25/88]
[Filed 11/9/99, Notice 4/21/99—published 12/1/99, effective 2/1/00]

661—5.776 to 5.799 Reserved.

FIRE SAFETY RULES FOR RESIDENTIAL OCCUPANCIES

661—5.800(100) New residential occupancies.

5.800(1) Application. The requirements within this chapter shall apply to all new residential occupancies, including additions, alterations, or modifications.

5.800(2) "Residential occupancies" for purposes of rules 661—5.800(100) to 661—5.809(100) shall include hotels, motels, apartment houses, dormitories, lodging and rooming houses, convents and monasteries each accommodating more than ten persons. In addition, for purposes of rules 661—5.806(100) to 661—5.809(100), "residential occupancies" shall include all one- and two-family dwellings.

5.800(3) The state fire marshal shall, where local, state or federal codes are being enforced and are equivalent to or more restrictive than the rules promulgated herein, accept these codes as meeting the intent of this chapter.

NOTE: New residential occupancies constructed where the state building code applies shall follow the provisions of the state building code.

5.800(4) All electrical work shall meet the requirements set forth in the National Electrical Code (N.F.P.A. 70) 1988.

5.800(5) Definitions.

"Apartment house" is any building or portion thereof which contains three or more dwelling units.

"Atrium" is an opening through two or more floor levels other than enclosed stairways, elevators, hoistways, escalator, plumbing, electrical, air conditioning or other equipment which is closed at the top and not defined as a mall.

"Convent or monastery" is a place of residence occupied by a religious group of people, especially monks or nuns.

"Dormitories" are buildings or spaces where group sleeping accommodations are provided for guests in a series of closely associated rooms under joint occupancy and single management, such as college dormitories, fraternity houses, sorority houses, with or without meals but without individual cooking facilities.

"Guest" is any person hiring or occupying a room for living or sleeping purposes.

"Guest room" is any room or rooms used or intended to be used by a guest for sleeping purposes. Every hundred square feet of superficial floor area in a dormitory shall be considered to be a guest room.

"Hotel/motel" is any building containing six or more guest rooms intended or designed to be used or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests.

"Lodging or rooming house" is any building or portion thereof containing not more than five guest rooms where rent is paid in money, goods, labor or otherwise.

5.800(6) Construction, height and allowable floor area.

a. General. Buildings or parts of buildings classed as residential occupancies shall be limited to the types of construction set forth in Table 5-B in rule 5.50(100) "Exits" and shall not exceed, in area or height, the limits specified in Table 8-B.

b. Special provisions. Residential occupancies more than two stories in height or having more than 3,000 square feet of floor area above the first story shall be limited to the types of construction and height in Table 8-B.

EXCEPTION: Interior nonload-bearing partitions within individual dwelling units in apartment houses and guest rooms or suites in hotels when such dwelling units, guest rooms or suites are separated from each other and from corridors by not less than one-hour fire-resistive construction may be constructed of:

1. Noncombustible materials or fire-retardant treated wood in buildings of any type of construction; or
2. Combustible framing with noncombustible materials applied to the framing in buildings of Type III or V construction.

Storage or laundry rooms that are within residential occupancies that are used in common by tenants shall be separated from the rest of the building by not less than one-hour fire-resistive occupancy separation.

5.800(7) *Light and ventilation.* All guest rooms, dormitories and habitable rooms within a dwelling unit shall be provided with natural light by means of exterior glazed openings with an area not less than one-tenth of the floor area of such rooms with a minimum of 10 square feet. All bathrooms, water closet compartments, laundry rooms and similar rooms shall be provided with natural ventilation by means of openable exterior openings with an area not less than one-twentieth of the floor area of the rooms with a minimum of 1½ square feet.

All guest rooms, dormitories and habitable rooms within a dwelling unit shall be provided with natural ventilation by means of openable exterior openings with an area of not less than one-twentieth of the floor area of such rooms with a minimum of 5 square feet.

In lieu of required exterior openings for natural ventilation, an approved mechanical ventilating system may be provided. Such systems shall be capable of providing two air changes per hour in all guest rooms, dormitories, habitable rooms and public corridors. One-fifth of the air supply shall be taken from the outside. In bathrooms, water closet compartments, laundry rooms and similar rooms a mechanical ventilation system connected directly to the outside shall be capable of providing five air changes per hour.

For the purpose of determining light and ventilation requirements, any room may be considered as a portion of an adjoining room when one-half of the area of the common wall is open and unobstructed and provides an opening of not less than one-tenth of the floor area of the interior room or 25 square feet, whichever is greater.

Required exterior openings for natural light and ventilation shall open directly onto a street or public alley, yard or court located on the same lot as the building.

EXCEPTION: Required windows may open into a roofed porch where the porch:

1. Abuts a street, yard or court;
2. Has a ceiling height of not less than 7 feet; and
3. Has the longer side at least 65 percent open and unobstructed.

5.800(8) Mixed occupancies general. When a building is used for more than one occupancy purpose, each part of the building comprising a distinct "Occupancy," as shown in the occupancy classification Table 8-A shall be separated from any other occupancy as specified in Table 8-C.

EXCEPTION: Gift shops, administrative offices and similar rooms not exceeding 10 percent of the floor area of the major use.

5.800(9) Occupant load. For the purpose of establishing exit requirements, the occupant load of any building or portion thereof used for the purpose of rules 5.800(100) to 5.802(100) shall be determined by dividing the net floor area assigned to that use by the square feet per occupant as indicated in Table 5-A and rule 680—5.51(100).

5.800(10) Dormitories. New dormitories shall comply with the requirements for new hotels within this chapter.

661—5.801(100) Exit facilities.

5.801(1) *Types of exits.* Exits of the specified number and width shall be one or more of the following types as listed in state fire marshal's fire safety rules and regulations for new and existing buildings.

1. Doors of the swinging type leading directly to the outside or to a lobby or passageway leading to the outside of the building. (See rule 5.53(100))
2. Horizontal exits. (See rule 5.57(100))
3. Smokeproof towers. (See rule 5.59(100))
4. Interior stairs. (See rule 5.55(100) and 5.58(100))
5. Outside stairs. (See rule 5.55(100))
6. Ramps. (See rule 5.56(100))
7. Escalators. (See rule 5.58(100))
8. Exit passageways. (See rule 5.61(100))
9. Corridors and exterior balconies. (See rule 5.54(100))
10. Exit courts. (See rule 5.60(100))

5.801(2) *Number of exits.* The minimum number of exits shall be as prescribed in rule 5.52(100).

EXCEPTION 1: Except as provided in Table 5-A, only one exit need be provided from the second story within an individual dwelling unit.

EXCEPTION 2: Two or more dwelling units on the second story may have access to only one common exit when the total occupant load using that exit does not exceed 10 or 2,000 square feet of floor area. See Table 5-A.

5.801(3) *Required exit width.* Exit width shall be determined as outlined in subrule 5.52(2).

5.801(4) *Arrangement of exits.* The arrangement of required exits shall be as prescribed in subrule 5.52(3).

5.801(5) *Travel distance.* The maximum travel distance from any point to an exterior exit door, horizontal exit, exit passageway, or an enclosed stairway shall not exceed 150 feet, or 200 feet in a building equipped with an automatic sprinkler system complying with subrule 5.52(6). These distances may be increased 100 feet when the last 150 feet is within a corridor complying with rule 5.54(100).

5.801(6) *Exit illumination.* At any time the building is occupied, exits shall be illuminated with light having an intensity of not less than one foot-candle at floor level and in accordance with the requirements of rule 5.62(100).

5.801(7) *Exit signs.* Exit signs shall be installed at required exit doorways and where otherwise necessary to clearly indicate the direction of egress in accordance with the requirements of rule 5.63(100).

5.801(8) *Shaft enclosures.*

a. General. Openings extending vertically through floors shall be enclosed in a shaft of fire-resistive construction having the time period set forth in Table 5-B for shaft enclosures. Protection for stairways shall be as specified in rules 5.58(100) and 5.59(100).

EXCEPTION 1: An enclosure will not be required for openings which serve only one adjacent floor and are not connected with openings serving other floors and which are not concealed within the building construction.

EXCEPTION 2: Stairs within individual apartments need not be enclosed.

b. Rubbish and linen chutes. In occupancies covered by this code, rubbish and linen chutes shall terminate in rooms separated from the remainder of the building by a one-hour fire-resistive occupancy separation. Openings into the chutes and termination rooms shall not be located in exit corridors or stairways.

5.801(9) *Atriums.*

a. General. Buildings classified as residential occupancies with automatic sprinkler protection throughout may have atriums complying with the provisions of this rule. Such atriums shall have a minimum opening and dimensions as follows:

Height in Stories	Minimum Clear Opening (Ft.)	Minimum Area (Sq. Ft.)
3-4	20	400
5-8	30	900
8 or more	40	1,600

NOTE: The above dimensions are the diameters of inscribed circles whose centers fall on a common axis for the full heights of the atrium.

b. Smoke-control system. A mechanically operated air-handling system shall be installed that will exhaust smoke either entering or developed within the atrium. Exhaust openings shall be located in the ceiling or in a smoke-trap area immediately adjacent to the ceiling of the atrium. The lowest level of the exhaust openings shall be located above the top of the highest portion of door openings into the atrium. Supply openings sized to provide a minimum of 50 percent of the exhaust volume shall be located at the lowest level of the atrium.

When the height of the atrium is 55 feet or less, supply air may be introduced by gravity, provided smoke control is accomplished. When the height of the atrium is more than 55 feet, supply air shall be introduced mechanically from the floor of the atrium and be directed vertically toward the exhaust outlets. In atriums over six stories in height or where tenant spaces above the second story are open to the atrium, supplemental supply air may be introduced at upper levels. The exhaust and supply system for the atrium shall operate automatically upon the actuation of the automatic sprinkler system within the atrium or areas open to the atrium or by the actuation of two or more smoke detectors required by this rule. The exhaust and supply equipment shall also be manually operable by controls designed for fire department use. The smoke-control system may be separate or integrated with other air-handling systems. When the smoke-control mode is actuated, air-handling systems which would interfere with the smoke-control system shall be automatically shut down.

Enclosed tenant spaces shall be provided with an approved smoke-control system.

The atrium smoke-control system shall exhaust not less than the following quantities of air:

1. For atriums having a volume of not more than 600,000 cubic feet, including the volume of any levels not physically separated from the atrium, not less than six air changes per hour nor less than 40,000 cfm. A lesser cfm is acceptable if it can be shown by test that smoke will not migrate beyond the perimeter of the atrium.

2. For atriums having a volume of more than 600,000 cubic feet, including the volume of any levels not physically separated from the atrium, not less than four air changes per hour.

Smoke detectors which will automatically operate the atrium smoke-control system shall be installed at the perimeter and on the ceiling of the atrium and on the ceiling of each floor level that is open to the atrium. In floor levels open to the atrium, detectors shall be within 15 feet of the atrium. Detectors shall be located in accordance with their listing.

c. Enclosure of atriums. Atriums shall be separated from adjacent spaces by not less than one-hour fire-resistive construction.

EXCEPTION: Open exit balconies are permitted within the atrium.

Openings in the atrium enclosure other than fixed glazing shall be protected by tight-fitting fire assembly doors which are maintained automatic closing by actuation of a smoke detector, or self-closing.

Fixed glazed openings in the atrium enclosure shall be equipped with fire windows having a fire-resistive rating of not less than three-fourths hour, and the total area of such openings shall not exceed 25 percent of the area of the common wall between the atrium and the room into which the opening is provided.

EXCEPTION: In residential occupancies, openings may be unprotected when the floor area of each room or dwelling unit does not exceed 1,000 square feet and each room or unit has an approved exit not entering the atrium.

d. Travel distance. When a required exit enters the atrium space, the travel distance from the doorway of the tenant space to an enclosed stairway, horizontal exit, exterior door or exit passageway shall not exceed 100 feet.

e. Standby power. The smoke-control system for the atrium and the smoke-control system for the tenant space are to be provided with approved standby power.

f. Interior finish. The interior finish of walls and ceilings of the atrium and all unseparated tenant spaces shall be Class A with no reduction in class for sprinkler protection.

g. Acceptance of the smoke-control system. Before the certificate of occupancy is issued, the smoke-control systems shall be tested in an approved manner and shall show compliance with the requirements of this rule.

h. Inspection of the smoke-control system. All operating parts of the smoke-control systems shall be tested by an approved inspection agency or by the owner or the owner's representative when so approved. Inspections shall be made every three months and a log of the tests be kept by the testing agency. The log shall be on the premises and available for examination by fire department personnel.

i. Combustible furnishings in atriums. The quantity of combustible furnishings in atriums shall not exceed that specified below:

(1) The potential heat of combustible furnishings and decorative materials within atriums shall not exceed 9,000 Btu per pound when located within an area of the atrium that is more than 20 feet below ceiling-mounted sprinklers.

(2) All decorative materials shall be noncombustible or shall be flame-retardant treated and so maintained.

(3) Devices generating an open flame shall not be used nor installed within atriums.

661—5.802(100) General safety requirements.

5.802(1) *Special hazards.* Chimneys and heating apparatus shall conform to manufacturer's instruction and nationally recognized codes. The storage and handling of gasoline, fuel oil or other flammable liquids shall be in accordance with national fire codes. Doors leading into rooms in which volatile flammable liquids are stored or used shall be protected by a fire assembly having a one-hour fire protection rating. The fire assembly shall be self-closing and shall be posted with a sign on each side of the door in 1-inch block letters stating: FIRE DOOR — KEEP CLOSED.

Every room containing a boiler or central heating plant shall be separated from the rest of the building by not less than a one-hour fire-resistive occupancy separation.

EXCEPTION: A separation shall not be required for rooms with equipment servicing only one dwelling unit.

5.802(2) *Interior finish.*

a. Corridors, lobbies and enclosed stairways. Interior finish in all corridors and lobbies shall be Class A, or Class B will be permitted in a fully sprinklered building, and in enclosed stairways, Class A.

b. General assembly. Interior finish in general assembly areas shall be Class A in exit. See Table No. 5-C following 661—5.105(100).

c. Interior floor finish. Interior floor finish within corridors and exits shall be Class I or Class II interior floor finish. See Table No. 5-D following 661—5.105(100).

5.802(3) *Windows for rescue.* Every sleeping room below the fourth story shall have at least one openable window or exterior door approved for emergency rescue. The units shall be openable from the inside without the use of separate tools.

All rescue windows from sleeping rooms shall have a minimum net clear opening of 5.7 square feet. The minimum net clear opening height dimension shall be 24 inches. The minimum clear opening width dimension shall be 20 inches. Where windows are provided as a means of rescue, they shall have a finished sill height of not more than 44 inches above the floor.

Bars, grilles, grates or similar devices may be installed on emergency escape or rescue windows or doors, provided:

1. Devices are equipped with approved release mechanisms which are openable from the inside without use of a key or special knowledge or effort; and
2. The building is equipped with smoke detectors installed in accordance with subrule 5.802(4).

5.802(4) *Protection systems.*

a. Smoke detectors. Every dwelling unit in apartment houses, dormitories, and every guest room in a hotel/motel or lodging house used for sleeping purposes shall be provided with approved smoke detectors. In all new construction, required smoke detectors shall receive their primary power from the building wiring when wiring is served from a commercial source. Wiring shall be permanent and without a disconnecting switch other than those required for overcurrent protection. In dwelling units, detectors shall be mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to rooms used for sleeping purposes. (For specific requirements see Iowa Code section 100.18.)

b. Alarm systems. Every apartment house three stories or more in height or containing more than 15 apartments and every hotel three stories or more in height, or containing 20 or more guest rooms shall have installed therein an approved automatic or manually operated fire alarm system designed to warn the occupants of the building in the event of fire. Fire alarm systems shall be so designed that all occupants of the building may be warned simultaneously.

EXCEPTION: An alarm system need not be installed in buildings not over two stories in height when all individual apartments and guest rooms and contiguous attic and crawl spaces are separated from each other and from common areas by at least one-hour fire-resistive occupancy separations and each individual apartment or guest room has an exit direct to a yard or public way.

c. Automatic sprinkler system. Automatic sprinkler systems shall be provided in all residential occupancies more than four stories in height or more than 65 feet above grade level. (Also see subrule 5.52(6) and Iowa Code section 100.39.)

d. Portable fire extinguishers. Approved-type fire extinguishers shall be provided on each floor, so located that they will be accessible to the occupants, and spaced so that no person will have to travel more than 75 feet from any point to reach the nearest extinguisher. Additional extinguishers may be required in areas that constitute a special hazard. Type and number of portable extinguishers shall be determined by the state fire marshal or local fire authority.

e. Maintenance. Regular and proper maintenance of electric service, heating plants, alarm systems, sprinkler systems, fire doors and exit facilities shall be required.

EXISTING RESIDENTIAL OCCUPANCIES

661—5.803(100) Existing residential occupancies.

5.803(1) *Application.* The requirements of this chapter shall apply to existing hotels/motels, apartment houses, dormitories, lodging and rooming houses.

Existing convents and monasteries (each accommodating more than ten persons).

No building or structure housing existing residential occupancies shall be occupied in violation of rules 5.803(100) to 5.805(100).

5.803(2) *Reasonable safety provisions.* The state fire marshal or local enforcement authority shall determine the adequacy of means of egress and other measures for safety from fire in accordance with these rules. In existing buildings where physical limitations may require disproportionate effort or expense with little increase in life safety, the state fire marshal or local enforcement authority may grant exceptions to these rules, but only when it is clearly evident that reasonable safety is provided.

5.803(3) *Change of occupancy.* No existing building or portion of an existing building may have its occupancy changed to residential use unless the building or portion thereof meets the requirements for new residential occupancies.

5.803(4) *Occupant load.* For the purpose of establishing exit requirements, the occupant load of any building or portion thereof used for the purposes of rules 5.803(100) to 5.805(100) shall be determined by dividing the net floor area assigned to that use by the square feet per occupant as indicated in Table 5-A and rule 680—5.51(100) of the state fire marshal's fire safety rules regarding exits.

661—5.804(100) Exit facilities.

5.804(1) *Types of exits.* Exits of the specified number and width shall be one or more of the following types as listed in the state fire marshal's fire safety rules and regulations for new and existing buildings.

1. Doors of the swinging types leading directly to the outside or to a lobby or passageway leading to the outside of the building. (See rule 5.53(100))
2. Horizontal exits. (See rule 5.57(100))
3. Smokeproof towers. (See rule 5.59(100))
4. Interior stairs (See rules 5.55(100) and 5.58(100))
5. Outside stairs. (See rule 5.55(100))
6. Ramps. (See rule 5.56(100))
7. Escalators. (See rule 5.58(100))
8. Exit passageways. (See rules 5.61(100) and 5.101(100))
9. Corridors and exterior balconies. (See rule 5.54(100))
10. Exit courts. (See rule 5.60(100))

An existing stairway, fire escape or other exit component which meets the requirements of rules 5.100(100) to 5.105(100) may be continued in use provided it is in good repair and acceptable to the authority having jurisdiction.

Any exit modification required by this chapter shall meet the requirements for new construction.

5.804(2) *Number of exits.* The minimum number of exits shall be as prescribed in subrule 5.52(1) or 5.101(1).

EXCEPTION 1: Any living unit which has an exit directly to the street or yard at ground level or by way of an outside stairway, or an enclosed stairway with fire-resistance rating of one hour or more serving that apartment only and not communicating with any floor below the level of exit discharge or other area not a part of the apartment served, may have a single exit serving that unit only.

EXCEPTION 2: Any building less than three stories in height with no floor below the floor of exit discharge or, in case there is such a floor, with the street floor construction of at least one-hour fire resistance, may have a single exit, under the following conditions:

a. The stairway is completely enclosed with a partition having a fire-resistance rating of at least one hour with self-closing fire doors protecting all openings between the stairway enclosure and the building.

b. The stairway does not serve any floor below the floor of exit discharge.

c. All corridors serving as access to exits have at least a one-hour fire-resistance rating.

d. There is not more than 35 feet of travel distance to reach an exit from the entrance door of any living unit.

5.804(3) *Required exit width.* Exit width shall be determined as outlined in subrule 5.52(2).

5.804(4) *Arrangement of exits.* The arrangement of required exits shall be as prescribed in subrule 5.52(3).

5.804(5) *Travel distance.* The maximum travel distance from any point to an exterior exit door, horizontal exit, exit passageway, or an enclosed stairway shall not exceed 150 feet.

EXCEPTION: The travel distance may be increased to 200 feet if protected throughout by an automatic sprinkler system.

5.804(6) *Dead-end corridors.* Dead-end corridors shall not exceed 20 feet in length.

EXCEPTION: When corridors meet requirements of rule 5.105(100).

5.804(7) *Exit illumination.* Exits shall be illuminated at any time the building is occupied with light having an intensity of not less than 1 foot-candle at floor level and in accordance with the requirements of rule 5.62(100).

5.804(8) *Exit signs.* Exit signs shall be installed at required exit doorways and where otherwise necessary to clearly indicate the direction of egress in accordance with the requirements of subrule 5.101(5).

5.804(9) *Protection of vertical openings.* All interior stairways, elevator shafts, light and ventilation shafts and other vertical openings shall be enclosed or protected as provided in rule 5.102(100).

EXCEPTION 1: Unprotected openings connecting not more than three floors may be permitted provided the building is completely sprinklered.

EXCEPTION 2: Stairs within individual apartments need not be enclosed.

661—5.805(100) General provisions.

5.805(1) *Hazardous areas.* An area used for general storage, boiler or furnace rooms, fuel storage, janitor's closets, maintenance shops, including woodworking and painting area, laundries and kitchens shall be separated from other parts of the building by construction having not less than one-hour fire-resistance rating, and all openings shall be protected with at least 1¾-inch solid core wood doors or equivalent equipped with approved self-closing devices, or such rooms or spaces may be protected by an automatic sprinkler system.

EXCEPTION: A separation shall not be required for such rooms with equipment serving only one dwelling unit.

5.805(2) *Interior finish.*

a. Corridors, lobbies, and enclosed stairways. Interior finish in all corridors and lobbies shall be Class A, or Class B will be permitted in a fully sprinklered building, and in enclosed stairways, Class A.

b. General assembly. Interior finish in general assembly areas shall be Class A in exit. See Table No. 5-C following 661—5.105(100).

c. Interior floor finish. Interior floor finish within corridors and exits shall be Class I or Class II interior floor finish. See Table No. 5-D following 661—5.105(100).

5.805(3) *Windows for rescue.* Every sleeping room below the fourth story should have at least one openable window or exterior door approved for emergency rescue. The units shall be openable from the inside without the use of separate tools.

Any new or replacement windows from sleeping rooms shall have a minimum net clear opening of 5.7 square feet. The minimum net clear opening height dimension shall be 24 inches. The minimum clear opening width dimension shall be 20 inches. Where windows are provided as a means of rescue, they shall have a finished sill height of not more than 44 inches above the floor.

5.805(4) *Protection systems.*

a. Smoke detectors. Every dwelling unit within an apartment house, dormitory and every guest room in a hotel used for sleeping purposes shall be provided with approved smoke detectors. In dwelling units, detectors shall be mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to rooms used for sleeping purposes. (For specific requirements see Iowa Code section 100.18.)

b. Alarm systems. Every apartment house three stories or more in height or containing more than 15 apartments and every hotel three stories or more in height containing 20 or more guest rooms shall have installed therein an approved automatic or manually operated fire alarm system designed to warn the occupants of the building in the event of fire. The fire alarm system shall be so designed that all occupants of the building may be warned simultaneously.

EXCEPTION: An alarm system need not be installed in buildings when all individual apartments and guest rooms and contiguous attic and crawl spaces are separated from each other and from common areas by at least one-hour fire-resistive occupancy separations and each individual apartment or guest room has an exit direct to a yard or public way.

Stations for operating any manually operated fire alarm system shall be placed immediately adjacent to the telephone switchboard in the building if there is a switchboard and at such other locations as may be required by the authority having jurisdiction.

Presignal alarm systems will not be permitted.

c. Automatic sprinkler protection. When automatic sprinkler protection is provided it shall be as required by subrule 5.52(6).

5.805(5) *Portable fire extinguishers.* Approved-type fire extinguishers shall be provided on each floor, so located that they will be accessible to the occupants, and spaced so that no person will have to travel more than 75 feet from any point to reach the nearest extinguisher. Additional extinguishers may be required in areas that constitute a special hazard. Type and number of portable extinguishers shall be determined by the state fire marshal or local fire authority.

5.805(6) *Fire and general equipment.* All fire and life safety equipment or devices shall be regularly and properly maintained in an operable condition at all times in accordance with nationally recognized standards. This includes fire extinguishing equipment, alarm systems, exit facilities, doors and their appurtenances, electric service, heating and ventilation equipment.

All fire protection or extinguishing systems, coverage, spacing and specifications shall also be maintained in accordance with recognized standards at all times and shall be extended, altered or augmented as necessary to maintain and continue protection whenever any building so equipped is altered, remodeled, or added to. All additions, repairs, alterations or servicing shall be made in accordance with recognized standards.

5.805(7) *Storage.* Excessive storage of combustible or flammable materials such as papers, cartons, magazines, paints, and similar materials so as to constitute an unnecessary hazard in the opinion of the authority having jurisdiction shall not be permitted.

These rules are intended to implement Iowa Code chapter 100.

661—5.806(100) Smoke detectors definition. "Approved" is defined as being acceptable to the state fire marshal. Any equipment, device or procedure which bears the stamp of approval or meets applicable standards prescribed by an organization of national reputation such as the Underwriters Laboratories, Inc., National Bureau of Standards, Factory Mutual Laboratories, American Society for National Fire Protection Association, American Society of Mechanical Engineers or American Standards Association, which undertakes to test and approve or provide standards for equipment, devices or procedures of the nature prescribed in these regulations shall be deemed acceptable to the state fire marshal.

661—5.807(100) General requirements.

5.807(1) Approved single station smoke detectors will be acceptable in all areas covered by these regulations, unless other fire warning equipment or materials are required by other standards.

5.807(2) Any installation of wiring and equipment shall be in accordance with the latest edition of the National Fire Protection Association Standard No. 70, National Electric Code, and other applicable standards.

5.807(3) All devices, combinations of devices, and equipment to be installed in conformity with these regulations shall be approved and used for the purposes for which they are intended.

5.807(4) A combination system, such as a household fire warning system whose components may be used in whole or in part, in common with a nonfire emergency signaling system, such as a burglar alarm system or an intercom system, shall not be permitted or approved, except for one- or two-family dwellings.

5.807(5) All power supplies shall be sufficient to operate the alarm for at least four continuous minutes.

5.807(6) Power source.

a. In new buildings and additions constructed after July 1, 1991, required smoke detectors shall receive their primary power from the building wiring when such wiring is served from a commercial source. Wiring shall be permanent and without a disconnecting switch other than those required for overcurrent protection. Smoke detectors may be solely battery operated when installed in existing buildings, or in buildings without commercial power, or in buildings which undergo alterations, repairs or additions regulated by subrule 5.807(2).

b. New and replacement smoke detectors installed after May 1, 1993, which receive their primary power from the building wiring shall be equipped with a battery backup.

5.807(7) The failure of any nonreliable or short-life component which renders the detector inoperative shall be readily apparent to the occupant of the sleeping unit without the need for a test. Each smoke detector shall detect abnormal quantities of smoke that may occur and shall properly operate in the normal environmental condition.

5.807(8) Equipment shall be installed, located and spaced in accordance with the manufacturer's recommendations.

5.807(9) Installed fire warning equipment shall be mounted so as to be supported independently of its attachment to wires.

5.807(10) All apparatus shall be restored to normal immediately after each alarm or test.

5.807(11) Location within dwelling units.

a. In dwelling units, detectors shall be mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to each separate sleeping area. When the dwelling unit has more than one story and in dwellings with basements, a detector shall be installed on each story and in the basement. In dwelling units where a story or basement is split into two or more levels, the smoke detector shall be installed on the upper level, except that when the lower level contains a sleeping area, a detector shall be installed on each level. When sleeping rooms are on an upper level, the detector shall be placed at the ceiling of the upper level in close proximity to the stairway. In dwelling units where the ceiling height of a room open to the hallway serving the bedrooms exceeds that of the hallway by 24 inches or more, smoke detectors shall be installed in the hallway and in the adjacent room. Detectors shall sound an alarm audible in all sleeping areas of the dwelling unit in which they are located.

b. Location in efficiency dwelling units and hotels. In efficiency dwelling units, hotel suites and in hotel sleeping rooms, detectors shall be located on the ceiling or wall of the main room or hotel sleeping room. When sleeping rooms within an efficiency dwelling unit or hotel suite are on an upper level, the detector shall be placed at the ceiling of the upper level in close proximity to the stairway. When actuated, the detector shall sound an alarm audible within the sleeping area of the dwelling unit, hotel suite or sleeping room in which it is located.

661—5.808(100) Smoke detectors—notice and certification of installation.

5.808(1) *Notice of installation.* Owners of rental residential buildings containing two or more units required by law to install smoke detectors shall notify their local fire department upon installation of required smoke detectors.

5.808(2) *Certification—single-family dwelling units.* A person who files for homestead credit pursuant to Iowa Code chapter 425 shall certify that the single-family dwelling unit for which credit is filed has a smoke detector(s) installed in accordance with 5.807(6) and 5.807(11)*"a,"* or that such smoke detector(s) will be installed within 30 days of the date of filing for credit.

5.808(3) *Reports to fire marshal.* Each county or city assessor charged with the responsibility of accepting homestead exemption credit applications will obtain certification of smoke detection on a form acceptable to the state fire marshal, signed by the person making application for credit and file a quarterly report with the fire marshal listing the name, address and whether applicant attested to a detector(s) being present at the time of application or that a detector(s) would be installed as required within 30 days.

661—5.809(100) Smoke detectors—new and existing construction.

5.809(1) *New construction.* All multiple-unit residential buildings and single-family dwellings which are constructed after July 1, 1991, shall include the installation of smoke detectors meeting the requirements of rule 661—5.806(100) and rule 661—5.807(100).

5.809(2) *Existing construction.* All existing single-family units and multiple-unit residential buildings shall be equipped with smoke detectors as required in 5.807(11)*"a."*

Rules 5.806 to 5.809 are intended to implement Iowa Code section 100.18.

OCCUPANCY CLASSIFICATIONS PER TABLE 8-A

General Occupation Description	Current Occupancy Designation	Complete Occupancy Description
Assembly	A-1	Any assembly building with a stage and occupant load of 1,000 or more in building.
	A-2	Any building or portion of a building having an assembly room with an occupant load of less than 1,000 and a stage.
	A-2.1	Any building or portion of a building having an assembly room with an occupant load of 300 or more without a stage, including such buildings used for educational purposes and not classed as a Group E or Group B, Division 2 Occupancy.
	A-3	Any building or portion of building having an assembly room with an occupant load of 300 or more without a stage, including such buildings used for educational purposes and not classed as a Group E or Group B, Division 2 Occupancy.
	A-4	Stadiums, reviewing stands and amusement park structures not included within other Group A Occupancies.
Business, including offices, factories, mercantile and storage	B-1	Gasoline service stations, storage garages where no repair work is done except exchange of parts and maintenance requiring no open flame, welding or the use of highly flammable liquids.
	B-2	Drinking and dining establishments having an occupant load of less than 50, wholesale and retail stores, office buildings, printing plants, municipal police and fire stations, factories and workshops using material not highly flammable or combustible, storage and sales rooms for combustible goods, paint stores without bulk handling. Buildings or portions of buildings having rooms used for educational purposes, beyond the 12th grade, with less than 50 occupants in any room.
	B-3	Aircraft hangers where no repair work is done except change of parts and maintenance requiring no open flame, welding or use of highly flammable liquids. Open parking garages, heliports.
	B-4	Ice plants, power plants, pumping plants, cold storage, creameries. Factories and workshops using noncombustible and nonexplosive materials. Storage and sales rooms for noncombustible and nonexplosive materials.

Educational	E-1	Any building used for educational purposes through 12th grade by 50 or more persons for more than twelve hours per week or four hours in any one day.
	E-2	Any building used for educational purposes through 12th grade by less than 50 persons for more than twelve hours per week or four hours in one day.
	E-3	Any building used for day-care purposes for more than six children.
Hazardous	H-1	Storage, handling, use or sale of hazardous and highly flammable or explosive materials other than Class I, II, or III-A liquids.
	H-2	Storage and handling of Class I, II and III-A liquids, dry cleaning plants using flammable liquids; paint stores with bulk handling; paint shops and spray painting rooms and shops. The storage or sale of hazardous materials or chemicals or Class I, II and III-A liquids in amounts that do not exceed those set forth in Table No. 9-A is permitted in buildings or portions thereof without classifying such buildings as a Group H Occupancy, provided such chemicals, hazardous materials or liquids are stored and handled in compliance with the provisions of the Fire Code.
	H-3	Woodworking establishments, planing mills, box factories, buffing rooms for tire rebuilding plants and picking rooms; shops, factories or warehouses where loose combustible fibers or dust are manufactured, processed, generated or stored; and pin-refinishing rooms.
	H-4	Repair garages.
	H-5	Aircraft repair hangers.
Institutional	I-1	Nurseries for full-time care of children under the age of six (each accommodating more than five persons). Hospitals, sanitariums, nursing homes with nonambulatory patients and similar buildings (each accommodating more than five persons).
	I-2	Nursing homes for ambulatory patients, homes for children six years of age or over (each accommodating more than five persons).
	I-3	Mental hospitals, mental sanitariums, jails, prisons, reformatories and buildings where personal liberties of inmates are similarly restrained.
		EXCEPTION: Group I Occupancies shall not include buildings used only for private residential purposes for a family group.

Miscellaneous structures	11	M-1	Private garages, carports.
		M-2	Fences over six feet high, tanks and towers.
Residential	12	R-1	Hotels and apartment houses. Convents and monasteries (more than 10 people).
		R-3	Lodging houses (five guests or rooms).

TABLE 8-B: ALLOWABLE FLOOR AREA
(Per single story)
AND MAXIMUM HEIGHT OF BUILDINGS

TYPES OF CONSTRUCTION								
I	II			III		IV	V	
F.R.	F.R.	ONE-HOUR	N	ONE-HOUR	N	H.T.	ONE-HOUR	N

BASIC ALLOWABLE FLOOR AREA FOR BUILDINGS ONE STORY IN HEIGHT
(In Square Feet)

Unlimited	29,900	13,500	9,100	13,500	9,100	13,500	10,500	6,000
MAXIMUM HEIGHT IN FEET								
Unlimited	160	65	55	65	55	65	50	40
MAXIMUM HEIGHT IN STORIES								
Unlimited	12	4	2	4	2	4	3	2

See Notes 1. - 6.
N — No Requirements for Fire Resistance
F.R. — Fire Resistive
H.T. — Heavy Timber

NOTE 1: Separation on two sides. Where public space, streets, or yards more than twenty feet in width extend along and adjoin the sides of the building, floor areas may be increased at a rate of 1¼ percent for each foot by which the minimum width exceeds twenty feet but the increase shall not exceed 50 percent.

NOTE 2: Separation on three sides. Where public space, streets or yards more than twenty feet in width extend along and enjoin three sides of the building, floor areas may be increased at a rate of 2½ percent for each foot by which the minimum width exceeds twenty feet, but the increase shall not exceed 100 percent.

NOTE 3: Separation on all sides. Where public space, streets or yards more than twenty feet in width extend on all sides of a building and enjoin the entire perimeter, floor areas may be increased at a rate of 5 percent for each foot by which the minimum width exceeds twenty feet. Such increases shall not exceed 100 percent.

NOTE 4: Areas of buildings over one story. The total combined floor area for multistory buildings may be twice that permitted by Table 8-B for one-story buildings, and the floor area of any single story shall not exceed that permitted for a one-story building.

NOTE 5: Automatic sprinkler system. The areas specified in Table 8-B may be tripled in one-story buildings and doubled in buildings of more than one story if the building is provided with an approved automatic sprinkler system throughout. The area increases permitted for installing an approved automatic sprinkler system may be compounded with that specified in Notes 1, 2, and 3.

NOTE 6: The area increases permitted in Note 5 shall not apply when automatic sprinkler systems are installed under the following provisions:

a. An increase in allowable number of stories.
b. Substitution for one-hour fire-resistive construction.
c. Atriums.

TABLE 8-C—REQUIRED SEPARATION
IN BUILDINGS OF MIXED OCCUPANCY
(In Hours)

	A-1	A-2	A-2.1	A-3	A-4	B-1	B-2	B-3	B-4	E	H-1	H-2	H-3	H-4,5	I	M[2]	R-1	R-3
I	3	3	3	3	3	4	2	4	4	1	NP[3]	4	4	4	—	1	1	1
R-1	1	1	1	1	1	3[1]	1	1	1	1	4	3	3	3	1	1	—	N
R-3	1	1	1	1	1	1	N	N	N	1	4	3	3	3	1	1	N	—

[1]The three-hour separation may be reduced to one hour where the Group B, Division 1 Occupancy, is limited to the storage of passenger motor vehicles having a capacity of not more than nine persons per vehicle and provided no repair or fueling is done and the area does not exceed 3,000 square feet in a building.

[2]In the one-hour occupancy separation between a Group R, Division 3 and M Occupancy, the separation may be limited to the installation of materials approved for one-hour fire-resistive construction on the garage side and a self-closing, tight fitting solid wood door in lieu of a one-hour fire assembly. Fire dampers shall not be required in ducts piercing this separation for ducts constructed of not less than No. 26 gauge galvanized steel.

[3]Not permitted.

661—5.810 to 5.849 Reserved.

[Filed June 22, 1962]
[Filed 2/12/82, Notice 12/9/81—published 3/3/82, effective 4/7/82]
[Filed 9/9/85, Notice 7/17/85—published 9/25/85, effective 10/30/85]
[Filed 4/1/88, Notice 9/23/87—published 4/20/88, effective 5/25/88]
[Filed 2/2/89, Notice 12/28/88—published 2/22/89, effective 3/29/89]
[Filed 11/22/91, Notice 7/10/91—published 12/11/91, effective 1/15/92]
[Filed 4/24/92, Notice 2/19/92—published 5/13/92, effective 7/1/92]
[Filed 2/24/93, Notice 12/9/92—published 3/17/93, effective 5/1/93]

EXPLOSIVE MATERIALS

661—5.850(101A) Rules generally. The code, "NFPA 495 Manufacture, Transportation, Storage, and Use of Explosive Materials," 1992 edition, as published by the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, with the exception of chapter 2 and references to other specific standards contained in chapter 2, is hereby adopted by reference as the rules governing the manufacture, transportation, storage, and use of explosive materials in the state of Iowa.

This rule is intended to implement Iowa Code section 101A.5.

661—5.851(101A) Inventory. Inventory shall be of such that it shows amount of explosive material on hand, quantities dispensed and to whom, and quantity on hand at the end of each calendar working day. Anytime a shortage appears it shall be reported immediately to the chief of police or sheriff having jurisdiction, who in turn shall cause a federal form 4712 (Department of Treasury, Internal Revenue Service) to be implemented, a copy of which shall be sent to the Iowa Department of Public Safety, attention of state fire marshal.

This rule is intended to implement Iowa Code section 101A.5.

661—5.852 to **5.864** Reserved.

661—5.865(101A,252J) Grounds for suspension, revocation, or denial of commercial explosives licenses. The department may refuse to issue a commercial license for the manufacture, importation, distribution, sale, and commercial use of explosives sought pursuant to Iowa Code section 101A.2 or may suspend or revoke such a license for any of the following reasons:

1. Finding that the applicant or licensee is not of good moral character and sound judgment.
2. Finding that the applicant or licensee lacks sufficient knowledge of the use, handling, and storage of explosive materials to protect the public safety.
3. Finding that the applicant or licensee falsified information in the current or any previous license application.
4. Proof that the licensee or applicant has violated any provision of Iowa Code chapter 101A or these rules.
5. Receipt by the department of a certificate of noncompliance from the child support recovery unit of the Iowa department of human services, pursuant to the procedures set forth in Iowa Code Supplement chapter 252J.

An applicant or licensee whose application is denied or a licensee whose license is suspended or revoked other than because of receipt of a certificate of noncompliance from the child support recovery unit may appeal that action pursuant to 661-chapter 10. Applicants or licensees whose licenses are denied, suspended, or revoked because of receipt by the department of a certificate of noncompliance issued by the child support recovery unit shall be subject to the provisions of rule 661—5.866(252J) and procedures specified in 661-chapter 10 for contesting department actions shall not apply in these cases.

This rule is intended to implement Iowa Code section 101A.2 and Iowa Code Supplement chapter 252J.

661—5.866(252J) Child support collection procedures. The following procedures shall apply to actions taken by the department on a certificate of noncompliance received from the Iowa department of human services pursuant to Iowa Code Supplement chapter 252J:

5.866(1) The notice required by Iowa Code Supplement section 252J.8 shall be served upon the applicant or licensee by restricted certified mail, return receipt requested, or personal service in accordance with Rules of Civil Procedure 56.1. Alternatively, the licensee, identification card holder, or applicant may accept service personally or through authorized counsel.

5.866(2) The effective date of revocation or suspension of a license, or denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code Supplement section 252J.8, shall be 60 days following service upon the licensee or applicant.

5.866(3) Licensees and applicants for licenses shall keep the department informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code Supplement chapter 252J and shall provide the department with copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code Supplement section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

5.866(4) All departmental fees for applications, license renewal or reinstatement must be paid by the licensee or applicant before a license will be issued, renewed, or reinstated after the department has denied the issuance or renewal of a license, or has suspended or revoked a license pursuant to Iowa Code Supplement chapter 252J.

5.866(5) In the event a licensee or applicant files a timely district court action following service of a department notice pursuant to Iowa Code Supplement sections 252J.8 and 252J.9, the department shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the department to proceed. For the purpose of determining the effective date of revocation or suspension or denial of the issuance or renewal of a license, the department shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

This rule is intended to implement Iowa Code chapter 252J.

[Filed August 19, 1971]
[Filed 6/15/84, Notice 4/11/84—published 7/4/84, effective 8/8/84]
[Filed emergency 7/13/84—published 8/1/84, effective 8/8/84]
[Filed 4/1/88, Notice 9/23/87—published 4/20/88, effective 5/25/88]
[Filed 11/3/95, Notice 8/2/95—published 11/22/95, effective 1/1/96]
[Filed 7/25/96, Notice 6/19/96—published 8/14/96, effective 10/1/96]

661—5.867 to **5.899** Reserved.

[Filed 11/25/55]
[Filed 9/17/57; amended 10/9/57]
[Filed 8/21/57; amended 1/15/60, 6/22/62, 8/19/70]
[Filed 10/8/57; amended 1/15/60, 8/31/71, 11/24/71, 12/13/72]
[Filed 8/1/60]
[Filed 12/19/60]
[Filed 6/22/62]
[Filed 4/6/65; amended 10/17/69]
[Filed 8/19/71]
[Filed 7/12/72]
[Filed 10/12/71; amended 12/31/73]
[Filed 6/30/75]
[Filed 6/22/76, Notice 5/17/76—published 7/12/76, effective 8/16/76]
[Filed 11/15/76, Notice 7/26/76—published 12/1/76, effective 1/5/77]
[Filed 2/16/77, Notice 1/12/77—published 3/9/77, effective 4/13/77]
[Filed 3/3/77, Notice 1/26/77—published 3/23/77, effective 4/27/77]
[Filed 4/4/77, Notice 9/22/76—published 4/20/77, effective 5/25/77]
[Filed 6/22/77, Notice 5/4/77—published 7/13/77, effective 8/17/77]
[Filed 9/7/79, Notice 7/25/79—published 10/3/79, effective 11/8/79*]
[Filed emergency after Notice 12/7/79, Notice 11/14/79—published 12/26/79, effective 1/17/80]
[Filed 2/12/82, Notice 12/9/81—published 3/3/82, effective 4/7/82]
[Filed 9/23/82, Notice 8/4/82—published 10/13/82, effective 11/17/82]
[Filed 11/5/82, Notice 9/29/82—published 11/24/82, effective 12/29/82]
[Filed emergency 12/17/82—published 1/5/83, effective 12/17/82]
[Filed 2/25/83, Notice 1/19/83—published 3/16/83, effective 4/20/83]
[Filed 4/7/83, Notice 3/2/83—published 4/27/83, effective 6/2/83]
[Filed 4/6/84, Notice 2/29/84—published 4/25/84, effective 5/31/84]
[Filed emergency 5/4/84—published 5/23/84, effective 5/31/84]
[Filed 6/15/84, Notice 4/11/84—published 7/4/84, effective 8/8/84]
[Filed emergency 7/13/84—published 8/1/84, effective 8/8/84]
[Filed 3/21/85, Notice 11/21/84—published 4/10/85, effective 5/15/85]
[Filed 5/17/85, Notice 12/19/84—published 6/5/85, effective 7/10/85]
[Filed emergency 9/6/85—published 9/25/85, effective 9/6/85]
[Filed 9/9/85, Notice 7/17/85—published 9/25/85, effective 10/20/85]
[Filed 6/13/86, Notice 4/9/86—published 7/2/86, effective 8/6/86]
[Filed 10/10/86, Notice 11/5/86—published 12/31/86, effective 2/4/87]
[Filed 3/6/87, Notice 1/14/87—published 3/25/87, effective 4/29/87]
[Filed 6/26/87, Notice 12/31/86—published 7/15/87, effective 8/19/87]
[Filed 4/1/88, Notice 9/23/87—published 4/20/88, effective 5/25/88]
[Filed 10/14/88, Notice 9/7/88—published 11/2/88, effective 12/8/88]
[Filed 2/2/89, Notice 12/28/88—published 2/22/89, effective 3/29/89]
[Filed emergency 6/29/89—published 7/26/89, effective 7/1/89]
[Filed 9/1/89, Notice 7/26/89—published 9/20/89, effective 10/25/89]
[Filed 3/16/90, Notice 12/13/89—published 4/4/90, effective 5/9/90]
[Filed 11/26/90, Notice 8/22/90—published 12/12/90, effective 1/16/91]

*Editor's Note:
Effective date of 5.300, 5.301(6), 5.301(7), 5.302, 5.304(2)"c"(2), 5.304(3), 5.304(4), 5.305, 5.350 and 5.351 delayed by the Administrative Rules Review Committee 70 days.
Subrule 5.305(3) which was delayed 70 days from November 8, 1979, is renumbered and amended as 5.305(2) to be effective January 17, 1980.
Effective date of 5.400 and 5.450 to 5.452 delayed by the Administrative Rules Review Committee 70 days. These amendments published in IAC 10/3/79, ARC 0596.

[Filed 5/10/91, Notice 2/6/91—published 5/29/91, effective 7/3/91]
[Filed emergency 5/17/91—published 6/12/91, effective 5/17/91]
[Filed emergency 6/21/91—published 7/10/91, effective 7/1/91]
[Filed 7/19/91, Notice 6/12/91—published 8/7/91, effective 9/15/91]
[Filed 11/22/91, Notice 7/10/91—published 12/11/91, effective 1/15/92]
[Filed 4/24/92, Notice 2/19/92—published 5/13/92, effective 7/1/92]
[Filed 8/25/92, Notice 5/13/92—published 9/16/92, effective 11/1/92]
[Filed 2/24/93, Notice 12/9/92—published 3/17/93, effective 5/1/93]
[Filed 3/11/94, Notice 1/5/94—published 3/30/94, effective 6/1/94]
[Filed 11/3/95, Notice 8/2/95—published 11/22/95, effective 1/1/96]
[Filed 7/25/96, Notice 6/19/96—published 8/14/96, effective 10/1/96]
[Filed 5/16/97, Notice 3/26/97—published 6/4/97, effective 7/15/97]
[Filed 12/16/98, Notice 6/3/98—published 1/13/99, effective 3/1/99**]
[Filed 9/30/99, Notice 4/21/99—published 10/20/99, effective 12/1/99]
[11/9/99, Notice 4/21/99—published 12/1/99, effective 2/1/00]

**Effective date of 661—5.620(100,135C), introductory paragraph, and subrule 5.620(1) delayed 70 days by the Administrative Rules Review Committee at its meeting held February 8, 1999.

TURKEY MARKETING COUNCIL, IOWA[787]

[Created by 1999 Iowa Acts, chapter 158, section 3]

CHAPTER 1
REFUNDS

787—1.1(78GA,ch158) Refunds.

1.1(1) An assessment imposed under Iowa Code section 184.2 shall not be refunded on turkeys raised in Iowa.

1.1(2) An assessment may be refunded on turkeys raised in another state and processed in Iowa if both of the following criteria are met:

a. The refund is requested by an organization representing the interests of the turkey producers in the state in which the turkeys were raised.

b. The organization requesting the refund has a signed and effective agreement on file between it and the Iowa Turkey Marketing Council regarding the refund.

This rule is intended to implement 1999 Iowa Acts, chapter 158.

[Filed 11/12/99, Notice 7/28/99—published 12/1/99, effective 1/5/00]

ENVIRONMENTAL PROTECTION COMMISSION (cont'd)
Water quality
Supply

Noncommunity
Generally **567**—40.2, 41.2(1)*c*, 41.2(4), 41.3(1)*a*, 41.3(1)*c*(5,6), 41.7(1)*a*, 42.1(1)*e*, 42.4(3), 43.5
Nontransient **567**—40.2, 41.3(1), 41.4, 41.5(1), 41.5(1)*c*(2)"4,6,9," 41.5(1)*c*(3)"4," 41.11, 42.1(1)*e*, 42.2(4)*d,e*, 42.2(6), 42.4(2)*a*(3), 43.1(5), 43.8
Nonpublic **567**—ch 49, *see also WELLS*
Nonregulated, interference **567**—ch 54
Permits, construction/operation **567**—40.3–40.5, 42.1(6), 42.4(3)*a*(2), 42.5(1)*e*, ch 42 Appendix B, 43.2, 43.3(3,6,7,9), 43.8(4,7), *see also WELLS*
Pipes/mains/service lines **567**—ch 9, 42.4(2)*e*, 43.1(2), 43.3(6), 43.7(4)
Private **567**—ch 38, 40.1, ch 47
Public, *generally* **567**—chs 40, 41, 43, 52.10(3)*h*
Records/reports **567**—41.7(2)*e*(2), 43.5(4)*b*, 43.7(1)*b*, 52.6, *see also Contaminants, Levels/Analyses this subheading above*
Sodium **567**—41.11(3)
Tests **567**—42.4(3)*b*(1)"4," 43.7(2)*c*(3), ch 47, 82.12(5), ch 83, *see also Aquifers this subheading above; Contaminants, Levels/Analyses: Monitoring this subheading above*
Treatment, *see Treatment below*
Violations, notification **567**—41.9(3)*b*(5), 42.1, 42.3(3)*d*, 43.5(4)*b*(4)
Wells, *see Wells below*

Surface sources, protection **567**—43.5, ch 61, 135.9(10), 137.4, 137.5(6,8), 137.6(2,7)
Treatment
Corrosion control **567**—41.4, 42.2(2)*a*, 42.4(2)*c*, ch 42 Appendix A"48," 43.7
Facilities **567**—ch 44, 71.5, 72.8, ch 81
Filters/filtration **567**—41.2(1)*d*(4), 41.7, 43.3(9), 43.5
Loans, facilities **567**—40.6, ch 44
Methods, compliance **567**—43.1(3), 43.3(10), 43.5
Operators
Certification **567**—81.2, 81.6(2), 81.9–81.11, 81.14
Discipline **567**—81.13, 81.14
Education/experience **567**—81.6, 81.9, 81.10
Examinations **567**—81.6–81.9, 81.10(4)
Proposals, changes **567**—41.5(1)*e*(6)
Records/reports **567**—41.7(2), 43.5(4)*b*(4), 43.7
Wastewater, *see Wastewater Treatment above*

Waterways, *see Streams, Protected this subheading above*

ETHICS AND CAMPAIGN DISCLOSURE (cont'd)
Complaints