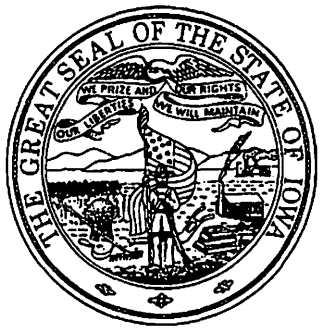
State of Iowa

Iowa Administrative Code Supplement

Biweekly
May 3, 2000



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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 THE
IOWA ADMINISTRATIVE CODE

Agency names and numbers in the first column below correspond to the divider tabs in the IAC binders. Obsolete pages of the IAC are listed in the "Remove Old Pages" column. New and replacement pages included in this Supplement are listed in the "Insert New Pages" column. Carefully remove and insert pages as directed.

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May 3, 2000, Biweekly Supplement
[Previous Supplement dated 4/19/00]

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*These pages may be archived for tracing the history of a rule.

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35.33(3) Reimbursement to a provider of "emergency services" shall not be denied by any carrier without that organization's 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. Reimbursement for emergency services shall not be denied solely on the grounds that services were performed by a noncontracted provider. If reimbursement for emergency services is denied, the enrollee may file a complaint with the carrier. Upon denial of reimbursement for emergency services, the carrier shall notify the enrollee and the provider that they may register a complaint with the commissioner of insurance.

191—35.34(514C) Provider access. A carrier subject to this chapter shall allow a female enrollee direct access to obstetrical and gynecological services from network or participating providers. The carrier shall also allow a pediatrician to be the primary care provider for a child through the age of 18.

These rules are intended to implement Iowa Code chapters 509 and 514C and 1999 Iowa Acts, Senate File 276.

191—35.35(509) Reconstructive surgery.

35.35(1) A carrier or organized delivery system that provides medical and surgical benefits with respect to a mastectomy shall provide the following coverage in the event an enrollee receives benefits in connection with a mastectomy and elects breast reconstruction:

a. Reconstruction of the breast on which the mastectomy has been performed;

b. Surgery and reconstruction of the other breast to produce a symmetrical appearance; and

c. Prostheses and coverage of physical complications at all stages of a mastectomy including lymphedemas.

35.35(2) The benefits under this rule shall be provided in a manner determined in consultation with the attending physician and the enrollee. The coverage may be subject to annual deductibles and coinsurance provisions that are consistent with other benefits under the plan or coverage.

35.35(3) Written notice of the availability of coverage in this rule shall be provided to the enrollee upon enrollment and then annually.

35.35(4) A carrier or organized delivery system shall not deny an enrollee eligibility or continued eligibility to enroll or renew coverage under the terms of the health insurance solely for the purpose of avoiding the requirements of this rule. A carrier or organized delivery system shall not penalize, reduce or limit the reimbursement of an attending provider or induce the provider to provide care in a manner inconsistent with this rule.

This rule is intended to implement Public Law 105-277.

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*See IAB Insurance Division

191—71.22(514C) Provider access. A carrier shall allow a female enrollee direct access to obstetrical or gynecological services from network and participating providers. The plan shall also allow a pediatrician to be the primary care provider for a child through the age of 18.

These rules are intended to implement Iowa Code chapters 513B and 514C and 1999 Iowa Acts, Senate File 276.

191—71.23(513B) Reconstructive surgery.

71.23(1) A carrier or organized delivery system that provides medical and surgical benefits with respect to a mastectomy shall provide the following coverage in the event an enrollee receives benefits in connection with a mastectomy and elects breast reconstruction:

a. Reconstruction of the breast on which the mastectomy has been performed;

b. Surgery and reconstruction of the other breast to produce a symmetrical appearance; and

c. Prostheses and coverage of physical complications at all stages of a mastectomy including lymphedemas.

71.23(2) The benefits under this rule shall be provided in a manner determined in consultation with the attending physician and the enrollee. The coverage may be subject to annual deductibles and coinsurance provisions that are consistent with other benefits under the plan or coverage.

71.23(3) Written notice of the availability of coverage in this rule shall be provided to the enrollee upon enrollment and then annually.

71.23(4) A carrier or organized delivery system shall not deny an enrollee eligibility or continued eligibility to enroll or renew coverage under the terms of the health insurance solely for the purpose of avoiding the requirements of this rule. A carrier or organized delivery system shall not penalize, reduce or limit the reimbursement of an attending provider or induce the provider to provide care in a manner inconsistent with this rule.

This rule is intended to implement Public Law 105-277.

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75.14(3) Reimbursement to a provider of "emergency services" shall not be denied by any carrier without that organization's 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. Reimbursement for emergency services shall not be denied solely on the grounds that services were performed by a noncontracted provider. If reimbursement for emergency services is denied, the enrollee may file a complaint with the carrier. Upon denial of reimbursement for emergency services, the carrier shall notify the enrollee and provider that they may register a complaint with the commissioner of insurance.

191—75.15(514C) Provider access. A carrier shall allow a female enrollee direct access to obstetrical or gynecological services from network and participating providers. The plan shall also allow a pediatrician to be the primary care provider for a child through the age of 18.

191—75.16(514C) Diabetic coverage. All carriers shall provide benefits in the standard health benefit plan for the cost associated with equipment, supplies, and education for the treatment of diabetes pursuant to Iowa Code section 514C.14.

These rules are intended to implement Iowa Code chapters 513C and 514C and 1997 Iowa Acts, House File 701; 1995 Iowa Acts, chapter 204, section 14; 1996 Iowa Acts, chapter 1219, section 52; and 1999 Iowa Acts, Senate File 276.

191—75.17(513C) Reconstructive surgery.

75.17(1) A carrier or organized delivery system that provides medical and surgical benefits with respect to a mastectomy shall provide the following coverage in the event an enrollee receives benefits in connection with a mastectomy and elects breast reconstruction:

a. Reconstruction of the breast on which the mastectomy has been performed;

b. Surgery and reconstruction of the other breast to produce a symmetrical appearance; and

c. Prostheses and coverage of physical complications at all stages of a mastectomy including lymphedemas.

75.17(2) The benefits under this rule shall be provided in a manner determined in consultation with the attending physician and the enrollee. The coverage may be subject to annual deductibles and coinsurance provisions that are consistent with other benefits under the plan or coverage.

75.17(3) Written notice of the availability of coverage in this rule shall be provided to the enrollee upon enrollment and then annually.

75.17(4) A carrier or organized delivery system shall not deny an enrollee eligibility or continued eligibility to enroll or renew coverage under the terms of the health insurance solely for the purpose of avoiding the requirements of this rule. A carrier or organized delivery system shall not penalize, reduce or limit the reimbursement of an attending provider or induce the provider to provide care in a manner inconsistent with this rule.

This rule is intended to implement Public Law 105-277.

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[Filed 4/10/00, Notice 1/12/00—published 5/3/00, effective 6/7/00]

c. A health care professional who is not a medical physician shall also hold a current certification by the professional's respective licensing or specialty board if applicable.

d. The applicant must attest that reviewers have no history of disciplinary actions or sanctions including, but not limited to, the loss of staff privileges or any participation restriction taken or pending by any hospital or state or federal government regulatory agency for wrongdoing by the health care professional.

e. The applicant shall provide a description of the qualifications of the reviewers retained to conduct external reviews of coverage decisions including the reviewers' current and past employment histories and practice affiliations.

f. The applicant shall provide a description of the procedures employed to ensure that reviewers conducting external reviews are appropriately licensed, registered or certified; trained in the principles, procedures and standards of the independent review entity; and knowledgeable about the health care service which is the subject of the external review.

g. The applicant shall provide a description of the methods of recruiting and selecting impartial reviewers and matching such reviewers to specific cases.

h. The applicant shall provide the number of reviewers retained by the independent review entity and a description of the areas of expertise available from such reviewers and the types of cases such reviewers are qualified to review.

i. The applicant shall provide a description of the policies and procedures employed to protect confidentiality of individual medical and treatment records in accordance with applicable state and federal law.

j. The applicant shall provide a description of the quality assurance program established by the independent review entity.

k. The applicant shall provide the names of all corporations and organizations owned or controlled by the independent review entity or which own or control the applicant, and the nature and extent of any such ownership or control.

l. The applicant shall provide the names and résumés of all directors, officers, and executives of the independent review entity.

m. The applicant shall provide a description of the fees to be charged by the review entity for external reviews.

n. The applicant shall provide the name of the medical director or health professional director responsible for the supervision and oversight of the independent review procedure.

76.9(2) The independent review entity shall develop written policies and procedures governing all aspects of the external review process including, at a minimum, the following:

a. Procedures to ensure that external reviews are conducted within the times frames specified in 1999 Iowa Acts, Senate File 276, and that any required notices are provided in a timely manner.

b. Procedures to ensure the selection of qualified and impartial reviewers. The reviewers shall be qualified to render impartial determinations relating to the health care service which is the subject of the coverage decision under external review. The reviewers shall be experts in the treatment of the medical condition under review.

c. Procedures to ensure the confidentiality of medical and health treatment records and review materials.

d. Procedures to ensure adherence to the requirements of 1999 Iowa Acts, Senate File 276, by any contractor, subcontractor, subvendor, agent or employee affiliated with the certified independent review entity.

76.9(3) The independent review entity shall establish a quality assurance program. The program shall include a written description to be provided to all individuals involved in the program, the organizational arrangements, and the ongoing procedures for the identification, evaluation, resolution and follow-up of potential and actual problems in external reviews performed by the independent review entity and procedures to ensure the maintenance of program standards pursuant to this requirement.

76.9(4) The independent review entity shall establish a toll-free telephone service to receive information relating to external reviews pursuant to 1999 Iowa Acts, Senate File 276. The system shall develop a procedure to ensure the capability of accepting, recording, or providing instruction to incoming telephone calls during other than normal business hours. The independent review entity shall also establish a facsimile and electronic mail service.

76.9(5) No independent review entity, officer, director, employee, or reviewer employed or engaged to conduct external reviews shall have any material professional affiliation or material financial affiliation with a health plan for which it is conducting a review.

76.9(6) The independent review entity shall provide the commissioner such data, information, and reports as the commissioner determines necessary to evaluate the external review process established under 1999 Iowa Acts, Senate File 276.

76.9(7) Applications shall be submitted in duplicate to the Commissioner of Insurance, 330 Maple Street, Des Moines, Iowa 50319. Applications must be submitted in full to be considered. All applicants will be notified of the certification decision. A list of certified independent review entities shall be maintained at the division of insurance and shall be available through the division's Web site.

This rule is intended to implement 1999 Iowa Acts, Senate File 276, section 12.

[Filed 10/29/99, Notice 9/22/99—published 11/17/99, effective 12/22/99]
[Filed 4/10/00, Notice 1/12/00—published 5/3/00, effective 6/7/00]

CHAPTERS 77 to 79
Reserved

CHAPTER 81
POSTDELIVERY BENEFITS AND CARE

191—81.1(514C) Purpose. The purpose of this chapter is to implement Iowa Code section 514C.12, thereby setting forth those requirements deemed appropriate by the commissioner for the general provision of coverage for benefits for postdelivery care.

191—81.2(514C) Applicability and scope. This chapter shall apply to all individual or group accident and health insurance, individual or group hospital or health care service contracts issued pursuant to Iowa Code chapter 509, 509A, 514, or 514A, and individual or group health maintenance organization contracts issued and regulated under chapter 514B, which are delivered, amended, or renewed on or after July 1, 1996.

191—81.3(514C) Postdelivery benefits. Every person issuing contracts under the scope of this chapter providing maternity benefits, which are not limited to complications of pregnancy, or newborn care benefits, shall not terminate inpatient benefits or require discharge of a mother or the newborn from a hospital following delivery earlier than determined to be medically appropriate by the attending physician after consultation with the mother and in accordance with the Guidelines for Perinatal Care, Third Edition, 1992, by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists, which provide that when complications are not present, the postpartum hospital stay ranges from a minimum of 48 hours for a vaginal delivery to a minimum of 96 hours for a Cesarean birth, excluding the day of delivery. In accordance with those guidelines, in the event of a discharge from the hospital prior to the minimum stay established in the guidelines, a postdischarge follow-up visit shall be provided to the mother and newborn by providers competent in postpartum care and newborn assessment if determined medically appropriate as directed by the attending physician. Copies of this publication may be obtained through the Iowa Insurance Division, Lucas State Office Building, Des Moines, Iowa 50319, telephone (515)281-5705.

These rules are intended to implement Iowa Code section 514C.12.

[Filed 12/13/96, Notice 9/25/96—published 1/1/97, effective 4/2/97]

CHAPTERS 82 to 99
Reserved

CHAPTER 100
COMMUNITY HEALTH MANAGEMENT INFORMATION SYSTEM
Rescinded IAB 5/3/00, effective 6/7/00

CHAPTER 1
BUSINESS CONDUCT
[Prior to 6/15/88, see Real Estate Commission[700] Ch 1]

193E—1.1(543B) Definitions.

"Advance fees" shall mean any fees charged for services to be paid in advance of the rendering of such services including, without limitation, any fees charged for listing, advertising, or offering for sale or lease any real property, but excluding any fees paid solely for advertisement in a newspaper of general circulation.

"Affiliated licensee" means a broker associate or salesperson, as defined in Iowa Code section 543B.5, who is under the supervision of a broker.

"Brokerage agreement" means a contract between a broker and a client which establishes the relationship between the parties as to the brokerage services to be performed.

"Buyer" includes a purchaser, tenant, vendee, lessee, party to an exchange, or grantee of an option. Selected rules in this chapter will at times refer separately to "buyers" and "tenants" to clarify licensee's duties and obligations.

"Client" means a party to a transaction who has an agency agreement with a broker for brokerage services.

"Common source information companies" means any individual, corporation, limited liability company, business trust, estate, trust, partnership, association, or any other legal entity (except any government or governmental subdivision or agency, or any officer or employee thereof acting in such individual's official capacity) that is a source, compiler, or supplier of information regarding real estate for sale or lease and other data and includes, but is not limited to, multiple listing services.

"Confidential information" means information made confidential by statute, regulation, or express instructions from the client. Confidential information:

1. Shall include, but not be limited to, the following:

- Information concerning the client that, if disclosed to the other party, could place the client at a disadvantage when bargaining;
- That the seller or landlord is willing to accept less than the asking price or lease price for the property;
- That the buyer or tenant is willing to pay more than the asking price or lease price for the property;
- What the motivating factors are for the party selling or leasing the property;
- What the motivating factors are for the party buying or leasing the property;
- That the seller or landlord will agree to sale, lease, or financing terms other than those offered;
- That the buyer or tenant will agree to sale, lease, or financing terms other than those offered;
- The seller's or landlord's real estate needs;
- The buyer's or tenant's real estate needs;
- The seller's or landlord's financial information, except the seller's ability to sell and the landlord's ability to lease are considered a material fact;
- The buyer's or tenant's financial qualifications, except the buyer's ability to buy and the tenant's ability to lease are considered a material fact.

2. Does not include "material adverse facts" as defined in Iowa Code Supplement section 543B.5.

3. Shall not be disclosed unless:

• The client to whom the information pertains provides informed written consent to disclose the information;

• The disclosure is required by statute or regulation, or failure to disclose the information would constitute fraudulent representation;

• The information is made public or becomes public by the words or conduct of the client to whom the information pertains or from a source other than the licensee; or

• The disclosure is necessary to defend the licensee against an accusation of wrongful conduct in an actual or threatened judicial proceeding, an administrative proceeding before the commission, or in a proceeding before a professional committee.

"Consumer" means a person seeking or receiving real estate brokerage services.

"Contract between the buyer and seller" includes an offer to purchase, a sales contract, an option, a lease-purchase option, an offer to lease, or a lease.

"Customer" means a consumer of real estate services in connection with a real estate transaction who is not being represented by the licensee, but for whom the licensee may perform ministerial acts. A customer may be a client of another broker, may not have yet decided whether or not to be represented by any broker, or may have chosen not to be represented by any broker.

"Dual agent" means a licensee who, with the written informed consent of all the parties to a contemplated real estate transaction, has entered into a brokerage agreement with and therefore represents both the seller and buyer or both the landlord and tenant in the same in-house transaction.

"Firm" means a licensed partnership, association, or corporation.

"Licensee" means a designated broker as defined in Iowa Code Supplement section 543B.5, a broker associate as defined in Iowa Code section 543B.5(1), and a salesperson as defined in 543B.5(3).

"Listing broker" means the real estate broker who obtains a listing of real estate or of an interest in a residential cooperative housing corporation.

"Ministerial acts" means those acts that a licensee may perform for a consumer that are informative in nature and do not rise to the level of specific assistance on behalf of a consumer. For purposes of this rule, ministerial acts include, but are not limited to, the following:

1. Responding to telephone inquiries by consumers as to the availability and pricing of brokerage services;
2. Responding to telephone inquiries from a consumer concerning the price or location of property;
3. Attending an open house and responding to questions about the property from a consumer;
4. Setting an appointment to view property;
5. Responding to questions of consumers walking into a licensee's office concerning brokerage services offered or particular properties;
6. Accompanying an appraiser, inspector, contractor, or similar third party on a visit to a property;
7. Describing a property or the property's condition in response to a consumer's inquiry;
8. Completing business or factual information for a consumer on an offer or contract to purchase on behalf of a client;
9. Showing a client through a property being sold by an owner on the owner's own behalf; or
10. Referring a person to another broker or service provider.

* *"Referral fee"* or *"finder's fee"* means any fee or other valuable consideration paid by a licensee to any unlicensed person or entity for the purpose of procuring prospects for the sale, exchange, purchase, rental or leasing of real estate.

"Seller" includes an owner, landlord, vendor, lessor, party to an exchange, or grantor of an option. Selected rules in this chapter will at times refer separately to "sellers" and "landlords" to clarify licensee's duties and obligations.

*Effective date of April 26, 2000, delayed 70 days by the Administrative Rules Review Committee at its meeting held April 7, 2000.

193E—1.40(543B) Disclosure of licensee interest, acting as a principal, and status as a licensee required. A licensee shall not act in a transaction on the licensee's own behalf, on behalf of the licensee's immediate family, including but not limited to a spouse, parent, child, grandparent, grandchild, brother, or sister, or on behalf of the brokerage, or on behalf of an organization or business entity in which the licensee has an interest, including an affiliated business arrangement as defined in subrule 1.50(1), unless the licensee provides written disclosure of that interest to all parties to the transaction. Disclosure required under this rule must be made at the time of or prior to the licensee's providing specific assistance to the party or parties to the transaction. Copies of the disclosure may be provided in person or by mail, as soon as reasonably practical. If no specific assistance is provided, disclosure shall be provided prior to the parties' forming a legally binding contract, either prior to an offer being made by the buyer or tenant or prior to an acceptance by the seller or landlord, whichever comes first.

1.40(1) *Licensee acting as a principal.* A licensee shall not acquire any interest in any property directly or indirectly nor shall the licensee sell any interest in which the licensee directly or indirectly has an interest without first making written disclosure of the licensee's true position clear to the other party. Satisfactory proof of this fact must be produced by the licensee upon request of the commission. Whenever a licensee is in doubt as to whether an interest, relationship, association, or affiliation requires disclosure under this rule, the safest course of action is to make the written disclosure.

1.40(2) *Status as a licensee.* Before buying, selling, or leasing real estate as described above, the licensee shall disclose in writing any ownership, or other interest, which the licensee has or will have and the licensee's status to all parties to the transaction. An inactive status license shall not exempt a licensee from providing the required disclosure.

1.40(3) *Dual capacity.* The licensee shall not act in a dual capacity of agent and undisclosed principal in any transaction.

***193E—1.41(543B) Rebates and inducements.** With proper written disclosure, rebates and inducements may be paid to a party to the transaction, consistent with Iowa Code sections 543B.6 and 543B.34(9a), provided such party does not engage in any activity that requires a real estate license. A rebate or inducement shall not be made without the required written disclosures to the parties as provided in 193E—1.42(543B).

1.41(1) A licensee shall not pay a commission, any part of the commission, or valuable consideration to an unlicensed third party for performing brokerage functions or engaging in any activity that requires a real estate license. Referral fees or finder's fees paid to unlicensed third parties for performing brokerage activities, or engaging in any activity that requires a real estate license, are prohibited.

1.41(2) In a listing contract, the broker is principal party to the contract. The broker may, with proper disclosure, pay a portion of the commission earned to an unlicensed seller or landlord that is a principal party to the listing contract. This will be deemed a reduction in the amount of the earned commission.

***1.41(3)** Payment to an unlicensed buyer or tenant is often referred to as "rebating." A broker's intention to pay money or costs associated with a transaction to a buyer or tenant may be advertised and promoted as a sales inducement. The payment to the buyer or tenant is permissible, when disclosed, because the broker is licensed and authorized to negotiate and the buyer or tenant may negotiate on the buyer's or tenant's own account.

1.41(4) A licensee may present a gratuitous gift, such as flowers or a door knocker, to the buyer or tenant subsequent to closing and not promised or offered as an inducement to buy or lease. The permission and disclosure requirements of 193E—1.42(543B) do not apply as long as any client relationship has terminated.

*Effective date of April 26, 2000, delayed 70 days by the Administrative Rules Review Committee at its meeting held April 7, 2000.

1.41(5) A licensee may present free gifts, such as prizes, money, or other valuable consideration, to a potential party to a transaction or lease, prior to signing a contract to purchase or lease and not promised or offered as an inducement to buy or lease. It is the licensee's responsibility to ensure that the promotion is in compliance with other Iowa laws, such as gaming regulations. The permission and disclosure requirements of 193E—1.42(543B) do not apply as long as no client relationship has been established with the buyer or lessee.

1.41(6) The offering by a licensee of a free gift, prize, money, or other valuable consideration as an inducement shall be free from deception and shall not serve to distort the true value of the real estate service being promoted.

***1.41(7)** No broker shall pay a commission, referral or finder's fee, or other valuable consideration to another broker knowing that a portion will be paid to an unlicensed person or party for performing any activity for which a real estate license is required, or which otherwise constitutes a commission, referral or finder's fee, or other valuable consideration, requested after a bona fide offer to purchase has been accepted or a bona fide listing agreement or buyer's brokerage agreement has been signed, or which constitutes an undisclosed rebate or inducement.

1.41(8) A licensee may make donations to a charity, or other not-for-profit organization, for each listing or closing, or both, that the licensee has during a specific time period. The receiving entity may be selected by the licensee or by a party to the transaction. The contribution may be in the name of the licensee or in the name of a party to the transaction. Contributions are permissible only if the following conditions are met:

a. There are no restrictions placed on the payment;

b. The donation is for a specific amount;

c. The receiving entity does not act or participate in any manner that would require a license;

d. The licensee exercises reasonable care to ensure that the organization or fund is a bona fide nonprofit;

e. The licensee exercises reasonable care to ensure that the promotional materials clearly explain the terms under which the donations will be made; and

f. All required disclosures are made.

193E—1.42(543B) Brokerage agreements. All brokerage agreements shall be written and cannot be assigned, sold, or otherwise transferred to another broker without the express written consent of all parties to the original agreement, unless the terms of the agreement state otherwise. Upon termination of association or employment with the principal broker, the affiliated broker associate or salesperson shall not take or use any written brokerage agreements secured during the association or employment. Said brokerage agreements remain the property of the principal broker and may be canceled only by the broker and the client.

1.42(1) Every written brokerage agreement shall include, at a minimum, the requirements set forth in Iowa Code Supplement section 543B.57 and the following provisions:

a. A statement disclosing the brokerage policy on cooperating with and compensating other brokerages whether the brokerage is acting as subagent or the other parties' agent in the sale, lease, rental, or purchase of real estate, including whether the brokerage intends to share the compensation with other brokerages. Such disclosure shall serve to inform the client of any policy that would limit the participation of any other brokerage;

b. All listing contracts and all brokerage agency contracts shall comply with Iowa real estate law and commission rules including, but not limited to, 193E—1.23(543B) Listings, 1.30(543B) Property management, and 1.20(543B) Terms and conditions.

1.42(2) No licensee shall make or enter into a brokerage agreement that specifies a net sale, lease, rental, or exchange price to be received by an owner and the excess to be received by the licensee as a commission.

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193E—1.52(543B) Enforcement date. Rules 1.41(543B) to 1.51(543B) shall not be enforced until July 1, 1996. When the commission adopted these rules, which became effective January 24, 1996, it intended to delay enforcement until July 1, 1996, as stated in rule 1.41(543B). This rule is intended to clarify the enforcement date to avoid any possible confusion by licensees or the public more generally. The commission wants to provide licensees with the opportunity to obtain education and to become familiar with the rules prior to enforcement.

These rules are intended to implement Iowa Code chapters 558A and 543B and Iowa Code Supplement sections 543B.57 to 543B.63.

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CHAPTER 23
ANNUAL REPORT
[Prior to 10/8/86, Commerce Commission[250]]

199—23.1(476) General information.

23.1(1) Every public utility is required to keep and render its books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the board and to comply with all directions of the board relating to such books, accounts, papers and records.

23.1(2) Each public utility subject to Iowa Code chapter 476 shall file with this board, on or before April 1 of each year, an annual report as described in these rules and covering operations during the immediately preceding calendar year. Pursuant to chapter 476, this information will be used to apportion the costs of the utilities division. If a utility ceases operations through merger or sale of its plant during the calendar year, each utility involved in the transaction shall separately file, within 90 days after the merger or sale, an annual report covering the portion of the calendar year operations to the date of sale or merger.

23.1(3) All pages of the report must be completed and submitted to the board. The words "none" or "not applicable" may be used to complete a schedule when they accurately and fully state the facts. The board shall be notified of the nature, amount and purpose of any accounts used in addition to those prescribed in utilities division Chapter 16, "Accounting." A copy shall be retained in the respondent's file. All reports are to be prepared for and certified to the Iowa utilities board.

23.1(4) Annual report requirements specified in "Regulations Governing Service Supplied by Gas, Electric, Telephone, or Water Utilities," utilities division, Chapters 19, 20, 21, and 22, shall be included with the annual reports set forth in the following paragraphs. The reporting utility should use their own format in preparing such reports.

199—23.2(476) Annual report requirements—rate-regulated utilities. Two copies each of the following report forms must be completed and filed with the board.

23.2(1) *Electric utilities.*

a. Class A & B—Form IE-1, Annual Report—Rate-Regulated Electric Utilities (including FPC Annual Report Form No. 1).

b. Class C & D—Form IE-1, Annual Report—Rate-Regulated Electric Utilities (including FPC Annual Report Form No. 1F).

23.2(2) *Gas utilities.*

a. Class A & B—Form IG-1, Annual Report—Rate-Regulated Gas Utilities (including FPC Annual Report Form No. 2).

b. Class C & D—Form IG-1, Annual Report—Rate-Regulated Gas Utilities (including FPC Annual Report Form No. 2A).

23.2(3) *Telegraph utilities.* Form RTG-1, Annual Report—Rate-Regulated Telegraph Utilities (including FCC Annual Report Form—R & O).

23.2(4) *Telephone utilities.* Form TR-1, Telephone Annual Report to the Utilities Board and Department of Revenue and Finance, State of Iowa (including FCC Annual Report Form M).

23.2(5) *Water utilities.*

a. Class A & B—Form WA-1, Annual Report—Rate-Regulated Water Utilities.

b. Class C & D—Form WD-1, Annual Report—Rate-Regulated Water Utilities.

23.2(6) Reports by rate-regulated utilities which have multistate operations shall provide information concerning their Iowa operations on the schedules listed below. Such schedules shall be prepared using the same format used in reporting total company data and shall be clearly labeled "Iowa Operations" at the top of each schedule. It shall include:

a. Summary of utility plant and accumulated depreciation and amortization reserves.

b. Plant in service by primary account.

c. Materials and supplies.

d. Contributions in aid of construction.

e. Accumulated deferred income taxes.
f. Accumulated investment credit.
g. Statement of income for the year.
h. Operating revenues.
i. Operating and maintenance expenses.
j. Taxes charged during year.

Statements shall be included setting forth the method or basis used in making allocations between states.

23.2(7) Cooperative Electric Utilities Corporations or Associations—Form EC-1, Annual Report—Cooperative Electric Plant and Operations.

23.2(8) The respondent shall file as part of its annual report filed with the board (a) a list (by title, author, and date) of any financial, statistical, technical or operational reviews or reports that a company may prepare for distribution to stockholders, bondholders, utility organizations or associations or other interested parties and (b) a list (by form number and title) of all financial, statistical, technical and operational review-related documents filed with an agency of the federal government.

23.2(9) In addition to the above-mentioned reports, the respondent shall file with the board, immediately upon publication, two copies of any financial or statistical reports that a company may prepare for distribution to stockholders, bondholders or any other interested parties.

This rule is intended to implement Iowa Code section 476.31.

199—23.3(476) Annual report requirements—non-rate-regulated utilities. One copy of each of the following report forms must be completed and filed with the board.

23.3(1) *Municipally owned electric.* Form ME-1, Annual Report—Municipal Electric Plant and Operations.

23.3(2) *Municipally owned gas utilities.* Form MG-1, Annual Report—Municipal Gas, Plant and Operations.

23.3(3) *Non-rate-regulated telephone utilities.* Form TR-1, Telephone Annual Report to the Utilities Board and Department of Revenue and Finance, State of Iowa.

199—23.4(476,476A) Renumbered as subrule 20.13(3), effective 10/31/84.

These rules are intended to implement Iowa Code sections 476.2, 476.9, 476.10, 476.22, 476.31, and 546.7.

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CHAPTER 37
EQUIPMENT DISTRIBUTION PROGRAM

199—37.1(477C) Policy and purpose. The board has authority under Iowa Code section 477C.4 to plan, establish, administer, and promote a program to secure, finance, and distribute telecommunications devices for the deaf. The needs for equipment to allow persons with communication impairments to use the telephone are not being satisfied in Iowa at this time. A reasonable distribution program is desirable. All customers will benefit when access to the telephone system is available to more persons. The existing dual party relay service will be more fully utilized when more persons have the equipment necessary to gain access to the relay service.

The equipment distribution program will be limited by periodic budget amounts set by the board. When the budgeted amounts for a period are committed or expended, no further vouchers for equipment will be issued until the next period when the board budgets additional amounts.

199—37.2(477C) Program structure. The equipment distribution program will be conducted by a program administrator chosen by the board. Distribution of equipment will be made through a voucher system utilizing private vendors for equipment purchases. Vouchers to pay part or, depending upon the price, all of the cost of equipment will be issued by the program administrator to eligible recipients. After purchase using a voucher, the recipient will be the permanent owner of the equipment and responsible for enforcement of any warranties and for any repairs.

37.2(1) *Amount.* The voucher will state a standard amount for a particular piece of equipment.

a. The standard amount shall be determined and updated periodically by the program administrator.

b. The standard amount shall be 95 percent of the average retail market price for the piece of equipment, unless the retail market price is more than $1,000, in which case the standard amount shall be 99 percent of the average retail market price. The standard amount may be increased to 100 percent if a person demonstrates to the program administrator that the person is unable to pay the matching amount.

37.2(2) *Voucher use.* The recipient of a voucher may purchase equipment from any vendor who will accept the voucher and may apply the voucher amount toward purchase of the brand and model of indicated equipment as the recipient chooses. A bill of sale for equipment purchased prior to the issuance of a voucher shall not be reimbursed.

37.2(3) *Term.* The vouchers shall provide for a 40-day period to present the voucher to the vendor. The vendor, upon presentation of the voucher, shall have 60 days to complete the sale and delivery of the equipment and to return the voucher to the program administrator. The program administrator shall have 20 days to process and return the voucher to the board for payment. The program administrator, for good cause shown, may extend either the 40- or 60-day deadline, provided the voucher is returned to the board for payment within 120 days from the issuance of the voucher. Except for good cause shown, the vendor will not be reimbursed for a voucher issued more than 120 days before the voucher is returned to the board for payment.

37.2(4) *Payment.* The voucher is not a negotiable instrument. Upon presentation of documentation by the vendor as required by the board, including but not limited to a bill of sale showing an amount due no greater than the voucher amount, the vendor will be issued a state warrant for the amount due.

199—37.3(477C) Eligibility. To be eligible to receive a voucher for equipment under the program, a person must satisfy the following standards. Applications will be processed in queue as determined by the program administrator. No person will be entitled to equipment at a particular time merely because that person meets the eligibility requirements. Additional vouchers will not be issued during a period if unpaid vouchers are outstanding for the remaining funds budgeted for the period.

37.3(1) The applicant's need for the equipment must be verified by an appropriate professional, including but not limited to a licensed physician; certified teacher in the fields of hearing, speech, or visual impairment; speech pathologist; audiologist; or an appropriate state or federal agency representative, as part of the initial application. At the time of reapplication for equipment, the applicant must submit a statement certifying the applicant's condition has not changed to the extent that a different type of equipment is needed. If an applicant's condition has changed to the extent that a different type of equipment is needed from that originally received, the applicant's need must be verified by an appropriate professional.

37.3(2) The applicant must have telephone service available to the applicant's Iowa residence or must have applied for telephone service to the Iowa residence.

37.3(3) The applicant must be an individual.

37.3(4) The applicant must be at least five years of age or demonstrate an ability to use the equipment requested. No demonstration is required for those five years of age and older.

37.3(5) The applicant will be limited to a voucher for one type of equipment or equipment package. If there are individuals in the same household who have different communication impairments that require different types of assistive telecommunications equipment, the individuals may make a joint or separate request to the equipment distribution program administrator. The administrator may grant those portions of the requests that satisfy the eligibility requirements in this rule.

37.3(6) Equipment may be replaced under the program by reapplication as appropriate. Reapplication will be limited by a five-year waiting period. The reapplication period may be shortened by the program administrator for good cause shown.

37.3(7) An applicant must agree to cooperate with studies to evaluate the effectiveness of the program.

37.3(8) An applicant's gross household income must be less than $57,000 for a family of four. Household numbers above or below four will increase or decrease that amount in $9,000 increments.

199—37.4(477C) Equipment. The board will authorize the types of equipment to be distributed through the program, including but not limited to telecommunications devices for the deaf with printers, signalers, amplifiers, computer software, and a limited number of telecommunications devices for the deaf/blind.

199—37.5(477C) Complaints. All complaints concerning the equipment distribution program will be resolved pursuant to the following:

37.5(1) The program administrator will make determinations concerning matters such as eligibility, type of equipment for particular applicants, or reimbursement of vendors.

a. The administrator, after requiring interested persons to state verbally or in writing any complaint or dispute arising under the equipment distribution program, shall attempt to settle the matter informally within 45 days.

b. Should the informal dispute resolution process fail, the complaint may be submitted to the board by the complainant and will be processed by the project manager as provided for utility customers in 199 IAC 6. The complaint will be directed to the program administrator with a copy to the consumer advocate. The board staff assigned to the equipment distribution program will then issue a proposed resolution as defined in 199 IAC 6.4(476).

c. The proposed resolution shall include a description of the facts involved in the dispute and a clear statement of the proposed resolution.

d. The proposed resolution shall also give notice that any interested person dissatisfied with the proposed resolution has 14 days after the issuance of the proposed resolution to file a written request for formal complaint proceedings before the Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069. If no timely request for formal complaint proceedings is filed, the proposed resolution shall be deemed binding on all interested persons served with the proposed resolution. The request for formal complaint proceedings shall be considered as filed on the date of the United States Postal Service postmark or the date personal service is made.

37.5(2) The request for formal complaint proceedings shall explain why the proposed resolution should be modified or rejected and propose an alternate resolution, including any temporary relief desired. Copies of the request shall be mailed to any other persons served with the proposed resolution.

37.5(3) Upon receipt of a request for formal complaint proceedings, the board shall consider whether formal complaint proceedings should be initiated and issue an order. The request shall be granted if the board determines there is any reasonable ground for investigating the complaint. If the board denies formal complaint proceedings, a party may file a petition for judicial review either in the Polk County district court or in the district court for the county in which the party resides or has its principal place of business.

37.5(4) When a complaint is docketed as a formal proceeding, the procedures set forth in 199—Chapter 7 will apply.

These rules are intended to implement Iowa Code section 477C.4.

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CHAPTER 17
OPEN ENROLLMENT

281—17.1(282) Intent and purpose. It is the intent of Iowa Code section 282.18 to maximize parental choice in providing a wide range of educational opportunities which are not available for pupils because of where they live. It is the purpose of this chapter to give guidance and direction to parents/guardians, public school district administrators and boards in making quality decisions regarding school district choice for the education of pupils.

281—17.2(282) Definitions. For the purpose of this chapter the indicated terms are defined as follows:

"Alternative receiving district" is a district to which a parent/guardian petitions for the open enrollment transfer of a pupil from a receiving district. An alternative receiving district could be the district of residence of the parents/guardians.

"Economic eligibility requirements" relate to family household income levels that qualify the parent/guardian for transportation assistance from the resident district for an open enrollment pupil.

"Good cause" is a condition that occurs after the open enrollment filing deadline related to change in the status of a pupil's residence or change in the status of a pupil's resident district that qualifies the parent/guardian to file a request for open enrollment which shall be considered in the same manner as if the deadline had been met.

"Nuclear family" is a family group that consists of the mother and father and their children in a two-parent family or all children in a family group for which a single parent/guardian(s) has custody and responsibility.

"Open enrollment" is the procedure allowing a parent/guardian to enroll one or more pupils in a public school district other than the district of residence at no tuition cost.

"Receiving district" is the public school district in which a parent/guardian desires to have the pupil enrolled or the district accepting the application for enrollment of a pupil under the provisions of Iowa Code section 282.18.

"Resident district" is the district of residence for school purposes of the parent/guardian and the district in which an open enrollment pupil shall be counted for the purpose of generating state aid regardless of the district in which the pupil is enrolled.

"Sending district" is synonymous with the term resident district.

"Timely filed application" includes an open enrollment request postmarked or hand-delivered on or before January 1, an open enrollment request for "good cause" as defined in Iowa Code section 282.18(16), and an open enrollment request filed for a continuation of an educational program postmarked or hand-delivered on or before the third Thursday of the following September.

"Volunteer or court-ordered desegregation" is a district that is either under direct court order or is in voluntary compliance with state board of education guidelines to maintain certain minority-nonminority pupil ratios in the district according to a desegregation plan or order.

*Correction of Iowa Code citation in definition of "timely filed application."

281—17.3(282) Application process for the 1990-1991 and subsequent school years. The following procedures shall be used by parents/guardians and school districts in processing open enrollment applications.

17.3(1) *Parent/guardian responsibilities.* On or before January 1 of the school year preceding the school year for which open enrollment is requested, a parent/guardian shall formally notify the district of residence of the request for open enrollment. The request for open enrollment shall be made on forms provided by the department of education. The parent/guardian is required to indicate on the form if the request is for a pupil requiring special education, as provided by Iowa Code chapter 256B. The forms for open enrollment application are available from each public school district, area education agency, and the state department of education.

17.3(2) *School district responsibilities.* The board of the resident district shall act on an open enrollment request by no later than February 1 of the year preceding the school year for which the request is made. If the request is denied, the parent/guardian shall be notified by the district superintendent within three days following board action and a copy of the application form, indicating the action taken, shall be filed with the department of education. If the request is approved, the district superintendent shall forward the approved application form to the receiving district within five days following board action and shall notify the parent/guardian within three days of this action.

The board of the receiving district shall act to approve or deny an open enrollment request by no later than March 1 following receipt of the request from the resident district. The receiving district superintendent shall provide notification of either approval or denial of the request to the parent/guardian and to the resident district within 15 days of board action and shall file a copy of the application form, indicating the final action on the request, with the department of education.

As an alternative procedure, either the resident board or the receiving board may by policy authorize the superintendent to approve, but not deny, timely filed applications. The board shall have the discretion to determine the scope of the authorization. The authorization may be for regular applications filed on or before January 1, good cause applications, kindergarten applications and continuation applications filed on or before the third Thursday of the following September, or any combination that the board determines. The same timelines for approval, forwarding, and notification shall apply.

The parent/guardian may withdraw an open enrollment request anytime prior to the first day of school in the resident district. After the first day of school, an open enrollment request can only be changed during the term of the approval by the procedures of subrules 17.8(3) and 17.8(4).

Boards of the resident and receiving districts shall comply with the provisions of rule 17.11(282) if the application for open enrollment is for a pupil requiring special education as provided by Iowa Code chapter 256B.

By September 30 of each school year, the district shall notify parents of open enrollment deadlines, transportation assistance, and possible loss of athletic eligibility for open enrollment pupils. This notification may be published in a school newsletter, a newspaper of general circulation, or a parent handbook provided to all patrons of the district. This information shall also be provided to any parent/guardian of a pupil who transfers into the district during the school year.

281—63.15(282) Aides. Educational aides shall be provided preservice and in-service opportunities consistent with duties to be performed and shall work under the direct supervision of the teacher.

281—63.16(282) Accounting. Revenues, expenditures, and balances of the juvenile home programs shall be accounted for in the manner provided in Uniform Financial Accounting for Iowa LEAs and AEAs, except as otherwise noted in these rules.

63.16(1) *Fund.* Juvenile home instructional programs shall be accounted for in a special revenue fund. The fund balances shall be maintained in the special revenue fund at year end, and the continuance or disposition of positive or negative fund balances shall be determined by the department of education.

63.16(2) *Tuition.* Tuition paid or received shall be calculated as follows:

a. If juvenile home students not requiring special education attend a local school district, other than the district of residence, tuition shall be calculated in the manner prescribed in Iowa Code section 282.24 for determining tuition costs for any nonresident student attending a local school district. In lieu of paying tuition to the local school district for these students, the AEA may request the local school district to account for these students through the foster care facility claim process.

b. Tuition for students provided a special education program pursuant to an IEP shall be paid by the district of residence, in accordance with the rules of special education and pursuant to Iowa Code chapter 282, to the district in which the juvenile home is located or to the AEA, whichever is providing the special education. The district in which the juvenile home is located or the AEA, whichever is providing the special education, shall notify the district of residence if the child was being served on the third Friday in September by the district in which the home is located or by the AEA. The district in which the juvenile home is located or the AEA, whichever is providing the special education, shall also notify the district of residence if the child was being served on December 1 by the district in which the home is located or by the AEA.

281—63.17(282) Revenues. Revenues shall include:

1. Funding received pursuant to Iowa Code section 282.31,
2. Educational excellence funding received pursuant to Iowa Code chapter 294A for teachers in the juvenile home program,
3. Tuition revenue from the district of residence or agency in another state for educational services provided for out-of-state students,
4. Tuition revenue from the district of residence for educational services for students provided a special education program pursuant to an IEP, and
5. Other miscellaneous funding received or accrued for the purpose of operating the juvenile home instructional programs.

281—63.18(282) Expenditures. Expenditures may include actual instructional expenditures, student support services expenditures, instructional staff support services expenditures, administrative support services, operations and maintenance of plant services, student transportation services, and interfund transfers for indirect costs. Supplies and equipment necessary to provide the educational program shall be equivalent to those provided to a comparable number of students by the district in which the juvenile home is located. Classroom space shall be adequate for the number and needs of children in the juvenile home instructional program.

63.18(1) *Instructional expenditures.* Instructional expenditures may include:

a. Salaries and employee benefits of employees providing instructional services. Included are teachers, substitutes, other instructional personnel, and aides.

b. Purchased services, supplies, and equipment, which are customarily considered instructional expenditures.

c. Intrafund transfers.

d. The department of education shall annually determine the maximum amount that may be expended on instructional expenditures. Total expenditures for instructional services for each continuing classroom, other than salary and employee benefits, which are not provided pursuant to an IEP shall not exceed 10 percent of the state average expenditure on instructional salaries and employee benefits in the juvenile home program in the year prior to the base year. New classrooms in the first year of operation shall not exceed twice the maximum amount calculated.

63.18(2) *Student and instructional staff support services and student transportation services expenditures.* Among the services included in these categories are guidance services, transportation services, curriculum development, library and instructional technology. Expenditures may include salaries, employee benefits, purchased services, supplies, equipment, and intrafund transfers.

63.18(3) *Administrative support services, operation and maintenance of plant services, and interfund transfers.* Administrative support services, operation and maintenance of plant services and interfund transfer expenditures may include:

a. Intrafund transfers and actual costs of general administration services provided to the juvenile home program. Expenditures for general administrative costs shall correspond to the amount of the administrator's time assigned and provided to the juvenile home program.

b. Intrafund transfers and actual costs of division administrative services provided to the juvenile home program. Expenditures for division administrative costs shall correspond to the amount of the administrator's time assigned and provided to the juvenile home program.

c. Expenditures for the administrative services of administrative staff assigned directly to the juvenile home program.

d. Expenditures for business administration services provided to the juvenile home program. The juvenile home program may be charged for costs of providing business administration services. If the juvenile home program is charged for providing business administration services, the amount shall be either actual costs or the amount determined by using the restricted indirect cost rate applied to allowable juvenile home program expenditures.

e. The total of all expenditures for administrative services shall be no greater than the actual cost determined by the AEA's accounting records or 10 percent of the total expenditures in the juvenile home program, whichever is less.

f. Expenditures for operation and maintenance of plant services except as restricted in subrule 63.18(4).

g. The total of all expenditures for administrative services and for operation and maintenance of plant services shall be no greater than the actual cost determined by the AEA's cost accounting system or 20 percent of the total expenditures in the juvenile home program, whichever is less.

***63.18(4)** *Unauthorized expenditures.* Expenditures shall not include expenditures for debt services, for facilities acquisition and construction services including remodeling and facility repair, or for rental expenditures for classroom facilities when adequate space is available at the juvenile home or AEA.

63.18(5) *Charges for AEA services.* As required by rules 63.7(282), 63.8(282), and 63.9(282), juvenile home students shall have available to them special education support services, educational services, and media services comparable to those services made available to other students in the AEA; however, expenditures for these services are inherent costs to the respective AEA programs and are not to be assessed to the juvenile home educational program.

*Effective date of 3/15/00 delayed 70 days by the Administrative Rules Review Committee at its meeting held March 10, 2000; delay lifted by the Committee at its meeting held April 7, 2000, effective April 8, 2000.

281—63.19(282) Claims. AEAs shall submit program and budget proposals and claims consolidating all juvenile home education programs within each AEA. Certain program information may be required for each separate juvenile home.

The number of classrooms being provided by each AEA shall be reported on the budget proposals and claims. The number is to be expressed in terms of full-time equivalent (FTE) classrooms. One FTE represents a full-time teacher providing a program during the normal school year. One-tenth FTE shall be added for each month of summer school taught on a daily full-time basis. A full school year and three months of summer school is calculated as 1.3 FTE.

Pursuant to Iowa Code section 294.4, each teacher shall keep a daily register which shall include the name, age, attendance, and enrollment status of each student.

The average daily membership of students of school age living in juvenile homes who are being provided an educational program shall be reported on the budget proposals and claims. *"Average daily membership (ADM)"* shall mean the average obtained by dividing the total of the aggregate days of attendance plus the aggregate days of absence by the total number of student contact days. Student contact days are the days during which the educational program is provided and students are under the guidance and instruction of the instructional professional staff. *"Aggregate days"* means the sum of the number of days of attendance and days of absence for all pupils who are enrolled during the school year. A student shall be considered enrolled after being placed in a juvenile home and taking part in the educational program. A student is considered to be in membership from the date of enrollment until the date of leaving the juvenile home or receiving a high school diploma or its equivalent, whichever occurs first. ADM shall be calculated on the regular school year exclusive of summer session. School age is defined pursuant to Iowa Code chapter 282.

281—63.20(282) Audits. AEAs must make the records related to providing educational services for juvenile homes available to independent auditors, state auditors and department of education staff on request.

281—63.21(282) Waivers. A waiver may be requested by an AEA which presents evidence of a need for a different configuration of expenditures under paragraph 63.18(1)*"d,"* 63.18(3)*"a,"* 63.18(3)*"b,"* 63.18(3)*"e,"* or 63.18(3)*"g,"* or subrule 63.18(4) or 63.18(5). The AEA must annually request the waiver and must include the waiver request and the evidence required by this rule with the program and budget proposal or budget amendment submitted pursuant to rule 63.3(282) or rule 63.4(282). An approved waiver related to rent payment to the juvenile home does not require an annual waiver request except in any year that the rental contract terms change from the rental contract terms in the previous year.

If the department denies a waiver request, the AEA which was denied may request within ten days of notification of the denial that the director of the department of education review the denial of the waiver request.

It is the intent of the department of education to waive requirements only when it is determined that they would result in unequal treatment of the AEAs or cause an undue hardship to the requesting AEA and the waiver clearly is in the public interest.

These rules are intended to implement Iowa Code sections 282.30 and 282.31.

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EDUCATIONAL EXAMINERS BOARD[282]

[Prior to 6/15/88, see Professional Teaching Practices Commission[640]]
[Prior to 5/16/90, see Professional Teaching Practices Commission[287]]

CHAPTER 11*
COMPLAINTS, INVESTIGATIONS, CONTESTED CASE HEARINGS

[Prior to 6/15/88, see Professional Teaching Practices Commission[640] Ch 2]
[Prior to 5/16/90, see Professional Teaching Practices Commission[287] Ch 2]

282—11.1(17A,272) Scope and applicability. This chapter applies to contested case proceedings conducted by the board of educational examiners.

282—11.2(17A) Definitions. Except where otherwise specifically defined by law:

"Board" means the board of educational examiners.

"Complainant" means any qualified party who files a complaint with the board.

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

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

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

"Presiding officer" means an administrative law judge from the Iowa department of inspections and appeals or the full board or a three-member panel of the board.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the full board did not preside.

"Respondent" means any individual who is charged in a complaint with violating the criteria of professional practices or the criteria of competent performance.

282—11.3(17A,272) Jurisdictional requirements.

11.3(1) The case must relate to alleged violation of the criteria of professional practices or the criteria of competent performance.

11.3(2) The magnitude of the alleged violation must be adequate to warrant a hearing by the board.

11.3(3) There must be sufficient evidence to support the complaint.

11.3(4) As an additional factor, it should appear that a reasonable effort has been made to resolve the problem on the local level. However, the absence of such an effort shall not preclude investigation by the board.

282—11.4(17A,272) Complaint.

11.4(1) *Who may initiate.*

a. Licensed practitioners employed by a school district or their educational entity or their recognized local or state professional organization.

b. Local boards of education.

c. Parents or guardians of students involved in the alleged complaint.

11.4(2) *Form and content of the complaint.*

a. The complaint shall be in writing and signed by at least one complainant or an authorized representative if the complainant is an organization. (An official form may be used. This form may be obtained from the board upon request.)

b. The complaint shall show venue as "BEFORE THE BOARD OF EDUCATIONAL EXAMINERS" and shall be captioned "COMPLAINT".

*Effective date of March 15, 2000, delayed 45 days by the Administrative Rules Review Committee at its meeting held March 10, 2000; delay lifted by the Committee at its meeting held April 7, 2000, effective April 8, 2000.

c. The complaint shall contain the following information:

(1) The full name, address and telephone number of the complainant.

(2) The full name, address and telephone number, if known, of the respondent.

(3) A concise statement of the facts which clearly and accurately apprises the respondent of the alleged violation of the criteria of professional practices or the criteria of competent performance and shall state relief sought by the complainant.

11.4(3) *Required copies—place and time of filing.*

a. In addition to the original, a sufficient number of copies of the complaint must be filed to enable service of one copy to each of the respondents and retention of 12 copies for use by the board.

b. The complaint must be delivered personally or by mail to the office of the board. The current office address is the Grimes State Office Building, Third Floor, Des Moines, Iowa 50319.

c. Timely filing is required in order to ensure the availability of witnesses and to avoid initiation of an investigation under conditions which may have been significantly altered during the period of delay.

11.4(4) *Service of complaint.* The board or a designee of the board shall serve a copy of the complaint upon the respondent by one of the following means:

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

b. Certified mail, return receipt requested; or

c. First-class mail; or

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

11.4(5) *Amendment or withdrawal of complaint.* A complaint or any specification thereof may be amended or withdrawn by the complainant at any time prior to notification of the respondent, and thereafter at the sole discretion of the board.

11.4(6) *Voluntary surrender of license.* When a formal complaint has been filed under Iowa Code chapter 272 and rule 11.4(17A,272), the respondent may voluntarily surrender the license by admitting the truth of the allegations of the complaint and completing a waiver of hearing form provided by the board. The surrender shall result in the permanent revocation of the respondent's license.

11.4(7) *Investigation of license reports.*

a. Reports received by the board from another state, territory or other jurisdiction concerning licenses or certificate revocation or suspension shall be reviewed and investigated by the board in the same manner as is prescribed in these rules for the review and investigation of written complaints.

b. Failure to report a license revocation, suspension or other disciplinary action taken by licensing authority of another state, territory or jurisdiction within 30 days of the final action by such licensing authority shall constitute cause for initiation of an investigation.

282—11.5(272) Investigation of complaints. The chairperson of the board or the chairperson's designee may assign an investigation of a complaint to a member of the board or may request an investigator to investigate the complaint or report. The investigating board member or investigator may consult an assistant attorney general concerning the investigation or evidence produced from the investigation. Upon completion of the investigation, the investigating board member or investigator shall prepare a report of the investigation for consideration by the board in determining whether probable cause exists. A board member who has personally investigated a complaint is disqualified from participating in any contested case proceeding resulting from the investigation.

282—11.6(272) Ruling on the initial inquiry. Upon review of the investigator's report, the board may take any of the following actions:

11.6(1) *Reject the case.* If a determination is made by the board to reject the case, the complaint shall be returned to the complainant along with a statement specifying the reasons for rejection. A letter of explanation concerning the decision of the board shall be sent to the respondent.

282—11.29(17A,272) Applications for rehearing.

11.29(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

11.29(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the board decision on the existing record and whether, on the basis of the grounds enumerated in subrule 11.28(4), the applicant requests an opportunity to submit additional evidence.

11.29(3) *Time of filing.* The application shall be filed with the board within 20 days after issuance of the final decision.

11.29(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies on all parties.

11.29(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

282—11.30(17A,272) Stays of board actions.

11.30(1) *When available.*

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

b. Any party to a contested case proceeding may petition the board for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

11.30(2) *When granted.* In determining whether to grant a stay, the executive director or presiding officer shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

11.30(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the board or any other party.

282—11.31(17A,272) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

282—11.32(17A,272) Emergency adjudicative proceedings.

11.32(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the board may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudicative order. Before issuing an emergency adjudicative order the board shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the board is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the board is necessary to avoid the immediate danger.

11.32(2) *Issuance of order.*

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the board's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the board;

(3) Certified mail to the last address on file with the board;

(4) First-class mail to the last address on file with the board; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that board orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the board shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

11.32(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

11.32(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the board shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which board proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further board proceedings to a later date will be granted only in compelling circumstances upon application in writing.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and chapter 272.

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CHAPTER 14
ISSUANCE OF PRACTITIONER'S LICENSES AND ENDORSEMENTS

[Prior to 9/7/88, see Public Instruction Department[670] Ch 70]
[Prior to 10/3/90, see Education Department[281] Ch 73]
[282—14.25 to 14.29 transferred from 281—84.18 to 84.22, IAB 1/9/91, effective 12/21/90]

282—14.1(272) Applicants desiring Iowa licensure. Licenses are issued upon application filed on a form provided by the board of educational examiners.

14.1(1) Effective October 1, 2000, an initial applicant will be required to submit a completed fingerprint packet that accompanies the application to facilitate a national criminal history background check. The fee for the evaluation of the fingerprint packet will be assessed to the applicant.

14.1(2) Effective October 1, 2000, an Iowa department of criminal investigation background check will be conducted on initial applicants. The fee for the evaluation of the DCI background check will be assessed to the applicant.

282—14.2(272) Applicants from recognized Iowa institutions. An applicant for initial licensure who completes the teacher or administrative preparation program from a recognized Iowa institution shall have the recommendation for the specific endorsement(s) from the designated recommending official at the recognized education institution where the preparation was completed. A recognized Iowa institution is one which has its program of preparation approved by the state board of education according to standards established by the board.

282—14.3(272) Applicants from recognized non-Iowa institutions. An applicant for initial licensure who completes the teacher or administrative preparation program from a recognized non-Iowa institution shall have the recommendation for the specific endorsement from the designated recommending official at the recognized institution where the preparation was completed, provided all requirements for Iowa licensure have been met.

Applicants whose preparation was completed through a nontraditional program or through an accumulation of credits from several institutions shall file all transcripts with the board of educational examiners for a determination of eligibility for licensure.

A recognized non-Iowa institution is one which is accredited by the regional accrediting agency for the territory in which the institution is located.

282—14.4(272) Applicants from foreign institutions. An applicant for initial licensure whose preparation was completed in a foreign institution will be required to have all records translated into English and then file these records with the board of educational examiners for a determination of eligibility for licensure.

282—14.5(272) Issue date on original license. A license is valid only from and after the date of issuance.

282—14.6(272) Adding endorsements to licenses. After the issuance of a teaching or administrative license, an individual may add other endorsements to that license upon proper application provided current requirements for that endorsement have been met. An updated license with expiration date unchanged from the original or renewed license will be prepared.

To add an endorsement, the applicant must follow one of these options:

Option 1. Identify with a recognized Iowa teacher preparing institution and meet that institution's current requirements for the endorsement desired and receive that institution's recommendation.

Option 2. Identify with a recognized Iowa teacher education institution and receive a statement that the applicant has completed the equivalent of the institution's approved program for the endorsement sought.

Option 3. Identify with a recognized teacher education institution and receive a statement that based on the institution's evaluation of the individual's preparation the applicant has completed all of the Iowa requirements for the endorsement sought.

Appeal: If an applicant cannot obtain an equivalent statement from an institution and if the applicant believes the Iowa requirements have been met, the applicant may file the transcripts for review. The rejection from the institution must be in writing. In this situation, the staff in the board of educational examiners will review the preparation in terms of the Iowa requirements.

282—14.7(272) Correcting licenses. If at the time of the original issuance or renewal of a certificate, a person does not receive an endorsement for which eligible, a corrected license will be issued. Also, if a person receives an endorsement for which not eligible, a corrected license will be issued.

282—14.8(272) Duplicate licenses. Upon application and fee, duplicate licenses will be issued. The fee for the duplicate license is set out in subrule 14.32(3).

282—14.9(272) Fraud in procurement or renewal of licenses. Fraud in procurement or renewal of a license or falsifying records for licensure purposes will constitute grounds for filing a complaint with the board of educational examiners.

282—14.10(272) Licenses. The following licenses are issued by the board.

Provisional
Educational
Professional Teacher
Professional Administrator
Conditional
Substitute
Area Education Agency Administrator
Alternative Preparation

282—14.11(272) Requirements for a provisional license.

1. Baccalaureate degree from a regionally accredited institution.
2. Completion of an approved teacher education program.
3. Completion of an approved human relations component.
4. Completion of requirements for one of the teaching endorsements listed under 282—14.18(272), the special education teaching endorsements in 282—Chapter 15, or the secondary level occupational endorsements listed in rule 282—16.1(272).
5. Meet the recency requirement of 14.15"3."

The provisional license is valid for two years and may be renewed under certain prescribed conditions listed in 282—17.8(272).

282—14.12(272) Requirements for an educational license.

1. Completion of items 1, 2, 3, 4 listed under 14.11(272).
2. Evidence of two years' successful teaching experience based on a local evaluation process.
3. Meet the recency requirement of 14.15"3."

The educational license is valid for five years and may be renewed by meeting requirements listed in 282—17.5(272).

282—14.13(272) Requirements for a professional teacher's license.

1. Holder of or eligible for an educational license.
2. Five years of teaching experience.
3. Master's degree in an instructional endorsement area, or in an area of educational or instructional improvement or school curriculum; the master's degree must be related to school-based programming.

The professional teacher's license is valid for five years and may be renewed by meeting requirements listed in 282—17.6(272).

282—14.14(272) Requirements for a professional administrator's license.

1. Holder of or eligible for an educational license.
2. Five years of teaching experience.
3. Completion of an area of endorsement as listed in 282—14.23(272).
4. Meet the requirements for the evaluator approval.

The professional administrator's license is valid for five years and may be renewed by meeting requirements listed in 282—17.7(272).

282—14.15(272) Requirements for a one-year conditional license. A conditional license valid for one year may be issued to an individual under the following conditions:

1. Has not completed all the required courses in the professional core from 14.19(3)*"a"* through *"k."*
2. Has not completed an approved human relations component.
3. Recency—Meets the requirement(s) for a valid license but has had less than 160 days of teaching experience during the five-year period immediately preceding the date of application or has not completed six semester hours of college credit from a recognized institution within the five-year period.

To obtain the desired license, the applicant must complete recent credit, and where recent credits are required, these credits shall be taken in professional education or in the applicant's endorsement area(s).

4. Degree not granted until next regular commencement. An applicant who meets the requirements for a license, with the exception of the degree but whose degree will not be granted until the next regular commencement, may be issued a one-year conditional license.
5. Based on an expired Iowa certificate or license, exclusive of a conditional license. The holder of an expired Iowa license, exclusive of a conditional license or a temporary certificate shall be eligible to receive a conditional license upon application. This license shall be endorsed for the type of service authorized by the expired license on which it is based.
6. Based on an administrative decision. The bureau of practitioner preparation and licensure is authorized to issue a conditional license to applicants whose services are needed to fill positions in unique need circumstances.

The conditional license is valid for one year and not renewable.

For a one-year conditional license with a special education endorsement, see 282—Chapter 15.

282—14.16(272) Requirements for a two-year conditional license. A conditional license valid for two years may be issued to an individual under the following conditions:

If a person is the holder of a valid license and is the holder of one or more endorsements, but is seeking to obtain some other endorsement, a two-year conditional license may be issued if requested by an employer and the individual seeking this endorsement has completed at least two-thirds of the content requirements or one-half of the content requirements in a state-designated shortage area, leading to completion of all requirements for that endorsement.

If teaching experience is a requirement of the endorsement sought, a maximum of one year of teaching experience may be earned within the term of the conditional license by teaching a minimum of one hour per day for a minimum of 160 days per year in a classroom for which the applicant holds the proper endorsement. For the superintendent's endorsement, all experience requirements must have been met prior to applying for the conditional license.

A school district administrator may file a written request with the board for an exception to the minimum content requirements on the basis of documented need and benefit to the instructional program. The board will review the request and provide a written decision either approving or denying the request.

This license is not renewable.

282—14.17(272) Requirements for a substitute teacher's license.

14.17(1) A substitute teacher's license may be issued to an individual who has met the following:

a. Has been the holder of, or presently holds, a license in Iowa; or holds or held a regular teacher's license or certificate in another state, exclusive of temporary, emergency, substitute certificate or license, or a certificate based on an alternative certification program.

b. Has successfully completed all requirements of an approved teacher education program and is eligible for the provisional license, but has not applied for and been issued this license, or who meets all requirements for the provisional license with the exception of the degree but whose degree will be granted at the next regular commencement.

14.17(2) A substitute license is valid for five years and for not more than 90 days of teaching in any one assignment during any one school year.

A school district administrator may file a written request with the board for an extension of the 90-day limit in one assignment on the basis of documented need and benefit to the instructional program. The board will review the request and provide a written decision either approving or denying the request.

14.17(3) The holder of a substitute license is authorized to teach in any school system in any position in which a regularly licensed teacher was employed to begin the school year.

In addition to the authority inherent in the provisional, educational, professional teacher, two-year exchange, and permanent professional licenses and the endorsement(s) held, the holder of one of these regular licenses may substitute on the same basis as the holder of a substitute license while the regular license is in effect.

This license may be renewed by meeting requirements listed in 282—17.9(272).

282—14.18(272) Areas and grade levels of teaching endorsements.

1. Teaching—Subject areas.

Endorsements	Grade Levels	
	K-6*	7-12**
Agriculture		X
Art	X	X
Business — General		X
Business — Office and Business — Marketing/Management		X
Driver and Safety Education		X
English/Language Arts	X	X
Foreign Language	X	X
Health	X	X
Home Economics		X
Industrial Technology		X
Journalism		X
Mathematics	X	X
Music	X	X
Physical Education	X	X
Reading	X	X

282—14.25(272) Two-year administrator exchange license.

14.25(1) A two-year nonrenewable exchange license may be issued to an individual under the following conditions. The individual:

a. Has completed a state-approved teacher education program in a college or university approved by the state board of education or the state board of educational examiners in the individual's home state.

b. Has completed a state-approved administrator education program in a college or university approved by the state board of education or the state board of educational examiners in the individual's home state.

c. Holds a valid regular administrative certificate or license.

d. Is not subject to any pending disciplinary proceedings in any state.

e. Meets the experience requirements for the administrative endorsements. Verified successful completion of five years of full-time teaching and administrative experience in other states, on a valid license, shall be considered equivalent experience necessary for the principal endorsement. Verified successful completion of eight years of full-time teaching and administrative experience in other states, on a valid license, shall be considered equivalent experience for the superintendent endorsement provided that three years were as a building principal or other PK-12 districtwide or area education agency administrator.

14.25(2) Each exchange license shall be limited to the area(s) and level(s) of administration as determined by an analysis of the application, the transcripts, and the license or certificate held in the state in which the basic preparation for the administrative licensure was completed.

14.25(3) Each individual receiving the two-year exchange license will have to complete any identified licensure deficiencies in order to be eligible for a regular educational and administrative license in Iowa.

282—14.26(272) Two-year nonrenewable school counseling exchange license.

14.26(1) A two-year nonrenewable school counseling exchange license may be issued to an individual, provided that the individual:

a. Has completed a regionally accredited master's degree program in school guidance counseling.

b. Holds a valid school counseling certificate or license issued by an examining board which issues certificates or licenses based on requirements which are substantially equivalent to those of the board of educational examiners.

c. Meets the qualifications in Iowa Code section 272.6.

d. Is not subject to any pending disciplinary proceeding in any state.

14.26(2) Each exchange license shall be limited to the area(s) and level(s) of counseling as determined by an analysis of the application, the transcripts, and the license or certificate held in the state in which the basic preparation for the school counseling license was completed.

14.26(3) Each applicant for the exchange license shall comply with all requirements with regard to application processes and payment of licensure fees.

14.26(4) Each individual receiving the two-year exchange license will have to complete any identified licensure deficiencies in order to be eligible for a regular educational license in Iowa.

14.26(5) Individuals licensed under this provision are subject to the administrative rules of the board.

282—14.27(272) Human relations requirements for practitioner licensure. Preparation in human relations shall be included in programs leading to practitioner licensure. Human relations study shall include interpersonal and intergroup relations and shall contribute to the development of sensitivity to and understanding of the values, beliefs, lifestyles and attitudes of individuals and the diverse groups found in a pluralistic society.

14.27(1) Beginning on or after August 31, 1980, each applicant for an initial practitioner's license shall have completed the human relations requirement.

14.27(2) On or after August 31, 1980, each applicant for the renewal of a practitioner's license shall have completed an approved human relations requirement.

14.27(3) Credit for the human relations requirement shall be given to licensed practitioners who can give evidence that they have completed a human relations program which meets board of educational examiners criteria (see 14.30(272)).

282—14.28(272) Development of human relations components. Human relations components shall be developed by teacher preparation institutions. In-service human relations components may also be developed by educational agencies other than teacher preparation institutions, as approved by the board of educational examiners.

282—14.29(272) Advisory committee. Education agencies developing human relations components shall give evidence that in the development of their programs they were assisted by an advisory committee. The advisory committee shall consist of equal representation of various minority and majority groups.

282—14.30(272) Standards for approved components. Human relations components will be approved by the board of educational examiners upon submission of evidence that they are designed to develop the ability of participants to:

14.30(1) Be aware of and understand the various values, lifestyles, history, and contributions of various identifiable subgroups in our society.

14.30(2) Recognize and deal with dehumanizing biases such as sexism, racism, prejudice, and discrimination, and become aware of the impact that such biases have on interpersonal relations.

14.30(3) Translate knowledge of human relations into attitudes, skills, and techniques which will result in favorable learning experiences for students.

14.30(4) Recognize the ways in which dehumanizing biases may be reflected in instructional materials.

14.30(5) Respect human diversity and the rights of each individual.

14.30(6) Relate effectively to other individuals and various subgroups other than one's own.

282—14.31(272) Evaluation. Educational agencies providing the human relations components shall indicate the means to be utilized for evaluation.

282—14.32(272) Licensure and authorization fee.

14.32(1) *Issuance and renewal of licenses, authorizations, and statements of professional recognition.* The fee for the issuance of each initial practitioner's license, the evaluator license, the statement of professional recognition, and the coaching authorization and the renewal of each license, evaluator approval license, statement of professional recognition, and coaching authorization shall be $50.

14.32(2) *Adding endorsements.* The fee for the addition of each endorsement to a license, following the issuance of the initial license and endorsement(s), shall be $25.

14.32(3) *Duplicate licenses, authorizations, and statements of professional recognition.* The fee for the issuance of a duplicate practitioner's license, evaluator license or coaching authorization shall be $10.

14.32(4) *Evaluation fee.* Each application from an out-of-state institution for initial licensure shall include, in addition to the basic fee for the issuance of a license, a one-time nonrefundable $50 evaluation fee.

Each application or request for a statement of professional recognition shall include a one-time nonrefundable $50 evaluation fee.

14.32(5) *One-year emergency license.* The fee for the issuance of a one-year emergency license based on an expired conditional license or an expired administrative decision license shall be $100.

14.32(6) *Late renewal fee.* Effective September 1, 2000, an additional fee of $25 per calendar month, not to exceed $100, shall be imposed if a renewal application is submitted after the date of expiration of a practitioner's license. The board may waive a late renewal fee upon application for waiver of the fee by a practitioner. Waiver of the late fee will be granted only upon a showing of extraordinary circumstances rendering imposition of the fee unreasonable.

282—14.33(272) Requirements for an alternative preparation license.

14.33(1) Following are the requirements for the issuance of a teaching license based on an alternative preparation program for persons prepared in Iowa.

a. Baccalaureate degree with a cumulative grade point average of 2.5 or better from a regionally accredited institution. This degree must have been conferred at least three years prior to application to an alternative preparation program.

b. Completion of an alternative preparation program approved by the state board of education.

c. Completion of an approved human relations component.

d. Completion of the exceptional learner program, which must include preparation that contributes to the education of individuals with disabilities and the gifted and talented.

e. Professional education core. Completed coursework or evidence of competency in:

(1) Student learning. The practitioner understands how students learn and develop and provides learning opportunities that support intellectual, career, social, and personal development.

(2) Diverse learners. The practitioner understands how students differ in their approaches to learning and creates instructional opportunities that are equitable and are adaptable to diverse learners.

(3) Instructional planning. The practitioner plans instruction based upon knowledge of subject matter, students, the community, curriculum goals, and state curriculum models.

(4) Instructional strategies. The practitioner understands and uses a variety of instructional strategies to encourage students' development of critical thinking, problem solving, and performance skills.

(5) Learning environment/classroom management. The practitioner uses an understanding of individual and group motivation and behavior to create a learning environment that encourages positive social interaction, active engagement in learning, and self-motivation.

(6) Communication. The practitioner uses knowledge of effective verbal, nonverbal, and media communication techniques, and other forms of symbolic representation, to foster active inquiry and collaboration and to support interaction in the classroom.

(7) Assessment. The practitioner understands and uses formal and informal assessment strategies to evaluate the continuous intellectual, social, and physical development of the learner.

(8) Foundations, reflection, and professional development. The practitioner continually evaluates the effects of the practitioner's choices and actions on students, parents, and other professionals in the learning community and actively seeks out opportunities to grow professionally.

(9) Collaboration, ethics, and relationships. The practitioner fosters relationships with parents, school colleagues, and organizations in the larger community to support students' learning and development.

f. Computer technology related to instruction.

g. Completion of pre-student teaching field-based experiences.

h. Methods of teaching with an emphasis on the subject and grade level endorsement desired.

i. Content/subject matter specialization. The practitioner understands the central concepts, tools of inquiry, and structure of the discipline(s) the practitioner teaches and creates learning experiences that make these aspects of subject matter meaningful for students.

This is evidenced by completion of a 30-semester-hour teaching major which must minimally include the requirements for at least one of the basic endorsement areas or special education teaching endorsements listed in 282—14.20(272) or 282—15.2(272).

j. A minimum of 12 weeks of student teaching in the subject area and at the grade level in which the endorsement is desired.

14.33(2) Following are the basic requirements for the issuance of a teaching license based on an alternative preparation program with an endorsement for persons prepared in states other than Iowa.

a. Hold a baccalaureate degree from a regionally accredited institution.

b. Provide a valid out-of-state teaching license based on a state-approved alternative preparation program.

c. Provide a recommendation from a regionally accredited institution, Department of Education, or a state's standards board indicating the completion of an approved alternative teacher preparation program.

d. Provide official institutional transcript(s) to be analyzed for the coursework necessary for full Iowa licensure based on 14.33(1)"*c*" to "*i*" above.

e. Verify three years of teaching experience which will waive the student teaching requirement.

The alternative preparation license is valid for two years and may be renewed under certain prescribed conditions for a provisional license listed in 282—17.8(272).

282—14.34(272) NCATE accredited programs. The requirements of the professional education core at 282—subrule 14.19(3), notwithstanding, an applicant from an out-of-state institution who has completed a program accredited by the National Council for the Accreditation of Teacher Education on and after October 1, 1988, shall be recognized as having completed the professional education core set out in 14.19(3), with the exception of paragraphs "*h*" and "*n.*"

These rules are intended to implement Iowa Code chapter 272.

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CHAPTER 14
ISSUANCE OF PRACTITIONERS' LICENSES
(Effective August 31, 2001)

282—14.1(272) Applicants desiring Iowa licensure. Licenses are issued upon application filed on a form provided by the board of educational examiners.

282—14.2(272) Applicants from recognized Iowa institutions. An applicant for initial licensure who completes the teacher, administrator, or school service personnel preparation program from a recognized Iowa institution shall have the recommendation for the specific license and endorsement(s) or the specific endorsement(s) from the designated recommending official at the recognized education institution where the preparation was completed. A recognized Iowa institution is one which has its program of preparation approved by the state board of education according to standards established by said board, or an alternative program recognized by the state board of educational examiners.

282—14.3(272) Applicants from recognized non-Iowa institutions. An applicant for initial licensure who completes the teacher, administrator, or school service personnel preparation program from a recognized non-Iowa institution shall have the recommendation for the specific license and endorsement(s) or the specific endorsement(s) from the designated recommending official at the recognized institution where the preparation was completed, provided all requirements for Iowa licensure have been met.

Applicants who hold a valid license from another state and whose preparation was completed through a nontraditional program, through an accumulation of credits from several institutions, shall file all transcripts with the practitioner preparation and licensure bureau for a determination of eligibility for licensure.

A recognized non-Iowa institution is one which is accredited by the regional accrediting agency for the territory in which the institution is located.

282—14.4(272) Applicants from foreign institutions. An applicant for initial licensure whose preparation was completed in a foreign institution will be required to have all records translated into English and then file these records with the board of educational examiners for a determination of eligibility for licensure.

282—14.5(272) Issue date on original license. A license is valid only from and after the date of issuance.

282—14.6(272) Adding endorsements to licenses. After the issuance of a teaching, administrative, or school service personnel license, an individual may add other endorsements to that license upon proper application, provided current requirements for that endorsement have been met. An updated license with expiration date unchanged from the original or renewed license will be prepared.

14.6(1) To add an endorsement, the applicant shall comply with one of the following options:

Option 1. Identify with a recognized Iowa teacher preparing institution, meet that institution's current requirements for the endorsement desired, and receive that institution's recommendation.

Option 2. Identify with a recognized Iowa teacher education institution and receive a statement that the applicant has completed the equivalent of the institution's approved program for the endorsement sought.

282—16.3(272) Renewal requirements—six renewal units are required.

16.3(1) One renewal unit may be earned for each semester hour of credit which advances one toward the completion of a degree program.

16.3(2) One renewal unit may be earned for each semester hour of credit completed which may not lead to a degree but which adds greater technical depth/competence to the endorsement(s) held.

16.3(3) Renewal units may be earned upon the completion of staff development programs approved through guidelines established by the board of educational examiners or approved technical update program approved by the board of educational examiners.

16.3(4) Completion of an approved human relations component, if not already met.

282—16.4(272) Requirements for occupational secondary license.

16.4(1) Occupational secondary license—valid for five years.

a. Initial requirements. Meet requirements for the provisional occupational secondary license and have completed an approved human relations component.

b. Renewal requirements. Same as those in rule 16.3(272).

16.4(2) Reserved.

282—16.5(272) Requirements for postsecondary occupational instructors above grade twelve.

16.5(1) Instructors of preparatory occupational programs.

Provisional occupational postsecondary license—valid for five years.

NOTE: This license is provided to noneducators entering the education profession to instruct in occupations and specialty "fields" that are recognized in vocational service areas and career cluster areas.

Applicants must commit to complete initial requirements.

a. Initial requirements.

(1) A new teacher's workshop of a minimum of 30 clock hours and specified competencies. To be completed during the first year of license validity.

(2) Competency development in four basic areas:

1. Methods and techniques of teaching.
2. Course and curriculum development.
3. Measurement and evaluation of programs and students.
4. History and philosophy (foundations) of vocational and career education.

The four areas of competency development required in 16.2(1)*"b,"* 16.5(1)*"a"*(2), and 16.6(1)*"a"*(1)"3" cannot be accepted as credit to meet the minimum endorsement requirement of 16.6(2) for an education teaching endorsement at the postsecondary level.

NOTE: Individuals who feel that their previous professional experiences or formal education and preparation indicate mastery of competencies in the required study areas may have such requirements waived. Transcripts or other supporting data should be provided to a teacher educator at one of the institutions which has approved teacher education programs. The results of the competency determination will be forwarded with recommendations to the board of educational examiners. Department personnel will make final determination as to the competencies mastered and cite studies which yet need to be completed, if any.

Instructors are expected to make annual progress at a minimum rate of one course per year to complete the studies, following initial completion of the new teacher workshop.

(3) Six thousand hours of recent and relevant occupational experience in the teaching endorsement area sought.

In those subjects, occupational areas or endorsement areas which require state registration, certification or licensure, each applicant must hold the appropriate license, registration or certificate before the issuance of the provisional or the occupational license.

b. Renewal requirements—six renewal units are required.

(1) One renewal unit may be earned for each semester hour of credit which advances one toward the completion of a degree program.

(2) One renewal unit may be earned for each semester hour of credit completed which may not lead to a degree but which adds greater technical depth/competence to the endorsement(s) held.

(3) Renewal units may be earned upon the completion of staff development programs approved through guidelines established by the board of educational examiners or approved technical update program approved by the board of educational examiners.

(4) Completion of an approved human relations component, if not already met.

c. Occupational postsecondary license, valid for five years.

(1) Initial requirements.

Option 1: Completion of requirements for a provisional license with endorsement in one or more of the occupational areas outlined in subrules 16.1(1) to 16.1(8) and two years of teaching experience.

Option 2:

1. Baccalaureate or master's degree.
2. Completion of requirements for a provisional occupational postsecondary license.

Option 3:

1. Baccalaureate or master's degree.
2. An approved human relations component/program.
3. Five years of teaching experience, or the equivalent thereof, at the postsecondary level in the occupational specialty or area of responsibility.

(2) Renewal requirements. Refer to 16.5(1)*"b."*

16.5(2) Reserved.

282—16.6(272) Requirements for postsecondary arts and science instructors.

16.6(1) *Instructors of arts and science (transfer division) subjects.*

a. Provisional postsecondary license—valid for five years.

NOTE: This license is provided primarily for noneducators who possess knowledge, competence, and experience in a subject matter field to instruct in a community college.

Applicant must commit to complete initial requirements.

(1) Initial requirements.

1. Have a master's degree in a field of instruction from a regionally accredited graduate school. In special fields or areas in which postbaccalaureate recognition or professional licensure is necessary for practice in the profession, including accounting, engineering, law, law enforcement, and medicine, an individual may be certified on the basis of two or more years of successful experience in the fields or areas the individual will instruct and the possession of the academic preparation ordinarily required for such special fields or areas.
2. A new teacher's workshop of approximately 30 clock hours in specified competencies.

282—16.10(272) Noninstructional administrators, adult coordinators, occasional and specialized personnel and support staff. Persons employed in the following functions/responsibilities shall not be required to hold an Iowa teacher's license. Each area school board shall develop and adopt local standards for the employment and assignments of such persons. The standards shall be available locally for review and shall be made available to the board of educational examiners upon request.

Following are the areas covered by this rule:

1. Noninstructional administrators: assistant superintendent, associate superintendent, administrative assistant.
2. Adult or special needs coordinators.
3. Occasional—specialized—substitute: adult basic education, general educational development preparation, continuing and general, supplemental vocational, coach (persons who are not full-time faculty members), preparatory vocational, college parallel.
4. Support staff: assistant/associate librarian, learning resource specialist and media specialist/technician.

Business area: manager, purchasing agent, accountant, personnel manager.

Ancillary services: area agency on aging, Comprehensive Employment Training Act youth employment, sheltered workshop, aides, interns, institutional data processing.

Student services: registrar, placement officer, financial aid officer, admissions officer, activities coordinator, relations/outreach worker, media technician.

282—16.11(272) Conditional occupational and postsecondary licenses.

16.11(1) *Conditional occupational license.* A two-year conditional occupational license may be issued to an applicant who has not met all of the experience requirements for the provisional occupational license.

16.11(2) *Conditional postsecondary license.* A two-year conditional postsecondary license may be issued to an applicant who has not met all of the initial requirements for a provisional postsecondary license or holds the provisional or regular postsecondary license with an endorsement and is seeking an endorsement in another teaching field.

282—16.12(272) Definitions. Definitions that apply to personnel in this chapter.

"Adjunct" is less than half time which is defined to mean faculty who are employed less than a period covering consecutively three quarters or two semesters per school year and who have an assignment equivalent to less than 50 percent of what has been established as a maximum full-time load by area school laws and standards or by local policy in cases where laws and standards do not apply but without an expectation of continued employment.

"Half time or more" is defined to mean faculty who are employed for a period covering consecutively three quarters or two semesters per school year and who have an assignment equivalent to 50 percent or more of what has been established as a maximum full-time load by area school laws and standards or by local policy in cases where laws and standards do not apply. This information has application to matters related to licensure of staff.

"Part time" is less than half time which is defined to mean faculty who are employed less than a period covering consecutively three quarters or two semesters per school year or who have an assignment equivalent to less than 50 percent of what has been established as a maximum full-time load by area school laws and standards or by local policy in cases where laws and standards do not apply and who have an expectation of continued employment.

These rules are intended to implement Iowa Code chapter 272.

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CHAPTER 14
ORGANIZATION AND OPERATION OF TERRACE HILL

[Prior to 5/31/89, see Historical Division[223] Ch 25]
[Prior to 2/16/94, see Historical Division[223] Ch 55]

401—14.1(18) Definitions. The definitions listed in Iowa Code section 17A.2 shall apply for terms as used throughout this chapter. In addition, the following definitions shall apply:

"Administrator" means the administrator of Terrace Hill.

"Commission" means the Terrace Hill commission as established by Iowa Code section 18.8A.

"Facility" means the Terrace Hill mansion, carriage house, grounds, and all related property.

"Foundation" means the Terrace Hill Foundation, a nonprofit corporation which solicits contributions and raises funds for the renovation and improvement of the facility.

"Society" means the Terrace Hill Society, an unofficial organization which raises funds and provides volunteers for restoration and landscape projects of Terrace Hill.

401—14.2(18) Mission statement. The Terrace Hill commission exists in accordance with Iowa Code section 18.8A to preserve, maintain, renovate, landscape, and administer the Terrace Hill facility. The commission has authority to approve the ongoing expenditures for preservation, renovation, and landscaping of Terrace Hill and seeks necessary funds for these activities. Terrace Hill is maintained as the official residence for the governor of Iowa and serves as a facility for public and private functions.

401—14.3(18) Terrace Hill commission.

14.3(1) *Function.* The Terrace Hill commission exists to establish policy and procedures for the renovation, interpretation, operation and fiscal management of the facility.

14.3(2) *Composition.* The commission consists of nine members appointed by the governor in accordance with Iowa Code section 18.8A.

14.3(3) *Meetings.* The commission shall meet at the call of the chair. Six members present and voting constitutes a quorum and an affirmative vote of five members is required for approval of an item.

All meetings are open to the public under Iowa Code chapter 21, and in accordance with Robert's Rules of Order, Revised Edition. Public notice of all meetings shall be distributed to the news media. The tentative agenda for meetings shall be posted in the governor's office at the State Capitol at least 24 hours prior to the commencement of any meeting in accordance with Iowa Code chapter 21.

14.3(4) *Committees—appointment.* Committees of the commission may be appointed on an ad hoc basis by the chairperson of the board. Nonboard members may be appointed to committees as nonvoting members.

401—14.4(18) Gifts, bequests, endowments. The commission, acting on behalf of the society and the foundation, may accept private gifts, bequests, and endowments with such gifts credited to the account of the society. Accepted gifts, bequests, and endowments shall be used in accordance with the desire of the donor as expressed at the time of the donation. Undesignated funds shall be credited to the general fund of the society and used for projects and activities of the commission or society.

401—14.5(18) Public and private grants and donations. The commission, society, or foundation may apply for and receive funds from public or private sources. Receipts from these grants shall be credited to the appropriate account and shall be used in accordance with all stipulations of the grant contract.

401—14.6(18) Sale of mementos. The commission may sell mementos or other items relating to Iowa and its culture at its facilities.

14.6(1) *Operator of gift shop.* The commission may enter into an agreement with the society for operation of the gift shop including facilities, merchandise, and promotion. The commission shall require an accounting of all receipts and expenditures of the gift shop.

14.6(2) *Income.* All receipts shall be deposited in the account of the society. The society shall provide a quarterly financial statement to the commission.

401—14.7(18) Facilities management.

14.7(1) Address. Terrace Hill is located at 2300 Grand Avenue, Des Moines, Iowa 50312. Telephone number (515)281-3604.

14.7(2) Hours of operation. Terrace Hill is open to the public a minimum of 20 hours per week and is closed the months of January and February. Specific hours and days shall be posted at the facility. The hours shall be approved by the commission. Changes in the hours shall be effective upon 30 days' notice as posted.

14.7(3) Fees. Fees may be charged and collected by the commission and shall be administered according to Iowa Code section 18.8A. Fees may be charged for, but are not limited to, admission, special events, use of images, and technical services. All fees charged shall be approved by the commission and shall become effective upon 30 days' notice. This notice shall be a public posting in the facility. All fees shall be permanently posted.

14.7(4) Smoking. Smoking shall be prohibited in all designated areas of the facility. Smoking areas shall be approved by the commission.

14.7(5) Food and drink. Consumption of food and beverages shall be prohibited in the facility except in specific areas as designated by the commission.

14.7(6) Use of alcoholic beverages. Alcoholic beverages may be served at functions at the facility only with the use of an approved caterer. Interested caterers shall contact the Administrator, Terrace Hill, 2300 Grand Avenue, Des Moines, Iowa 50312.

14.7(7) All individuals and groups renting the facility for any use shall agree in writing to abide by the "hold harmless" clause specified in the letter of agreement.

All individuals or groups renting the facility shall be liable for any or all damages to the facility. The renter shall be billed for the cost of the repairs, extraordinary cleaning and, if necessary, the collection costs.

14.7(8) Public functions may be held at the facility when the governor has an immediate interest or the function meets the special events criteria established by the commission. The criteria require that the event be in accordance with the mission of the facility. Weddings and wedding receptions are strictly prohibited, except in the case of the immediate family of the current governor. Inquiries shall be directed to the Administrator, Terrace Hill, 2300 Grand Avenue, Des Moines, Iowa 50312.

401—14.8(18) Tours.

14.8(1) *Group tours.* Reservations shall be required for tour groups of ten or more. Requests for reservations shall be directed to the Administrator, Terrace Hill, 2300 Grand Avenue, Des Moines, Iowa 50312.

14.8(2) *Fees.* An admission fee is charged at Terrace Hill. There shall be no charge for school groups. The fee schedule shall be permanently posted at the site. Inquiries concerning fees shall be directed to the Administrator, Terrace Hill, 2300 Grand Avenue, Des Moines, Iowa 50312.

14.8(3) *Parking.* Designated parking has been established by the commission. Vehicles are not permitted in the east driveway.

14.8(4) *Pets.* Pets are not permitted at the facility with exception of those belonging to the governor, or those assisting the hearing or visually impaired.

These rules are intended to implement Iowa Code section 18.8A.

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CHAPTER 15
Reserved

CHAPTER 25
DISABILITY SERVICES MANAGEMENT

CHAPTERS 26 and 27
Reserved

CHAPTER 28
POLICIES FOR ALL INSTITUTIONS

CHAPTER 29
MENTAL HEALTH INSTITUTES

CHAPTER 30
STATE HOSPITAL-SCHOOLS

CHAPTER 24
ACCREDITATION OF PROVIDERS OF SERVICES TO PERSONS WITH MENTAL ILLNESS, MENTAL RETARDATION, AND DEVELOPMENTAL DISABILITIES

PREAMBLE

The mental health and developmental disabilities commission has established this set of standards to be met by all mental health and mental retardation organizations and services that are not licensed by the department of inspections and appeals and that are required to meet specific standards for the organizations and services under the authority of the commission.

The mental health and developmental disabilities commission has established this set of standards to be met by community mental health centers, mental health services providers, case management providers and supported community living providers in accordance with Iowa Code chapter 225C. The commission's intent is to establish standards that are based on the principles of quality improvement, that are designed to facilitate the provision of excellent quality services that lead to positive outcomes, that make organizations providing services responsible for effecting efficient and effective management and operational systems that enhance the involvement of consumers and that establish a best practices level of performance by which to measure provider organizations. The standards are to serve as the foundation of a performance-based review of those organizations for which the commission holds accreditation responsibility as set forth in Iowa Code chapters 225C and 230A.

MISSION OF ACCREDITATION

To ensure consumers and the general public of organizational accountability for meeting best practices performance levels, for efficient and effective management and for the provision of quality services that result in quality outcomes for consumers.

441—24.1(225C) Definitions.

"Accreditation" means the decision made by the commission that the organization has met the applicable standards. There will be one accreditation award for all the services based upon the lowest score of the services surveyed.

"Advisory board" means the board that reviews and makes recommendations to the organization's board of directors on the program being accredited. The advisory board meets at least three times a year and has at least three members, at least 51 percent of whom are not providers. The advisory board includes representatives who have disabilities or family members of persons with disabilities. The advisory board's duties include review and recommendation of policies, development and review of the organization plan for the program being accredited, review and recommendation of the budget for the program being accredited, and review and recommendation of the total quality improvement program of the program being accredited.

"Anticipated discharge plan" means the general statement of the condition or circumstances by which the consumer would no longer need services.

"Appropriate" means the degree to which the services or supports or activities provided or undertaken by the organization are relevant to the consumer's needs, situation, problems, or desires.

"Assessment" means the review of the consumer's current functioning in regard to the consumer's situation, needs, strengths, abilities, desires and goals.

"Benchmarks" are defined as best practices or competencies of excellent quality organizations producing excellent quality services and outcomes.

"Board of directors" means the board that provides oversight, guidance, and policy direction for the operation of the program being accredited. The board shall have at least three members. Organization staff shall not constitute the majority of members of the board.

"Case management services" means those services established pursuant to Iowa Code chapter 225C.

"Chronic mental illness" means the same as serious and persistent mental illness for the purposes of these standards.

"Commission" means the mental health and developmental disabilities commission (MH/DD commission) as established and defined in Iowa Code chapter 225C.

"Community" means a natural setting where consumers live, learn, work, and socialize.

"Community mental health center" means an organization providing mental health services which is established pursuant to Iowa Code chapters 225C and 230A.

"Consultation services" means case, program and community levels of professional assistance and information to increase the skill level and effectiveness of services being provided by other service organizations or groups.

"Consumer" means a person who uses the services of the organization.

"Credentialed staff" or *"staff who have been credentialed"* means staff who have completed the organization credential verification process.

"Credential verification process" means the process used by the organization to define the qualifications of education, training and experience required for each staff position, and the procedures for verifying that staff in the positions meet those qualifications.

"Crisis intervention plan" means a personalized, individualized plan developed with the consumer that identifies potential personal psychiatric, environmental and medical emergencies. This plan shall also include how the consumer will access emergency services and professional and natural supports.

"Deemed status" means acceptance by the commission of accreditation or licensure of a program or service by another accrediting body in lieu of accreditation based on review and evaluation by the division (as outlined in accreditation procedures).

"Department" means the Iowa department of human services.

"Direct services" means services involving direct interaction with a consumer such as transporting a consumer or providing therapy, habilitation, or rehabilitation activities.

"Division" means the division of mental health and developmental disabilities of the department of human services.

"Doctor of medicine or osteopathic medicine" means a person who is licensed in the state of Iowa to practice medicine as a medical physician under Iowa Code chapter 148 or as an osteopathic doctor under Iowa Code chapter 150A.

"Education services" means professional information, training, assistance, and referral services provided to the general public, to individual persons and to organizations about mental illness and mental health, the promotion of prevention services, and skill training for organizations.

"Functional assessment" means the assessment of the consumer's level of effectiveness in the activities and decision making required by daily living situations. The functional assessment also takes into consideration consumer strengths, stated needs, and level and kind of disability.

"Human services field" means a post-high school course of study resulting in a degree from an accredited four-year college in a field of study which includes, but is not limited to, psychiatry, psychology, social work, mental health counseling, marriage and family therapy, nursing, education, occupational therapy, and recreational therapy.

"Indicators" are defined as conditions that will exist when the activity is done competently and benchmarks are achieved. They also provide a means to assess the activity's effect on outcomes of services.

"Informed consent" refers to time-limited, voluntary consent. The consumer or legal guardian may withdraw consent at any time without risk of punitive action. The consumer or legal guardian has the opportunity to ask and have questions satisfactorily answered. Informed consent includes a description of the treatment and specific procedures to be followed, the intended outcome or anticipated benefits, the rationale for use, the risks of use and nonuse, and the less restrictive alternatives considered.

"Intensive psychiatric rehabilitation services" means services designed to restore, improve, or maximize level of functioning, self-care, responsibility, independence, and quality of life and to minimize impairments, disabilities, and disadvantages of persons with a disabling mental illness. Services are focused on improving personal capabilities while reducing the harmful effects of psychiatric disability and resulting in consumers' recovering the ability to perform a valued role in society.

"Leadership" means the governing board, the chief administrative officer or executive director, managers, supervisors, and clinical leaders who participate in developing and implementing organizational policies, plans and systems.

"Marital and family therapist" means a person who is licensed under Iowa Code chapter 154D in the application of counseling techniques in the assessment and resolution of emotional conditions. This includes the alteration and establishment of attitudes and patterns of interaction relative to marriage, family life, and interpersonal relationships.

"Mental health counselor" means a person who is licensed under Iowa Code chapter 154D in counseling services involving assessment, referral, consultation, and the application of counseling, human development principles, learning theory, group dynamics, and the etiology of maladjustment and dysfunctional behavior to individuals, families, and groups.

"Mental health professional" means a person who meets all of the following conditions:

1. Holds at least a master's degree in a mental health field including, but not limited to, psychology, counseling and guidance, psychiatric nursing and social work; or is a doctor of medicine (MD) or doctor of osteopathic medicine and surgery (DO); and
2. Holds a current Iowa license when required by the Iowa licensure law; and
3. Has at least two years of postdegree experience supervised by a mental health professional in assessing mental health problems, mental illness and needs of persons and in providing appropriate mental health services for those persons.

"Mental health treatment services" are those activities, programs, or services which include, but are not limited to, diagnosis, evaluation, psychotherapy, and psychosocial rehabilitation provided to persons with mental health problems, mental illness, or disorders and the stabilization, amelioration, or resolution of the problems, illness, or disorder.

"Mental retardation" means a diagnosis of mental retardation under these rules which shall be made only when the onset of the person's condition was prior to the age of 18 years and shall be based on an assessment of the person's intellectual functioning and level of adaptive skills. A psychologist or psychiatrist who is professionally trained to administer the tests required to assess intellectual functioning and to evaluate a person's adaptive skills shall make the diagnosis. A diagnosis of mental retardation shall be made in accordance with the criteria provided in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, published by the American Psychiatric Association.

"Natural supports" means those services and supports identified as wanted or needed by the consumer provided by persons not for pay (family, friends, neighbors, and others in the community) and organizations or entities that serve the general public.

"Organization" means the entity being accredited under 441—Chapter 24 that is a governmental entity or is an entity that meets Iowa Code requirements for a business organization as a for-profit or not-for-profit business including, but not limited to, a business corporation under Iowa Code chapter 490 or a nonprofit corporation under Iowa Code chapter 504A. "Organization" does not mean an individual for whom a license to engage in a profession is required under Iowa Code section 147.2 or any individual providing a service if the individual is not organized as a corporation or other business entity recognized under Iowa Code.

"Outcome" means the result of the performance or nonperformance of a function or process or activity.

"Persons with a chronic mental illness" means persons aged 18 and over with a persistent mental or emotional disorder that seriously impairs their functioning relative to such primary aspects of daily living as personal relations, living arrangements, or employment. Persons with chronic mental illness typically meet at least one of the following criteria:

1. Have undergone psychiatric treatment more intensive than outpatient care, more than once in a lifetime (e.g., emergency services, alternative home care, partial hospitalization or inpatient hospitalization).

2. Have experienced at least one episode of continuous, structured supportive residential care other than hospitalization.

In addition, these persons typically meet at least two of the following criteria, on a continuing or intermittent basis for at least two years:

- Are unemployed, or employed in a sheltered setting, or have markedly limited skills and a poor work history.
- Require financial assistance for out-of-hospital maintenance and may be unable to procure this assistance without help.
- Show severe inability to establish or maintain a personal social support system.
- Require help in basic living skills.
- Exhibit inappropriate social behavior that results in demand for intervention by the mental health or judicial system.

In atypical instances, a person who varies from the above criteria could still be considered to be a person with chronic mental illness.

"Persons with developmental disabilities" means persons with a severe, chronic disability which:

1. Is attributable to mental or physical impairment or a combination of mental and physical impairments.

2. Is manifested before the person attains the age of 22.

3. Is likely to continue indefinitely.

4. Results in substantial functional limitation in three or more of the following areas of life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency.

5. Reflects the person's need for a combination and sequence of services which are of lifelong or extended duration and are individually planned and coordinated, unless this term is applied to infants and young children from birth to the age of five inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.

"Procedures" means the steps to be taken to implement the policies of the organization.

"Program" means a set of related resources and services directed to the accomplishment of a fixed set of goals for the population of a specified geographic area or for special target populations.

"Provider of other mental health services" means an organization whose services are established to specifically address mental health services to individuals or the administration of facilities in which these services are provided. Organizations included are those that are contracting with a county board of supervisors to provide mental health services in lieu of that county's affiliation with a community mental health center (Iowa Code chapter 230A) and those that may contract with a county board of supervisors for special services to the general public or special segments of the general public and that are not accredited by any other accrediting body. These standards do not apply to individual practitioners or partnerships of practitioners who are covered under professional licensure laws.

"Psychiatric nurse" means a person who meets the requirements of a certified psychiatric nurse and is eligible for certification by the American Nursing Association and licensed by the state of Iowa to practice nursing as defined in Iowa Code chapter 152.

"Psychiatric rehabilitation practitioner" means a person who holds a graduate degree in rehabilitation counseling, mental health counseling, psychology, social work, nursing, or medicine and has at least two years' experience working in a psychiatric rehabilitation program or has at least 60 contact hours of training in psychiatric rehabilitation; or a person who holds a bachelor's degree in one of the above areas and has both at least two years of experience working in a psychiatric rehabilitation program and at least 60 contact hours of training in psychiatric rehabilitation.

"Psychiatrist" means a doctor of medicine or osteopathic medicine and surgery who is certified by the American Board of Psychiatry and Neurology or who is eligible for certification and who is fully licensed to practice medicine in the state of Iowa.

"Psychologist" means a person who is licensed to practice psychology in the state of Iowa, or who is certified by the Iowa department of education as a school psychologist, or is eligible for certification, or meets the requirements of eligibility for a license to practice psychology in the state of Iowa as defined in Iowa Code chapter 154B.

"Qualified case managers and supervisors" means persons who have the following qualifications: (1) a bachelor's degree with 30 semester hours or equivalent quarter hours in a human services field and at least one year of experience in the delivery of services to the population groups they serve, or (2) an Iowa license to practice as a registered nurse and at least three years of experience in the delivery of services to the population groups they serve. Persons employed as case management supervisors on or before August 1, 1993, who do not meet these requirements shall be considered to meet these requirements as long as they are continuously employed by the same case management provider.

"Qualified in a human services field" means holding at least a bachelor's degree from an accredited four-year college with a major or at least 30 semester hours or its equivalent in human services. Fields of study which qualify as "human-service-related fields" include, but are not limited to: psychiatry, psychology, social work, mental health counseling, marriage and family therapy, nursing, education, occupational therapy, and recreational therapy.

"Registered nurse" means a person who is licensed to practice nursing in the state of Iowa as defined in Iowa Code chapter 152.

"Rehabilitation services" means services designed to restore, improve, or maximize the individual's optimal level of functioning, self-care, self-responsibility, independence and quality of life and to minimize impairments, disabilities and dysfunction caused by a serious and persistent mental or emotional disability.

"Service plan" means an individualized goal-oriented plan of services written in language understandable by the consumer and developed for a consumer by the consumer and with the organization.

"Social worker" means a person who is licensed to practice social work in the state of Iowa as defined in Iowa Code chapter 154C.

"Staff" means a person paid by the organization to perform duties and responsibilities defined in the organization's policies and procedures.

"Supported community living services" means those services provided to individuals with a mental illness, mental retardation, or developmental disability to assist them in living, learning, working and socializing in the community. They include the provision of or arrangement for personal and environmental supports, assistance and referral in meeting basic human needs, the provision of or arrangement for family and community support, and education, coordination and development of local support systems. These services are intended to be provided in the individual's home or other natural community environment.

441—24.2(225C) Standards for policy and procedures. The organization has written policy direction for the program being accredited.

24.2(1) *Performance benchmark.* The organization has a current policy and procedures manual with policy guidelines and administrative procedures for all organizational activities and services specific to its organization.

24.2(2) *Performance indicators.*

a. The policies and procedures in the manual are current and meet the requirements in this division.

b. The policies and procedures manual is made available to all staff. The policies and procedures reflect current organizational activities and practices.

441—24.3(225C) Standards for organizational activities.

24.3(1) *Organization of service systems.*

a. *Performance benchmark.* The organization designs and structures the activities and systems of services to maximize coordination and facilitate continuity and comprehensiveness of services to a consumer.

b. *Performance indicators.*

(1) The consumer's admission to an appropriate level of service is based on an assessment of the consumer's needs, desires and abilities, and the organization's capability to provide the services.

(2) The organization has established and documented the necessary admission information to determine the consumer's eligibility for participation in the service.

(3) Information is provided to the consumer and, when appropriate, family and significant others about the nature of the services to be provided and the consumer's rights, choices, and responsibilities.

(4) Continuity of services occurs through coordination among the staff and professionals providing services to the consumer. Coordination of services through linkages with other settings and providers has occurred, as appropriate.

(5) Referral, transfer, or discharge of the consumer to another level of services or provider, or termination of services, is based upon the consumer's assessed needs, abilities, situation and desires, and is planned and coordinated.

(6) A written discharge summary is included in each consumer record at the time of discharge.

24.3(2) *Consumer rights.*

a. *Performance benchmark.* Each consumer is recognized and respected in the provision of services, in accordance with basic human, civil and statutory rights.

b. *Performance indicators.*

(1) Services are provided in ways that respect and enhance the consumer's sense of autonomy, privacy, dignity, self-esteem and involvement in the consumer's own treatment. Language barriers, cultural differences, and cognitive deficits are taken into consideration, and provisions are made to facilitate meaningful consumer participation.

(2) Requirements and expectations for participation in the service program are defined by the organization and staff providing the services.

(3) The organization has a mechanism established to protect the consumers and ensure their rights during any activities, procedure or research that requires informed consent.

(4) The organization informs the consumer about the consumer's rights and provides an avenue to express questions, concerns, complaints or grievances about any aspect of the consumer's service.

(5) The organization provides the consumers and their guardians the right to appeal the application of policies, procedures, or any staff action that affects the consumer. The provider has established written appeal procedures and a method to ensure that the procedures and appeal process are available to consumers.

(6) The organization has implemented procedures to ensure that the procedures and appeal process are available.

(7) All consumers, their legal representatives, or other persons authorized by law have access to the consumer's record in accordance with state and federal laws and regulations.

24.3(3) *Performance improvement system.*

a. *Performance benchmark.* The organization has a systematic, organizationwide, planned approach to designing, measuring, evaluating, and improving the level of its performance.

b. *Performance indicators.*

(1) Organization leaders provide the direction, resources, and training to facilitate quality assessment and improvement activities on an organizationwide basis.

(2) There is a systematic process of identifying, collecting, and assessing information and data which is used to measure the organization's level of performance, identify priority areas for improvement, design and assess new systems, and evaluate levels of improvement resulting from a change in existing systems.

(3) Consumer expectations and perceptions, or those of legal guardians and family, and staff identification of priority areas are included in assessing quality of services and effectiveness of performance.

(4) Measurement of organization and consumer-focused outcomes is carried out to assess effectiveness of performance and determine areas where services or systems may need improvement.

(5) Data is gathered about consumer achievements and outcomes so that effectiveness of interventions is measured and monitored.

(6) Performance improvement activities involve all staff and represent all areas and levels of organizational functioning.

(7) Performance improvement activities involve consumers served by the organization and their legal guardians and family members as appropriate.

24.3(4) *Leadership.*

a. *Performance benchmark.* Organizational leaders provide the framework for the planning, designing, directing, coordination, provision and improvement of services that are responsive to the consumers and the community served by the organization.

b. *Performance indicators.*

(1) There are clearly articulated mission and values statements that are reflected in the long-range organizational plans and in organization policies.

(2) The annual and long-range budgeting process involves appropriate governing and managing levels of leadership and reflects the organization mission and values. An annual financial audit is done by an independent auditor or as provided by law.

(3) The organization establishes a board of directors or advisory board.

(4) The organization's decision-making process, including policy decisions affecting the organization, reflects involvement of the various levels of leadership and responsiveness to staff.

(5) Organization leaders solicit input from leaders of the various community and consumer groups served by the organization in designing responsive service delivery systems.

(6) The leaders develop and implement a service system appropriate to the needs of the consumers served by the organization.

(7) The organization leaders structure and support a method of performance improvement that ensures that internal systems and activities throughout the organization are measured, assessed and improved on an ongoing basis.

(8) Organization leaders make educational information and service consultation available to community groups and resources.

24.3(5) *Management information system.*

a. Performance benchmark. Information is obtained, managed and used in an efficient and effective method to document, enhance and improve organizational performance and service delivery to the consumers.

b. Performance indicators.

(1) The organization has provided for the security, confidentiality and integrity of all data information including consumer records.

(2) The organization has a system of consumer records, maintained on a current basis, for the organization, compilation, documentation, and maintenance of all individual consumer-specific information related to the provision and outcomes of services and treatments provided to the consumer.

(3) The organization provides opportunities to obtain information to use in planning, designing, managing and improving consumer services and organizational systems.

(4) The organization gathers information and data is captured, analyzed and available to facilitate the following performance improvement activities: decision making, service delivery, and performance improvement.

24.3(6) *Human resources.*

a. Performance benchmark. The organization provides credentialed staff in order to support the organization's mission and facilitate the provision of quality services to consumers.

b. Performance indicators.

(1) Qualifications and competencies are defined commensurate with the specific job responsibilities and applicable licensure laws, and a credentialing review process is established to ensure compliance. Copies of applicable licenses and degrees shall be included in personnel records.

(2) There is a system to ensure that the demonstrated performance and competency of all staff within their job responsibilities are assessed regularly, with provisions made for ongoing improvement goals, and for supervision or peer review.

(3) Ongoing in-service and other learning and educational opportunities are made available to and used by staff to maintain and improve staff competency levels. New staff receive initial orientation, information, and training which includes adult and child abuse mandatory reporter requirements and confidentiality training. Training on confidentiality and on reporting of child and dependent adult abuse and neglect shall be documented in personnel records.

(4) The organization has established and implemented a code of ethics for all staff. The personnel records shall have documentation that the current code of ethics has been reviewed with each staff member. The organization ensures that the following issues are addressed: confidentiality, consumer rights, professional and legal issues and statutory obligations in providing services to consumers.

24.3(7) *Organizational environment.*

a. Performance benchmark. Services are provided in an organizational environment that is safe and supportive for the consumers being served and the staff providing services.

b. Performance indicators.

(1) The environment enhances the self-image of the consumer and preserves the consumer's dignity, privacy, and self-development.

(2) The environment is safe and accessible and meets all applicable local, state, and federal regulations.

(3) The processes that service and maintain the environment and the effectiveness of the environment are reviewed within the organization's monitoring and improvement system.

(4) Procedures for interventions are established for situations in which a consumer may be involved in behavior that presents significant risk to the consumer or others. The interventions also ensure that the consumer's rights are protected and that due process is afforded.

(5) Risk management situations are reviewed by the organization's performance improvement system for necessity, appropriateness, effectiveness and prevention.

(6) The organization has a mechanism that addresses the safe storage, provision, and administration of medication when used within the service environment in accordance with state and federal regulations.

441—24.4(225C) Standards for services. The standards in subrules 24.4(1) through 24.4(6) shall be reviewed as part of the review for each specific service set forth in subrules 24.4(7) through 24.4(14).

24.4(1) *Clinical records.*

a. Performance benchmark. Each clinical record shall include a social history, assessment, consumer service plan, and documentation of service provision.

b. Performance indicators.

(1) Essential information is kept current.

(2) Records reflect the input of the consumer served.

24.4(2) *Social history.*

a. Performance benchmark. The social history shall include relevant historical information regarding the familial, physical, psychosocial, behavioral, environmental, social functioning, cultural and legal aspects of the consumer's life.

b. Performance indicators.

(1) Relevant historical information is collected and documented.

(2) The social history is developed and completed by staff credentialed in accordance with organization policy and procedure and appropriate professional standards of practice.

(3) The social history is updated at least annually.

(4) Family and significant others as desired by the consumer are involved, as appropriate, in developing the social history.

24.4(3) *Assessment.*

a. Performance benchmark. A written assessment is developed that is the basis for the services provided to the consumer. The assessment includes information about the consumer's current situation, needs, problems, wants, abilities and desired results.

b. Performance indicators.

(1) Staff credentialed in accordance with organization policy and procedure and appropriate professional standards of practice complete the assessment.

(2) Decisions regarding level, type and immediacy of services to be provided, or need for further assessment or evaluation, are based upon the analysis of the information gathered in the assessment and with the consumer's involvement.

(3) Assessments of children reflect developmental history and needs.

(4) Collateral provider information should be solicited as appropriate to the individual situation in order to compile a comprehensive and full assessment.

(5) Each consumer is reassessed at least annually during the course of services to determine the consumer's response to interventions and when a significant change occurs in the consumer's functioning, presenting problem, needs, or desires. The reassessment shall be documented in a written format.

(6) Consumers with a diagnosis of a serious and persistent mental illness must have this diagnosis supported by a psychiatric or psychological evaluation conducted by a qualified professional, and documentation of the diagnosis shall be contained in the consumer record.

(7) Documentation supporting the diagnoses of a developmental disability by professionals shall be in the consumer record.

24.4(4) *Consumer service plan.*

a. Performance benchmark. Individualized, planned and appropriate services are guided by an individual-specific service plan developed in collaboration with the consumer, significantly involved others as appropriate, and staff. Services are planned and directed to where the consumers live, learn, work, and socialize.

b.. Performance indicators.

(1) The service plan is based on the current assessment.

(2) The service plan identifies observable or measurable consumer goals and action steps to meet the goals.

(3) The service plan includes interventions and supports needed to meet those goals with incremental time lines.

(4) The service plan includes the persons or organizations responsible for carrying out the interventions or supports.

(5) Services defined in the service plan are appropriate to the severity level of problems and specific needs or disabilities and related to desired consumer outcomes.

(6) The plan reflects consumer desires and involves other organizations and individuals as appropriate.

(7) The selection and wording of the goals and desired outcomes reflect consumer collaboration.

(8) Activities identified in the service plan encourage the consumer's ability and right to make choices, to experience a sense of achievement, and to modify or continue the consumer's participation in the treatment process.

(9) Staff monitor the service plan with review occurring regularly. At least annually, the service plan is assessed and revised to determine achievement, continued need or change in goals or intervention methods. The review includes the consumer with the involvement of significant others as appropriate.

(10) A separate, individualized, anticipated discharge plan is developed as part of the individualized service plan.

(11) The service plan shall include documentation of any rights restrictions with a plan to restore those rights or a reason why a plan is not needed.

24.4(5) *Documentation of service provision.*

a. Performance benchmark. Individualized and appropriate intervention services and treatments are provided in ways that support the needs, desires, and goals identified in the service plan, and that respect consumers' rights and choices.

b. Performance indicators.

(1) All interventions respect and enhance the consumer's abilities and dignity, encourage the development of a sense of achievement, and allow the consumer to choose to continue or to modify the consumer's participation in the treatment process.

(2) Responsible staff monitor and document the provision of the intervention services, the consumer's response to those services, and the outcomes of the services provided. This documentation shall be in a written, legible, narrative format in accordance with organizational procedures.

(3) Staff who are credentialed in accordance with organization policy and procedure, who meet relevant standards of practice, and who function within an authorized scope of practice provide intervention services.

(4) Services provided to consumers reflect current practice and knowledge levels.

24.4(6) *Confidentiality and legal status.* The benchmark for confidentiality and legal status applies to all clinical records.

a. Performance benchmark. Information regarding a consumer is recognized and respected as confidential.

b. Performance indicators.

(1) The organization shall obtain written consent from the consumer, the consumer's legal guardian, or other persons authorized by law for the release of personal identifying information.

(2) Refusal by the consumer to authorize the release of personal identifying information is not an automatic reason for denial of services.

(3) Personal identifying information is released or disclosed only in accordance with existing federal and state laws and regulations.

(4) There shall be documentation of legal status including a copy of guardianship papers, probation, commitment or other court orders if applicable.

24.4(7) *Providers of case management.* Case management is a service that assists service recipients in gaining access to appropriate living environments, needed medical services, and interrelated social, vocational, and educational services. Consumers receive case management services from qualified, supervised case managers. Case management providers in this chapter shall meet the guidelines set forth in the Iowa Medicaid state plan.

Case management services link consumers to service agencies and support systems responsible for providing the necessary direct service activities and coordinate and monitor those services. Case managers shall not provide direct services. Within an accredited case management program, the average caseload shall be no more than 45 consumers per case manager.

a. Performance benchmark. Consumers are enabled to live, learn, work, and socialize as independently as possible in a community setting through the receipt of skill enhancement services that are coordinated and monitored.

b. Performance indicators.

(1) Consumers are part of a team composed of, at a minimum, the case manager and organizations or natural supports relevant to the consumer's service needs. In addition, the team may include family at the discretion of the consumer.

(2) The team works with the consumer to establish the service plan which guides and coordinates the delivery of the services.

(3) The case manager advocates for the consumer.

(4) The case manager coordinates the services. Face-to-face meetings with the consumer must be held at least quarterly.

(5) The case manager monitors the services but does not provide direct services.

(6) Consumers are linked to appropriate resources, which shall provide necessary direct services and natural supports.

(7) Consumers participate in developing an individualized crisis intervention plan.

(8) Consumers are facilitated to exercise choice, make decisions, and take risks that are a typical part of life and fully participate as members in the community.

(9) Documentation shows consumer input on choosing goals.

(10) Documentation shows consumers are informed about their choice of providers as provided in the county management plan.

24.4(8) *Day treatment.* Day treatment is an individualized service emphasizing mental health treatment and rehabilitation activities designed to increase the consumer's ability to function independently or facilitate transition from residential placement. Individual and group treatment and rehabilitation services are used based on consumer needs and identified behavioral or mental health issues. A mental health professional provides the mental health treatment services. Supervision of staff and services is done by a mental health professional.

a. Performance benchmark. Consumers who are experiencing a significantly reduced ability to function in the community are stabilized and improved by the receipt of mental health treatment services and in-home support services, and the need for residential or inpatient placement is alleviated.

b. Performance indicators.

(1) Consumers participate with the staff in identifying the problem areas to be addressed and the goals to be achieved that are based on the consumer's need for services.

(2) Consumers receive individualized services designed to focus on those identified mental health or behavioral issues that are causing the significant impairment in their day-to-day functioning.

(3) Consumers who receive day treatment services receive a comprehensive and integrated schedule of recognized individual and group treatment and rehabilitation services at least three hours per day, three days per week for an identified period of time.

(4) Consumers and staff review the consumer's progress in resolving problems and achieving goals on a frequent and regular basis.

(5) Consumers receive services appropriate to defined need and current risk factors.

(6) Consumers receive services from staff who are appropriately qualified and trained to provide the range and intensity of services required by the specific problems or disabilities of the consumer. A mental health professional provides or directly supervises the provision of treatment services.

(7) Consumers participate in discharge planning which focuses on coordinating and integrating consumer, family, and community and organization resources.

(8) Family members of consumers are involved in the planning and provision of services as appropriate and as desired by the consumer.

24.4(9) *Intensive psychiatric rehabilitation services.* Intensive psychiatric rehabilitation services are individualized services emphasizing mental health treatment, intensive psychiatric rehabilitation services and in-home support services designed to increase the consumer's ability to function independently and to prevent or reduce the need for services in a hospital or residential setting. A mental health professional provides the mental health treatment services. Intensive psychiatric rehabilitation services are provided by or under the supervision of a psychiatric rehabilitation practitioner or a mental health professional who has been trained as a rehabilitation practitioner.

a. Performance benchmark. Consumers who are experiencing a significantly reduced ability to function in the community are stabilized and improved by the receipt of intensive psychiatric rehabilitation, mental health treatment services and in-home support services, and the need for residential or inpatient placement is alleviated.

b. Performance indicators.

(1) Consumers participate with the organization staff in identifying the problem areas to be addressed and the goals to be achieved.

(2) Consumers receive individualized services designed to focus on those identified mental health needs, functional needs and support needs that are causing the significant impairment in their day-to-day functioning.

(3) Whenever possible, intensive psychiatric rehabilitative services should be provided in natural settings where people live, work, learn, and socialize.

(4) Consumers and staff review their progress in resolving problems and achieving goals on a frequent and regular basis.

(5) Consumers receive services appropriate to defined need and current risk factors.

(6) Consumers receive services from staff who are appropriately qualified and trained to provide the range and intensity of services required by the specific problems or disabilities of the consumer. A mental health professional provides or directly supervises the provision of treatment services. A mental health professional or a psychiatric rehabilitation practitioner provides or supervises the provision of rehabilitation and support services.

(7) Consumers participate in discharge planning which focuses on coordinating and integrating consumer, family, and community and organization resources.

(8) Significantly involved others are involved with the consumer in the planning and provision of services as appropriate and as desired by the consumer.

(9) Consumers receive four to ten hours per week of recognized individual and group treatment and rehabilitation services with an emphasis on individual services. Individual in-home support services may also be provided. All services are provided for an identified period of time.

(10) An increase in motivational readiness to choose valued roles and environments is documented in each consumer's file.

(11) Increases in skill competency are documented in each consumer's file.

(12) Increases in the use of critical resources are documented in each consumer's file.

(13) The achievement of chosen rehabilitation goals is documented in each consumer's file.

(14) Satisfaction with services is documented in each consumer's file.

(15) Satisfaction with chosen roles and environments is documented in each consumer's file.

(16) Positive changes in environmental status such as getting a job, moving to a more independent living arrangement, enrolling in an education program, and joining a community group are achieved by consumers and are documented in each consumer's file.

(17) A decrease in the need for and use of psychiatric inpatient services is documented in each consumer's file.

24.4(10) *Supported community living services.* Supported community living services are those services and supports determined necessary to enable consumers with a mental illness, mental retardation, or a developmental disability to live, learn, work, and socialize in a community setting. Services are consumer individualized, need and abilities focused, and organized according to the following components, which are to be provided by organizational staff or through linkages with other resources: outreach to appropriate support or treatment services; assistance and referral in meeting basic human needs; assistance in housing and living arrangements; mental health treatment; crisis intervention and assistance; social and vocational assistance; support, assistance, and education to the consumer's family and to the community; protection and advocacy; coordination and development of natural support systems; and service coordination. Services are directed to enhancing the consumer's ability to regain or attain higher levels of independence, or to maximize current levels of functioning.

a. Performance benchmark. Consumers with disabilities live, learn, work, and socialize in the community.

b. Performance indicators.

(1) Consumers receive services within their home and community setting based on need, desire and mutually identified problem areas.

(2) Consumers participate in a functional assessment at intake to assist in defining areas of service need and establishing a service plan. The functional assessment shall be summarized in a narrative that describes the consumer's current level of functioning in the areas of living, learning, working, and socialization. Functional assessments are reviewed on a regular basis to determine progress.

(3) Consumers with a mental illness have a current psychiatric evaluation contained in the consumer record.

(4) Consumers with a diagnosis of mental retardation must have this diagnosis supported by a psychological evaluation conducted by a qualified professional, and documentation of the diagnosis shall be contained in the consumer record.

(5) Documentation supporting the diagnosis of a developmental disability by professionals shall be in the consumer record.

(6) Consumers receive support services directed to enabling them to regain or attain higher levels of functioning or to maximize current functioning.

(7) Natural support systems identified by the consumers receive education and consultation services from staff.

(8) Services are delivered on an individualized basis in the place where the consumer lives or works. Supported community living is not part of an organized mental health support or treatment group. Skill training groups can be one of the activities in the service plan and part of supported community living. They cannot stand alone as a supported community living service.

(9) Documentation is in the consumer file that natural supports outside the organization are accessed.

(10) Consumers participate in developing a detailed individualized crisis intervention plan.

24.4(11) *Partial hospitalization services.* Partial hospitalization services are active treatment programs providing intensive group and individual clinical services within a structured therapeutic environment for those consumers who are exhibiting psychiatric symptoms of sufficient severity to cause significant impairment in day-to-day functioning. Short-term outpatient crisis stabilization and rehabilitation services are provided to avert hospitalization or to transition from an acute care setting. Services are supervised and managed by a mental health professional, and psychiatric consultation is routinely available. Clinical services are provided by a mental health professional.

a. Performance benchmark. Consumers who are experiencing serious impairment in day-to-day functioning due to severe psychiatric distress are enabled to remain in their community living situation through the receipt of therapeutically intensive milieu services.

b. Performance indicators.

(1) Consumers and staff mutually develop an individualized service plan that focuses on the behavioral and mental health issues and problems identified at admission. Goals are based on the consumer's need for services.

(2) Consumers receive clinical services that are provided and supervised by mental health professionals. A licensed and qualified psychiatrist provides psychiatric consultation and medication services.

(3) Consumers receive a comprehensive schedule of active, planned and integrated psychotherapeutic and rehabilitation services provided by qualified professional staff at least four hours per day, four days per week.

(4) Consumers receive group and individual treatment services that are designed to increase their ability to function independently.

(5) Consumers are involved in the development of an anticipated discharge plan that includes linkages to family, provider, and community resources and services.

(6) Consumers have sufficient staff available to ensure their safety, to be responsive to crisis or individual need, and to provide active treatment services.

(7) Consumers receive services commensurate with current identified risk and need factors.

(8) Support systems identified by consumers are involved in the planning and provision of services and treatments as appropriate and desired by the consumer.

24.4(12) *Outpatient psychotherapy and counseling services.* Outpatient psychotherapy and counseling services are dynamic processes in which the therapist uses professional skills, knowledge and training to enable consumers to realize and mobilize their strengths and abilities; take charge of their lives; and resolve their issues and problems. Psychotherapy services may be individual, group, or family, and are provided by a person meeting the criteria of a mental health professional, or a person with a master's degree in a mental health field who is directly supervised by a mental health professional.

a. Performance benchmark. Consumers realize and mobilize their own strengths and abilities to take control of their lives in the areas where they live, learn, work, and socialize.

b. Performance indicators.

(1) Consumers are prepared for their role as a partner in the therapeutic process at intake where they define their situation, evaluate those factors that affect their situation, and establish desired problem resolution. Psychiatric services and medical management are available to the consumer.

(2) Psychiatric and psychopharmacological services are available as needed by the consumer.

(3) Current and future treatment goals and interventions and supports mutually agreed to by the consumer and the therapist shall be documented in the initial assessment and progress notes. A distinct service plan document is not required.

(4) The consumer's status as of the last visit and the reasons for continuation or discontinuation of services are documented in the progress notes. A distinct discharge summary document is not required.

(5) Consumer records shall be subject to an internal quality assurance process and monitored by the organization. Quality assurance activities shall include:

1. A review of the consumer's involvement in and with treatment.

2. Verification that treatment activities are documented and are relevant to the diagnosis or presenting problem.

3. Verification that the mental health professional follows up on consumers who miss appointments.

24.4(13) *Emergency services.* Emergency services are crisis services that provide a focused assessment and rapid stabilization of acute symptoms of mental illness or emotional distress, and are available and accessible, by telephone or face-to-face, to consumers on a 24-hour basis. The clinical assessment and psychotherapeutic services shall be provided by a person who holds a master's degree in a mental health field, including, but not limited to, psychology, counseling and guidance, psychiatric nursing, psychiatric rehabilitation, and social work who has training in emergency services and who has access, at least by telephone, to a mental health professional, if indicated; or a person who holds a bachelor's degree in a human services discipline with five years of experience providing mental health services or human services who has training in emergency services and who has access, at least by telephone, to a mental health professional; or a psychiatric nurse with three years of clinical experience in mental health who has training in emergency services and who has access, at least by telephone, to a mental health professional. A comprehensive social history is not required for this treatment.

a. Performance benchmark. Consumers receive, when needed, emergency services that provide a focused assessment and rapid stabilization of acute symptoms of mental illness or emotional distress.

b. Performance indicators.

(1) Consumers can access 24-hour emergency services by telephone or in person.

(2) Information about how to access emergency services is publicized to facilitate availability of services to consumers, family members, and the public.

(3) Consumers receive assessments and services from either a mental health professional or from personnel who meet the requirements above and are supervised by a mental health professional. Psychiatric consultation is available, if needed.

(4) Consumers receive intervention services commensurate with current identified risk factors.

(5) Significantly involved others of consumers are involved as necessary and appropriate to the situation and as desired by the consumer.

(6) Consumers are involved in the development of postemergency service planning and resource identification and coordination.

24.4(14) *Evaluation services.* Evaluation services are screening, diagnosis and assessment of individual and family functioning needs, abilities, and disabilities, and determining current status and functioning in the areas of living, learning, working, and socializing.

a. *Performance benchmark.* Consumers receive comprehensive evaluation services that include screening, diagnosis, and assessment of individual or family functioning, needs and disabilities.

b. *Performance indicators.*

(1) The evaluation shall include recommendations for services and need for further evaluations.

(2) Evaluations shall consider the emotional, behavioral, cognitive, psychosocial, and physical information as appropriate and necessary.

(3) Consumers shall receive comprehensive evaluation services by a mental health professional that include screening, diagnosis, and assessment of individual or family functioning, needs, abilities, and disabilities.

(4) Persons who meet the criteria of a mental health professional shall complete mental health evaluations.

441—24.5(225C) Accreditation. The commission shall make all decisions involving issuance, denial, or revocation of accreditation. This accreditation shall delineate all categories of service the organization is accredited to provide. Although an organization may have more than one facility or service site, only one accreditation notice shall be issued to the organization.

24.5(1) *Organizations eligible for accreditation.* The commission accredits the following organizations:

a. Providers of case management.

b. Community mental health centers.

c. Providers of supported community living.

d. Providers of other mental health services.

24.5(2) *Performance outcome evaluations system.*

a. There are three major sections contained in these standards: policies and procedures, organizational activities, and services. The major sections are divided into standards, with a performance benchmark and performance indicators for each standard. Each of the standards for the three sections (policy and procedures, organizational activities, and services) as set forth in rules 441—24.2(225C), 24.3(225C), and 24.4(225C) shall be reviewed.

A performance compliance level shall be determined for each benchmark based on the number of indicators present for that benchmark. Each indicator under a benchmark is assigned a percentage weight arrived at by dividing 100 percent by the number of indicators for the benchmark. Benchmark rating totals shall be added and the sum divided by the number of benchmarks to determine the section's performance rating. The performance compliance level for the benchmarks of each section shall have a potential total rating of 100 percent.

In order for a total overall rating to be established, the performance rating for policy and procedures shall be counted as 25 percent of the total, organizational activities as 25 percent of the total, and services as 50 percent of the total.

b. When an organization is accredited for more than one service under this chapter, staff will conduct one survey for the organization. There shall be one accreditation award for all the services based upon the lowest score of the services surveyed. At the time of the recertification visit, staff shall review the services that did not receive three-year accreditation.

When an organization subcontracts with agencies to provide services, on-site reviews shall determine if each agency meets all the requirements in this division. When an organization subcontracts with more than one agency, the length of accreditation shall be determined individually.

24.5(3) *Accreditation decisions.*

a. *Initial 270-day accreditation.* This type of accreditation is granted to a new organization, or to an organization not previously accredited by the division. Staff may conduct a desk audit or on-site visit to review the organization's mission, policies, procedures, staff credentials, and program descriptions.

b. *Three-year accreditation.* An organization or service is eligible for this type of accreditation if it has achieved an 80 percent or higher percent average performance compliance level. The organization may be required to develop and submit a plan of corrective action and improvement that may be monitored either by written report or on-site review.

c. *One-year accreditation.* An organization is eligible for this type of accreditation when multiple and substantial deficiencies exist in specific areas causing compliance levels with performance benchmarks and indicators to fall between the averages of 70 percent and 79 percent, or when previously required corrective action plans have not been implemented or completed. The organization must submit a corrective action plan to correct and improve specific deficiencies and overall levels of functioning. This plan shall be monitored through on-site reviews, written reports and the provision of technical assistance.

d. *Probational 180-day accreditation.* An organization is eligible for this type of accreditation in lieu of denial when the overall compliance level is from 60 to 69 percent and pervasive and serious deficiencies exist; or when previously required corrective action plans as a result of a one-year accreditation have not been implemented or completed. All deficiencies must be corrected by the time of the follow-up on-site survey at the conclusion of the provisional time period. After this survey the organization shall either be accredited for at least one year, or accreditation shall be denied. Organizations with a one- or three-year accreditation may be downgraded to the probational 180-day accreditation when one or more complaints are founded at an on-site investigation visit conducted by division staff.

e. *Denial of accreditation.*

(1) When there are pervasive and serious deficiencies that put consumers at immediate risk or when the overall compliance level falls to 59 percent or below, the division administrator is authorized to temporarily deny accreditation, based upon that determination. The action of the division administrator shall be reviewed at the next regularly scheduled commission meeting and, if approved, accreditation shall be denied.

(2) When one or more complaints are received, an investigation shall be completed and a report submitted to the commission. If any of the complaints are founded and the commission determines there is a pervasive or serious deficiency, accreditation shall be denied.

24.5(4) *Nonassignability.* Accreditation shall not be assignable to any other organization or provider.

24.5(5) *Discontinuation.*

a. A discontinued organization is one that has terminated the service for which it has been accredited.

b. Accreditation is not transferable. Any person or other legal entity acquiring an accredited facility for the purpose of operating a service shall make an application as provided herein for a new certificate of accreditation. Similarly, any organization having acquired accreditation and desiring to fundamentally alter the service philosophy or transfer to different premises must notify the division 30 calendar days before said action in order for the division to review the change and to determine appropriate action.

c. An organization shall notify the division of any sale or change in the business status or transfer of ownership in the business or impending closure of the accredited or certified service at least 30 calendar days before closure. The organization shall be responsible for the referral and placement of consumers, as appropriate, and for the preservation of all records.

24.5(6) *Application and renewal procedures.* Applying for accreditation usually constitutes the beginning of the accreditation process and the process shall continue until the commission makes final determination of the organization's accreditation status. The division shall provide Form 470-3005, Application for Accreditation, to all applicants for accreditation or renewal. An applicant for accreditation shall submit the following information.

a. The name and address of the applicant organization.

b. The name and address of the chief executive officer of the applicant organization.

c. The type of organization and specific services for which the organization is seeking accreditation.

d. The targeted population groups for which services are to be provided, as applicable.

e. The number of individuals in each targeted population group to be served, as applicable.

f. Other information related to the standards as requested by division staff.

g. Form 470-3005, Application for Accreditation. The organization's chief executive officer and the chairperson of the governing body shall sign this form.

24.5(7) *Application review.* An organization seeking accreditation shall submit a completed application, Form 470-3005, to the division. The division shall review the application for completion and request any additional material as needed. Organizations applying for first-time accreditation may be granted initial accreditation for 270 days to operate until the division completes an on-site survey.

24.5(8) *Survey review of organizations.* The division shall review organizational services and activities as determined by the accreditation category. This review may include on-site case record audits, administrative procedures, clinical practices, personnel records, performance improvement systems and documentation, and interviews with staff, consumers, boards of directors, or others deemed appropriate, consistent with the confidentiality safeguards of state and federal laws.

a. An on-site visit shall be made with the organization. The division shall not be required to provide advance notice to the provider of the on-site visit for accreditation.

b. The on-site survey team shall consist of designated members of the division staff. The team may include provider staff, consumers, and others deemed appropriate.

c. The team shall survey the organization that has applied for accreditation or that is being reviewed as determined by accreditation category and the services indicated on the accreditation application in order to verify information contained in the application and ensure compliance with all applicable laws, rules and regulations.

d. The accreditation survey team leader shall send a written report of the findings to the organization within 30 working days after completion of the accreditation survey.

e. Organizations applying for first-time accreditation shall be offered technical assistance. Following accreditation, any organization may request technical assistance from the division to bring into conformity those areas found in noncompliance with this chapter's requirements. The commission may also require that technical assistance be provided to an organization if multiple deficiencies are noted during a survey to assist in implementation of the organization's corrective action plan. Renewal applicants may be provided technical assistance as needed.

f. Organizations required to develop a corrective action and improvement plan shall submit it to the division within 30 working days after the receipt of a report issued as a result of the division's survey review. The corrective action plan shall include: specific problem areas cited, corrective actions to be implemented by the organization, dates by which each corrective measure shall be completed, and quality assurance and improvement activities to measure and ensure continued compliance.

g. The division shall prepare all documents with a final recommendation regarding accreditation to be presented at the commission meeting. The division shall mail summary reports of the on-site service review or desk review and a final recommendation concerning accreditation to all commission members on each application to be processed at the next commission meeting. If the commission approves accreditation, Form 470-3006, Notice of Action-Approval, shall be issued which states the duration of the accreditation and the services which the organization is accredited to provide. If the commission denies or revokes accreditation, Form 470-3008, Notice of Action-Denial, shall be issued which states the reasons for the denial.

h. The division may grant an extension to the period of accreditation for an organization if there has been a delay in the accreditation process which is beyond the control of the organization, division, or commission; or the organization has requested an extension to permit the organization to prepare and obtain approval of a corrective action plan. The division shall establish the length of the extension on a case-by-case basis.

441—24.6(225C) Deemed status. The commission may grant deemed status to organizations accredited by a recognized, national, not-for-profit accrediting body when the commission determines the accreditation is for similar services. Deemed status for supported community living services will also be granted to organizations that are certified under 441—subrule 77.37(14).

24.6(1) *National accrediting bodies.* The national accrediting bodies currently recognized as meeting division criteria for possible deeming are:

a. Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

b. The Commission on Accreditation of Rehabilitation Facilities (CARF).

c. The Council on Quality and Leadership in Supports for People with Disabilities (The Council).

d. Council on Accreditation of Services for Families and Children (COA).

The accreditation credentials of these national bodies must specify the type of organization, programs, and services that they accredit, and include targeted population groups, if appropriate.

Deemed status means that the division is accepting an outside body's review, assessment, and accreditation of an organization's functioning and services. Therefore, the accrediting body doing the review must be assessing categories of organizations and types of programs and services corresponding to those described under this chapter.

An organization that has received accreditation by deemed status is still held responsible for meeting all requirements under this chapter and all applicable state laws and regulations. When an organization that is nationally accredited requests deemed status for services not covered by the national body's standards but covered under this chapter, the accreditation for those services shall be done by the division. Technical assistance by division staff shall be provided to deemed status organizations as time permits; however, the assistance will be focused on this chapter's requirements.

24.6(2) *Reservations.* When deemed status is granted, the commission and the division reserve the following:

a. To have division staff conduct on-site focused reviews for those organizations applying for deemed status that the division has not previously accredited.

b. To have division staff do joint site visits with the accrediting body, attend exit conferences, or conduct focused follow-behind visits as determined to be appropriate in consultation with the national accrediting organization and the provider organization.

c. To be informed of and to investigate all complaints that fall under this chapter's jurisdiction and to make findings as a result of the investigation. Complaints and findings shall be reported to the national accrediting body. The complaint process outlined in this chapter shall be followed.

d. To review and act upon deemed status under the following circumstances: when complaints have been founded, when focused reviews find instances of noncompliance with this chapter's requirements, when the national accreditation status of the provider expires without renewal, or when the organization's status is downgraded or withdrawn by the national accrediting body.

e. To have division staff conduct either focused or full surveys in instances in which the national body has accredited the organization for less than the maximum time period.

24.6(3) *Application for deemed status.* To apply for deemed status, the organization shall:

a. Submit Form 470-3331, Application for Deemed Accreditation, and copies of the latest survey report and accreditation certificate, documentation of specific programming policies and procedures for populations being served, and credentials for staff providing services to populations served.

b. Sign Form 470-3332, Letter of Agreement, and submit it to the division.

24.6(4) *Requirements for deemed status.* To be eligible for deemed status, the organization shall:

a. Be currently accredited by a recognized national accrediting body for services that are defined under this chapter, or

b. Be currently accredited under 441—subrule 77.37(14) for supported community living under the home- and community-based waiver. If consumers with mental illness are served, the provider must submit verification of the training and credentials of the staff to show that the staff can meet the needs of the consumers they serve.

c. Require the supported community living staff to have the same supervisor as the HCBS/MR program.

d. Require staff for the program being deemed to have the training and credentials needed to meet the needs of the person served.

24.6(5) *Granting of deemed status.* When the commission grants deemed status, the accreditation period shall coincide with the time period awarded by the national accrediting body or the certification for home- and community-based services. Under no circumstances shall accreditation be made for longer than three years.

24.6(6) *Continuation of deemed status.* The following documentation shall be submitted to the division to continue deemed status:

a. A copy of the application for renewal shall be sent to the division at the same time as application is made to a national accrediting body.

b. For organizations deemed for supported community living under the home- and community-based services (HCBS) waiver, HCBS staff shall furnish the division copies of the letter notifying a provider of a forthcoming recertification.

c. Following the on-site review by a national accrediting body, the organization shall send the division a copy of the cover sheet and national accrediting body report within 30 calendar days from the date that the organization receives the documents. If a corrective action plan is required, the organization shall send the division a copy of all correspondence and documentation related to the corrective action.

d. HCBS staff shall furnish the division with copies of HCBS certification reports and any corrective action required by HCBS within 30 calendar days after HCBS staff complete the report or the organization completes required corrective action.

441—24.7(225C) Complaint process. The division shall receive and record complaints by consumers, employees, any interested persons, and the public relating to or alleging violations of applicable requirements of the Iowa Code or rules adopted pursuant to the Code.

24.7(1) *Submittal of complaint.* The complaint may be delivered personally or by mail to the MH/DD Division, Department of Human Services, Fifth Floor, Hoover State Office Building, Des Moines, Iowa 50319-0114, or by telephone at (515)281-5874.

a. Consumers shall be assisted as needed or requested in making a complaint.

b. The information received should specifically state the basis of the complaint.

24.7(2) *Review of complaint.* Upon receipt of a complaint, the division shall make a preliminary review of the complaint. If the division concludes that the complaint is reasonable, has merit, and is based on a violation of rules in this chapter, it may make an on-site review of the organization (with approval of either the division administrator or designee or the commission) which is subject to the complaint. The on-site review does not require advance notice to the organization.

24.7(3) *Decision of division.* The division shall determine an appropriate response which may include, when approved by the administrator or designee, an on-site investigation. The decision and action shall be made in a timely fashion to preserve the availability of witnesses and avoid beginning an investigation under conditions which may have been significantly altered since the period with which the complaint is concerned. If a decision is made to conduct an on-site investigation, the chief executive officer and board chairperson of the organization involved shall, before or at the commencement of the on-site investigation, be notified that the division has received a complaint.

a. The organization shall be given an opportunity to informally present a position regarding allegations in the complaint. The position may be submitted in writing or presented in a personal conference with division staff.

b. A written report shall be submitted by certified mail to the chief administrative officer of the organization and the chairperson of the board of directors within 20 working days after completion of the investigation.

c. The report shall indicate whether the complaint was or was not substantiated, the basis for the substantiation or nonsubstantiation, the specific rules violated, and a recommendation for corrective action with time lines specified in the report.

d. The date of delivery shown by the certified mail stub shall constitute date of official notice.

24.7(4) *Review by commission.* To the extent allowed by Iowa Code section 21.5, the commission may review the complaint and investigation report in a closed meeting.

a. If the complaint is founded, the commission may take actions deemed appropriate, which may include downgrading or suspending or revoking an organization's accreditation status, depending on the severity of the substantiated complaint.

b. The action taken by the commission shall be voted upon in the reconvened public meeting part and entered into the official record of commission minutes.

c. The complainant and the organization shall be informed of the findings and actions taken by the commission.

24.7(5) *Corrective action plan.* If the complaint is substantiated, the organization may be expected to submit a corrective action plan to the division within 20 calendar days after receiving the commission's decision. This plan must respond to violations cited and commission requirements, and include time lines, internal monitoring systems, and performance improvement planning. Failure of the organization to respond to the report may of itself constitute the basis for revocation or suspension of accreditation. The organization shall be notified if any action is taken.

441—24.8(225C) Appeal of survey report.

24.8(1) *Review by the department.* When an organization does not agree with the results or content of an accreditation report, it may request a review of the report. This request shall be made in writing within 30 calendar days from the date of the report to MH/DD Division, Bureau Chief of Quality Assurance and Support, Department of Human Services, Hoover State Office Building, Fifth Floor, Des Moines, Iowa 50319-0114. A meeting shall be set up between organization staff and the division for clarification of the report findings within 30 calendar days of the date of the organization's letter requesting a review of the report.

a. The division shall send a letter to the organization within 15 calendar days from the date of the meeting notifying the organization if any changes were made in the report or corrective action plan.

b. Services to the consumers shall continue in accordance with 441—Chapter 24 until the review is completed.

24.8(2) *Review by the commission.* If the organization is not satisfied with the decision of the division, it may request a review of accreditation reports and accreditation recommendations by the commission. This request shall be made in writing within 30 calendar days from the date of the decision to the MH/DD Commission, MH/DD Division, Department of Human Services, Hoover State Office Building, Fifth Floor, Des Moines, Iowa 50319-0114.

a. The request must be received by the division a minimum of 15 calendar days before the next commission meeting to be put on the agenda. Requests received less than 15 calendar days before the next commission meeting will be put on the agenda for the next commission meeting. The division shall send the organization a copy of the agenda. The organization may choose to come to the commission meeting for a verbal presentation.

The commission shall make a formal motion on the request that will become part of the minutes. The division shall notify the organization of the commission's decision within five working days of the meeting.

b. Services to the consumers shall continue in accordance with 441—Chapter 24 until the review is completed.

24.8(3) *Appeal procedure.* If the organization completed all the review procedures set forth in subrules 24.8(1) and 24.8(2) and is dissatisfied with the decision of the commission, it may file an appeal with the department pursuant to 441—Chapter 7. Written request for an appeal shall be made to Appeals Section, Department of Human Services, Hoover State Office Building, Fifth Floor, Des Moines, Iowa 50319-0114, within 30 calendar days of the written decision from the division.

Appeals filed prior to completion of all review procedures will be deemed premature and denied hearing.

441—24.9(225C) Exceptions to policy. Exceptions to policy shall follow the policies and procedures in the department's general rule on exceptions to policy at rule 441—1.8(217). The mental health and developmental disabilities commission shall make a recommendation to the director on whether the exception shall be approved.

These rules are intended to implement Iowa Code chapter 225C.

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g. Payment may be made for necessary repair, maintenance, and supplies for recipient-owned equipment. No payment may be made for repairs, maintenance, or supplies when the recipient is renting the item.

h. Replacement of recipient-owned equipment is covered in cases of loss or irreparable damage or when required because of a change in the patient's condition.

i. No allowance will be made for delivery, freight, postage, or other provider operating expenses for DME, prosthetic devices or sickroom supplies.

78.10(2) *Durable medical equipment.* DME is equipment which can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of an illness or injury, and is appropriate for use in the home.

a. Durable medical equipment will not be provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded except when a Medicaid-eligible resident of a nursing facility medically needs oxygen for 12 or more hours per day for at least 30 days or more. Medicaid will provide payment to medical equipment and supply dealers to provide oxygen services in a nursing facility when all of the following requirements and conditions have been met:

(1) A physician's, physician assistant's, or advanced registered nurse practitioner's prescription documents that a resident of a nursing facility requires oxygen for 12 hours or more per day and the provider and physician, physician assistant, or advanced registered nurse practitioner jointly submit Attending Physician's Certification of Medical Necessity for Home Oxygen Therapy, Form HCFA A-484, from Medicare or a reasonable facsimile to the Medicaid fiscal agent with the monthly billing. The documentation submitted must contain the following: number of hours oxygen is required per day; the diagnosis of the disease requiring continuous oxygen, prognosis, and length of time the oxygen will be needed; the oxygen flow rate and concentration; the type of system ordered, i.e., cylinder gas, liquid gas, or concentrator; a specific estimate of the frequency and duration of use; and, where applicable, the initial reading on the time meter clock on each concentrator.

(2) The maximum Medicaid payment shall be based on the least costly method of oxygen delivery.

(3) Medicaid payment shall be made for the rental of equipment only. All accessories and disposable supplies related to the oxygen delivery system, servicing and repairing of equipment are included in the Medicaid payment.

(4) Oxygen logs must be maintained by the provider. When random postpayment review of these logs indicates less than an average of 12 hours per day of oxygen was provided over a 30-day period, recoupment of the overpayment may occur.

(5) Payment will be made for only one mode of oxygen even if the physician's, physician assistant's, or advanced registered nurse practitioner's prescription allows for multiple modes of delivery.

(6) Payment will not be made for oxygen that is not documented according to department of inspections and appeals 481—subrule 58.21(8).

b. Only the following types of durable medical equipment can be covered through the Medicaid program:

Ambu bags (for age 20 and under).

Alternating pressure pump.

Blood pressure cuffs (for age 20 and under).

Cardiorespiratory monitor (rental and supplies).

Commode.

Dialysis equipment.

Hospital bed.

Inhalation equipment.
Lymphademo pump.
Neuromuscular stimulator.
Oximeter (for age 20 and under).
Oxygen. Medicaid coverage of home oxygen equipment and oxygen under the durable medical equipment benefit will be considered reasonable and necessary only for recipients with significant hypoxemia as shown by medical documentation. The physician's, physician assistant's, or advanced registered nurse practitioner's prescription shall document that other forms of treatment have been tried and have not been successful, and that oxygen therapy is required. To identify the medical necessity for oxygen therapy, suppliers and physicians, physician assistants, or advanced registered nurse practitioners should jointly submit a "Physician's Certification for Durable Medical Equipment," Form (B-7401), from Medicare or a reasonable facsimile. The following information is required: a diagnosis of the disease requiring home use of oxygen; the oxygen flow rate and concentration; the type of system ordered, i.e., cylinder gas, liquid gas, or concentrator; a specific estimate of the frequency and duration of use; and, where applicable, the initial reading on the time meter clock on each concentrator.

If the patient's condition or need for oxygen services changes, the attending physician, physician assistant, or advanced registered nurse practitioner must adjust the documentation accordingly. When used as a backup for oxygen concentrators or as a standby in case of emergency, a second oxygen system is not covered by Medicaid. Recipients may be provided with a portable oxygen system to complement a stationary oxygen system, or used by itself, with documentation from the physician (doctor of medicine or osteopathy), physician assistant, or advanced registered nurse practitioner of the medical necessity for portable oxygen for specific activities.

Medicaid payment for concentrators shall be made only on a rental basis after December 1, 1990. All accessories, disposable supplies, servicing, and repairing of concentrators are included in the monthly Medicaid payment for concentrators.

Medicaid payment will be made for all supplies required for concentrators that are considered recipient-owned before December 1, 1990. No more than $1,500 will be paid for the repairs of a concentrator considered to be recipient-owned after December 1, 1990. If repairs for a recipient-owned concentrator exceed $1,500 after December 1, 1990, Medicaid will not pay for the repairs. Monthly maintenance and replacement of filters are not considered a repair. If the recipient meets the Medicaid requirements for oxygen, the recipient will be eligible for a new concentrator on a rental basis only.

Patient lift (Hoyer).
Phototherapy bilirubin light.
Pressure units.
Protective helmets.
Respirator.
Resuscitator bags and pressure gauge (for age 20 and under).
Seat lift chair.
Suction machine.
Traction equipment.
Ventilator.
Walker.
Wheelchair—standard and adaptive.
Whirlpool bath.

(5) The date of the start of the services.
(6) The frequency of the services.
(7) Progress in response to the services.
(8) The estimated length of time the services are needed.

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

441—78.20(249A) Independent laboratories. Payment will be made for medically necessary laboratory services provided by independent laboratories certified to participate in the Medicare program.

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

441—78.21(249A) Rural health clinics. Payment will be made to rural health clinics for the same services payable under the Medicare program (Title XVIII of the Social Security Act). Payment will be made for sterilization in accordance with 78.1(16).

78.21(1) *Utilization review.* Utilization review shall be conducted of Medicaid recipients who access more than 24 outpatient visits in any 12-month period from physicians, family and pediatric nurse practitioners, federally qualified health centers, other clinics, and emergency rooms. Refer to rule 441—76.9(249A) for further information concerning the recipient lock-in program.

78.21(2) *Risk assessments.* Risk assessments, using Form 470-2942, Medicaid Prenatal Risk Assessment, shall be completed twice during a Medicaid recipient's pregnancy. If the risk assessment reflects a high-risk pregnancy, referral shall be made for enhanced services. See description of enhanced services at subrule 78.25(3).

Rural health clinics which wish to administer vaccines which are available through the vaccines for children program to Medicaid recipients shall enroll in the vaccines for children program. In lieu of payment, vaccines available through the vaccines for children program shall be accessed from the department of public health for Medicaid recipients.

78.21(3) *EPSDT care coordination.* Payment for EPSDT care coordination services outlined in 78.18(6)*"b"*(2)"1" to "7" is available to Medipass eligible providers as defined in rule 441—88.41(249A) who accept responsibility for providing EPSDT care coordination services to the Medipass recipients under the age of 21 assigned to them on a monthly basis. All Medipass providers shall be required to complete Form 470-3183, Care Coordination Agreement, to reflect acceptance or denial of EPSDT care coordination responsibility. When the Medipass provider does not accept the responsibility, the Medipass patients assigned to the Medipass provider are automatically referred to the designated department of public health EPSDT care coordination agency in the recipient's geographical area. Acknowledgment of acceptance of the EPSDT care coordination responsibility shall be for a specified period of time of no less than six months. Medipass providers who identify Medipass EPSDT recipients in need of transportation assistance beyond that available according to rule 441—78.13(249A) shall be referred to the designated department of public health agency assigned to the geographical area of the recipient's residence.

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

441—78.22(249A) Family planning clinics. Payments will be made on a fee schedule basis for services provided by family planning clinics. Payment will be made for sterilization in accordance with 78.1(16). Family planning clinics which wish to administer vaccines for Medicaid recipients who receive family planning services at the family planning clinic shall enroll in the vaccines for children program. In lieu of payment, vaccines available through the vaccines for children program shall be accessed from the department of public health for Medicaid recipients. Family planning clinics shall receive reimbursement for the administration of vaccines to Medicaid recipients.

441—78.23(249A) Other clinic services. Payment will be made on a fee schedule basis to facilities not part of a hospital, funded publicly or by private contributions, which provide medically necessary treatment by or under the direct supervision of a physician or dentist to outpatients. Payment will be made for sterilization in accordance with 78.1(16).

Utilization review shall be conducted of Medicaid recipients who access more than 24 outpatient visits in any 12-month period from physicians, family and pediatric nurse practitioners, federally qualified health centers, other clinics, and emergency rooms. Refer to rule 441—76.9(249A) for further information concerning the recipient lock-in program.

Risk assessments, using Form 470-2942, Medicaid Prenatal Risk Assessment, shall be completed twice during a Medicaid recipient's pregnancy. If the risk assessment reflects a high-risk pregnancy, referral shall be made for enhanced services. See description of enhanced services at subrule 78.25(3).

Clinics which wish to administer vaccines which are available through the vaccines for children program to Medicaid recipients shall enroll in the vaccines for children program. In lieu of payment, vaccines available through the vaccines for children program shall be accessed from the department of public health for Medicaid recipients. Clinics shall receive reimbursement for the administration of vaccines to Medicaid recipients.

441—78.24(249A) Psychologists. Payment will be approved for services authorized by state law when they are provided by the psychologist in the psychologist's office, a hospital, or intermediate or residential care facility.

78.24(1) Payment for covered services provided by the psychologist shall be made on a fee for service basis.

a. Payment shall be made only for time spent in face-to-face consultation with the client.

b. Time spent with clients shall be rounded to the quarter hour.

78.24(2) Payment will be approved for the following psychological procedures:

a. Individual outpatient psychotherapy or other psychological procedures not to exceed one hour per week or 40 hours in any 12-month period, or

b. Couple, marital, family, or group outpatient therapy not to exceed one and one-half hours per week or 60 hours in any 12-month period, or

c. A combination of individual and group therapy not to exceed the cost of 40 individual therapy hours in any 12-month period.

d. Psychological examinations and testing for purposes of evaluation, placement, psychotherapy, or assessment of therapeutic progress, not to exceed eight hours in any 12-month period.

e. Mileage at the same rate as in 78.1(8) when the following conditions are met:

(1) It is necessary for the psychologist to travel outside of the home community, and

(2) There is no qualified mental health professional more immediately available in the community, and

(3) The recipient has a medical condition which prohibits travel.

f. Covered procedures necessary to maintain continuity of psychological treatment during periods of hospitalization or convalescence for physical illness.

g. Procedures provided within a licensed hospital, residential treatment facility, day hospital, or nursing home as part of an approved treatment plan and a psychologist is not employed by the facility.

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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 eligible patients 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 reimbursement for the care of these patients equal to the maximum allowable cost for the type of facility (or, for disproportionate share facilities, the rate paid pursuant to paragraph *"e"*) plus a $100 per day incentive factor. Facilities may continue to receive reimbursement at these rates 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.

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n. Depreciation, interest and other capital costs attributable to construction of new facilities, expanding existing facilities, or the purchase of an existing facility, are allowable expenses only if prior approval has been gained through the health planning process specified in rules of the public health department, 641—Chapter 201.

o. Reasonable legal fees are an allowable cost when directly related to patient care. Legal fees related to defense against threatened state license revocation or Medicaid decertification are allowable costs only up to the date a final appeal decision is issued. However, in no case will legal fees related to Medicaid decertification be allowable costs following the decertification date.

81.6(12) *Termination or change of owner.*

a. A participating facility contemplating termination of participation or negotiating a change of ownership shall provide the department of human services with at least 60 days' prior notice. A transfer of ownership or operation terminates the participation agreement. A new owner or operator shall establish that the facility meets the conditions for participation and enter into a new agreement. The person responsible for transfer of ownership or for termination is responsible for submission of a final financial and statistical report through the date of the transfer. No payment to the new owner will be made until formal notification is received. The following situations are defined as a transfer of ownership:

(1) In the case of a partnership which is a party to an agreement to participate in the medical assistance program, the removal, addition, or substitution of an individual for a partner in the association in the absence of an express statement to the contrary, dissolves the old partnership and creates a new partnership which is not a party to the previously executed agreement and a transfer of ownership has occurred.

(2) When a participating nursing facility is a sole proprietorship, a transfer of title and property to another party constitutes a change of ownership.

(3) When the facility is a corporation, neither a transfer of corporate stock nor a merger of one or more corporations with the participating corporation surviving is a transfer of ownership. A consolidation of two or more corporations resulting in the creation of a new corporate entity constitutes a change of ownership.

(4) When a participating facility is leased, a transfer of ownership is considered to have taken place. When the entire facility is leased, the total agreement with the lessor terminates. When only part of the facility is leased, the agreement remains in effect with respect to the unleased portion, but terminates with respect to the leased portion.

b. No increase in the value of property shall be allowed in determining the Medicaid rate for the new owner with any change of ownership (including lease agreements). When filing the first cost report, the new owner shall either continue the schedule of depreciation and interest established by the previous owner, or the new owner may choose to claim the actual rate of interest expense. The results of the actual rate of interest expense shall not be higher than would be allowed under the Medicare principles of reimbursement and shall be applied to the allowed depreciable value established by the previous owner, less any down payment made by the new owner.

c. Other acquisition costs of the new owner such as legal fees, accounting and administrative costs, travel costs and the costs of feasibility studies attributable to the negotiation or settlement of the sale or purchase of the property shall not be allowed.

d. In general, the provisions of Section 1861(v)(1)(0) of the Social Security Act regarding payment allowed under Medicare principles of reimbursement at the time of a change of ownership shall be followed, except that no return on equity or recapture of depreciation provisions shall be employed.

e. A new owner or lessee wishing to claim a new rate of interest expense must submit documentation which verifies the amount of down payment made, the actual rate of interest, and the number of years required for repayment with the next semiannual cost report. In the absence of the necessary supportive documentation, interest and other property costs for all facilities which have changed or will change ownership shall continue at the rate allowed the previous owner.

81.6(13) *Facility-requested rate adjustment.* A facility may request a rate adjustment for a period of time no more than 18 months prior to the facility's rate effective date. The request for adjustment shall be made to the department's accounting firm.

81.6(14) *Payment to new facility.* A new facility for which cost has not been established shall receive the prevailing maximum allowable cost ceiling. At the end of three months' operation, a financial and statistical report shall be submitted and the cost established. Subsequent reports shall be submitted from the beginning day of operation to the end of the fiscal year or six months' interim period, whichever comes first, and each six months thereafter.

81.6(15) *Payment to new owner.* An existing facility with a new owner shall continue with the previous owner's per diem rate until a new financial and statistical report has been submitted and a new rate established, not to exceed private pay charges. The facility may submit a report for the period from beginning of actual operation to the end of the fiscal year or may submit two cost reports within the fiscal year provided the second report covers a period of six months ending on the last day of the fiscal year. The facility shall notify the department's accounting firm of the date its fiscal year will end and of the reporting option selected.

81.6(16) *Establishment of ceiling and reimbursement rate.*

a. An inflation factor will be considered in determining the facility's prospective payment rate. The rate will be determined by using the change in the weighted average cost per diem of the compilation of various costs and statistical data as found in the two most recent reports of "unaudited compilation of various cost and statistical data." The percentage increase of this weighted average will be the basis for the next semiannual inflation factor. The inflation factor shall not exceed the amount by which the consumer price index for all urban consumers increased during the preceding calendar year ending December 31, on an annual basis.

b. An incentive factor shall be determined at the beginning of the state's fiscal year based upon the latest June 30 report of "unaudited compilation of various costs and statistical data." The incentive factor shall be equal to one-half the difference between the forty-sixth percentile of allowable costs and the seventy-fourth percentile of allowable costs. Notwithstanding the foregoing, under no circumstances shall the incentive factor be less than $1 per patient day or more than $1.75 per patient day.

c. For non-state-owned nursing facilities, the reimbursement rate shall be established by determining, on a per diem basis, the allowable cost plus the established inflation factor plus the established incentive factor, subject to the maximum allowable cost ceiling.

d. For non-state-owned nursing facilities, an additional factor in determining the reimbursement rate shall be arrived at by dividing total reported patient expenses by total patient days during the reporting period. Patient days for purposes of the computation of patient care service expenses shall be inpatient days as determined by subrule 81.6(7). Patient days for purposes of the computation of all other expenses shall be inpatient days as determined in subrule 81.6(7) or 80 percent of the licensed capacity of the facility, whichever is greater.

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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.

"Food instrument" means a voucher, check, coupon, electronic benefits transfer (EBT) card or any other document used to obtain supplemental foods.

"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.

"Peer group" means a system of grouping WIC vendors according to structure, type, and number of cash registers. Peer groups are used to establish statistical norms that an individual store may be compared against and provide the numeric baselines for the process of determining what may be fraudulent behavior.

"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 instruments 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 instruments. A WIC participant has 30 days from the date of issue in which to cash any WIC food instrument through a vendor. The food instrument becomes invalid after this time.

b. Claiming food instruments. Enrolled participants are required to appear in person to claim food instruments 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 food instruments 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 instrument. The WIC participant in using the WIC food instrument to obtain the specified foods shall:

(1) Sign each food instrument and WIC identification card at the time of receipt in the clinic.

(2) Present the WIC identification card to the vendor at point of purchase.

(3) Sign each food instrument 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 food instruments or portions of the food allotment.

(6) Attempt to redeem food instruments only with a WIC-contracted vendor.

73.8(2) *Responsibilities of contract agencies.*

a. Loss or theft of food instruments. The contract agency is responsible for any financial loss due to theft or other loss of food instruments 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 food instruments. Mailing of food instruments to participants is allowed when inclement weather prevents participants from coming to a distribution site. Any mailing of WIC food instruments on a clinicwide basis must have prior approval from the state.

c. Use of manual food instruments. Manually written food instruments shall be issued only when:

(1) Computer food instruments arrive damaged or mutilated, or are lost or stolen after being issued to participant.

(2) Computer food instruments 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 biennial securement of contracts shall be carried out in accord with department directives outlined in the WIC Policy and Procedure Manual.

e. Food instrument 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 food instruments 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 food instrument 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 food instrument. 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 4-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 fifteen 46-ounce containers of 100 percent fruit or vegetable juice and ten 12-ounce containers of concentrated 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 concentrated 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 pounds each of at least two different varieties of approved cheese in packages weighing one pound or less.

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. A minimum of six cans of any current rebate contract powdered formula.
10. A minimum of twenty-four 13-ounce cans of any current rebate contract concentrated formula.
11. A minimum of 24 ounces of WIC approved 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 peer group. 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 same peer group. Categories refer to the groupings of items identified in subparagraph (3), "1" to "11," above. For purposes of making the price comparisons, the average price for all other WIC vendors in the peer group 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 instruments prior to accepting any food instruments.

(9) The vendor must agree to adhere to all provisions of the WIC Vendor Instructions and Agreement 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 instruments.

(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 peer group.

(4) The vendor shall meet the criteria in paragraph *"a,"* subparagraphs (2), (5), (6), (7), and (8), for grocery vendors.

(5) The vendor must agree to adhere to all provisions of the WIC Vendor Instructions and Agreement 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 department or contract agency finds that the vendor has two or more types of out-of-date, stale, or moldy WIC foods in stock during the on-site visit, the vendor's application may be denied. 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 food instruments. Vendor agreements are valid only for the period of time specified, and a vendor may not continue accepting food instruments 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 been assessed less than 60 violation points under paragraph 73.19(2)*"b"* within the previous 24 months.

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 food instruments 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 food instruments. 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 food instruments. The WIC vendor shall be responsible for ensuring that:

(1) The participant signature required on the food instrument is completed in the vendor's presence;

(2) The participant presents a WIC identification card prior to redeeming food instruments. A signature on the WIC identification card must match the food instrument signature;

(3) The type and quantity of food to be purchased is as indicated on the food instrument;

(4) The amount of money written onto the food instrument for repayment does not exceed the maximum amount as designated by the department and printed on the food instrument;

(5) The expiration date is present on the food instrument and is equal to or no later than the date of usage;

(6) WIC food instruments are never exchanged for cash or credit;

(7) Substitutions of foods different from those listed on the food instrument in type or amount are not made;

(8) Food instruments 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 food instrument 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 currently authorized 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 food instrument or observation of a participant, educational buys, review of inventory levels, examination of redeemed WIC food instruments 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 food instrument 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 been identified as high-risk according to the Iowa WIC Policy and Procedure Manual. It includes, but is not limited to, any or all of the following: review of inventory levels, examination of redeemed WIC food instruments 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 attempted purchases 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 during the investigation. 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, or grated cheese is provided due to cost and possible confusion with imitation or processed cheese products. Approved single-strength juice shall be packaged in a 46-ounce container. Approved concentrated juice shall be packaged in 11.5- or 12-ounce containers.

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 six 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 biennially, taking effect on October 1 in years when new vendor contracts are signed. Inquiries from food companies about new and continuing products must be received prior to February 1 of the year vendor contracts expire 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 16 name-brand cold cereals, the top 3 varieties of private-label (store) brand cold cereals and the top 2 hot cereals that qualify are selected.

(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) Single-strength juice shall be packaged in a 46-ounce container. Concentrated juice shall be marketed in 11.5- or 12-ounce containers.

(3) The brand shall be carried by one of the six largest distributors in the state. Juices are ranked by the six major distributors to Iowa WIC vendors based on volume of total sales. The top two name brands of each flavor of juice (e.g., tomato, orange, grapefruit, grape, apple, or blended) and form of juice (single-strength or concentrated) that meet the selection criteria will be approved. Any private-label (store) brands from the six major distributors that meet the selection criteria will also be approved.

(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. Single-strength and concentrated 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) Concentrated 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 or string form (not shredded, sliced, or grated) and shall have no added flavors (e.g., smoke flavoring, peppers, wine).

(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.* The right to appeal shall be granted when a local agency's or a vendor's application to participate is denied. The right to appeal shall also be granted when, during the course of the contract or agreement period, a local agency or vendor is disqualified or any other action which affects participation is taken. 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. The right to appeal shall not be granted in the following circumstances:

a. When a vendor's contract expires.

b. When the department makes a determination regarding participant access.

c. When a vendor is disqualified from the WIC program as a result of a food stamp program disqualification.

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 food instrument for more than the possible value of the foods listed.	3
3. Not countersigning the food instrument at the time of purchase.	3
4. Attempting to cash food instruments after the last valid date.	4
5. Redeeming WIC food instruments at an unauthorized vendor.	4
6. Attempting to countersign a food instrument signed by spouse or proxy, or allowing a proxy to countersign a food instrument signed by the authorized person.	5
7. Attempting to cash food instruments that were countersigned prior to redemption at the vendor.	5
8. Redeeming WIC food instruments that were reported as lost or stolen.	5
9. Attempting to purchase more than the quantity of foods specified on the food instrument.	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 food instruments for cash or credit.	10
16. Altering a food instrument (e.g., changing last valid date, food item or quantity).	10
17. Attempting to redeem food instrument 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 food instruments from a contract agency or participant.	10
21. Physical abuse of WIC or vendor employees.	10
22. Attempting to pick up food instruments 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 food instruments 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 food instruments 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 food instruments 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 instruments. 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 food instruments for which payment is required. The participant is required to surrender any unspent food instruments and send payment to the department in check or money order for those food instruments 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 food instruments, issuance of violation points, and suspensions.

a. Nonpayment of food instruments.

(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 food instrument, missing signature, price exceeds maximum printed on face of food instrument.

(2) If the violation can be corrected by applying the authorized stamp, obtaining the proper signature, 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 food instrument 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 food instruments over 30 days old within the agreement period.	5
2. Redeeming five food instruments more than 15 days after receipt within the agreement period.	5
3. Accepting five food instruments with no date stamp within the agreement period.	5
4. Refusal to accept valid WIC food instruments 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 food instrument or provide reasonable explanation for the cost of the food instrument.	5
18. Accepting the return of food purchased with WIC food instruments 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 food instrument.	10
21. Issuing "rain checks" or credit in exchange for WIC food instruments.	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 food instrument 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 peer group.	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 participants 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 food instrument amount.	10
32.	Requiring other cash purchases to redeem WIC food instruments.	15
33.	Failure to allow purchase of up to the full amount of WIC foods authorized on the food instrument if such foods are available and desired by the WIC participant.	20

c. Suspensions. With an administrative finding of the following violations, the vendor will be suspended for one year.

1. Accumulation of 45 or more violation points within the first year or 90 or more violation points within a single agreement period.
2. Allowing purchase of nonapproved and nonsimilar food items in exchange for WIC food instruments.
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. Submitting for payment a WIC food instrument redeemed by another authorized vendor.
6. Threatening or verbally abusing WIC participants or authorized WIC program personnel in the conduct of legitimate WIC program transactions.

d. With an administrative finding of the following violations, the vendor will be suspended for three years.

1. A pattern of charging WIC participants more than non-WIC customers or charging WIC participants more than the current shelf price.
2. A pattern of charging for items not received by the WIC participant or for foods provided in excess of those listed on the WIC food instrument.
3. A pattern of providing credit or nonfood items, except for alcohol, alcoholic beverages, or tobacco products, in exchange for WIC food instruments.
4. One incidence of allowing the purchase of alcohol, alcoholic beverages, or tobacco products with a WIC food instrument.
5. A pattern of receiving, transacting, or redeeming WIC food instruments outside authorized channels, including through unauthorized vendors or persons.
6. A pattern of 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.
7. Submission for payment of WIC food instruments known by the vendor to have been lost or stolen.

e. With an administrative finding of the following violations, the vendor will be suspended for six years.

1. One incidence of buying or selling food instruments for cash (trafficking).
2. Participating 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 food instruments.

3. One incidence of 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 WIC food instruments.

f. With a conviction in a criminal court of law for trafficking in WIC 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 WIC food instruments, the vendor will be permanently disqualified from the Iowa WIC program. The department may impose a civil money penalty (CMP) in lieu of a disqualification when it determines, in its sole discretion, 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.

g. 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. For each month in which a vendor accepts WIC food instruments during a suspension period, the suspension period shall be extended by 30 days.

h. 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 food instruments, trading cash and other inappropriate commodities for food instruments, 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.

i. A vendor shall not be entitled to receive any compensation for revenues lost as a result of any suspension or permanent disqualification.

j. A minimum of 15 days' notice is provided prior to all suspensions, except for permanent disqualifications assessed under paragraph 73.19(2)*"f,"* which are effective on the date of receipt of the notice of administrative action. When the department determines that an offense has occurred, a suspension letter with supporting documentation is prepared for the WIC director's signature. The suspension letter identifies the specific offenses that the vendor is charged with and the procedures for filing an appeal.

k. 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).

l. Federal food stamp regulations require automatic disqualification from the food stamp program for vendors suspended by the WIC program for certain types of violations. When a vendor is suspended from the WIC program, the suspension letter to the vendor will include the following statement: "This disqualification from WIC may result in disqualification as a retailer in the food stamp program. Such disqualification may not be subject to administrative or judicial review under the food stamp program." For all vendor disqualifications from the WIC program, notice will be sent to the United States Department of Agriculture for appropriate action.

m. 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. If the department determines that disqualification of a vendor would result in inadequate participant access, it will impose a civil money penalty (CMP) in lieu of disqualification.

n. Civil money penalties.

(1) When the department determines that a civil money penalty (CMP) shall be imposed in lieu of disqualification for reasons specified under paragraph 73.19(2)*"f"* or 73.19(2)*"m,"* it shall use the civil money penalty formula in accordance with Title 7 CFR Subpart 246.12(k)(1)(x) to determine the CMP.

(2) If a vendor does not pay, only partially pays, or fails to timely pay a CMP, the department will disqualify the vendor for the length of the disqualification corresponding to the violation for which the CMP was assessed. "Failure to timely pay a CMP" includes the failure to pay a CMP in accordance with an installment plan approved by the department.

(3) 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 food instruments 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).

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*See IAB, Inspections and Appeals Department.
**Effective date delayed 70 days by the Administrative Rules Review Committee at its March 8, 1988, meeting.

7.33(3) Procedures for notifying the department of a change in taxpayer's address. The department generally will use the address on the most recent filed and properly processed return by tax type as the address of record for all notices of assessment and denial of claims for refund. If a taxpayer no longer wishes the address of record to be the address on the most recently filed return, the taxpayer must give clear and concise written notification of a change in address to the department. Notifications of a change in address should be addressed to: Changes in Name or Address, Iowa Department of Revenue and Finance, P.O. Box 10413, Des Moines, Iowa 50306.

If after a joint return or married filing separately on a combined return is filed either taxpayer establishes a separate residence, each taxpayer should send clear and concise written notification of a current address to the department.

If a department employee contacts a taxpayer in connection with the filing of a return or an adjustment to a taxpayer's return, the taxpayer may provide clear and concise written notification of a change of address to the department employee who initiated the contact.

A taxpayer should notify the U.S. Postal Service facility serving the taxpayer's old address of the taxpayer's new address in order that mail from the department can be forwarded to the new address. However, notification to the U.S. Postal Service does not constitute the clear and concise written notification that is required to change a taxpayer's address of record with the department.

This rule is intended to implement Iowa Code section 421.60.

701—7.34(421) Power of attorney. No attorney, accountant, or other representative will be recognized as representing any taxpayer in regard to any claim, appeal, or other matter relating to the tax liability of such taxpayer in any hearing before or conference with the department, or any member or agent thereof, unless there is first filed with the department a written authorization.

7.34(1) A power of attorney is required by the department when the taxpayer wishes to authorize an individual to perform one or more of the following acts on behalf of the taxpayer:

a. To receive copies of any notices or documents sent by the department, its representatives or its attorneys.

b. To receive, but not to endorse and collect, checks in payment of any refund of Iowa taxes, penalties, or interest.

c. To execute waivers (including offers of waivers) of restrictions on assessment or collection of deficiencies in tax and waivers of notice of disallowance of a claim for credit or refund.

d. To execute consents extending the statutory period for assessment or collection of taxes.

e. To fully represent the taxpayer(s) in any hearing, determination, final or otherwise, or appeal.

f. To enter into any compromise with the director of revenue and finance's office.

g. To execute any release from liability required by the department of revenue and finance prerequisite to divulging otherwise confidential information concerning taxpayer(s).

h. Other acts as stipulated by the taxpayer.

7.34(2) A power of attorney or any supplemental notification intended to be utilized as a power of attorney must contain the following information to be valid:

a. Name and address of the taxpayer;

b. Identification number of the taxpayer (i.e., social security number, federal identification number, or any state-issued tax identification number relative to matters covered by the power of attorney);

c. Name, mailing address, and PTIN (preparer's tax identification number), FEIN (federal employer identification number) or SSN (social security number) of the representative;

d. Description of the matter(s) for which representation is authorized which, if applicable, must include:

(1) The type of tax(es) involved;

(2) The specific year(s) or period(s) involved; and

(3) In estate matters, decedent's date of death; and

e. A clear expression of the taxpayer's intention concerning the scope of authority granted to the recognized representative(s) as provided in 7.34(1).

7.34(3) A power of attorney may not be used for tax periods that end more than three years after the date on which the power of attorney is received by the department. A power of attorney may concern an unlimited number of tax periods which have ended prior to the date on which the power of attorney is received by the department; however, each tax period must be separately stated.

7.34(4) The individual who must execute a power of attorney depends on the type of taxpayer involved as follows:

a. Individual taxpayer. In matters involving an individual taxpayer, a power of attorney must be signed by the individual.

b. Husband and wife. In matters involving a joint return or married taxpayers who have elected to file separately on a combined return in which both husband and wife are to be represented by the same representative(s), the power of attorney must be executed by both husband and wife.

In any matters concerning a joint return or married taxpayers who have elected to file separately on a combined return in which both husband and wife are not to be represented by the same representatives, the power of attorney must be executed by the spouse who is to be represented. However, the recognized representative of such spouse cannot perform any act with respect to a tax matter that the spouse represented cannot perform alone.

c. Corporation. In the case of a corporation, a power of attorney must be executed by an officer of the corporation having authority to legally bind the corporation, who must certify that the officer has such authority.

d. Association. In the case of an association, a power of attorney must be executed by an officer of the association having authority to legally bind the association, who must certify that the officer has such authority.

e. Partnership. In the case of a partnership, a power of attorney must be executed by all partners, or if executed in the name of the partnership, by the partner or partners duly authorized to act for the partnership, who must certify that the partner(s) has such authority.

7.34(5) A power of attorney is not needed for individuals who have been named as an authorized representative on a fiduciary return of income filed under Iowa Code section 422.14 or a tax return filed under Iowa Code chapter 450, 450A or 451.

7.34(6) A new power of attorney for a particular tax type(s) and tax period(s) revokes a prior power of attorney for that tax type(s) and tax period(s), unless the taxpayer has indicated on the power of attorney form that a prior power of attorney is to remain in effect. For a previously designated representative to remain as the taxpayer's representative when a subsequent power of attorney form is filed, a taxpayer must attach a copy of the previously submitted power of attorney form which designates the representative that the taxpayer wishes to retain. To revoke a designated power of attorney without appointing a new power of attorney, see 7.34(7).

EXAMPLE A. A taxpayer executes a power of attorney for the taxpayer's accountant to represent the taxpayer during an audit of the taxpayer's books and records. After the department issues a notice of assessment, the taxpayer wishes to have the taxpayer's attorney-at-law as an authorized representative in addition to the taxpayer's accountant. The taxpayer may use one of two options to designate the accountant and the attorney-at-law as the taxpayer's representatives: (1) the taxpayer may complete and submit to the department a new power of attorney, Form IA2848 or federal Form 2848, designating both the accountant and the attorney-at-law as the taxpayer's authorized representatives. By submitting a new power of attorney form, the prior power of attorney designations are revoked, leaving only the subsequent new power of attorney form effective; or (2) the taxpayer may properly complete a new power of attorney form by including the designated attorney-at-law's name, address, PTIN, FEIN or SSN, tax type(s) and tax period(s) on the first page and checking the appropriate box on page 2 of Form IA2848 or page 2 of federal Form 2848. In addition, to retain the accountant as the taxpayer's representative, the taxpayer must also attach to the new completed power of attorney form a copy of the previously submitted power of attorney form designating the accountant as the taxpayer's representative.

EXAMPLE B. Same factual scenario as in Example A applies; however, the taxpayer seeks to use power of attorney Form IA14-101 (a form that preceded the current Form IA2848). In this situation, the taxpayer must attach a statement to the completed Form IA14-101. The statement must state that the previously designated accountant is to be retained and the attorney-at-law is to be added. Such notification must also include the names, PTIN, SSN or FEIN of all the parties, addresses, tax types(s) and tax period(s) of representation.

EXAMPLE C. A taxpayer wishes to designate an additional power of attorney and retain a prior power of attorney. However, the taxpayer does not wish to utilize an IA2848 or federal 2848 form. In this situation, the taxpayer must send written notification to the department designating the new power of attorney's name, address, PTIN, SSN or FEIN, the tax type(s), the tax period(s) of representation and the name, address, and PTIN, SSN or FEIN of the previously designated power of attorney that the taxpayer seeks to retain for that tax period.

In each of the foregoing examples, the original power of attorney will continue to automatically receive the notices concerning the specified tax matter, unless such authority is explicitly revoked by the taxpayer. Also see subrule 7.34(13) regarding notices.

7.34(7) A taxpayer may revoke a power of attorney without authorizing a new representative by filing a statement of revocation with the department. The statement of revocation must indicate that the authority of the previous power of attorney is revoked and must be signed by the taxpayer. Also, the name and address of each representative whose authority is revoked must be listed (or a copy of the power of attorney must be attached).

7.34(8) A representative may withdraw from representation in a matter in which a power of attorney has been filed by filing a statement with the department. The statement must be signed by the representative and must identify the name and address of the taxpayer(s) and the matter(s) from which the representative is withdrawing.

7.34(9) A properly completed Iowa power of attorney, Form IA14-101 or IA2848, or properly designated federal form as described in this subrule, satisfies the requirements of this rule.

In addition to the Iowa power of attorney, Form IA2848 or IA14-101, the department can accept Internal Revenue Service Form 2848, if references to the "Internal Revenue Service" are crossed out and "Iowa Department of Revenue and Finance" is inserted in lieu thereof, as long as such a form contains specific designation by the taxpayer for the state-related taxes at issue. Designation must include, but is not limited to, name, address, PTIN, SSN or FEIN of the representative, the tax type(s) and tax period(s). In addition, the department will accept any other document which satisfies the requirements of this rule.

7.34(10) The department will not recognize as a valid power of attorney a power of attorney form attached to a tax return filed with the department except in the instance of a form attached to a fiduciary return of income form, inheritance tax return, generation skipping tax return, or estate tax return.

7.34(11) The department will accept either the original, an electronically scanned and transmitted power of attorney form, or a copy of a power of attorney. A copy of a power of attorney received by facsimile transmission (fax) will be accepted. All copies, facsimiles and electronically scanned and transmitted power of attorney forms must include a valid signature of the taxpayer to be represented.

7.34(12) If an individual desires to represent a taxpayer through correspondence with the department, the individual must submit a power of attorney even though no personal appearance is contemplated.

7.34(13) Any notice or other written communication (or copy thereof) required or permitted to be given to the taxpayer in any matter before the department must be given to the taxpayer and, unless restricted by the taxpayer, to the taxpayer's first designated power of attorney who is representing the taxpayer for the tax type(s) and tax period(s) contained in the notice. Due to limitations of the department's automated systems, it is the general practice of the department to limit distribution of copies of documents by the department to the taxpayer's first designated power of attorney. Determination of the first designated power of attorney will be based on the earliest execution date of the power of attorney and the first name designated on a power of attorney form listing more than one designated representative.

7.34(14) Information from power of attorney forms, including the representative's PTIN, SSN or FEIN, is utilized by department personnel to:

a. Determine whether a representative is authorized to receive or inspect confidential tax information;

b. Determine whether the representative is authorized to perform the acts set forth in subrule 7.34(1);

c. Send copies of computer-generated notices and communications to the representative as authorized by the taxpayer; and

d. Ensure that the taxpayer's representative receives all notices and communications authorized by the taxpayer, but notices and communications are not sent to a representative with the same or similar name.

7.34(15) Procedure for waiver. Any person who believes that the application of this rule would result in hardship or injustice to that person may petition the department for a waiver in the manner set out in Section II of the governor's Executive Order Number 11, issued September 13, 1999, until superceded by a uniform departmental waiver rule.

This rule is intended to implement Iowa Code section 421.60.

701—7.35(421) Taxpayer designation of tax type and period to which voluntary payments are to be applied.

7.35(1) A taxpayer may designate in separate written instructions accompanying the payment the type of tax and tax periods to which any voluntary payment is to be applied. The taxpayer may not designate the application of payments which are the result of enforced collection.

7.35(2) Enforced collection includes, but is not limited to garnishment of wages, bank accounts, or payments due the taxpayer, or seizure of assets.

This rule is intended to implement Iowa Code section 421.60.

DIVISION II
INFORMAL, FORMAL, ADMINISTRATIVE AND JUDICIAL REVIEW PROCEDURES
APPLICABLE TO CONTESTED CASES AND OTHER PROCEEDINGS
COMMENCED ON OR AFTER JULY 1, 1999

701—7.36(421,17A) Applicability and scope of rules. Effective July 1, 1999, the rules contained in this division pertain to practice and procedure and are designed to implement the requirements of the Act, and aid in the effective and efficient administration and enforcement of the tax laws of this state and other activities of the department. These rules shall govern the practice, procedure and conduct of the informal proceedings, contested case proceedings, licensing, rule making, and declaratory orders involving taxation and other areas within the department's jurisdiction which includes the following:

1. Sales tax—Iowa Code sections 422.42 to 422.59;
2. Use tax—Iowa Code chapter 423;
3. Individual and fiduciary income tax—Iowa Code sections 422.4 to 422.31 and 422.110 to 422.112;
4. Franchise tax—Iowa Code sections 422.60 to 422.66;
5. Corporate income tax—Iowa Code sections 422.32 to 422.41 and 422.110 to 422.112;
6. Withholding tax—Iowa Code sections 422.16 and 422.17;
7. Estimated tax—Iowa Code sections 422.16, 422.17 and 422.85 to 422.92;
8. Motor fuel tax—Iowa Code chapter 452A;
9. Property tax—Iowa Code chapters 421, 425, 426A, 427, 427A, 428, 428A and 433 to 441;
10. Cigarette and tobacco tax—Iowa Code chapters 421B and 453A;
11. Inheritance, generation skipping transfer, and estate tax—Iowa Code chapters 450, 450A, 450B and 451;
12. Local option taxes—Iowa Code chapter 422B;
13. Hotel and motel tax—Iowa Code chapter 422A;
14. Drug excise tax—Iowa Code chapter 453B;
15. Automobile rental excise tax—Iowa Code chapter 422C;
16. Environmental protection charge—Iowa Code chapter 424;
17. Replacement taxes—Iowa Code chapter 437A;
18. Statewide property tax—Iowa Code chapter 437A;
19. Set-off procedures—Iowa Code section 421.17(29);
20. Other taxes and activities as may be assigned to the department from time to time; and
21. The Taxpayer's Bill of Rights—Iowa Code section 421.60.

As the purpose of these rules is to facilitate business and advance justice, any rule contained herein, pursuant to statutory authority, may be suspended or waived by the department to prevent undue hardship in any particular instance or to prevent surprise or injustice.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

X.14(17A) Filing of rules;
X.15(17A) Effectiveness of rules prior to publication;
X.16(17A) General statement of policy; and
X.17(17A) Review by agency of rules.

7.57(2) The department hereby states that the following cited Uniform Rules on Agency Procedure for Rule Making are not adopted by the department:
X.1(17A) Applicability;
X.3(17A) Public rule-making docket;
X.4(2) Notice of proposed rule making—incorporated by reference;
X.12(2) Contents, style, and form of rule—incorporation by reference;
X.12(3) Contents, style and form of rule—references to materials not published in full; and
X.13(17A) Agency rule-making record.

701—7.58(17A) Public inquiries on rule making and the rule-making records. The department maintains records of information obtained and all actions taken and criticisms received regarding any rule within the past five years. The department also keeps a record of the status of every rule within the rule-making procedure. Inquiries concerning the status of rule making may be made by contacting the Administrator of the Compliance Division, Department of Revenue and Finance, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319. For additional information regarding criticism of rules see 701—7.59(17A).

701—7.59(17A) Criticism of rules. The Administrator of the Compliance Division, Department of Revenue and Finance, Hoover State Office Building, Fourth Floor, Des Moines, Iowa 50319, is designated as the office where interested persons may submit by electronic means or by mail criticisms, requests for waivers, or comments regarding a rule. A criticism of a specific rule must be more than a mere lack of understanding of a rule or a dislike regarding the rule. To constitute a criticism of a rule, the criticism must be in writing, indicate it is a criticism of a specific rule, and have a valid legal basis for support. All requests for waivers, comments, or criticisms received on any rule will be kept in a separate record for a period of five years by the department.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 421.60.

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604.12(2) *License.*

a. The department shall affix a sticker to the applicant's license stating: "Renewal or license issuance denied due to vision."

b. If the applicant's license is valid for less than 30 days, the department may issue a temporary driving permit with restrictions appropriate to the applicant's visual acuity level and field of vision. The temporary driving permit is valid for not more than 30 days from the end of the current license validity.

604.12(3) *Report.* If the vision report recommends a restriction, the department shall issue a restricted license even though it would not be required by departmental standards.

604.12(4) *Applicant refusal.* If an applicant refuses to consult a licensed vision specialist, the department shall issue or deny the license based on the results achieved on the vision screening.

This rule is intended to implement Iowa Code sections 321.181, 321.186, 321.186A, 321.193 and 321.196.

761—604.13(321) Vision screening results.

604.13(1) *Two-year license.* An applicant who cannot attain a visual acuity of 20/40 with both eyes or with the better eye shall be issued a two-year license. This restriction may be waived by the department when a vision report pursuant to subrule 604.10(3) certifies that the vision has stabilized and is not expected to deteriorate.

604.13(2) *License denied.*

a. An applicant who cannot attain a visual acuity of 20/70 with both eyes or with the better eye shall not be licensed, subject to discretionary issuance under subrule 604.13(4).

b. If the applicant's binocular field of vision (sum of temporal measurements) is less than 115 degrees, or if neither eye has a monocular field of vision of at least 70 degrees temporal and 45 degrees nasal, the applicant shall not be licensed, subject to discretionary issuance under subrule 604.13(4).

604.13(3) *Reapplication.* An applicant who cannot meet the vision standards in subrule 604.13(2) may reapply when the vision improves and meets the vision standards. If a suspension or denial notice was served, reapplication must be made to the office of driver services at the address in 761—600.2(17A), and not at a driver's license examination station.

604.13(4) *Discretionary issuance.*

a. An applicant whose license is restricted under rule 761—604.11(321) or who cannot meet the vision standards in subrule 604.13(2) may submit a written request for review by an informal settlement officer.

b. Based upon consideration of the applicant's vision screening results or vision report, driving test and driving record, the written recommendation of the applicant's licensed vision specialist, and traffic conditions in the vicinity of the applicant's residence, the officer may recommend issuing a license with restrictions suitable to the applicant's capabilities. However:

(1) An applicant who cannot attain a visual acuity of 20/100 with both eyes or with the better eye may be considered for licensing only after recommendation by the medical advisory board.

(2) An applicant who cannot attain a visual acuity of 20/200 with both eyes or with the better eye shall not be licensed.

(3) If an applicant's binocular field of vision (sum of temporal measurements) is less than 95 degrees, or if neither eye has a monocular field of vision of at least 60 degrees temporal and 35 degrees nasal, the applicant may be considered for licensing only after recommendation by the medical advisory board.

c. The officer's recommendation denying discretionary issuance or regarding the extent and nature of restrictions is subject to reversal or modification upon review or appeal only if it is clearly characterized by an abuse of discretion.

This rule is intended to implement Iowa Code sections 321.186, 321.186A, 321.193 and 321.196.

761—604.14 to **604.19** Reserved.

761—604.20(321) Knowledge test.

604.20(1) *Written test.* A knowledge test is a written test to determine an applicant's ability to read and understand Iowa traffic laws and the highway signs that regulate, warn, and direct traffic. A test may be revised at any time but each test states the minimum passing score.

604.20(2) *Three types of tests.* There are three types of knowledge tests: an operator's test, a chauffeur's test, and a motorcycle test. The requirement for a license depends upon the class of license desired, applicable endorsements, and the qualifications of the applicant.

604.20(3) *Oral test.* An applicant who is unable to read or understand a written test may request an oral test. The oral test may be administered by an examiner or by an automated testing device.

604.20(4) *Waiver.* Rescinded IAB 1/8/92, effective 2/12/92.

This rule is intended to implement Iowa Code section 321.186.

761—604.21(321) Knowledge test requirements and waivers.

604.21(1) *Knowledge test requirements.* The knowledge test requirements are as follows:

a. *Operator's test.* An operator's knowledge test is required for all classes of licenses and all types of special licenses and permits.

b. *Motorcycle test.* A motorcycle knowledge test is required for:

(1) Motorcycle instruction permits.

(2) All Class M licenses.

c. *Chauffeur's test.* A chauffeur's knowledge test is required for:

(1) Chauffeur's instruction permits.

(2) Class D licenses except those with an endorsement for "passenger vehicle less than 16-passenger design."

604.21(2) *Knowledge test waivers.* The department may waive a knowledge test listed in subrule 604.21(1) if:

a. The applicant has passed the same test for another Iowa license that is still valid or has expired within the past 60 days.

b. The applicant has a military extension and is renewing a noncommercial Class C or Class M Iowa license or the equivalent within six months following separation from active duty.

This rule is intended to implement Iowa Code sections 321.180, 321.180A, 321.186, 321.189, 321.196 and 321.198.

761—604.22(321) Knowledge test results.

604.22(1) *Proof of Passing score.* When necessary, the department shall give the applicant a form, valid for 90 days, which certifies that the applicant has passed the knowledge test.

604.22(2) *Retesting.* An applicant who fails a knowledge test may repeat the test at the discretion of the examiner, but at least two hours shall elapse between tests.

This rule is intended to implement Iowa Code section 321.186.

761—604.23 to **604.29** Reserved.

b. After the three unsuccessful attempts, no further testing shall be allowed until six months have elapsed from the date of the last test failure, and then only if the applicant demonstrates a significant change or improvement in those physical or mental factors that resulted in the original decision. A request for further testing must be submitted in writing to the office of driver services at the address in rule 761—600.2(17A).

c. Notwithstanding paragraphs *"a"* and *"b"* of this subrule, no testing shall occur if the director determines that it is unsafe to allow testing.

This rule is intended to implement Iowa Code chapter 17A and sections 321.177, 321.180A and 321.210.

761—604.41 to **604.44** Reserved.

761—604.45(321) Reinstatement. A person whose license has been suspended or denied for failure to pass a required examination or reexamination shall meet the vision standards for licensing, pass the required knowledge examination(s), and pass the required driving test(s) before an Iowa license will be issued.

This rule is intended to implement Iowa Code sections 321.177 and 321.186.

761—604.46 to **604.49** Reserved.

761—604.50(321) Special reexaminations. The department may require a special reexamination consisting of a vision screening, knowledge test and driving test of any licensee.

604.50(1) The department may require a special reexamination when a licensee has been involved in a fatal motor vehicle accident and the investigating officer's report of the accident indicates the licensee contributed to the accident.

604.50(2) The department may require a special reexamination when a licensee has been involved in two accidents within a three-year period and the investigating officer's report of each accident lists one of the following "Driver/Vehicle Related Contributing Circumstances" for the licensee:

a. Ran traffic signal.
b. Ran stop sign.
c. Passing, interfered with other vehicle.
d. Left of center, not passing.
e. Failure to yield right-of-way at uncontrolled intersection.
f. Failure to yield right-of-way from stop sign.
g. Failure to yield right-of-way from yield sign.
h. Failure to yield right-of-way making left turn.
i. Failure to yield right-of-way to pedestrian.
j. Failure to have control.

604.50(3) The department may require a special reexamination when a licensee has been involved in two accidents within a three-year period and the investigating officers' reports for both accidents list a driver condition for the licensee of "apparently asleep."

604.50(4) The department may require a special reexamination when a licensee who is 65 years of age or older has been involved in an accident and information in the investigating officer's or the person's own report of the accident indicates the need for reexamination. A circumstance that may indicate a need for reexamination includes, but is not limited to, any one of the following:

a. The licensee made a left turn that resulted in the accident.
b. The licensee failed to yield the right-of-way at a stop sign.

c. The licensee failed to yield the right-of-way at a yield sign.

d. The licensee failed to yield the right-of-way at an uncontrolled intersection.

e. The licensee failed to yield the right-of-way at a traffic control signal.

f. The licensee's vision may be a contributing factor to a nighttime accident.

g. The licensee has a physical disability-related license restriction other than "corrective lenses" and the accident involved one of the circumstances listed in paragraphs *"a"* to *"f"* above.

604.50(5) The department may require a special reexamination when recommended by a peace officer, a court, or a properly documented citizen's request. A factor that may indicate a need for reexamination includes, but is not limited to, any one of the following:

a. Loss of consciousness.

b. Confusion, disorientation or dementia.

c. Inability to maintain a vehicle in the proper lane.

d. Repeatedly ignoring traffic control devices in a nonchase setting.

e. Inability to interact safely with other vehicles.

f. Inability to maintain consistent speed when no reaction to other vehicles or pedestrians is required.

This rule is intended to implement Iowa Code sections 321.177, 321.186 and 321.210.

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