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KATHLEEN K. BATES
ADMINISTRATIVE CODE EDITOR

STEPHANIE A. HOFF
ASSISTANT EDITOR

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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

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IOWA ADMINISTRATIVE CODE

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Editor's telephone: (515)281-3355 or (515)281-8157
Fax: (515)281-4424

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21—64.96(163) Reactors—removal. All cattle which react to the tuberculin test and for which the owner desires indemnity, as provided by statute, must be removed immediately from the cattle barn, lots and pastures where other cattle are being kept.

64.96(1) The barn or place where reacting cattle have been housed or kept shall be thoroughly cleaned and disinfected immediately.

64.96(2) Feed places and floors must be cleared of all hay and manure and scraped clean.

64.96(3) All loose boards and decayed woodwork should be removed, and when deemed necessary, and requested by the veterinarian, must be accomplished before it will be considered that the place has been properly cleaned and disinfected.

64.96(4) The feeding places, troughs, floors and partitions near the floor should be washed and scoured with hot water and lye.

This rule is intended to implement Iowa Code section 163.1.

21—64.97(163) Certificate. Strict compliance with these methods and rules shall entitle the owner of tuberculosis-free herds to a certificate, "TUBERCULOSIS-FREE ACCREDITED HERD", to be issued by the United States Department of Agriculture, bureau of animal industry and the division of animal industry, Iowa department of agriculture and land stewardship. Said certificate shall be good for one year from date of test unless revoked at an earlier date.

This rule is intended to implement Iowa Code section 165.12.

21—64.98(163) Violation of certificate. Failure on the part of the owners to comply with the letter or spirit of these methods and rules shall be considered sufficient cause for immediate cancellation of the cooperative agreement with them by the state and federal officials.

This rule is intended to implement Iowa Code section 165.12.

21—64.99(163) Tuberculin—administration. In accordance with the provisions of Iowa Code chapter 165, the Iowa department of agriculture and land stewardship shall have control of the sale, distribution and use of all tuberculin used in the state and shall formulate regulations for its distribution and use. Only such persons as are authorized by the department, inspectors of the B.A.I. and regularly licensed practicing veterinary surgeons of the state of Iowa shall be entitled to administer tuberculin to any animal included within the meaning of this chapter.

This rule is intended to implement Iowa Code section 165.13.

21—64.100(163) Sale of tuberculin. No person, firm or corporation shall sell or distribute tuberculin to any person or persons in the state of Iowa except under the following conditions:

64.100(1) That the person or persons are legally authorized to administer tuberculin.

64.100(2) That all sales of tuberculin shall be reported to the secretary of agriculture on proper forms, which forms may be obtained from the chief, division of animal industry.

64.100(3) Reports of all sales and distribution of tuberculin in the state of Iowa shall be made in triplicate; the original copy to be delivered with the tuberculin to the person obtaining same; the duplicate to be forwarded to the Chief, Division of Animal Industry, Des Moines, Iowa 50319; and the triplicate copy to be retained by the manufacturer or distributor. All reports shall be made within 60 days from date of sale.

This rule is intended to implement Iowa Code section 165.12.

21—64.101(165) Fee schedule.

64.101(1) *Injection.* Ten dollars per stop (herd) and one dollar twenty-five cents per head.

64.101(2) *Reading.* Ten dollars per stop (herd) and one dollar per head.

64.101(3) *Tagging and branding reactors.* Five dollars first reactor and three dollars each additional reactor.

This rule is intended to implement Iowa Code section 165.17.

21—64.102 and **64.103** Reserved.

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CHRONIC WASTING DISEASE (CWD)

21—64.104(163) Definitions. Definitions used in rules 64.104(163) through 64.120(163) are as follows:

"Accredited veterinarian" means a veterinarian approved by the deputy administrator of veterinary services, Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), and the state veterinarian in accordance with Part 161 of Title 9, Chapter 1 of the Code of Federal Regulations, revised as of January 1, 2000, to perform functions required by cooperative state/federal animal disease control and eradication programs.

"Adjacent herd" means one of the following:

1. A herd of Cervidae occupying premises that border an affected herd, including herds separated by roads or streams.
2. A herd of Cervidae occupying premises that were previously occupied by an affected herd within the past four years as determined by the designated epidemiologist.

"Affected cervid herd" means a cervid herd from which any animal has been diagnosed as affected with CWD and which has not been in compliance with the control program for CWD as described in rules 64.104(163) through 64.120(163).

"Approved laboratory" means an American Association of Veterinary Laboratory Diagnosticians (AAVLD) accredited laboratory or the National Veterinary Services Laboratory, Ames, Iowa.

"Certificate" means an official document, issued by a state veterinarian or federal animal health official or an accredited veterinarian at the point of origin, containing information on the individual identification of each animal being moved, the number of animals, the purpose of the movement, the points of origin and destination, the consignor, the consignee, and any other information required by the state veterinarian.

"Certified CWD cervid herd" means a herd of Cervidae that has met the qualifications for and has been issued a certified CWD cervid herd certificate signed by the state veterinarian.

"Cervidae" means elk, red deer, fallow deer, sika deer and related species and hybrids of these species.

"Cervid CWD surveillance identification program" or *"CCWDSI program"* means a CWD surveillance program that requires identification and laboratory diagnosis on all deaths of Cervidae over 18 months of age including, but not limited to, deaths by slaughter, hunting, illness, and injury. A copy of approved laboratory reports shall be maintained by the owner for purposes of completion of the annual inventory examination for recertification. Such diagnosis shall include examination of brain and any other tissue as directed by the state veterinarian. If there are deaths for which tissues were not submitted for laboratory diagnosis due to postmortem changes or unavailability, the department shall determine compliance.

"Cervid dealer" means any person who engages in the business of buying, selling, trading, or negotiating the transfer of Cervidae, but not a person who purchases Cervidae exclusively for slaughter on the person's own premises or buys and sells as part of a normal livestock production operation.

"Cervid herd" means a group of Cervidae or one or more groups of Cervidae maintained on common ground or under common ownership or supervision that are geographically separated but can have interchange or movement.

"Cervid herd of origin" means a cervid herd, or any farm or other premises, where the animals were born or where they currently reside.

"Chronic wasting disease" or *"CWD"* means a transmissible spongiform encephalopathy of cervids.

"CWD affected" means a designation applied to Cervidae diagnosed as affected with CWD based on laboratory results, clinical signs, or epidemiologic investigation.

"CWD exposed" or *"exposed"* means a designation applied to Cervidae that are either part of an affected herd or for which epidemiological investigation indicates contact with CWD affected animals or contact with animals from a CWD affected herd in the past four years.

"CWD suspect" means a designation applied to Cervidae for which laboratory evidence or clinical signs suggest a diagnosis of CWD but for which laboratory results are inconclusive.

"Designated epidemiologist" means a veterinarian who has demonstrated the knowledge and ability to perform the functions required under these rules and who has been selected by the state veterinarian.

"Group" means one or more Cervidae.

"Individual herd plan" means a written herd management and testing plan that is designed by the herd owner, the owner's veterinarian, if requested, and a designated epidemiologist to identify and eradicate CWD from an affected, exposed, or adjacent herd.

"Monitored CWD cervid herd" means a herd of Cervidae that is in compliance with the CCWDSI program as defined in this rule. Monitored herds are defined as one-year, two-year, three-year, and four-year monitored herds in accordance with the time in years such herds have been in compliance with the CCWDSI program.

"Official cervid CWD test" means an approved test to diagnose CWD conducted at an official laboratory.

"Official cervid identification" means a USDA-approved identification ear tag that conforms to the alphanumeric national uniform ear tagging system as defined in 9 CFR Part 71.1, Chapter 1, revised as of January 1, 2000.

"Permit" means an official document that is issued by the state veterinarian or USDA area veterinarian-in-charge or an accredited veterinarian for movement of affected, suspect, or exposed animals.

"Quarantine" means an imposed restriction prohibiting movement of cervids to any location without specific written permits.

"State" means any state of the United States; the District of Columbia; Puerto Rico; the U.S. Virgin Islands; or Guam.

"Traceback" means the process of identifying the herd or origin of CCWDSI positive animals, including herds that were sold for slaughter.

21—64.105(163) Supervision of the Cervidae CWD program. The state veterinarian's office will conduct an annual inventory of Cervidae in a herd enrolled in the CCWDSI program.

21—64.106(163) Surveillance procedures. For cervid herds enrolled in this voluntary certification program, surveillance procedures shall include the following:

64.106(1) *Slaughter establishments.* All slaughtered Cervidae over 18 months of age must have brain tissue submitted at slaughter and examined for CWD by an approved laboratory. This brain tissue sample will be obtained by a state or federal meat inspector or accredited veterinarian on the premises at the time of slaughter.

64.106(2) *Cervid herds.* All cervid herds must be under continuous surveillance for CWD as defined in the CCWDSI program.

21—64.107(163) Official cervid tests. The following are recognized as official cervid tests for CWD:

1. Histopathology.
2. Immunohistochemistry.
3. Western blot.
4. Negative stain electron microscopy.
5. Bioassay.
6. Any other tests performed by an official laboratory to confirm a diagnosis of CWD.

21—64.108(163) Investigation of CWD affected animals identified through surveillance. Traceback must be performed for all animals diagnosed at an approved laboratory as affected with CWD.

All herds of origin and all adjacent herds having contact with affected animals as determined by the CCWDSI program must be investigated epidemiologically. All herds of origin, adjacent herds, and herds having contact with affected animals or exposed animals must be quarantined.

21—64.109(163) Duration of quarantine. Quarantines placed in accordance with these rules shall be removed as follows:

1. For herds of origin, quarantines shall be removed after four years of compliance with rules 64.104(163) through 64.120(163).
2. For herds having contact with affected or exposed animals, quarantines shall be removed after four years of compliance with rules 64.104(163) through 64.120(163).
3. For adjacent herds, quarantines shall be removed as directed by the state veterinarian in consultation with the epidemiologist.

21—64.110(163) Herd plan. The herd owner, the owner's veterinarian, if requested, and the epidemiologist shall develop a plan for eradicating CWD in each affected herd. The plan must be designed to reduce and then eliminate CWD from the herd, to prevent spread of the disease to other herds, and to prevent reintroduction of CWD after the herd becomes a certified CWD cervid herd. The herd plan must be developed and signed within 60 days after the determination that the herd is affected.

The plan must address herd management and adhere to rules 64.104(163) through 64.120(163). The plan must be formalized as a memorandum of agreement between the owner and program officials, must be approved by the state veterinarian, and must include plans to obtain certified CWD cervid herd status.

21—64.111(163) Identification and disposal requirements. Affected and exposed animals must remain on the premises where they are found until they are identified and disposed of in accordance with direction from the state veterinarian.

21—64.112(163) Cleaning and disinfecting. Premises must be cleaned and disinfected under state supervision within 15 days after affected animals have been removed.

21—64.113(163) Methods for obtaining certified CWD cervid herd status. Certified CWD cervid herd status must include all Cervidae under common ownership. They cannot be commingled with other cervids that are not certified, and a minimum geographic separation of 30 feet between herds of different status must be maintained in accordance with the USDA Uniform Methods and Rules as defined in APHIS manual 91-45-011, revised as of January 22, 1999. A herd may qualify for status as a certified CWD cervid herd by one of the following means:

64.113(1) Purchasing a certified CWD cervid herd. Upon request and with proof of purchase, the department shall issue a new certificate in the new owner's name. The anniversary date and herd status for the purchased animals shall be the same as for the herd to which the animals are added; or if part or all of the purchased herd is moved directly to premises that have no other Cervidae, the herd may retain the certified CWD status of the herd of origin. The anniversary date of the new herd is the date of the most recent herd certification status certificate.

64.113(2) Upon request and with proof by records, a herd owner shall be issued a certified CWD cervid herd certificate by complying with the CCWDSI program for a period of four years.

21—64.114(163) Recertification of CWD cervid herds. A herd is certified for 12 months. Annual inventories conducted by state veterinarians are required every 9 to 15 months from the anniversary date. For continuous certification, adherence to the provisions in these rules and all other state laws and rules pertaining to raising cervids is required. A herd's certification status is immediately terminated and a herd investigation shall be initiated if CWD affected or exposed animals are determined to originate from that herd.

21—64.115(163) Movement into a certified CWD cervid herd.

64.115(1) Animals originating from certified CWD cervid herds may move into another certified CWD cervid herd.

64.115(2) Animals originating from noncertified herds that are moving into certified CWD cervid herds cannot be certified until they remain in the certified CWD cervid herd for four years.

64.115(3) Animals originating from CWD monitored herds cannot be certified until a combination of the years in CWD monitored status and the years present in the certified CWD herd totals four years.

21—64.116(163) Movement into a monitored CWD cervid herd.

64.116(1) Animals originating from a monitored CWD cervid herd may move into another monitored CWD cervid herd of the same status.

64.116(2) Animals originating from a herd which is not a monitored CWD cervid herd or from a lower status monitored CWD cervid herd will progress annually in status level on an individual animal basis until completion of CWD certification.

21—64.117(163) Recognition of monitored CWD herds. The state veterinarian shall issue a monitored CWD cervid herd certificate, including CWD monitored herd status as CWD monitored Level A during the first calendar year, CWD monitored Level B during the second calendar year, CWD monitored Level C during the third calendar year, CWD monitored Level D during the fourth calendar year, and CWD certification at the fifth year and thereafter.

21—64.118(163) Recognition of certified CWD cervid herds. The state veterinarian shall issue a certified CWD cervid herd certificate when the herd first qualifies for recertification. The state veterinarian shall issue a renewal form annually.

21—64.119(163) Intrastate movement requirements.

64.119(1) All intrastate movements of Cervidae other than to a state or federally inspected slaughter establishment shall be accompanied by an intrastate movement certificate of veterinary inspection signed by a licensed, accredited veterinarian.

64.119(2) Such intrastate movement certificate shall include all of the following:

a. Consignor's name and address.

b. Consignee's name and address.

c. Individual identification of each animal by an official ear tag.

d. The following statement: "There has been no diagnosis, signs, or epidemiologic evidence of CWD in this herd for the past year."

21—64.120(163) Import requirements.

64.120(1) All Cervidae entering Iowa must be accompanied by all of the following:

a. An official certificate of veterinary inspection.

b. A permit number requested by the licensed, accredited veterinarian signing the certificate and issued by the state veterinarian prior to movement.

c. One of the following statements must appear on the certificate:

"All Cervidae on this certificate have been part of the herd of origin for at least one year or were natural additions to this herd. There has been no diagnosis, signs, or epidemiologic evidence of CWD in this herd for the past year"; or

"All Cervidae on this certificate originate from a CWD monitored or certified herd in which these animals have been kept for at least one year or were natural additions. There has been no diagnosis, signs, or epidemiologic evidence of CWD in this herd for the past year."

64.120(2) If the Cervidae listed on the certificate are enrolled in a CWD program, the anniversary date and program status for each individual animal must be listed.

21—64.121 to **64.132** Reserved.

[Filed 8/18/00, Notice 7/12/00—published 9/6/00, effective 10/11/00]

ERADICATION OF SWINE TUBERCULOSIS

21—64.133(159) Indemnity. Indemnity may be paid for losses incurred by slaughtering establishments in the event native Iowa swine purchased by the establishments for immediate slaughter are determined to have tuberculosis by the official meat inspector at the establishment, subject to laboratory confirmation at the discretion of the department by any laboratory procedure acceptable to the department. Indemnity will be paid by the county of origin of the swine provided that swine shall be identified to the farm of origin located in that county. If no identification can be established on swine no indemnity may be paid.

If the county bovine tuberculosis eradication funds are insufficient, the claim may be filed and may be paid in subsequent years.

Indemnity will be paid to the producer of swine only after proof of cleaning and disinfecting of premises has been established.

If a herd of swine is tested for tuberculosis at program expense authorization must be given by an official of the Iowa department of agriculture and land stewardship.

This rule is intended to implement Iowa Code sections 159.5 and 163.15.

21—64.134(159) Fee schedule.

64.134(1) *Injection.* Ten dollars per stop (herd) and one dollar per head.

64.134(2) *Reading.* Ten dollars per stop (herd) and seventy-five cents per head.

64.134(3) *Tagging.* Five dollars for first reactor and one dollar for each additional reactor.

This rule is intended to implement Iowa Code section 159.5(13).

21—64.135 to **64.146** Reserved.

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PSEUDORABIES DISEASE

21—64.147(163,166D) Definitions. As used in these rules:

"All-in-all-out" means a management system whereby feeder swine are handled in groups kept "separate and apart" from other groups in a production facility. These groups are removed from the production facility with the completely vacated area being cleaned and sanitized prior to the introduction of another group.

"Aujeszky's disease," commonly known as pseudorabies, means the disease wherein an animal is infected with Aujeszky's disease virus, irrespective of the occurrence or absence of clinical symptoms.

"Breeding swine" means boars, sows and gilts used, or intended for use, exclusively for reproductive purposes.

"Department" means the Iowa department of agriculture and land stewardship.

"Exigent circumstances" means an extraordinary situation that the secretary concludes will impose an unjust and undue economic hardship if coupled with the imposition of these rules.

"Fertility center" means a premises where breeding swine are maintained for the purposes of the collection of semen, ovum, or other germplasm and for the distribution of semen, ovum, or other germplasm to other swine herds.

21—64.163(166D) Nondifferentiable pseudorabies vaccine disapproved. Transferred and amended, see 21—64.152(163,166D), IAB 8/19/92.

These rules are intended to implement Iowa Code chapters 163 and 166D.

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CHAPTER 66
LIVESTOCK MOVEMENT

[Appeared as Ch 2, 1973 IDR]
[Prior to 7/27/88, see Agriculture Department 30—Ch 18]

21—66.1(163) Definitions and permits.

66.1(1) *Definition.* As used in this chapter, the following term is defined to have the following meaning:

"Livestock" means cattle, horses, sheep, goats, swine (other than feeder swine), or any other animals of the bovine, equine, ovine, caprine or porcine species. "Livestock" also includes all species of deer, elk, and moose raised under confinement or agricultural conditions for the production of meat, the production of other agricultural products, sport, or exhibition.

66.1(2) *Livestock dealer permit required.* Any person engaged in the business of buying, selling or assembling livestock by consignment for the purpose of resale, either interstate or intrastate, shall first obtain a permit from the department to conduct business. However, a person is not required to be licensed as a livestock dealer if either of the following applies:

a. The person is licensed as an agent for a packer operating under Iowa Code chapter 172A, the person only buys for the packer, and the livestock move directly to slaughter; or

b. The person is licensed as a feeder pig dealer under Iowa Code section 163.30 and does not sell livestock other than feeder pigs.

A separate permit must be obtained for each separate location even though operated under the same management or person.

66.1(3) *Livestock dealer's agent permit required.* An individual working for a person holding a permit required by subrule 66.1(2) shall obtain, in lieu of a livestock dealer permit, a permit as a livestock dealer's agent. A person shall not act as an agent for more than one dealer at the same time. A person shall not act as an agent for a dealer and also hold a livestock dealer permit in the person's own name.

66.1(4) *Permitting period.* A livestock dealer permit and a livestock dealer's agent permit shall be issued for a time period commencing on July 1 and ending June 30 of the following year.

66.1(5) *Fee for permit.* The following nonrefundable fee shall accompany each application for a permit or the renewal of a permit.

1. Livestock dealer permit—$50
2. Livestock dealer's agent permit—$10

66.1(6) *Bonding requirement.* An applicant for a livestock dealer permit shall submit a bond to the department with the secretary of agriculture named as trustee. The bond shall be payable for the use and benefit of any person damaged as a result of a violation of this chapter. The amount of the bond shall be calculated in the same manner and contain the same condition clauses as required by the United States Packers and Stockyards Administration as adopted in Sections 201.30 and 201.31 of Title 9, Chapter II, of the Code of Federal Regulations, revised as of May 1, 2000. However, a person applying for a permit is exempt from providing a bond if the person can show that the person has a valid bond on file and maintained with the United States Packers and Stockyards Administration in an amount equivalent to or greater than that required by federal regulations.

66.1(7) *Information required.* An applicant for a livestock dealer permit or a livestock dealer's agent permit or a renewal of a permit shall provide the department with information required on the permit application including, but not limited to, the name, address, and telephone number of the applicant; a listing of any state, country, or province in which the applicant is licensed or permitted to engage in a similar business; and any past or pending legal or administrative action or investigation conducted or ongoing regarding that license or permit.

This rule is intended to implement Iowa Code section 163.1.

21—66.2(163) Animal health sanitation and record-keeping requirements.

66.2(1) *Veterinary inspection required.* All auction markets, marketing agencies, sales barns or sales yards operating under a permit as required shall provide for veterinary inspection by a qualified veterinary inspector, approved by the department of agriculture and land stewardship, state of Iowa, who shall inspect all animals marketed and shall require that the premises be maintained in sanitary condition at all times.

66.2(2) *Who may inspect.* Any accredited veterinarian, licensed to practice in the state of Iowa, and who has been approved by the Iowa department of agriculture and land stewardship. In addition the veterinary inspector must be approved by the department to do brucellosis testing or shall have available approved laboratory testing facilities.

66.2(3) All livestock marketing permitholders are required to comply with the record-keeping requirements of subrule 66.3(7). Failure to do so shall constitute grounds for revoking their permit.

This rule is intended to implement Iowa Code section 163.1.

21—66.3(163) Duties and responsibilities of the livestock market management.

General. All livestock market owners, operators or managers shall cooperate in obtaining full compliance with all state laws, rules and with the federal regulation (Part 78, Title 9—C.F.R.) and shall agree to:

66.3(1) Notify the division of animal industry, Iowa department of agriculture and land stewardship and United States Department of Agriculture (Des Moines branch) animal disease eradication division as to method of operation (buying, receiving and selling of livestock). Auction markets shall furnish a schedule of regular sale dates and notify both aforementioned departments of all special sales not less than five days in advance.

66.3(2) Provide for chutes and divisions of yarding and pens as required to handle livestock according to their classification.

66.3(3) Furnish the name of a veterinarian who will be held primarily responsible for all inspections required to be approved as veterinary inspector.

66.3(4) Permit no animals to be sold at any time prior to veterinary inspection.

66.3(5) Release only recognized beef-type cattle for feeding or grazing purposes as qualify under Iowa law and federal regulations.

66.3(6) Clean and disinfect all chutes, whether portable or stationary and all pens, alleyways and scales after each sale or at any time when ordered to do so by the approved veterinary inspector and in accordance with the procedure recommended by the inspector.

66.3(7) Maintain accurate records, including records of origin, identification, destination or other disposition of all livestock handled at the livestock market. Such records shall be made available for inspection by an authorized state or federal inspector upon request. Such records shall be kept for a period of not less than two years.

66.3(8) Notify both state and federal offices immediately in the event of sale, transfer of ownership or change of management of the livestock marketing agency.

66.3(9) Failure to comply with any of the foregoing provisions shall be deemed sufficient reason to remove a market from the state-federal approved list or revoke the permit to operate as a livestock market or both. In the event of termination of operation, the permit to operate must be surrendered to the State Department of Agriculture and Land Stewardship, Henry Wallace Building, Des Moines, Iowa 50319.

21—66.4(163) Duties and responsibilities of the livestock market veterinary inspector.

General. The livestock market veterinary inspector shall allow sufficient time to perform their duties at the livestock market and shall inspect all livestock prior to sale whether sold by auction or private sale. In the case of auction markets they must be present during the entire time the sale is in progress. They shall have full authority to reject or detain any animal or animals at owner's expense, or any animal or animals which in their opinion is diseased or exposed in conformance with Iowa Code chapter 163, which for any reason may be detrimental to the health of the animals within the state. In addition to clinical inspection on all animals, the veterinary inspector shall:

66.4(1) Permit no animal to be sold prior to test when a test is required.

66.4(2) Permit no animal to be released prior to vaccination when vaccination is required.

21—66.9(163) Order of sale through auction markets. The following order shall be maintained in the sale of the various classes of cattle through auction markets whenever applicable:

66.9(1) Cattle from certified herds and modified certified brucellosis areas.

66.9(2) Animals having passed a negative test within 30 days and official vaccinates of dairy type under 20 months of age and of beef type under 24 months of age not visibly pregnant or postparturient.

66.9(3) Beef cattle sold for feeding and grazing.

66.9(4) Animals consigned direct to a slaughter.

66.9(5) Brucellosis reactor animals.

This rule is intended to implement Iowa Code sections 163.1 and 163.19.

21—66.10(163) Releasing cattle. The veterinary inspector in charge of the livestock market shall be held responsible for seeing that all animals are released in conformance with Iowa laws, rules and federal regulation Title 9, Part 78—CFR, where interstate movement is involved. All release forms must be signed, stamped or otherwise approved by the veterinarian or someone authorized by the veterinarian. Any stamp so used must be initialed by the person by whom it is used. The livestock market management shall cooperate to see that all animals are released only on properly stamped or veterinary-approved release forms.

This rule is intended to implement Iowa Code section 163.4.

21—66.11(163,172B) Movement of livestock within the state. With the exception of nonquarantined livestock consigned for immediate slaughter, all livestock transported within Iowa, where a change of ownership is involved, must be accompanied by a standard transportation certificate or one of the following documents:

1. Certificate of Veterinary Inspection
2. Form M—Certificate of Inspection or Postmovement Quarantine Form
3. Form Q-LSM—Swine Quarantine
4. Form 1-27—Quarantined Livestock Consigned for Slaughter
5. Affidavit of Slaughter.

All of the foregoing documents shall be properly executed by a licensed, accredited veterinarian of Iowa and shall indicate the following: destination of the livestock, purpose of the movement, number and description of the animals, point of origin, and name and address of the consignor.

EXCEPTION: Livestock classes that do not require individual identification may move intrastate on a bill of sale containing a stamped certification of veterinary inspection. The stamped certification shall contain the following statement:

> "I certify as a licensed, accredited veterinarian, that these animals have been inspected by me and that they are not showing signs of infectious, contagious, or communicable diseases (except where noted)."
>
> _____
> Signature

The stamped certification must be signed by the veterinarian or contain the veterinarian's stamped signature, applied and initialed by someone authorized by the veterinarian.

Market consignment records must be signed or initialed by the inspecting veterinarian as proof of inspection before the stamped certification can be applied to the bill of sale by an authorized person. Inspection records must be maintained by the market for at least two years.

This rule is intended to implement Iowa Code chapters 163, 163A, 164, and 172B and Iowa Code section 163.12.

21—66.12(189,189A) Movement of food-producing animals and their products into the state. All movement in Iowa of animals which are raised for food production and intended for feeding or slaughter purposes, and which originate from countries which allow a use of chloramphenicol, prohibited by 21 CFR, Part 555, Revised as of April 1, 1983, shall be accompanied by a certificate that documents such animals are free from any residue of chloramphenicol drugs.

This rule is intended to implement Iowa Code sections 189.15 and 189.17.

21—66.13 to **66.19** Reserved.

21—66.20(163) Revocation or denial of permit. The department may revoke or refuse to issue or renew a livestock dealer permit, a pig dealer license, or a livestock dealer agent permit or a pig dealer agent permit if the department finds that the applicant, a person with an ownership interest in the applicant, or an individual employed by the applicant has done any of the following:

1. Has not filed or maintained a surety bond in the form and amount as required by Iowa Code section 163.30.
2. Has violated the provisions of Iowa Code chapter 163, 163A, 164, 165, 166, 166A, 166B, or 166D or the rules adopted pursuant to those chapters.
3. Has made false or misleading statements as to the health or physical condition or origin of livestock or feeder pigs, or practiced fraud or misrepresentation in connection with the buying or receiving of livestock or feeder pigs or the selling, exchanging, soliciting or negotiating the sale of livestock or the weighing of livestock or feeder pigs.
4. Has failed to maintain and keep suitable animal health and movement records as required or to provide access to the department to the records.
5. Has had a license or permit suspended or revoked or has been otherwise barred from engaging in the buying, selling, assembling livestock or feeder pigs, or receiving livestock or feeder pigs on consignment by either the United States Department of Agriculture or by another state unless the department concludes after an investigation that the facts leading to the suspension or revocation demonstrate that granting the license or permit will not create a substantial risk to the Iowa livestock or feeder pig industry. This paragraph shall also apply if there is a pending action to suspend or revoke a permit.
6. Has failed to comply with any lawful order of the department or a state or federal court.

This rule is intended to implement Iowa Code chapter 163.

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90.27(6) All temporary storage facilities shall be licensed before any products to be stored are placed in them.

90.27(7) Temporary licensed storage capacity may not exceed 30 percent of permanent licensed storage capacity.

90.27(8) All temporary storage facilities which the department has waived in subrule 90.27(1) shall continue to meet all of the other requirements of rule 90.27(203C). The chief may require the filing of additional bond or irrevocable letter of credit in an amount to be determined by the department for the temporary facility before the waiver of subrule 90.27(1) is granted.

90.27(9) The bureau chief or examiner shall issue written notice to the licensed warehouse operator for any temporary storage facility which no longer meets these requirements. Failure of the warehouse operator to place the facility in a suitable condition within a reasonable length of time shall result in the facility being eliminated from coverage from the warehouse license. Any facility found which has deteriorated to the point that it is unsuitable for storage shall be immediately removed from the warehouse license until the time that it meets the requirements and has been reinspected.

90.27(10) Corn containing more than 14 percent moisture or soybeans containing more than 13 percent moisture shall not be stored in temporary facilities.

90.27(11) Corn and soybeans which do not grade No. 2 or better using the Official U.S. Standards for Grain shall not be stored in a temporary storage facility.

This rule is intended to implement Iowa Code sections 203C.2, 203C.7, 203C.8, 203C.12, 203C.16, and 203C.18.

21—90.28(203C) Prioritization of inspections of warehouse operators. Warehouse operators with a probability of failure factor greater than 40 percent, as calculated by the statistical model, shall be examined at least twice in a 12-month period.

This rule is intended to implement Iowa Code sections 203C.2 and 203C.40.

21—90.29(203C) Department of agriculture and land stewardship enforcement procedures. The bureau shall follow a step-by-step enforcement policy to ensure consistent compliance with and application of these rules. The department recognizes that violations of certain rules may have more serious ramifications and thus the enforcement of those rules requires stricter policies. The enforcement policies apply to any violation of these rules unless enforcement provisions are specifically addressed in a particular rule or subrule.

90.29(1) If it is necessary to establish proof of a Code or rule violation, a special investigation of the licensee shall be conducted by the bureau of the department. The bureau may contact the licensed warehouse operator, the warehouse operator's employees, or any other interested party to gain information for its investigation. The bureau, in its investigation of a licensee, may cause a special examination to occur if evidence of at least one of the following conditions is present:

a. Insufficient funds check.

b. Stalled payment for grain.

c. Quantity deficiency.

d. Quality deficiency.

The expense of such special examination shall be based on actual costs incurred by the bureau and may be assessed to the licensee. The costs shall include the labor, equipment, sampling and any additional costs incurred by the bureau. Payment shall be made as directed by the bureau.

90.29(2) Upon establishment by an examiner or the bureau of a rule violation, the bureau shall consider the following elements in determining the proper period of time within which to require a licensee to comply with the rules:

a. Gravity of the offense.

b. Likelihood of depositor loss.

c. Length of time within which a reasonable licensee in a similar circumstance should be able to comply with the rule.

90.29(3) The chief may file an information against the licensee for any violation of these rules. The bureau chief shall consider the following factors in exercising statutory discretion to file an information:

a. Likelihood of depositor loss.
b. Gravity of the offense.
c. Licensee's intent to violate the rule.
d. Licensee's record of Code or rule violations.
e. Number of violations in the particular report.

90.29(4) The bureau chief may cause charges to be filed against the licensee for any violation of these rules. The bureau chief shall consider the following factors in exercising statutory discretion to file charges:

a. Likelihood of depositor loss.
b. Gravity of the offense.
c. Licensee's intent to violate the rule.
d. Licensee's record of rule violations.

This rule is intended to implement Iowa Code sections 203C.2, 203C.10 and 203C.36.

21—90.30(203C) Review proceedings. A warehouse licensee or applicant may file a formal written complaint with the department if the licensee or applicant contests any finding or decision of the bureau chief.

Any such complaints shall be resolved in contested case proceedings conducted pursuant to the applicable provisions of 21—Chapter 2.

21—90.31(203C) Emergency ground pile storage space. Emergency storage space may, in the discretion of the department, be approved and licensed on the following bases:

90.31(1) Licenses for emergency ground pile storage space shall be effective only for the storage of corn from August 1 to January 31 of the following year.

90.31(2) The warehouse operator shall either purchase the grain stored in the emergency ground pile storage space or remove the corn from the emergency ground pile storage space prior to February 1. Any corn remaining in such space after this date will not be included in grain inventory measurements made by the department, and such corn may not be used to cover storage obligations.

90.31(3) Before any corn can be placed in the emergency ground pile storage space, the department shall receive either an irrevocable letter of credit or a surety bond in the amount of $2 for each bushel to be placed in emergency ground pile storage space. The irrevocable letter of credit or surety bond will expire on April 1. The irrevocable letter of credit or surety bond filed with the department under this rule shall not be canceled by the issuer on less than 45 days' notice by certified mail to the department and the licensee. When the department receives notice from an issuer that it has canceled the irrevocable letter of credit or surety bond, the department shall automatically suspend the license if a replacement irrevocable letter of credit or surety bond is not received by the department within 30 days of the issuance of the notice of cancellation. If a replacement irrevocable letter of credit or surety bond is not filed within another 10 days following the suspension, the warehouse license shall be automatically revoked.

90.31(4) All emergency ground pile storage space shall have an asphalt base, concrete base, or a compacted limestone base which meets the following minimum specifications.

a. Base shall be of a depth and compaction to permit trucks or other equipment used in loading or unloading the pad to move around over the base without breaking through or unduly scuffing the surface.

b. Depth of limestone top shall be not less than four inches.

c. The slope from the center of the base shall not be less than one-fourth inch per linear foot to edge of base.

d. Adequate drainage away from the base shall be provided to prevent any water from standing or backing up under the grain.

90.31(5) All emergency ground pile storage space shall be licensed before any corn to be stored is placed in it.

90.31(6) Emergency licensed ground pile storage space may not exceed 30 percent of permanent licensed storage capacity.

90.31(7) A separate daily position record shall be maintained on all corn placed in the emergency licensed ground pile storage space.

90.31(8) Corn containing more than 15 percent moisture shall not be stored in emergency ground pile storage space.

90.31(9) Corn which does not grade No. 2 or better using the Official Grade Standards shall not be stored in emergency ground pile storage space.

90.31(10) The bureau chief or examiner shall issue written notice to the licensed warehouse operator for any emergency ground pile storage space which no longer meets these requirements. Failure of the warehouse operator to place the emergency ground pile storage space in a suitable condition within a reasonable length of time shall result in the emergency ground pile storage space's being eliminated from coverage from the warehouse license.

This rule is intended to implement Iowa Code sections 203C.2, 203C.7, 203C.8, 203C.12, 203C.16, and 203C.18.

21—90.32(203C) Polyethylene (polyvinyl) bag storage space. Polyvinyl bag storage space may, in the discretion of the department, be approved and licensed on the following bases:

90.32(1) Licenses for polyvinyl bag storage space shall be effective for the storage of corn only from August 1 to May 1 of the following year. Polyvinyl bag storage space shall terminate May 1 unless the licensee requests and obtains an extension. Extension shall be requested 45 days prior to the expiration of the original licensing period or extension then in effect.

90.32(2) An extension to the original licensing period of polyvinyl bag storage space or an additional extension may be granted only if all of the following requirements are satisfied:

a. The licensee has requested an original extension or an additional extension no later than 45 days prior to the expiration of the licensing period or extension then in effect.

b. The bureau shall have completed an examination of the licensee's polyvinyl bag storage space.

c. The licensee shall have paid the bureau for the cost of the examination of its polyvinyl bag storage space. The payment shall include the equipment cost, sampling cost, labor cost and any additional costs incurred by the bureau in examining a licensee's polyvinyl bag storage space. Payment shall be made and received by the bureau before any extension may be granted.

90.32(3) The warehouse operator shall either purchase the corn stored in the polyvinyl bag storage space or remove the corn from the polyvinyl bag storage space prior to May 1 or prior to the expiration of a granted extension.

90.32(4) All polyvinyl bag storage space shall comply with the following specifications:

a. The polyvinyl bag shall be a minimum of 8.5 mil or thicker.

b. The polyvinyl bag shall be white in color.

c. The polyvinyl bag site shall be firm and free of objects that could puncture the polyvinyl bag. Gravel base will not be an approved surface.

d. Approved surfaces:

(1) Asphalt base.

(2) Concrete base.

(3) Compacted limestone base.

(4) On turf or hay ground that has been mowed to height (not more than 2.5 inches) not to puncture the polyvinyl bag.

(5) Bladed dirt.

e. Adequate drainage away from the base shall be provided to prevent any water from standing or backing up under the polyvinyl bags.

f. The polyvinyl bag site shall be free of any spilled grain and tall grass.

90.32(5) Polyvinyl bags must be licensed before any corn to be stored is placed in them.

90.32(6) Corn stored in polyvinyl bags may not exceed 30 percent of permanent licensed storage capacity.

90.32(7) Corn containing more than 14 percent moisture shall not be stored in polyvinyl bags.

90.32(8) Corn which does not grade No. 2 or better using the Official U.S. Standards for Grain shall not be stored in polyvinyl bags.

90.32(9) The bureau chief or examiner shall issue written notice to the licensed warehouse operator for any polyvinyl bag which no longer meets these requirements. Failure of the warehouse operator to place the polyvinyl bag in a suitable condition within a reasonable length of time shall result in the polyvinyl bag's being eliminated from coverage from the warehouse license. Any polyvinyl bag found which has deteriorated to the point that it is unsuitable for storage shall be immediately removed from the warehouse license until the time that it meets the requirements and has been reinstated.

90.32(10) The polyvinyl bag must be closed in accordance with the manufacturer's written instructions or so that no deterioration of the stored corn can occur.

90.32(11) A weekly log shall be maintained on the condition of the polyvinyl bags. This weekly log shall be made available upon request by the bureau.

This rule is intended to implement Iowa Code sections 203C.2, 203C.7, 203C.8, 203C.12, 203C.16, and 203C.18.

These rules are intended to implement Iowa Code chapter 203C.

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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.

CONSUMER GUIDE

191—35.36(514K) Purpose. These rules implement Iowa Code Supplement section 514K.1(2) which requires the commissioner and the director of public health to annually publish a consumer guide. These rules apply to all carriers providing health insurance coverage in the individual, small employer group and large group markets that utilize a preferred provider arrangement and to all health maintenance organizations.

191—35.37(514K) Information filing requirements.

35.37(1) Each health maintenance organization shall annually file with the division no later than July 1 the following information by plan as requested by the division:

a. Health plan employer data information set (HEDIS).

b. Network composition.

c. Other information determined to be beneficial to consumers including but not limited to consumer survey information.

35.37(2) Each preferred provider organization health network shall annually file with the division no later than July 1 the following information by plan as requested by the division:

a. Reportable information as defined by a nationally recognized accreditation organization for preferred provider organization health networks.

b. Network composition.

c. Other information determined to be beneficial to consumers including but not limited to consumer survey information.

35.37(3) Each health maintenance organization and insurer using a preferred provider organization health network shall transmit the requested information by electronic mail or diskette in a format prescribed by the division.

191—35.38(514K) Limitation of information published. The division may establish limits on the data to be collected and published in the event the division believes the information is not statistically relevant and would not be beneficial to consumers.

These rules are intended to implement Iowa Code Supplement section 514K.1(2).

191—35.39(514C) Contraceptive coverage.

35.39(1) A carrier or organized delivery system that provides benefits for outpatient prescription drugs or devices shall provide benefits for prescription contraceptive drugs or prescription contraceptive devices which prevent conception and are approved by the United States Food and Drug Administration or generic equivalents approved as substitutable by the United States Food and Drug Administration. The covered drugs and devices are as follows:

a. Oral contraceptives.

b. Diaphragms.

c. Subcutaneous contraceptive implants.

d. Intrauterine devices.

e. Injectable contraceptives.

f. Emergency contraception pills.

g. Cervical caps.

35.39(2) A carrier or organized delivery system is not required to provide benefits for over-the-counter contraceptive drugs or contraceptive devices that do not require a prescription for purchase.

35.39(3) A contraceptive drug or contraceptive device does not include surgical services intended for sterilization, including, but not limited to, tubal ligation or vasectomy.

35.39(4) A carrier or organized delivery system shall be required to provide benefits for services related to outpatient contraceptive services for the purpose of preventing conception if the policy or contract provides benefits for other outpatient services provided by a health care professional.

35.39(5) If a carrier or organized delivery system does not provide benefits for a routine physical examination, the carrier or organized delivery system is not required to provide benefits for a routine physical examination provided in the course of prescribing a contraceptive drug or contraceptive device.

This rule is intended to implement 2000 Iowa Acts, Senate File 2126.

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*See IAB Insurance Division

71.13(2) The offer made under 71.13(1) shall occur not later than 60 days after July 2, 1993. A small employer shall be given at least 60 days to accept an offer made pursuant to 71.13(1).

71.13(3) A health insurance coverage provided to a terminated small employer pursuant to 71.13(1) shall meet the following conditions:

a. The health insurance coverage shall contain benefits that are identical to the benefits in the health insurance coverage that was terminated or nonrenewed.

b. The health insurance coverage shall not be subject to any waiting periods (including exclusion periods for preexisting conditions) or other limitations on coverage that exceed those contained in the health insurance coverage that was terminated or nonrenewed. In applying such exclusions or limitations, the health insurance coverage shall be treated as if it were continuously in force from the date it was originally issued to the date that it is restored pursuant to 71.13(513B).

c. The health insurance coverage shall not be subject to any provisions that restrict or exclude coverage or benefits for specific diseases, medical conditions or services otherwise covered by the plan.

d. The health insurance coverage shall provide coverage to all employees who are eligible employees as of the date the plan is restored. The carrier or ODS shall offer coverage to each dependent of such eligible employees.

e. The premium rate for the health insurance coverage shall be no more than the premium rate charged to the small employer on the date the health insurance coverage was terminated or nonrenewed provided that, if the number or case characteristics of the eligible employees (or their dependents) of the small employer has changed between the date the health insurance coverage was terminated or nonrenewed and the date that it is restored, the carrier or ODS may adjust the premium rates to reflect any changes in case characteristics of the small employer. If the carrier or ODS has increased premium rates for other similar groups with similar coverage to reflect general increases in health care costs and utilization, the premium rate may be further adjusted to reflect the lowest such increase given to a similar group. The premium rate for the health insurance coverage may not be increased to reflect any changes in risk characteristics of the small employer group until one year after the date the health insurance coverage is restored. Any such increase shall be subject to the provisions of Iowa Code section 513B.4.

f. The health insurance coverage shall not be eligible to be reinsured under the provisions of Iowa Code section 513B.12, except that the carrier or ODS may reinsure new entrants to the health insurance coverage who enroll after the restoration of coverage.

191—71.14(513B) Basic health benefit plan and standard health plan policy forms.

71.14(1) The form and level of coverage of the basic health benefit plan and the standard health benefit plan are contained in this rule. This rule provides the minimum benefit levels allowed and does not prevent carriers from voluntarily providing additional services to the basic health benefit plan or the standard health benefit plan.

71.14(2) The matrix and acceptable exclusions following this chapter are a guideline for the minimum benefit levels in a basic and standard health policy form.

71.14(3) Termination of pregnancy is to be covered in both policy forms when performed for therapeutic reasons. Elective termination of pregnancy is not to be covered in either the basic or standard form.

71.14(4) A provision shall be made in the basic health benefit plan and the standard health benefit plan covering diagnosis and treatment of human ailments for payment or reimbursement for necessary diagnosis and treatment provided by a chiropractor licensed under Iowa Code chapter 151, if the diagnosis or treatment is provided within the scope of the chiropractor's license.

71.14(5) Prosthetic devices are covered when medically necessary.

71.14(6) Prescription oral contraceptives and contraceptive devices that are approved by the United States Food and Drug Administration are to be covered in both policy forms.

71.14(7) Both policy forms shall cover well baby care consistent with Iowa Administrative Code 191—Chapter 80.

71.14(8) The division has available "safe harbor" policy forms for the basic and standard health insurance plans required pursuant to Iowa Code chapter 513B. These are model forms approved by the division as meeting the minimum requirements of a basic and a standard policy.

SMALL EMPLOYER PRODUCTS

	MANDATED INDEMNITY		MANDATED HMOs	
	BASIC	STANDARD	BASIC	STANDARD
Calendar Year Deductibles (S/F)	$500 x 3	$500 x 2		
E.R. Copayment	$50 (waived if admitted)	$50 (waived if admitted)	$50 (waived if admitted)	$50 (waived if admitted)
Coinsurance	60%	80%	60%	80%
Out-of-pocket per insured/family maximum	$4,800/$14,400	$2,000/$4,000	$4,000/$8,000 (excludes deductibles and copays)	$2,000/$4,000
Annual Maximum				
Lifetime Maximum	$250,000	$1,000,000	$250,000	$1,000,000
Pre-Existing	513B.10(3)	513B.10(3)	513B.10(3)	513B.10(3)
Late Entrant	513B.2(12)	513B.2(12)	513B.2(12)	513B.2(12)
Wellness	100% first $100 60% over $100	100% first $150 80% over $150	100% after $20 copay per visit	100% after $15 copay per visit
Maternity	60% Enrollee or Spouse Only	80% Enrollee or Spouse	60%	80%
PHYSICIAN SERVICES				
Office Visits	60%(1)	80%(2)	$20 copay per office visit	$15 copay per office visit
Urgent Care	60%	80%	60%	80%
Inpatient	60%	80%	60%	80%
Outpatient	60%(1)	80%(2)	60%	80%
Vision Screening				
Vision Examinations				
Immunizations	60%(1)	80%(2)	60%	80%
Well Child	60%(1) (Deductible does not apply)	80%(2) (Deductible does not apply)	100% after $20 copay/visit	100% after $15 copay/visit
Pre-Natal/Post-Natal Outpatient Visits	60%(1)	80%(2)	100% after $50 copay/pregnancy	100% after $50 copay/pregnancy

(1)For wellness services, covered 100% first $100 and 60% over $100

(2)For wellness services, covered 100% first $150 and 80% over $150

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.

191—71.24(514C) Contraceptive coverage.

71.24(1) A carrier or organized delivery system that provides benefits for outpatient prescription drugs or devices shall provide benefits for prescription contraceptive drugs or prescription contraceptive devices which prevent conception and are approved by the United States Food and Drug Administration or generic equivalents approved as substitutable by the United States Food and Drug Administration. The covered drugs and devices are as follows:

a. Oral contraceptives.

b. Diaphragms.

c. Subcutaneous contraceptive implants.

d. Intrauterine devices.

e. Injectable contraceptives.

f. Emergency contraception pills.

g. Cervical caps.

71.24(2) A carrier or organized delivery system is not required to provide benefits for over-the-counter contraceptive drugs or contraceptive devices that do not require a prescription for purchase.

71.24(3) A contraceptive drug or contraceptive device does not include surgical services intended for sterilization, including, but not limited to, tubal ligation or vasectomy.

71.24(4) A carrier or organized delivery system shall be required to provide benefits for services related to outpatient contraceptive services for the purpose of preventing conception if the policy or contract provides benefits for other outpatient services provided by a health care professional.

71.24(5) If a carrier or organized delivery system does not provide benefits for a routine physical examination, the carrier or organized delivery system is not required to provide benefits for a routine physical examination provided in the course of prescribing a contraceptive drug or contraceptive device.

This rule is intended to implement 2000 Iowa Acts, Senate File 2126.

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[Filed 8/17/00, Notice 7/12/00—published 9/6/00, effective 10/11/00]

a. A carrier or ODS shall not apply more stringent requirements related to the application process for the basic and standard health benefit plans than applied for other health benefit plans offered by the carrier or ODS.

b. A carrier or ODS shall supply a price quote for basic or standard plans to an eligible individual upon request.

c. If a carrier or ODS denies coverage under a health benefit plan to an individual on the basis of a risk characteristic, the denial shall be in writing and state with specificity the reasons for the denial subject to any restrictions related to confidentiality of medical information. The denial shall be accompanied by a written explanation of the availability of the basic and standard health benefit plans from the carrier or ODS and may be combined with the notification requirements of Iowa Code chapter 514E. The explanation shall include the following information about the basic and standard benefit plans:

(1) A general description of the benefits and policy provisions contained in each plan;

(2) A price quote for each plan; and

(3) Information describing eligibility and how an eligible individual may enroll in such plans.

75.9(3) The carrier or ODS shall not require an individual to join or contribute to any association or group as a condition of being accepted for coverage except, if membership in an association or other group is a requirement for accepting an individual into a particular health benefit plan, a carrier or ODS may apply such requirement.

75.9(4) A carrier or ODS may not require as a condition to the offer or sale of a health benefit plan to an individual that the individual purchase or qualify for any other insurance product or service.

75.9(5) Carriers and ODSs offering individual or group health benefit plans in this state shall be responsible for determining whether the plans are subject to the requirements of Iowa Code chapter 513C.

191—75.10(513C) Basic health benefit plan and standard health benefit plan policy forms.

75.10(1) The form and level of coverage of the basic health benefit plan and the standard health benefit plan are contained in the rules and table.

75.10(2) Termination of pregnancy is to be covered when performed for therapeutic reasons. Elective termination of pregnancy is not to be covered in either the basic or standard plan.

75.10(3) A provision shall be made in the basic health benefit plan and the standard health benefit plan covering diagnosis and treatment of human ailments for payment or reimbursement for necessary diagnosis and treatment provided by a chiropractor licensed under Iowa Code chapter 151, if the diagnosis or treatment is provided within the scope of the chiropractor's license.

75.10(4) Prescription oral contraceptives and contraceptive devices that are approved by the United States Food and Drug Administration are to be covered in both policy forms.

75.10(5) The division of insurance and the department of health have available "safe harbor" policy forms for the basic and standard health benefit plans required pursuant to Iowa Code chapter 513C.

Iowa Individual Products

Hospital Services	MANDATED INDEMNITY/ODS				MANDATED HMO	
			PPO			
	BASIC	STANDARD	In	Out	BASIC	STANDARD
Inpatient Outpatient	60%	80%	80%	60%	60% $400/admit	80% $200/admit
Prostheses	60%	80%	80%	60%	60%	80%
DME—including medical supplies	60%	80%	80%	60%	60%	80%
Ambulance—Emergency	60%	80%	80%	60%	60%	80%
Hospice	60%	80%	80%	60%	60%	80%
Home Health and Physician House Calls	60%	80%	80%	60%	60%	80%

Alcoholism Substance Abuse	MANDATED INDEMNITY/ODS				MANDATED HMO	
			PPO			
	BASIC	STANDARD	In	Out	BASIC	STANDARD
Inpatient	—	80%(1)	80%(1)	60%(1)	—	80%
Outpatient	—	80%(1) ($50 max. eligible fee)	80%(1)	60%(1)	—	80% ($50 max. eligible fee)

Mental Health	MANDATED INDEMNITY/ODS				MANDATED HMO	
			PPO			
	BASIC	STANDARD	In	Out	BASIC	STANDARD
Inpatient	—	80%(1)	80%(1)	60%(1)	—	80%
Outpatient	—	80%(1) ($50 max. eligible fee)	80%(1) ($50 max. eligible fee)	60%(1) ($50 max. eligible fee)	—	80% ($50 max. eligible fee)

(1)$50,000 Lifetime Max.

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.

191—75.18(514C) Contraceptive coverage.

75.18(1) A carrier or organized delivery system that provides benefits for outpatient prescription drugs or devices shall provide benefits for prescription contraceptive drugs or prescription contraceptive devices which prevent conception and are approved by the United States Food and Drug Administration or generic equivalents approved as substitutable by the United States Food and Drug Administration. The covered drugs and devices are as follows:

a. Oral contraceptives.

b. Diaphragms.

c. Subcutaneous contraceptive implants.

d. Intrauterine devices.

e. Injectable contraceptives.
f. Emergency contraception pills.
g. Cervical caps.

75.18(2) A carrier or organized delivery system is not required to offer benefits for over-the-counter contraceptive drugs or contraceptive devices that do not require a prescription for purchase.

75.18(3) A contraceptive drug or contraceptive device does not include surgical services intended for sterilization, including, but not limited to, tubal ligation or vasectomy.

75.18(4) A carrier or organized delivery system shall make available benefits for services related to outpatient contraceptive services for the purpose of preventing conception if the policy or contract provides benefits for other outpatient services provided by a health care professional.

75.18(5) If a carrier or organized delivery system does not provide benefits for a routine physical examination, the carrier or organized delivery system is not required to provide benefits for a routine physical examination provided in the course of prescribing a contraceptive drug or contraceptive device.

This rule is intended to implement 2000 Iowa Acts, Senate File 2126.

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CORRECTIONS DEPARTMENT[201]

Rules transferred from Social Services Department[770] to Department of Corrections[291]; see 1983 Iowa Acts, chapter 96. Rules transferred from agency number [291] to [201] to conform with the 1986 reorganization numbering scheme in general, IAC Supp. 3/20/91.

Note: Iowa Code chapter 246 renumbered as chapter 904 and 247 renumbered as chapter 913 in 1993 Iowa Code.

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CHAPTER 28
NEWTON CORRECTIONAL FACILITY

[Prior to 10/1/83, Social Services[770] Ch 21]
[Prior to 3/20/91, Corrections Department[291]]

201—28.1(904) Visiting: medium security.

28.1(1) Visitation within the Newton correctional facility is additionally governed by the provisions of department of corrections policy IN-V-122 and rule 201—20.3(904).

28.1(2) Visiting hours. Visiting hours are from 10 a.m. to 8 p.m. on Sunday, Monday, Thursday, Friday, and Saturday.

a. All visitors must show proof of identification and must submit to a personal search.

b. In the event that the maximum visiting capacity has been reached, visits will be shortened to accommodate new arrivals.

28.1(3) General population. Each visitor will be allowed two 3-hour visits per week if the offender is in Level 4 or three 3-hour visits per week if the offender is in Level 5. Offenders are permitted a maximum of five visitors at any given time without advance, written permission of the security director.

28.1(4) Close custody. Offenders in close custody, Levels 1 and 2, may receive one 1-hour, noncontact visit per week. Offenders in close custody, Level 3, may receive one 2-hour, contact visit per week.

28.1(5) Disciplinary detention. Offenders in disciplinary detention will be allowed one 1-hour, noncontact visit per week, by immediate family only. Children under the age of 18 shall not be permitted to visit any offender in this status.

28.1(6) County/federal detainees. County or federal detainees will be permitted one 30-minute, noncontact visit per week, by immediate family only.

201—28.2(904) Visiting: minimum security (correctional release center).

28.2(1) Visiting hours are from 8:15 a.m. to 4:30 p.m. on Saturdays, Sundays, and holidays and from 5:45 p.m. to 9:45 p.m., Monday through Friday. Visiting hours are scheduled to avoid conflicts with offender work programs/assignments.

28.2(2) An approved visitor may visit three times per week for a maximum of three hours per visit.

a. Offenders are permitted to have a maximum of five visitors at any given time without advance written permission from the security director.

b. Offenders on dormitory confinement are permitted one 2-hour visit per week during normal visiting hours by immediate family only.

c. Visiting hours for offenders in administrative/disciplinary segregation are from 10 a.m. to 3 p.m., Monday through Friday. Visits shall be scheduled in advance by the visitor. Visitors shall be immediate family only, and visits shall be limited to one hour and shall be noncontact.

28.2(3) Upon arrival, all visitors shall report to the control center. All visitors must be prepared to show proof of identification. In the event that maximum visiting capacity has been exceeded, visits will be shortened to two hours to accommodate new arrivals.

28.2(4) Outdoor visits are permitted April 15 through October 15, weather permitting.

28.2(5) Visits for offenders in the violator program will be permitted only in conjunction with scheduled support group treatment activities after the fourth week of treatment program participation. These visits must be scheduled with the unit director.

28.2(6) Visitors will have access only to designated visiting areas of the institution.

28.2(7) Visits between an attorney and offender shall be permitted during normal business hours or visiting hours. Such visits during nonbusiness hours shall be by appointment as authorized by the warden or designee.

28.2(8) Visitors must report to the control center at the end of the visit prior to leaving the institution.

201—28.3(904) Tours.

28.3(1) Tours of institutional facilities are available primarily for adult groups. In special cases, tours may be granted for persons under the age of 18 at the discretion of the warden or designee. Tours must be approved by the warden or designee.

28.3(2) Prior approval from the warden or designee shall be required for relatives or close friends of offenders to tour the institution.

201—28.4(904) Trips of offenders. An outside group wishing to schedule a presentation by a panel of offenders from the correctional release center shall send a written request to the institution's treatment director. Trips are limited to a 100-mile radius. Permission may be granted for longer trips at the discretion of the warden.

These rules are intended to implement Iowa Code section 904.512.

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CHAPTER 29
FORT DODGE CORRECTIONAL FACILITY

201—29.1(904) Visiting.

29.1(1) Visitation within the Fort Dodge correctional facility is additionally governed by the provisions of department of corrections policy IN-V-122 and rule 201—20.3(904).

29.1(2) Contact and noncontact visiting areas are available.

29.1(3) Visiting hours are from 1 p.m. to 8 p.m. on Thursday, Friday, Saturday, Sunday and Monday as well as New Year's Day, July 4 and Christmas Day.

29.1(4) Visits are limited to a maximum of three hours on weekdays and two hours on weekends.

29.1(5) All visitors shall present proper identification upon entrance to the institution. Photo identification is required for all visitors 16 years of age and older.

29.1(6) Each approved visitor will be allowed eight visits per month. Offenders will be permitted a maximum of five visitors at one time.

29.1(7) Attorneys, law enforcement officials and clergy are not required to be placed on an offender's visiting list. However, these visitors are encouraged to make prior arrangements for visitation and shall present proof of identity and appropriate credentials before entrance to the institution. The offender must express a desire to visit with clergy or an attorney before either is admitted to the facility for a visit.

29.1(8) County/federal detainees. Detainees will be allowed visitation with immediate family, approved clergy, and legal representatives. In limited circumstances, the names of additional visitors may be submitted by the assigned counselor and approved by the unit manager. Visiting hours for detainees are from 1 p.m. to 8 p.m. on Sunday, Monday, Thursday, Friday, and Saturday. Subject to availability of space, detainees are allowed up to three 1-hour noncontact visits per week. Generally, these visits shall be conducted in the noncontact visitation area of the institution's visiting room. Attorney or legal representative visits may be contact visits and shall take place in the attorney visit area of the visiting room.

201—29.2(904) Visiting: Unit A.

29.2(1) Offenders housed in Unit A shall visit in the noncontact visiting areas of Unit A. Visitors shall check in at reception and then be escorted to the Unit A visiting area by staff.

29.2(2) Visiting is restricted to two adult immediate family members or two clergy members at a time.

29.2(3) Offenders are allowed one visit per week. This visit is limited to one hour.

201—29.3(904) Visiting: administration segregation of disciplinary detention offenders housed outside of Unit A.

29.3(1) The noncontact visiting area in the visiting room shall be used.

29.3(2) A maximum of two persons, and one small child per adult who can sit on an adult's lap, will be allowed.

29.3(3) Visitors shall be escorted to one of the noncontact visiting rooms located adjacent to the visiting room.

201—29.4(904) Tours. Tours of the institution are limited to persons 18 years of age and older having a genuine interest in corrections and for whom the tour might prove beneficial or enlightening. These persons may include prospective employees, college or university student groups, legislators and their staff, employees of other governmental agencies, and civic organizations. Other individuals or groups may be permitted to tour the institution upon the specific approval of the office of the warden.

These rules are intended to implement Iowa Code section 904.512.

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CHAPTERS 30 to 36
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CHAPTER 37
IOWA STATE INDUSTRIES

[Prior to 10/1/83, Social Services[770] Ch 23]
[Prior to 3/20/91, Corrections Department[291]]

201—37.1(904) Sale of products.

37.1(1) Iowa state industries shall sell products to any tax-supported institution or governmental subdivision in any level of government which includes state, county, city or school. Iowa state industries may sell products to employees of such entities.

37.1(2) Iowa state industries may sell products to nonprofit organizations such as parochial schools, churches, or fraternal organizations and employees of such nonprofit organizations.

37.1(3) Iowa state industries may sell products to nonprofit health care facilities serving Medicaid or social security patients.

37.1(4) Sales will not generally be solicited from the general public. However, the division director may determine with the advice of the prison industries advisory board that limited public sales will be made when the sales to political subdivisions are insufficient to justify continued operation of a shop.

This rule is intended to implement Iowa Code section 904.815.

201—37.2(904) Catalogues. Catalogues are available at the Sales Office, Division of Correctional Institutions, Department of Social Services, Lucas State Office Building, Des Moines, Iowa or the Industries Office located at the Iowa State Men's Reformatory, Anamosa, Iowa and the Iowa State Penitentiary, Fort Madison, Iowa.

201—37.3(904) Direct purchasing. This rule is to implement Iowa Code section 904.813, which provides in part for direct purchases from vendors of raw materials and capital items used for the manufacturing process of Iowa state industries.

37.3(1) *Definitions.*

"Competition" is the effect of three or more parties actually engaged independently to obtain a contract with industries to provide capital items or raw materials in the most advantageous conditions or terms. "Advantageous conditions" shall include but not be limited to price, qualitative and quantitative vendor performance, timely execution of contract, meeting specifications, and delivery of items per contract provisions.

"Department" means Iowa department of corrections.

"Director" means director of the division of Iowa state industries, Anamosa, Iowa.

"Industries" means the division of Iowa state industries, Des Moines, Iowa.

"Manager" means the business manager of Iowa state industries, Anamosa, Iowa.

37.3(2) *Methods of procurement.*

a. *"Advertising"* means purchasing by competitive bids to include the following procedures:

1. Developing specifications and proposals outlining the requirements of industries.
2. Appropriate publication in ample time to permit bidders to prepare and submit bids before the exact set time of public opening of said bids.
3. Subject to bid evaluation awarding a contract to the bidder meeting specifications that are in the most advantageous conditions to industries.

b. *"Solicitation"* means procurement by obtaining two or more quotations via writing, telegraphic, telephonic, or any other means industries deem acceptable and documentable.

c. *"Negotiation"* means a method of procurement other than advertising and solicitation.

d. Other. The department or industries reserve the right to include in their procurement other methods including, but not limited to, life-cycle costing, point systems, or present value formulas. Under these circumstances, industries shall explicitly note in their bid proposal(s) such methods to be used to assure all bidders of same.

37.3(3) *Procurement policy.* It shall be the policy of the department to procure capital items and raw materials in the most efficient and economical manner possible and in a competitive manner of interest to all parties.

a. Advertising. The advertising method of procurement shall be used whenever this method is feasible and practicable under existing circumstances and conditions and the amount of purchase exceeds $10,000.

b. Solicitation. This method of procurement may be used if advertising is not practical in essence of time or advantageous to costs and the amount of purchase is less than $10,000.

c. Negotiation. This method may be used if advertising or solicitation is not practicable or in any of the following circumstances:

(1) Procurement is determined to be necessary in the public interest due to disaster or emergency.

(2) Amount of purchase is limited and less than $1,000.

(3) Items to be purchased are sole source.

(4) Competition is precluded because of patent rights, copyrights, confidential processes, etc.

(5) Bids or quotations have been solicited, and no responsive or acceptable bids or quotations have been received.

(6) Bids or quotations received do not cover quantity requirements or meet other specifications.

(7) The procurement is for a part or component as a replacement of existing equipment specially designed by the manufacturer.

d. Advertising procedures:

(1) The industries manager shall maintain current bidders' lists.

(2) Bidders' lists shall be obtained from various sources to include, but not limited to, technical publications, telephone books, trade journals, vendors' registers, and targeted small businesses certified by the department of economic development and other state departments.

(3) Any firm legally doing business in Iowa may be placed on the bid list by a written request to: Industries Manager, Iowa State Industries, Anamosa, Iowa 52205.

(4) Subject to concurrence of the attorney general's office, a bidder's name may be refused or taken off the bidders' lists for any of the following reasons:

1. Bidder has attempted to improperly influence any state employee involved in procurement processes.

2. Reasonable grounds of collusion exist.

3. Determination by the civil rights commission that the bidder conducts discriminatory practices.

4. Bidder has failed to meet specifications and performance of a previous contract.

e. Proposals. Industries shall prepare request for proposals complete with bidding documents, specifications, and instructions to bidders.

(1) Subject to special circumstances, e.g., the purchase of new products or equipment, the request proposal may be marked "preliminary" requesting bidder(s) to review the proposal to determine their ability to bid or suggestions bidders may have.

(2) Written requests for variations, delivery times, or approved equal substitutions to the proposal shall be accepted, evaluated, and answered by industries.

(3) Proposals may be amended by industries to incorporate approved changes. All changes shall be sent to prospective bidders.

(4) Methods to be used by industries in evaluating bids shall be disclosed in the request for proposals or before bid opening.

37.5(8) *Prison industries advisory board review.* Following approval by the director of corrections, the deputy director of prison industries shall forward the final proposal to the prison industries advisory board with the recommendation to approve or disapprove the work program, including all correspondence from the department of workforce development, the Department of Justice, and any local official who has offered comments.

The deputy director of prison industries shall provide written documentation to the prison industries advisory board confirming that the proposed work project will not displace civilian workers. If displacement occurs, the deputy director of prison industries shall advise the private employer that the employer will be given 30 days to become compliant or the department of corrections will terminate the use of offender labor.

37.5(9) *Disputes.* Anyone who believes that the private sector work program violates this rule shall advise the department of workforce development. A written complaint may be filed in accordance with workforce development board rule 877—1.5(84A). The workforce development director shall consult with the deputy director of prison industries before the workforce development board makes a final recommendation(s) to resolve any complaint.

The deputy director of prison industries will assist the department of workforce development in compiling all information necessary to resolve the dispute. The workforce development board shall notify the deputy director of prison industries and interested parties in writing of the recommended action to resolve a complaint, which will be binding on all parties.

This rule is intended to implement Iowa Code section 904.809.

201—37.6(904) Utilization of offender labor in construction and maintenance projects.

37.6(1) *Definitions.*

"Director" means the chief executive officer of the department of corrections.

"Employer" means a contractor or subcontractor providing maintenance or construction services under contract to the department of corrections or under the department of general services.

"Workforce development director" means the chief executive officer of the department of workforce development.

37.6(2) *Scope.* Utilization of offender labor applies only to contractors or subcontractors providing construction or maintenance services to the department of corrections. The contract authority for providing construction or maintenance services may be the department of general services.

37.6(3) *Employer application.* Employers working under contract with the state of Iowa may submit an application to the department of corrections to employ offenders. Requests for such labor shall not include work release offenders assigned to community-based corrections under Iowa Code chapter 905.

a. Prior to submitting an application, the employer shall place with the nearest workforce development center a job order with a duration of at least 30 days. The job order will contain the prevailing wage determined by the department of workforce development. The job order shall be listed statewide in all centers and on the department of workforce development's jobs Internet site.

b. The employer's application shall include:

1. Scope of work, including type of work and required number of workers;
2. Proposed wage rate;
3. Location;
4. Duration; and
5. Reason for utilizing offender labor.

c. The department of corrections shall verify through the department of workforce development the employer's 30-day job listing, the average wage rate for the job(s) the offenders will perform, the current unemployment rate in the county where the employer is located, and the current employment level of the employer that will employ the offenders.

37.6(4) *Verification.* The director of workforce development shall verify the employment levels and prevailing wages paid for similar jobs in the area and provide to the director, in writing:

1. Verification of the employer's 30-day job listing;
2. The number of qualified applicant referrals and hires made as a result of the job order;
3. The average wage rate for the proposed job(s);
4. The wage range;
5. The prevailing wage as determined by the U.S. Department of Labor;
6. The current unemployment rate for the county where the employer is located;
7. The current employment levels of the employer that will employ the offenders based upon the most recent quarter for which data is available.

37.6(5) *Safety training.* The employer shall document that all offenders employed in construction and maintenance projects receive a ten-hour safety course provided free of charge by the department of workforce development by a trainer with the appropriate authorization from the Occupational Safety and Health Administration Training Institute.

37.6(6) *Prevailing wages.* The director will not authorize an employer to employ offenders in hard labor programs without obtaining from the department of workforce development employment levels in the locale of the proposed jobs and the prevailing wages for the jobs in question. The average wage rate and wage range from the department of workforce development will be based on the appropriate geographic area for which occupational wage information is available. The appropriate geographic area may be statewide.

To reduce any potential displacement of civilian workers, the director shall advise prospective employers and eligible offenders of the following requirements:

1. Offenders will not be eligible for unemployment compensation while incarcerated.
2. Before the employer initiates work utilizing offender labor, the director shall provide the baseline number of jobs as established by the department of workforce development.
3. If the contract to employ offender labor exceeds six months, the director shall request and receive from the workforce development director the average wage rates and wage ranges for jobs currently held by offenders and current employment levels of employers employing offenders and shall compile a side-by-side comparison of each employer.

37.6(7) *Disputes.* Anyone who believes that the employer's application violates this rule shall present concerns in writing to the workforce development board. A written complaint may be filed with the workforce development board for any dispute arising from the implementation of the employer's application in accordance with the workforce development board's rule 877—1.6(84A). The workforce development board shall consult with the director prior to making recommendations. The director will assist the workforce development board in compiling all information necessary to resolve the dispute. The workforce development board shall notify the director and interested parties in writing of the corrective action plan to resolve the dispute, which will be binding on all parties.

This rule is intended to implement Iowa Code section 904.701.

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◊Two ARCs

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

[Created by 1986 Iowa Acts, chapter 1245]
[Prior to 1/14/87, see Iowa Development Commission[520] and Planning and Programming[630]]

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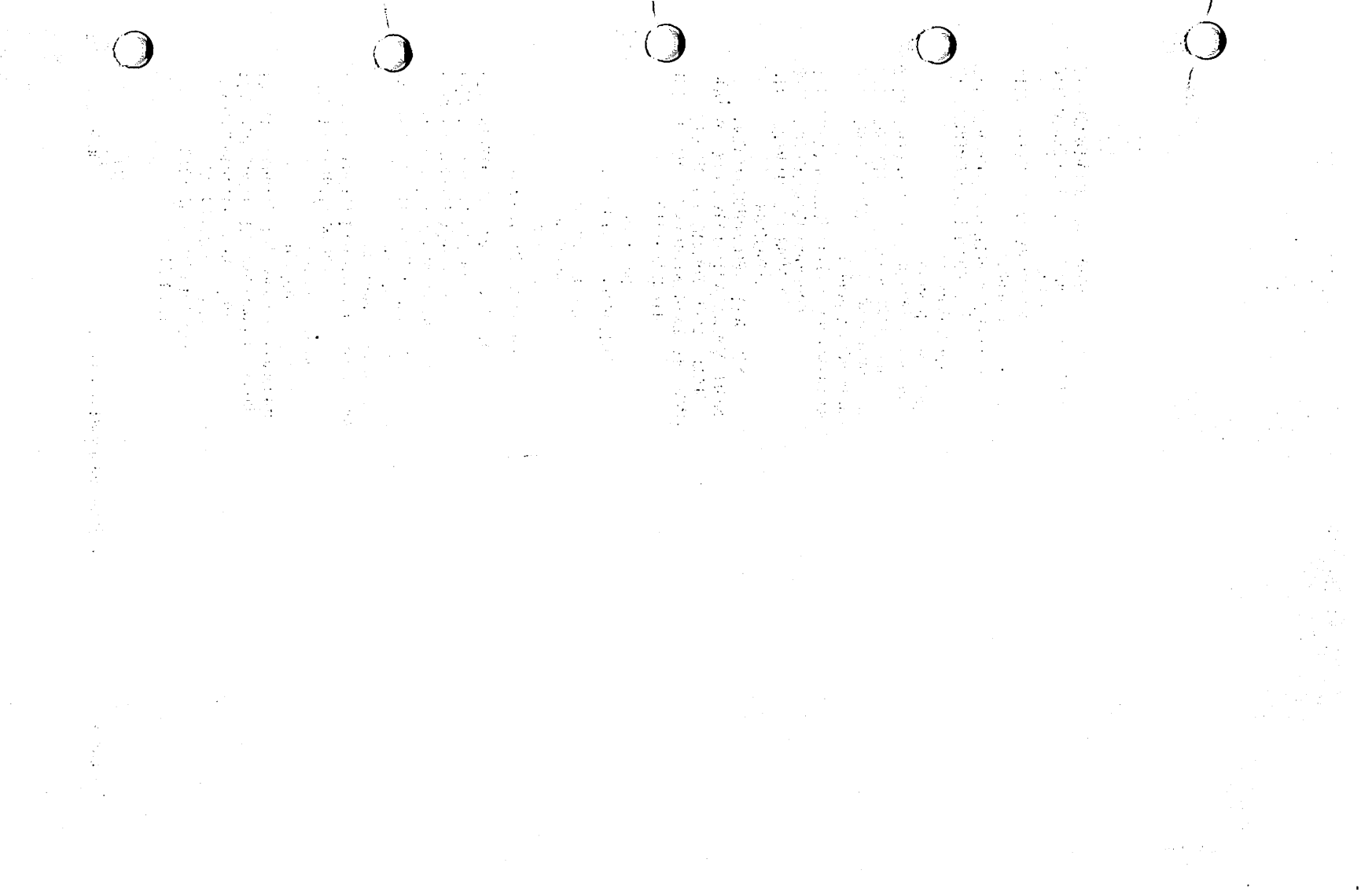

PART II
WORKFORCE DEVELOPMENT COORDINATION

CHAPTER 4
WORKFORCE DEVELOPMENT ACCOUNTABILITY SYSTEM

261—4.1(15) Purpose. The department of economic development, in conjunction with the department of education, has the responsibility under Iowa Code section 84A.5 to report information concerning the use of any state or federal training or retraining funds which are part of the workforce development system. The information reported shall be in a form that will permit the accountability system, which is a part of the workforce development system, to evaluate all of the following:

4.1(1) The impact of services on wages earned by individuals.

4.1(2) The effectiveness of training service providers in raising the skills of the Iowa workforce.

4.1(3) The impact of placement and training services on Iowa's families, communities and economy.

261—4.2(15) Compilation of information. The department of economic development, in conjunction with the community colleges, shall develop a mechanism and timetable for compiling relevant information which shall include the social security numbers of individuals trained, in order to access wages earned by those individuals, project identifier codes, and information needed to evaluate the effectiveness of training in raising the skills of trainees. When developing procedures for compiling this information, the community colleges and the department will incorporate procedures to safeguard confidentiality of social security numbers.

These rules are intended to implement Iowa Code section 84A.5.

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261—7.30(260F) Return of unused funds. The community college shall return all unused funds to the department within 45 days of project completion or within 45 days after being notified by the department that a project is in default.

261—7.31(260F) Open records. Information submitted to the department is subject to Iowa Code chapter 22, the public records law. Applications for training funds submitted to the department are available for public examination. Information which the business believes contains trade secrets recognized and protected by such as law, or the release of which would give an advantage to competitors and serves no public purpose or which meets other provisions for confidential treatment as authorized in Iowa Code section 22.7, shall be kept confidential. The department has adopted, with certain exceptions described in 261—Chapter 100, Uniform Rules on Agency Procedure, relating to public records and fair information practices. The uniform rules are printed in the first Volume of the Iowa Administrative Code. Uniform rule X.5 describes how a person may request a record to be treated as confidential and withheld from public examination. Businesses requesting confidential treatment of certain information submitted to the department shall follow the procedures described in the uniform rule. The department will process such requests as outlined in uniform rule X.5 and 261—Chapter 100.

261—7.32(260F) Required forms. Use of the following forms by the community college is required:

1. Application for Assistance, Form 260F-1;
2. Consortium Application for Assistance, Form 260F-1A;
3. Business Network Application for Assistance (Community College), Form 260F-1B;
4. Business Network Application for Assistance (Department), Form 260F-1C;
5. Apprenticeship Application for Assistance (Community College), Form 260F-1D;
6. Apprenticeship Application for Assistance (Department), Form 260F-1E;
7. Agreement of Intent, Form 260F-2;
8. Apprenticeship Agreement of Intent, Form 260F-2A;
9. Request for Release of Funds, Form 260F-3;
10. Training Contract, Form 260F-4;
11. Consortium Training Contract, Form 260F-4A;
12. Business Network Training Contract (Community College), Form 260F-4B;
13. Apprenticeship Training Contract (Community College), Form 260F-4D;
14. Business Network Training Contract (Department), Form 260F-4C;
15. Apprenticeship Training Contract (Department), Form 260F-4E;
16. Performance Report, Form 260F-5;
17. Apprenticeship Performance Report, Form 260F-5A;
18. Notice of Possible Default, Form 260F-6;
19. Declaration of Default, Form 260F-7.

These rules are intended to implement Iowa Code chapter 260F as amended by 1997 Iowa Acts, House File 655.

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CHAPTER 8
WORKFORCE DEVELOPMENT FUND
[Prior to 9/6/00, see 261—Ch 75]

261—8.1(15,76GA,ch1180) Purpose. The purpose of the workforce development fund is to provide revenue for programs which address the workforce development needs of the state. Moneys are appropriated to the fund from the workforce development fund account and are to be used for the following programs and purposes: training and retraining programs for targeted industries, projects under Iowa Code chapter 260F, apprenticeship programs under Iowa Code section 260C.44 (including new or statewide building trades apprenticeship programs) and innovative skill development activities.

261—8.2(15,76GA,ch1180) Definitions.

"Agreement" means an informal agreement between the department and a grantee that authorizes expenditure of a workforce development fund award.

"Board" means the Iowa department of economic development board.

"Contract" means a formal agreement executed by the department and a grantee for purposes of operating a program under the workforce development fund.

"Department" or *"IDED"* means the Iowa department of economic development.

"Director" means the director of the Iowa department of economic development.

"Grantee" means any entity receiving a workforce development fund award from the Iowa department of economic development.

261—8.3(15,76GA,ch1180) Workforce development fund account. A workforce development fund account is established in the office of the treasurer of state under control of the department. Upon payment in full of a certificate of participation or other obligation issued to fund a job training program under Iowa Code chapter 260E, including a certificate of participation repaid in whole or in part by the supplemental new jobs credit from withholding under Iowa Code section 15A.7, the community college providing the job training program shall notify the department of the amount paid by the employer or business to the community college to retire the certificate during the last 12 months of withholding collections. The department shall notify the department of revenue and finance of that amount. The department of revenue and finance shall then credit to the workforce development fund account, established in Iowa Code section 15.342A, 25 percent of that amount each quarter for a period of ten years. If the amount of withholding from the business or employer is insufficient, the department shall prorate the quarterly amount credited to the workforce development fund account. The maximum amount from all employers which shall be transferred to the workforce development fund account in any year is $10,000,000. The legislature will make an annual appropriation from the workforce development fund account to the workforce development fund.

261—8.4(15,76GA,ch1180) Workforce development fund allocation. The director shall submit, not later than January 1 of each year, at a regular or special meeting, for approval by the IDED board, the proposed allocation of funds from the workforce development fund to be made for the next fiscal year for the programs and purposes intended. The director shall also submit a copy of the proposed allocation to the chairpersons of the joint economic development appropriations subcommittee of the general assembly. Notwithstanding Iowa Code section 8.39, the plan may provide for increased or decreased allocations if the demand for a program indicates that the need is greater or lesser than the allocation for that program. Workforce development funds are received quarterly. The sequence in which the funds are allocated to the various programs under the workforce development fund will be determined by the department based upon the demand for the respective programs.

261—8.5(15,76GA,ch1180) Workforce development fund reporting. The director shall report on a quarterly basis to the IDED board on the status of the funds and may present proposed revisions for approval by the IDED board in January and April of each year. The director shall also provide quarterly reports to the legislative fiscal bureau on the status of the funds. Unobligated and unencumbered moneys remaining in the workforce development fund or any of its accounts on June 30 of each year shall be considered part of the fund for purposes of the next year's allocation.

261—8.6(15,76GA,ch1180) Training and retraining programs for targeted industries.

8.6(1) *Program purpose and targeted industries.* The purpose of this program is to provide training and retraining to develop the skills of employees employed in targeted businesses or industries or to address a workforce development need of a targeted industry. Targeted industries have been identified as industries engaged in the business or manufacture of:

a. Value-added agricultural products.
b. Insurance and financial services.
c. Plastics.
d. Metals.
e. Printing paper or packaging products.
f. Drugs and pharmaceuticals.
g. Software development.
h. Instruments and measuring devices and medical instruments.
i. Recycling.

8.6(2) *Other industries.* Training may be provided to industries other than those listed in 8.6(1); however, the applicant will have to provide a strong rationale regarding how that industry diversifies, strengthens or otherwise enhances Iowa's economy. Eligibility may be established by an industry other than those listed if that industry can provide rationale regarding the industry's benefit to Iowa's economic base. Rationale that is provided will be reviewed by department staff to determine eligibility as a targeted industry. Items that will be considered in determining an industry's benefit to Iowa's economic base will include:

a. The majority of the products or services produced by the industry are exported out of Iowa.
b. The inputs for the products produced in the industry are raw materials available in Iowa or are provided by Iowa suppliers.
c. The goods or services produced by this industry diversify Iowa's economy.
d. The goods or services provided by the industry resulted in, or will result in, a decrease in the importation of foreign-made goods into the United States.
e. The industry shows potential for future growth.
f. The functions of the industry do not produce harmful effects for Iowa's natural environment.
g. It is established that the average wages of the majority of the occupations in the industry are above the statewide average wage.

Businesses engaged in retail sales or the provision of health care or other professional services will not be considered targeted industries and are not eligible for this program.

8.6(3) *Eligible applicants.* Applicants must be an individual business, consortium of businesses, trade association or labor organization that represents one of the identified targeted industries in order to be eligible for funding.

8.6(4) *Length of projects and maximum grant awards.* The department will establish the desired project length and maximum grant awards based upon the amount of workforce development funds allocated to the program in a fiscal year and upon the training needs of the targeted industries. These limitations will be published in the application packet. Grantees may request extensions to the length of a project.

8.6(5) *Allowable activities.* Allowable activities include vocational and skill assessment testing; adult basic education; job-related training; cost of a company, college, or contracted trainer or training services; training-related materials, equipment, software and supplies; curriculum development; lease and rental of training facilities and equipment; training-related travel and meals; and contracted or professional services. Costs associated with the administration of the project (i.e., fiscal and reporting activities, project supervision and coordination) are allowable but are limited to 15 percent of the total program budget.

8.6(6) *Application procedure.* Application packets will be made available by the department. Application packets will outline eligibility criteria, the required application inclusions and points established for evaluation. Applications must be submitted to the Iowa Department of Economic Development, Workforce Development Coordinator, 200 East Grand Avenue, Des Moines, Iowa 50309. Only the applications of eligible applicants will be considered. Applications may be submitted at any time during the year but must be submitted at least 15 days prior to the start date of activities for which reimbursement through this program is being requested. Applications will be reviewed in the order in which they are received.

8.6(7) *Required proposal inclusions.* Required contents of an application will be described in the application. Applications must address all information requested in the application packet to be considered for award. If all requested information is not provided, applications will not be considered for funding. Applicants who have been denied funding may reapply. Reapplications will be treated as new applications.

8.6(8) *Evaluation and rating criteria.* The criteria used for scoring the application will include the following:

a. The training proposed in the project is needed to address industry demands, up to 10 points.

b. This project is for industry-specific training that is not currently available, up to 5 points.

c. The scope of the project is such that there is benefit for several businesses within the industry, up to 5 points.

d. It is proposed that the training will be provided to several businesses within the industry, up to 5 points.

e. The training is for an industry where there is anticipated job growth, up to 10 points.

f. Training is also made available to job seekers wishing to enter the industry, up to 5 points.

g. The training is required in order for the employee to retain employment or the training will improve the employee's opportunities for enhanced pay or benefits or for promotional opportunities within the industry, up to 10 points.

h. The project is feasible in terms of the reasonableness of the budget in comparison to the expected outcomes, other comparable training, and the demands of the industry, up to 15 points.

i. The expected outcomes enhance the competitiveness of the industry and the economy of the state, up to 15 points.

j. The previous experience of the training provider is sufficient to ensure quality training, up to 10 points.

k. Match contributed to the project evidences commitment to the project on behalf of the proposer, up to 10 points.

Proposals will be reviewed by two department staff. As a part of this review, staff will ascertain which community college district(s) the project corresponds to and notify the appropriate community college president from that district of the proposal for purposes of review and comment. Points will be assigned for each evaluation criteria by each of the respective staff and totaled. The two scores will then be averaged. Proposals receiving an average score of at least 70 out of a possible 100 points will be presented to the director for a final funding decision. The director will base a final funding decision upon available funding.

8.6(9) *Award process.* Upon approval by the director, the applicant will receive an award letter which will state the amount and conditions of the award. Awards will be made in the form of grants.

8.6(10) *Contract.* Following notification of award, a contract will be prepared for execution between the applicant and IDED. The final project application will become part of the contract. In addition, there will be other contract assurances which will include, but are not limited to, the provisions of these rules and applicable state and federal laws. After execution of the contract the grantee may request disbursement of funds on the form(s) prescribed by IDED.

261—8.7(15,76GA,ch1180) Projects under Iowa Code chapter 260F. The 260F program is funded in part through the workforce development fund. Administrative rules for this program can be found in 261—Chapter 7.

261—8.8(15,76GA,chs1180,1219) Apprenticeship programs under Iowa Code section 260C.44 (including new or statewide building trades apprenticeship programs). The apprenticeship program under Iowa Code section 260C.44 is funded by an allocation to the workforce development fund. Administrative rules for this program can be found in 261—Chapter 17.

261—8.9(15,76GA,chs1180,1219) Innovative skill development activities.

8.9(1) *Program purpose.* To develop and provide creative training programs that will enhance the skill development of Iowa employees or address a workforce development need. Projects should concentrate on developing skills in new or emerging businesses or industries or address technological skills needed for current or future workers to become or remain competitive in the current labor market in existing businesses. The department will establish priority innovative skill areas for project solicitation annually, prior to the beginning of each fiscal year. These priorities will be established based upon the workforce and economic development needs of the state. These priority areas will be reflected in the request for proposal.

8.9(2) *Eligible applicants.* Eligible applicants include individual businesses, consortia of businesses, trade associations, labor organizations which represent a majority of the employees to be trained, educational institutions, and other public or private not-for-profit organizations which represent a majority of the individuals or businesses that will benefit from the training.

8.9(3) *Length of projects and maximum grant awards.* The department will establish the desired project length and maximum grant awards based upon the amount of workforce development funds allocated to the program in a fiscal year and upon the annual priorities set for this program by the board. These limitations will be published in the application packet. Grantees may request extensions to the length of a project.

8.9(4) *Allowable activities.* Allowable program activities include purchase or development of training curricula and materials; purchase or provision of technological equipment and related materials needed for the delivery of training; activities needed to support a training program including, but not limited to, assessment, recruitment, outreach and applications; training site development; activities needed to develop a training program including, but not limited to, travel, research and development, focus group activities and legal fees; activities designed to creatively address a workforce development need identified by a community that, if successful, can be easily replicated in other communities; tuition and fee reimbursements for students; tutorial and remedial education services; counseling services; coordination services; vocational and skill assessment testing; adult basic education; job-related training; cost of a company, college, or contracted trainer or training services; training-related materials, equipment, software, and supplies; lease and rental of training facilities and equipment; training-related travel and meals; and contracted or professional services. Costs associated with the administration of the project (i.e., fiscal and reporting activities, project supervision, and coordination) are allowable but are limited to 15 percent of the total program budget.

8.9(5) *Application procedure.* Application packets will be made available by the department. Application packets will outline eligibility criteria, the required application inclusions, and points established for evaluation. Applications must be submitted to the Iowa Department of Economic Development, Workforce Development Coordinator, 200 East Grand Avenue, Des Moines, Iowa 50309. Only the applications of eligible applicants will be considered. Applications may be submitted at any time during the year but must be submitted at least 15 days prior to the start date of activities for which reimbursement through this program is being requested. Applications will be reviewed in the order in which they are received.

8.9(6) *Required proposal inclusions.* Required contents of an application will be described in the application. Applications must address all information requested in the application packet to be considered for award. If all requested information is not provided, applications will not be considered for funding. Applicants who are denied funding may reapply. Reapplications will be treated as new applications.

8.9(7) *Evaluation and rating criteria.* The criteria used for scoring the application will include the following:

a. Sufficient need for the project has been established by participating groups, up to 10 points.

b. The project will enhance the skill development of Iowa's current and potential employees or will address a skill development need, up to 10 points.

c. The scope of the project is such that there is benefit and the potential for replicability for several businesses, industries, communities, or individuals, up to 10 points.

d. The project represents a coordinated, collaborative approach to addressing the need or problem identified and involves appropriate organizations, up to 10 points.

e. The project is for a new or emerging industry that will benefit from the activities under this project or it addresses technological skills enhancements that will be realized as a result of this project, up to 10 points.

f. Individuals, industries, businesses or communities will benefit from this project from a workforce development perspective, up to 10 points.

g. The project is feasible in terms of the reasonableness of the budget in comparison to the expected outcomes, other comparable training, and the demands of the individuals, businesses, industries, or communities it will serve, up to 15 points.

h. The expected outcomes will assist the current labor market to become or remain competitive and will foster growth in the local and state economy. This may be evidenced by expected increases in wages or career opportunities of trainees, or by expected competitive advantages to be realized by companies or industries, or by projected enhancement of employment opportunities for communities, up to 10 points.

i. The previous experience of the project operator or service provider is sufficient to ensure quality programming, up to 5 points.

j. Match contributed to the project evidences commitment to the project on behalf of the proposer, up to 10 points.

Proposals will be reviewed by two department staff members. As a part of this review, staff will ascertain which community college district(s) the project corresponds to and notify the appropriate community college president from that district of the proposal for purposes of review and comment. Points will be assigned for each evaluation criteria by each of the respective staff and totaled. The two scores will then be averaged. Proposals receiving an average score of at least 70 out of a possible 100 points will be presented to the IDED board for a final funding decision. The IDED board will base a final funding decision upon the project's ability to address the annual priorities previously established by the IDED and board and upon availability of funding.

8.9(8) *Award process.* Upon approval of the IDED board, the applicant will receive an award letter which will state the amount and conditions of the award. Awards will be made in the form of grants.

8.9(9) *Contract.* Following notification of award, a contract will be prepared for execution between the applicant and IDED. The final project application will become part of the contract. In addition, there will be other contract assurances which will include, but are not limited to, the provisions of these rules and applicable state and federal laws. After execution of the contract the grantee may request disbursement of funds on the form(s) prescribed by IDED.

261—8.10(15,76GA,ch1180) Negotiation and award. The department reserves the right to negotiate the amount, terms or other conditions of the grants or forgivable loans prior to the award.

261—8.11(15,76GA,ch1180) Administration.

8.11(1) *Access to records.* The department or its designees, at all reasonable times, may enter the grantee's establishment during the course of or following the completion of the projects for any purpose arising from the performance of the contracted project or agreement.

8.11(2) *Waiver.* The department may waive particular provisions of the program requirements outlined in this chapter, provided the waiver does not conflict with applicable state laws. Waivers will be provided only in extreme circumstances when chapter requirements are hindering the ability of a specific project to carry out the intent of the applicable program.

8.11(3) *Record keeping and retention.* Grantees shall maintain all records required for compliance with applicable law, regulation and project contracts until the end of the fiscal year following the year the project was closed out.

8.11(4) *Data collection and reporting.* Grantees shall collect, maintain, and report to IDED information pertaining to the characteristics of the participants, activity and service levels, program outcomes, and expenditures as required for program analysis.

8.11(5) *Monitoring.* Each grantee must make available all of its records pertaining to all matters related to the program being operated. They shall also permit the department to utilize, monitor, examine or make excerpts of transcripts from such records, contracts, invoices, personnel records, conditions of employment, and other data and records related to all other matters covered by this program.

8.11(6) *Compliance problems.* When problems of compliance with law, regulation, or contract or agreement stipulations are noted or when it is discovered a grantee has made false or misleading representations in the program application, contract, or agreement, the department may require corrective action to be taken. Failure to respond to corrective action requests may result in the establishment of a debt on the part of the grantee.

8.11(7) *Remedies for noncompliance.* At any time before project closeout, the department may, for cause, find that a grantee is not in compliance with the requirements of a program under the workforce development fund. At the department's discretion, remedies for noncompliance may include the following:

a. Issue a warning letter that further failure to comply with program requirements within a stated period of time will result in a more serious sanction.

b. Condition a future grant or agreement.

c. Direct the grantee to stop incurring costs under the project.

d. Require that some or all of the grant amounts be remitted to the state.

e. Reduce the level of funds that the grantee would otherwise be entitled to receive.

f. Elect not to provide future workforce development fund moneys to the grantee until the appropriate actions are taken to ensure compliance.

8.11(8) *Compliance with applicable labor laws.* Grantees shall operate all projects in compliance with state and federal health, safety, equal opportunity, and other applicable labor laws.

261—8.12(15,76GA,ch1180) Training materials and equipment. Training materials and equipment that are needed to carry out the deliverables described within a project may be purchased by the grantee, unless specified otherwise in the program-specific requirements of these rules. For the purposes of this chapter, equipment means property with a purchase price of $1000 or more and an anticipated useful life in excess of one year. Equipment purchased with workforce development funds shall not be used by any entity for the purposes of generating a profit to the entity, unless the equipment purchase was prorated based upon anticipated usage between grant or forgivable loan funds and cash provided by the purchasing entity. Equipment with any remaining useful life may be disposed of at fair market value, with any funds realized from that sale being repaid to the department either in whole or on a prorated basis. Equipment that no longer has a useful life or that has no remaining value may be disposed of by the grantee with the permission of IDED.

261—8.13(15,76GA,ch1180) Redistribution of funds. The department reserves the right to recapture and redistribute funds based upon projected expenditures, if it appears that funds will not be expended in accordance with the proposed budget for a project.

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CHAPTER 9
SELF-EMPLOYMENT BUSINESS ASSISTANCE

Renumbered as 261—Ch 52, IAB 7/19/95

CHAPTER 10
LABOR-MANAGEMENT COOPERATION PROGRAM

Transferred to 345—Ch 11, IAB 7/17/96, effective 7/1/96, pursuant to 1996 Iowa Acts, Senate File 2409.

CHAPTER 20
ACCELERATED CAREER EDUCATION (ACE) PROGRAM

DIVISION I - GENERAL PROVISIONS

261—20.1(260G) Purpose. The ACE program has three parts: the capital costs component, the program job credits component, and the accelerated career education grants program. The Iowa department of economic development administers the first two components. The college student aid commission administers the career education grants portion of the ACE program as described in the commission's administrative rules. The goal of the ACE program is to provide an enhanced skilled workforce in Iowa.

261—20.2(260G) Definitions.

"Accelerated career education program" or *"ACE"* means the program established pursuant to Iowa Code Supplement chapter 260G as amended by 2000 Iowa Acts, Senate File 2439.

"Agreement" means a program agreement referred to in Iowa Code Supplement section 260G.3 as amended by 2000 Iowa Acts, Senate File 2439, between an employer and a community college.

"Allotment" means the distribution of job credits based upon need as determined by the community colleges.

"Community college" means a community college established under Iowa Code chapter 260C or a consortium of two or more community colleges.

"Employee" means a person employed in a program job.

"Employer" means a business or consortium of businesses engaged in interstate or intrastate commerce for the purposes of manufacturing, processing or assembling products; construction; conducting research and development; or providing services in interstate or intrastate commerce, but excluding retail services.

"Highly skilled job" means a job with a broadly based, high-performance skill profile including advanced computation and communication skills, technology skills and workplace behavior skills, and for which an applied technical education is required.

"IDED" or *"department"* means the Iowa department of economic development.

"IDED board" means the Iowa economic development board authorized under Iowa Code section 15.103.

"Participant" means an individual who is enrolled in an accelerated career education program at a community college.

"Participant position" means the individual student enrollment position available in an accelerated career education program.

"Program capital cost" means classroom and laboratory renovation, new classroom and laboratory construction, site acquisition or preparation.

"Program job" means a highly skilled job available from an employer pursuant to a program agreement.

"Program job credit" means a credit that an employer may claim against all withholding taxes due in an amount up to 10 percent of the gross program job wage of a program job position as authorized in an agreement between a community college and an employer.

"Program job position" means a job position which is planned or available for an employee by the employer pursuant to a program agreement.

"Program operating costs" means all necessary and incidental costs of providing program services.

"Program services" means services that include all of the following provided they are pursuant to a program agreement: program needs assessment and development, job task analysis, curriculum development and revision, instruction, instructional materials and supplies, computer software and upgrades, instructional support, administrative and student services, related school to career training programs, skill or career interest assessment services and testing and contracted services.

"Vertical infrastructure" means land acquisition and construction, major renovation and major repair of buildings, all appurtenant structures, utilities, site development and recreation trails. Vertical infrastructure does not include equipment; routine, recurring maintenance or operational expenses; or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

261—20.3(260G) ACE program eligibility and designation.

20.3(1) In order to receive financial assistance under the capital projects program, tax credits from withholding under the program job credits component or financial assistance through the college student aid commission's accelerated career education grants program, a program must be designated by a community college as an eligible ACE program. All programs must demonstrate increased capacity to enroll additional students. To be eligible, a program must be either:

a. A credit career, vocational, or technical education program resulting in the conferring of a certificate, diploma, associate of science degree, or associate of applied science degree; or

b. A credit-equivalent career, vocational, or technical education program consisting of not less than 540 contact hours of classroom and laboratory instruction and resulting in the conferring of a certificate or other recognized, competency-based credential.

20.3(2) By resolution of a community college board of directors, an eligible program may be approved and designated as an ACE program. The respective community college board(s) of directors shall ensure compliance with Iowa Code Supplement chapter 260G as amended by 2000 Iowa Acts, Senate File 2439, and 2000 Iowa Acts, Senate File 2453. In designating ACE programs, the respective community college board(s) shall give priority to targeted industries as designated by the department.

20.3(3) A copy of the designated ACE program shall be submitted to the department. The department will review the ACE program designation to ensure compliance with Iowa Code Supplement chapter 260G as amended by 2000 Iowa Acts, Senate File 2439. The department will maintain a record of all approved ACE programs.

261—20.4(260G) Funding allocation.

20.4(1) *Base allocation.*

a. Funds for ACE program job credits and capital costs projects shall be allocated among the community colleges in the state for the fiscal years and in the amounts specified in 2000 Iowa Acts, Senate Files 2439 and 2453, and these rules.

b. Community colleges shall submit program agreements to access allotted funds. The program agreement shall document the findings of the community college that all ACE eligibility requirements have been met.

20.4(2) *Alternate allotment.* If a community college fails to commit any of its allotment by April 1 of the fiscal year, the funds for that community college will be allocated to other community colleges based upon need as described in these rules. Program job credits are considered to be committed if there is a signed program agreement in place or if there is a statement of intent in place that states that a signed program agreement will be in place by May 1 of the fiscal year.

261—20.5(260G) Eligible and ineligible business.

20.5(1) *Eligible business.* An eligible business is a business engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, or assembling products; construction; conducting research and development; or providing services in interstate or intrastate commerce.

20.5(2) *Ineligible business.* A business engaged in retail services is ineligible to receive ACE program assistance.

261—20.6(260G) Program agreements.

20.6(1) Program agreements will be developed by an employer, a community college and any employee of an employer representing a program job. The development of the agreements may be facilitated by an entity representing a group of employers. Any community college that has an employer from its merged area involved in an ACE project must enter into the agreement. If a bargaining unit is in place with the employer pledging the jobs, a representative of the bargaining unit shall take part in the development of the program agreement. All participating parties must sign the program agreement. The agreement must include employer certification of contributions that are made toward the program costs.

20.6(2) A program agreement shall include, at a minimum, the following terms: match provided by the employer; tuition, student fees, or special charges fixed by the community college board of directors; guarantee of employer payments; type and amount of funding sources that will be used to pay for program costs; description of program services and implementation schedule; the term of the agreement, not to exceed five years; the employer's agreement to interview graduates for full-time positions and provide hiring preference; for employers with more than four sponsored participants, certification that a job offer will be made to at least 25 percent of those participants that complete the program; an agreement by the employer to provide a wage level of no less than 200 percent of the federal poverty guideline for a family of two; a provision that the employer does not have to fulfill the job offer requirement if the employer experiences an economic downturn; a provision that the participants will agree to interview with the employer following completion of the program; and default procedures.

20.6(3) Projects that cross community college boundaries, or projects that involve employers from multiple community college areas, must be conducted pursuant to an agreement or agreements with each college.

261—20.7(260G) Administration. The department will administer the statewide allocations and will consult with representatives of the community colleges to promulgate necessary forms and collect necessary information. The department will monitor program agreements for the purposes of preparing a study of the needs and performance of approved programs for submission to the general assembly by the department by December 31, 2002.

261—20.8(260G) Customer tracking system. Participants in the ACE program shall be included in the customer tracking system implemented by Iowa workforce development. In order to achieve this, social security numbers of all ACE program trainees will be required.

261—20.9(260G) Program costs recalculation. Program costs shall be calculated or recalculated on an annual basis based on the required program services for a specific number of participants. Agreement updates reflecting this recalculation must be submitted to IDED annually to review compliance with program parameters.

DIVISION II - CAPITAL COSTS COMPONENT

261—20.10(260G) Threshold requirements. To be considered for funding, the following threshold requirements shall be met:

1. The agreement must provide for pledged program positions paying at least 200 percent of the poverty level for a family of two. If the wage designated is to become effective after a training or probationary period, the employer must document that there is a plan in place regarding time frames for transition to the permanent full-time wage, and the employer must provide documentation that these time frames are reasonable and that the employer has previously adhered to the time schedule.
2. The agreement must demonstrate that the program meets the definition of an eligible ACE program.
3. The agreement must demonstrate that the project builds the capacity of the community college to train additional students for available jobs.
4. The agreement must establish a 20 percent employer cash or in-kind match for program operating funds.
5. The agreement shall describe how the project enhances geographic diversity of project offerings across the state.
6. The agreement must document that other private or public sources of funds are maximized prior to ACE program capital cost funding.
7. ACE program capital cost projects must enhance the geographic diversity of state investment in Iowa. The IDED board will continuously review projects to ensure that there is statewide impact. The IDED board will prioritize projects to ensure geographic diversity.
8. Funds shall be used only for ACE program capital costs for projects that meet the definition of vertical infrastructure. Building repair, renovation and construction for purposes of ACE program equipment installation shall be allowed.

261—20.11(260G) Application procedures.

20.11(1) *Final application.* Applicants shall submit a final agreement to IDED to request capital funds.

20.11(2) *Staff review and recommendation.* A committee of IDED staff will review and rate applications based upon the rating criteria stated in 261—20.12(260G). Based upon this review, a decision will be made regarding submittal of the application to the IDED board for action.

20.11(3) *IDED board action.* The IDED board will review ACE program capital costs projects meeting the requirements prescribed in these rules. A program agreement, which is approved by the community college board of directors, serves as the final application. Approval or denial of submitted applications that are complete and in final form shall be made no later than 60 days following receipt of the application by the department. Subsequent to board approval, an award letter will be sent. The award letter will be followed by a contract. After a signed contract is in place, funding for a project may be requested.

261—20.12(260G) Evaluation criteria for competitive awards—capital costs projects. Applications and accompanying program agreements meeting all ACE eligibility requirements will be prioritized and rated using the following point criteria:

1. The degree to which the applicant adequately demonstrates a lack of existing public or private infrastructure for development of the partnership. There must be a demonstration that the project will build capacity in order for the project to be considered. Capacity will be measured in terms of jobs that are pledged, students that are interested in the program area and the capacity that is built at the community college to undertake the programming. Up to 33 points will be awarded.

2. Demonstration that the jobs that would result from the partnership would include wages, benefits and other attributes that would improve the quality of employment within the region. Projects where the average wage for the pledged jobs exceeds the regional or county average wage, whichever is lower for the location where the training is to be provided, will be awarded points based upon the percentage that the average wage of the pledged jobs exceeds the applicable average wage. Up to 33 points will be awarded.

3. Evidence of local, public or private contributions that meet the requirements of Iowa Code Supplement chapter 260G as amended by 2000 Iowa Acts, Senate File 2439. Projects will be rated based upon the percentage of match that is pledged to the ACE program capital cost for the project. Up to 34 points will be awarded.

Applications that do not receive at least 66 out of 100 points will not be forwarded to the IDED board for review. Projects will be competing against each other for IDED board approval, and the number of points that a project receives will be considered in the award process.

DIVISION III - PROGRAM JOB CREDITS

261—20.13(260G) Threshold requirements—program job credits. To be eligible to receive program job credits, the following threshold requirements shall be met:

1. The agreement must provide for pledged program positions paying at least 200 percent of the poverty level for a family of two. If the wage designated is to become effective after a training or probationary period, the employer must document that there is a plan in place regarding time frames for transition to the permanent full-time wage, and the employer must provide documentation that these time frames are reasonable and that the employer has previously adhered to the time schedule.

2. The agreement must provide that the program meets the definition of an eligible ACE program.

3. The agreement must establish a 20 percent employer cash or in-kind match for program operating funds.

4. The agreement shall describe how the project enhances geographic diversity of project offerings across the state.

5. The executed agreement or a statement of intent must be submitted within the time periods described in these rules in order to establish a commitment of program job credits by the community college.

261—20.14(260G) Job credits allocation.

20.14(1) The department shall allot the total amount of program job credits authorized and available for the fiscal year to each community college based upon need ratios as follows:

	Merged Area	Need Based Proportionate Allotment Minimum $80,000 to Each Community College
I.	Northeast Iowa Community College	4.63%
II.	North Iowa Area Community College	4.63%
III.	Iowa Lakes Community College	2.67%
IV.	Northwest Iowa Community College	2.67%
V.	Iowa Central Community College	4.64%
VI.	Iowa Valley Community College District	4.38%
VII.	Hawkeye Community College	6.62%
IX.	Eastern Iowa Community College District	8.68%
X.	Kirkwood Community College	17.00%
XI.	Des Moines Area Community College	19.00%
XII.	Western Iowa Tech Community College	5.13%
XIII.	Iowa Western Community College	6.51%
XIV.	Southwestern Community College	2.67%
XV.	Indian Hills Community College	7.13%
XVI.	Southeastern Community College	3.64%
		100.00%

Agreements for the first $80,000 in job credits will be reviewed by the department to determine if the project meets eligibility requirements for the program prior to allocation of the job credit. For any job credits awarded above the $80,000 base allocation, a review of the quality of the project will be performed as described in rule 20.16(260G). Job credits will not be considered allocated until eligibility and quality criteria have been met.

20.14(2) For purposes of allotment, the foregoing ratios shall be applied to commitments made by community colleges pursuant to three cycle periods during the fiscal year, beginning on the following cycle dates: August 1, December 1, and May 1.

20.14(3) A commitment for a cycle period is established by filing a copy of an executed agreement or a statement of intent with the department not later than ten days prior to the next cycle date. Each community college may commit all or a portion of its proportionate allotment during each cycle period. Any amount uncommitted as of the cycle date shall be reported in the statement of intent and will carry over to the next cycle period and be reallotted by the department to the other community colleges based upon the same proportionate allotment ratios set out in subrule 20.14(1).

20.14(4) Notwithstanding subrule 20.14(3), it is recognized that 2000 Iowa Acts, Senate File 2439, section 5, requires that any portion of an allocation to a community college uncommitted on April 1 of a fiscal year may be available for use by other community colleges. As of April 1, each college shall have either an agreement or a statement of intent indicating that the college will enter into an agreement by May 1 to retain the college's current fiscal year allotment. Any job credit allotments that do not have accompanying agreements as of the May 1 cycle date will be available for proportional reallotment to other community colleges with signed agreements that have not received all of the tax credits that are needed under the agreement.

20.14(5) Beginning with the May 1 cycle, the department will accept program agreements or statements of intent for the first cycle of the following fiscal year's tax credit allotment. For the fiscal year beginning July 1, 2002, proportionate allocation ratios as described in subrule 20.14(1) will be reviewed and examined for possible modification based upon need in the respective merged areas throughout the state. Such review shall take place immediately following the August 1, 2001, cycle period allocation of credits.

20.14(6) The department shall calculate and report to each community college the number of job credits available for distribution each cycle period during the fiscal year based upon the proportionate allocation ratios set out in subrule 20.14(1) and subrule 20.14(4). Ratios in subrule 20.14(1) will be updated every two years beginning July 1, 2002.

20.14(7) So long as job credits are available for a cycle period, if an agreement provides for a two-year student program, the commitment shall be deemed to include the full amount of credits necessary to fund the entire two-year program and the duration of the agreement even though allocations for more than one fiscal year may be required.

20.14(8) Allocation credits, once received, may be retroactively applied to eligible programs during the fiscal year so long as the amount to be received does not exceed the proportionate allocation for each cycle period.

261—20.15(260G) Determination of job credits, notice, and certification.

20.15(1) *Determination of job credit amounts.* If a program provides that part of the program costs are to be met by receipt of program job credits, the method to be used shall be as follows:

a. Program job credits shall be based upon the program job positions identified and agreed to in the agreement.

b. Eligibility for program job credits shall be based on certification of program job positions and program job wages by the employer at the time established in the agreement.

c. An amount up to 10 percent of the gross program job wages as certified by the employer in the agreement shall be credited from the total payment made by an employer pursuant to Iowa Code section 422.16.

d. The employer shall remit the amount of the credit quarterly, in the same manner as withholding payments are reported to the department of revenue and finance, to the community college to be allocated to and, when collected, paid into a special fund of the community college to pay, in part, the program costs.

e. When the program costs have been paid, the employer credits shall cease and any moneys received after the program costs have been paid shall be remitted to the treasurer of state to be deposited in the general fund of the state.

20.15(2) *Notice to revenue and finance department.* The employer shall certify to the department of revenue and finance that the program job credit is in accordance with the agreement and shall provide other information the department may require.

20.15(3) *Certification of amount of job credits.* A community college shall certify to the department of revenue and finance that the amount of the program job credits is in accordance with an agreement and shall provide other information the department may require.

261—20.16(260G) Evaluation criteria for quality assurance—program job credits. Agreements submitted for funding greater than the minimum allocation set forth in 2000 Iowa Acts, Senate File 2439, section 5, will be reviewed and rated based on the following criteria:

1. The quality of the program ..... up to 17 points.
2. The number of program participant placements ..... up to 17 points.
3. The wages and benefits in program jobs ..... up to 17 points.
4. The level of employer contributions ..... up to 17 points.
5. The industrial cluster into which the program falls ..... up to 17 points.
6. The geographic location of the employers ..... up to 15 points.

Agreements that receive at least 65 points out of 100 points will be approved to receive tax credits above the base allocation. An award letter will be issued, followed by a contract.

261—20.17(260G) Committed funds. The department shall maintain an annual record of the proposed program job credits under each agreement for each cycle of each fiscal year. When the total available program job credits have been allocated for a fiscal year, the department shall inform all community colleges that the maximum amount has been allocated and that further program job credits will not be available for the remainder of the fiscal year. If any committed credits become uncommitted after the above-mentioned notice has been issued, the department will inform all community colleges that some job credits are again available and applications will be accepted for those job credits until they are again committed.

These rules are intended to implement Iowa Code Supplement chapter 260G as amended by 2000 Iowa Acts, Senate File 2439, and 2000 Iowa Acts, Senate File 2453.

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53.7(3) *Relating to business activity*:

a. The size of the business receiving assistance. The department shall award more points to small businesses as defined by the U.S. Small Business Administration.

b. The potential for future growth in the industry represented by the business being considered for assistance.

c. The impact of the proposed project on competitors of the business.

d. The capacity of the proposed project to create products by adding value to agricultural commodities.

e. The degree to which the proposed project relies upon agricultural or value-added research conducted at a college or university, including a regents institution, community college, or a private university or college.

261—53.8(15) Small business gap financing.

53.8(1) *Additional criteria.* Applications under this component shall be for businesses that meet the SBA definition of a small business. All geographic locations of the business will be used to determine the total number of employees. The criteria in rule 53.7(15) will be used for evaluating applications under this component.

53.8(2) *Application form.* Applicants applying for assistance under this component shall use the general business financial assistance application form provided by the department. The department may, at its option, transfer requests to a different financial assistance program, including but not limited to:

a. The new business opportunities or new product development components of CEBA;

b. EDSA (economic development set-aside program);

c. BDFC (business development finance corporation program); or

d. PFSA (public facilities set-aside program).

53.8(3) *Scoring.* The criteria noted in rule 53.7(15) are incorporated into the scoring system as follows:

a. Local effort compared with local resources. Maximum — 20 points. This includes assistance from the city, county, community college, chambers of commerce, economic development groups, utilities, or other local sources, compared to the resources reasonably available from those sources. The form of local assistance compared to the form of CEBA assistance requested will be considered (e.g., in-kind, grant, loan, forgivable loan, job training, tax abatement, tax increment financing). The dollar amount of local effort and the timing of the local effort participation as compared to the dollar amount and timing of the requested CEBA participation will also be considered. Conventional financing, inadequately documented in-kind financing, and local infrastructure projects not specifically directed at the business are not considered local effort.

b. Community need. Maximum — 10 points. This includes considerations such as unemployment rates, per capita income, major closings and layoffs, declining tax base, etc.

c. Private contribution compared with CEBA request. Maximum — 30 points. The greater the contribution by the assisted business, the higher the score. Conventional financing will be considered a private contribution. Contribution in the form of "new cash equity" by the business owner will result in a higher score.

d. Comprehensive community and economic development plan. Maximum — 10 points. A community submitting a comprehensive community and economic development plan meeting the requirements of 261—Chapter 80 will receive 10 points.

e. Extra points if small business, as defined by SBA. Maximum — 10 points.

f. Project impact on the state and local economy.

(1) Cost/benefit analysis. Maximum — 40 points. This factor compares the amount requested to the number of jobs to be created or retained as defined in paragraph 53.7(2)*"a"* and the projected increase in state and local tax revenues. Also considered here is the form of assistance (e.g., a forgivable loan will receive a lower score than a loan).

(2) Quality of jobs to be created. Maximum — 40 points. Higher points to be awarded for:

Higher wage rates;

Lower turnover rates;

Full-time, career-type positions;

Relative safety of the new jobs;

Health insurance benefits;

Fringe benefits;

Other related factors.

(3) Economic impact. Maximum — 40 points. Higher points to be awarded for base economic activities, e.g.:

Greater percentage of sales out of state, or import substitution;

Higher proportion of in-state suppliers;

Greater diversification of state economy;

Fewer in-state competitors;

Potential for future growth of industry;

Consistency with the state strategic plan for economic development prepared in compliance with Iowa Code section 15.104(2);

Increased value to agricultural commodities;

Degree of utilization of agricultural or value-added technology research from an Iowa educational institution;

A project which is not a retail operation;

A project which includes remediation or redevelopment of a brownfield site.

Maximum preliminary points for project impact — 120 points.

(4) Final impact score. Maximum — 120 points. Equal to preliminary impact score multiplied by a reliability factor (as a percent).

(NOTE OF EXPLANATION — Rating factors in 53.8(3)*"f"*(1) to (3) attempt to measure the expected impact of the project, if all predictions and projections in the application turn out to be accurate. Up to that point in the rating system, no attempt has been made to judge the feasibility of the business venture, the reliability of the job creation and financial estimates, the likelihood of success, the creditworthiness of the business, and whether the project would occur without state assistance. An attempt to analyze projects against these factors is also important. In order to incorporate this judgment into the rating system, the Preliminary Impact Score (Maximum of 120 points) is multiplied by a "reliability and feasibility factor" to obtain a final impact score, 53.8(3)*"f"*(4). This factor will range from 0 to 100 percent, depending upon the department's judgment as to the likelihood of the projections turning out as planned. If, in the department's judgment, the project would proceed whether it was funded or not, it will be assigned a zero percent on the reliability and feasibility factor and the final impact score will be zero. This is consistent with the intent of the program to use funds only where state assistance will make a difference.)

The maximum total score possible is 200 points.

Projects that score less than 120 points in rule 53.8(15) will not be recommended for funding by the staff to the committee.

53.16(5) *Extensions based on actual performance.* If the recipient achieves the job attainment goal within 90 days after the project expiration date, the department may consider providing up to a 90-day extension to the project expiration date without committee approval.

53.16(6) *Forms.* The following forms will be used by the department in the administration of the CEBA program:

1. Application for business financial assistance;
2. Application for comprehensive management assistance;
3. Loan agreement;
4. Loan subsidy (buydown) agreement;
5. Loan guarantee agreement;
6. Equity-like agreement;
7. Forgivable loan agreement;
8. Comprehensive management assistance agreement;
9. Applicant program budget and schedule;
10. Applicant semiannual performance report;
11. Applicant request for release of funds; and
12. Applicant final expenditure report.

These rules are intended to implement Iowa Code sections 15.315 to 15.320.

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◊ Two ARCs

261—61.6(15E) Award process.

61.6(1) Applications will be reviewed and summarized by department staff. Staff will prepare a summary for the director who shall make a final decision on the application.

61.6(2) Upon an application's submission, department staff will consult with the Iowa departments of transportation and natural resources and any other relevant state agency. The purpose of these consultations will be to ensure that the activities proposed by the applicant would be conducted in a manner consistent with the plans and policies of appropriate state agencies as they relate to physical infrastructure projects.

61.6(3) The department may request, and reimburse related costs for, the department of natural resources to assess environmentally contaminated sites and to identify remedial actions necessary to enhance the site for development or redevelopment.

61.6(4) In anticipation of the submission of a formal application, the director may, upon receipt of a letter of intent to apply from an eligible applicant, reserve physical infrastructure assistance funds for a period of 90 days from receipt of the letter of intent. The applicant will receive written notice of the reservation of funds and the date by which a formal application shall be submitted.

261—61.7(15E) Forms of assistance available; award amount.

61.7(1) *Forms of assistance.* Funding from state fiscal years 1997 and 1998 is available for providing assistance in the form of a loan, forgivable loan, loan guarantee, cost-share, indemnification of costs, indemnification of liability, or any combination deemed to be the most efficient in facilitating the infrastructure project. Any indemnification for liability agreements must be entered into prior to June 30, 1998.

61.7(2) *Amount of award.* The maximum award per project shall not exceed $1 million. The director may waive this award limit upon a showing that the business exceeds the eligibility requirements for the program; or the wages to be paid are in excess of those paid in the community or the industry; or the project will bring a substantial economic benefit to the community or the state. If an award would exceed the $1 million level, the director shall advise and consult with the IDED board prior to approving a waiver of the award limit. Any award in excess of $1 million shall be secured by an irrevocable letter of credit.

261—61.8(15E) Program administration.

61.8(1) *Contract.* The department and the recipient of PIAP funds shall enter into a contract which shall include, but not be limited to, the following terms: duration of contract, number of jobs to be created or retained, security requirements, default and repayment provisions.

61.8(2) *Monitoring.* The department reserves the right, at reasonable intervals, to monitor projects to ensure compliance with Iowa Code section 15E.175, these rules, and contractual obligations.

These rules are intended to implement Iowa Code section 15E.175.

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CHAPTERS 62 to 64
Reserved

CHAPTER 65
BROWNFIELD REDEVELOPMENT PROGRAM

261—65.1(78GA,HF2423) Purpose. The brownfield redevelopment program is designed to provide financial and technical assistance for the acquisition, remediation, or redevelopment of brownfield sites.

261—65.2(78GA,HF2423) Definitions. When used in this chapter, unless the context otherwise requires:

"Acquisition" means the purchase of brownfield property.

"Advisory council" means a brownfield redevelopment advisory council as established in 2000 Iowa Acts, House File 2423, section 4, consisting of five members.

"Board" means the Iowa department of economic development board.

"Brownfield site" means an abandoned, idled, or underutilized industrial or commercial facility where expansion or redevelopment is complicated by real or perceived environmental contamination. A brownfield site includes property contiguous with the property on which the individual or commercial facility is located. A brownfield site shall not include property which has been placed, or is proposed to be included, on the national priorities list established pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 et seq.

"CERCLA" means Comprehensive Environmental Response, Compensation, and Liability Act as defined at 42 U.S.C. 9601 et seq.

"Characterization" means determination of both the nature and extent of contamination in the various media of the environment.

"Community" means a city or county, or an entity established pursuant to Iowa Code chapter 28E.

"Contaminant" means any hazardous substance found in the various media of the environment.

"Department" or *"IDED"* means the Iowa department of economic development.

"Fund" means the brownfield redevelopment fund established pursuant to 2000 Iowa Acts, House File 2423, section 3.

"Grant" means the donation or contribution of funds with no expectation or requirement that the funds be repaid.

"Hazardous substance" means "hazardous substance" as defined in 567—Chapter 137 and includes petroleum substances not addressed in 567—Chapter 135.

"Loan" means an award of assistance with the requirement that the award be repaid, and with term, interest rate, and any other conditions specified as part of the award. A deferred loan is one for which the payment of principal or interest, or both, is not required for some specified period. A forgivable loan is one for which repayment is eliminated in part or entirely if the borrower satisfies specified conditions. A loan guarantee is a third-party commitment to repay all or a portion of the loan in the event that the borrower defaults on the loan.

"Redevelopment" means projects that result in the elimination of blighting characteristics as defined by Iowa Code section 403.2.

"Remediation" includes characterization, risk assessment, removal and cleanup of environmental contaminants located on and adjacent to a brownfield site. Funding awards used for remediation must comply with appropriate Iowa department of natural resources requirements and guidelines.

"Risk evaluation" means assessment of risks to human health and environment by way of guidelines established in 567—Chapter 137, Iowa Administrative Code.

"Sponsorship" means an agreement between a city or county and an applicant for assistance under the brownfield redevelopment program in which the city or county agrees to offer assistance or guidance to the applicant. Sponsorship is not required if the applicant is a city or county.

261—65.3(78GA,HF2423) Eligible applicants. To be eligible to apply for program assistance, an applicant must meet the following eligibility requirements:

65.3(1) *Site owner.* A person owning a site is an eligible applicant if the site for which assistance is sought meets the definition of a brownfield site and the applicant has secured a sponsor prior to applying for program assistance.

65.3(2) *Nonowner of site.* A person who is not an owner of a site is an eligible applicant if the site meets the definition of a brownfield site and the applicant has secured a sponsor prior to applying for program assistance.

65.3(3) *Agreement executed.* Prior to applying for financial assistance under this program, an applicant shall enter into an agreement with the owner of the brownfield site for which financial assistance is sought. The agreement shall at a minimum include:

1. The total cost for remediating the site.
2. Agreement that the owner shall transfer title of the property to the applicant upon completion of the remediation of the property.
3. Agreement that upon the subsequent sale of the property by the applicant to a person other than the original owner, the original owner shall receive not more than 75 percent of the estimated total cost of the remediation, acquisition or redevelopment.

261—65.4(78GA,HF2423) Eligible forms of assistance and limitations.

65.4(1) *Financial assistance.* Eligible forms of financial assistance under this program include grants, interest-bearing loans, forgivable loans, loan guarantees, and other forms of assistance under the brownfield redevelopment program established in 2000 Iowa Acts, House File 2423.

65.4(2) *Technical assistance.* Technical assistance under this program is available in the form of providing an applicant with assistance in identifying alternative forms of assistance for which the applicant may be eligible.

65.4(3) *Limitation on amount.* An applicant shall not receive financial assistance of more than 25 percent of the agreed-upon estimated total cost of remediation.

65.4(4) *Exclusions.* Program funds shall not be used for the remediation of contaminants being addressed under Iowa's leaking underground storage tank (LUST) program. However, a site's being addressed under the LUST program does not necessarily exclude that site from being addressed under the Iowa brownfield redevelopment Act if other nonpetroleum contaminants or petroleum substances not addressed under 567—Chapter 135 are present.

261—65.5(78GA,HF2423) Repayment to IDED. Upon the subsequent sale of the property by an applicant to a person other than the original owner, the applicant shall repay the department for financial assistance received by the applicant. The repayment shall be in an amount equal to the sales price less the amount paid to the original owner pursuant to the agreement between the applicant and the original owner. The repayment amount shall not exceed the amount of financial assistance received by the applicant.

261—65.6(78GA,HF2423) Application and award procedures. Subject to availability of funds, applications will be reviewed and rated by IDED staff on an ongoing basis and reviewed quarterly by the advisory council. Brownfield redevelopment funds will be awarded on a competitive basis. Applications will be reviewed by staff for completeness and eligibility. If additional information is required, the applicant shall be provided with notice, in writing, to submit additional information. Recommendations from the advisory council will be submitted to the board. The board may approve, deny or defer an application.

261—65.7(78GA,HF2423) Application contents. An application for assistance shall include, but not be limited to, the following information:

1. A business plan which includes a remediation plan. The business plan should, at a minimum, include a project contact/applying agency, a project overview (which would include the background of the project area, goals and objectives of the project, and implementation strategy), and a project/remediation budget.
2. A statement of purpose describing the intended use of and proposed repayment schedule for any financial assistance received by the applicant.
3. Evidence of sponsorship.

261—65.8(78GA,HF2423) Application forms. Application forms for the brownfield redevelopment program shall be available upon request from IDED, 200 East Grand Avenue, Des Moines, Iowa 50309. IDED may provide technical assistance as necessary to applicants. IDED staff may conduct on-site evaluations of proposed activities.

261—65.9(78GA,HF2423) Application review criteria. Brownfield redevelopment funds will be awarded on a competitive basis. Applications will be reviewed and prioritized based on the following criteria:

1. Whether the project meets the definition of a brownfield site.
2. Whether alternative forms of assistance have been explored and used by the applicant.
3. The level of distress or extent of the problem on the site has been identified.
4. Whether the site is on or proposed to be added to the U.S. Environmental Protection Agency's list of CERCLA sites.
5. The degree to which awards secured from other sources are committed to the subject site.
6. The leveraging of other public and private resources beyond the 75 percent minimum required.
7. Type and terms of assistance requested.
8. Rationale that the project serves a public purpose.
9. The level of economic and physical distress within the project area.
10. Past efforts of the community/owner to resolve the problem.
11. Ability of the applicant to outline the goals and objectives of the project and describe the overall strategy for achieving the goals and objectives.
12. Ancillary off-site development as a result of site remediation.

261—65.10(78GA,HF2423) Administration of awards.

65.10(1) A contract shall be executed between the recipient and IDED. These rules and applicable state laws and regulations shall be part of the contract.

65.10(2) The recipient must execute and return the contract to IDED within 45 days of transmittal of the final contract from IDED. Failure to do so may be cause for the board to terminate the award.

65.10(3) Certain activities may require that permits or clearances be obtained from other state or local agencies before the activity may proceed. Awards may be conditioned upon the timely completion of these requirements.

65.10(4) Awards may be conditioned upon commitment of other sources of funds necessary to complete the activity.

65.10(5) Awards may be conditioned upon IDED's receipt and approval of an implementation plan for the funded activity.

These rules are intended to implement 2000 Iowa Acts, House File 2423.

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CHAPTERS 66 to 100
Reserved

PART V
DIVISION OF TOURISM

CHAPTER 101
DIVISION RESPONSIBILITIES
[Prior to 9/6/00, see 261—Ch 62]

261—101.1(15) Mission. The mission of the division of tourism is to assist in diversifying Iowa's economy by supporting and promoting the Iowa hospitality industry and by enhancing the image of Iowa as a place to travel and live.

261—101.2(15) Activities. To carry out its mission, the division administers and develops the following programs: advertising, special events, publications, public relations, group travel, welcome centers, community assistance, education and training, licensing and sales, research and tourism regions.

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CHAPTER 102
WELCOME CENTER PROGRAM

[Prior to 7/19/95, see 261—Ch 58]
[Prior to 9/6/00, see 261—Ch 63]

261—102.1(72GA,HF540) Purpose. The primary goal of a statewide program for welcome centers is to provide to travelers high quality, accurate, and interesting information about the following: travel in the state; national, statewide, and local attractions; lodging, medical service, food service, vehicle service, and other kinds of necessities; general information about the state; and needed and convenient services such as restrooms, lodging information, and event reservation services. Settings for the welcome centers will convey a sense of being welcomed to the state through hospitable attitudes of personnel; high quality of site landscape architecture, architectural theme, and interior design of the buildings; special events that occur at the centers; and high level of maintenance.

261—102.2(72GA,HF540) Long-range plan. Reserved.

261—102.3(72GA,HF540) Definitions. Reserved.

261—102.4(72GA,HF540) Pilot projects. The department is authorized by 1987 Iowa Acts, House File 540, to establish site locations for a welcome center pilot project.

102.4(1) *Site categories.* A welcome center may be located in any of the following sites for the pilot project:

a. In proximity to interstate highways,

b. In proximity to primary highways,

c. In or near communities with populations of 5000 or less.

102.4(2) *Eligible applicant.* An applicant must either be an Iowa resident, a political subdivision of the state, or a business authorized to do business within the state to be eligible to apply under the pilot project.

102.4(3) *Project eligibility.* Eligible projects are those which expand the state's economy through the provision of facilities and programs where travelers can:

a. Obtain information about travel and hospitality services, tourism attractions, park and recreation opportunities, cultural and natural resources, lodging and other support information.

b. Have access to needed and convenient services, such as: restrooms; lodging information and event reservation services; souvenirs, crafts, arts, and food products originating in the state; food and beverages; and fishing, hunting, and other permits and licenses needed for recreation.

c. Be welcomed to the state in a high quality manner that presents a positive, lasting image of the state of Iowa.

102.4(4) *Assistance.*

a. Assistance amount. Assistance will be available not to exceed 50 percent of the total project cost. Projects with local matches greater than 50 percent will receive priority, other things being equal.

b. Assistance match. The local match may take the form of, but is not limited to: funds; donations; private foundation grants; any federal or state grant not administered by the department of economic development, the department of natural resources, the department of cultural affairs, or the department of transportation; land, buildings, and other types of in-kind services, such as long-term operation and maintenance costs, including personnel, management or other related supports. Assistance applicants shall provide evidence of local match sources and document all in-kind services. The department maintains the authority to verify the value of all forms of local matches, including independent, approved real estate appraisals.

102.4(5) *Application submission.*

a. Applications shall be on the forms provided by the department and contain the information specified in the application materials.

b. Applications shall be received by the date and time specified by the department in the application materials. Late applications will not be reviewed by the department.

c. All application materials submitted shall be deemed to be sealed bids.

d. The department will not, directly or indirectly or in any manner whatsoever, at any time other than as provided in the pilot project application materials, open any sealed bid or convey or divulge to any person any part of the contents of a sealed bid.

e. After submission of a completed application, applicants may be requested to present their project proposal to the project review committee.

f. Two or more eligible applicants may submit a joint proposal. One of the coapplicants must be designated as the lead applicant.

102.4(6) *Project review and selection.*

a. Review committee. The role of the review committee will be to evaluate, by site category, applications that are submitted based on information provided and make recommendations to the director of the department of economic development. The director will make recommendations to the IDED board who will approve the final selection decision. The review committee will consist of representatives from the department of economic development, the department of natural resources, the department of cultural affairs, the department of transportation, the Iowa chapter of the American Institute of Architects, the Iowa chapter of the American Society of Landscape Architects and the Iowa travel council.

b. Consideration withheld. The committee will not consider any application which is not complete upon submission and for which additional information was requested and not received, or which was not presented in an interview session as requested by the committee.

c. Rating criteria. Rating of the applications will be based upon the following criteria and total points:

1. Project/program cost and budget ..... 80 points

Evaluation of project/program cost and budget items includes development costs, operation costs, source of funding, and potential for self-sufficiency over time.

2. Project/program economic impact ..... 200 points

Evaluation of project/program economic impact includes job creation; the local, regional, and state level economic benefits; current project visitation; increased visitation; impact of new center upon existing center; types and presentation of information provided; types of service provided; and electronic data telecommunication systems.

3. Project/program feasibility ..... 200 points

Evaluation of project/program feasibility includes marketing and promotion, ownership, operation, average daily traffic, infrastructure availability, and project timing.

4. Project/program image quality ..... 200 points

Evaluation of project/program image quality includes concept plans, project/program image, plans for quality, potential for success, natural features, visual quality, and provision of a planning team.

102.4(7) *Project contract.*

a. Selected pilot projects shall be required to enter into a contract with the department. Terms and conditions will be as negotiated with the department.

b. Following the negotiation of a contract, applicants selected for assistance shall commence project planning within 30 days and commence construction within 12 months after the signing of the contract.

c. In the event there are funds remaining after the initial pilot projects are selected; or if the applicant(s) selected fails to sign a contract with the department; or if a contract is terminated before all contract funds are expended, the department reserves the right to negotiate a site contract with the next highest ranked applicant in that category that meets the established criteria.

102.4(8) *Record keeping.* Recipients of financial assistance shall keep adequate records relating to the welcome center project. These records are subject to audit by the department or the auditor of state.

102.4(9) *Project reviews.* The department may monitor and inspect the funded welcome center projects as deemed necessary by the department.

These rules are intended to implement Iowa Code sections 15.271 and 15.272.

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CHAPTER 103
TOURISM PROMOTION—LICENSING PROGRAM

[Prior to 7/19/95, see 261—Ch 60]
[Prior to 9/6/00, see 261—Ch 64]

261—103.1(15) Purpose. The purpose of the licensing program is to generate revenue and to aid in the promotion and marketing of Iowa tourism and special events. The department may issue licenses for use of its logos and other creative materials. Licensing agreements will be awarded to qualified vendors who shall produce merchandise bearing specified registered marks of the department.

261—103.2(15) Definitions.

"IDED" or *"department"* means the Iowa department of economic development.

"Licensee" means the entity receiving the licensing agreement to use the mark on their good(s).

"Licensor" means IDED.

"Mark" means a registered trademark or service mark of the department.

"Officially licensed product" means the article(s) of merchandise or product(s) that has been licensed by the IDED to the licensee.

261—103.3(15) Licensing eligibility criteria. An applicant shall meet each of the following criteria to be eligible to be a licensed vendor to produce items bearing the mark as agreed upon in the licensing agreement.

1. The applicant shall have been in operation for at least one year.
2. The applicant shall have a credible reputation as confirmed by the applicant's financial institution, local chamber of commerce, the better business bureau, or a local economic development group. The department may also contact the consumer protection or other appropriate division of the Iowa attorney general's office or other state or federal agencies for information about the applicant.
3. The applicant's product shall be manufactured, processed or originate in the United States of America.
4. The applicant shall not have had a license issued under these rules terminated.
5. The applicant shall demonstrate financial responsibility.
6. The applicant shall not have knowingly made a false statement to the department.
7. If the applicant is a non-Iowa corporation, the applicant shall be registered with the secretary of state.
8. The applicant shall furnish a signed and completed application form provided by the department. The application shall include, but not be limited to, the following:

- Documentation confirming the applicant has been in operation for at least one year.
- Documentation confirming the applicant has a credible reputation.
- Documentation confirming that the applicant's product is manufactured, processed or originates in the United States of America.
- A description and one sample (at no charge to IDED) of the product to be licensed.
- Warranty or guarantee statements covering the product, if available.
- Copies of promotional literature or brochures, if available.
- Any other information about the product or applicant as requested by the department.

261—103.4(15) Review and approval of applications.

103.4(1) *Application review.* Applications shall be reviewed by IDED staff to determine that the applicant meets the eligibility criteria and these rules. IDED staff may use a project review committee to assist in reviewing applications. IDED staff shall make final recommendations for approval by the director of IDED.

103.4(2) *Application submission.*

a. Applications shall be on the forms provided by the department and contain the information specified in the application materials.

b. After submission of a completed application, applicants may be requested to present their application to IDED staff or the project review committee.

103.4(3) *Evaluation criteria.* The department may issue a license to use a mark owned by IDED to any applicant who meets the eligibility requirements established by these rules. In deciding whether to grant a license to an eligible applicant, the department shall consider the following factors:

a. Background and reputation of the applicant for credibility and integrity;

b. Financial responsibility of the applicant;

c. To ensure compatibility with the dignity of the state, general welfare of the people, and goals and objectives of IDED's marketing and promotional efforts, the type of business owned and product on which the mark would be used;

d. The volume of expected sales and revenue potential;

e. The accuracy of the information supplied in the application for the license;

f. Distribution channel and current retail list;

g. The characteristics of the product such as product appeal, environmental awareness, etc.;

h. Any other criteria or information relevant to deciding whether to grant the license.

261—103.5(15) Licensing agreement.

103.5(1) *Agreement provisions.* Selected licensing applicants shall be required to enter into a licensing agreement with the department. The licensing agreement shall include, but not be limited to, provisions regarding royalties, record retention, use of mark, license term, indemnification, insurance, and termination.

103.5(2) *Period of performance.* Licensees shall be granted permission to place the mark on their product for up to one year. IDED shall retain the option to renew the licensing agreement on an annual basis for a maximum of five years.

103.5(3) *Use of mark.* Licensee shall use the mark only as stated in the licensing agreement. The licensing agreement shall state specific mark, product, and product description.

103.5(4) *Financial terms.*

a. Applicant shall submit a nonrefundable advance against royalties of $100.

b. Licensee shall pay IDED a royalty fee of 1 percent to 15 percent for each item licensed, as negotiated and outlined in the licensing agreement.

c. Licensee shall provide sales reports as stated in the licensing agreement.

d. Advance against royalties, royalties and sales reports shall be sent to: Division of Tourism, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

103.5(5) *Advertising and promotional requirements.*

a. Licensee shall be allowed to use the term "Officially Licensed Product of the Iowa Division of Tourism" in promoting the licensed product.

b. Licensee shall be required to tag or mark the merchandise with IDED "Officially Licensed Product" mark label.

c. IDED shall provide camera-ready artwork and design guides to produce "Officially Licensed Product" mark.

d. Licensee shall follow the graphic standards as outlined in IDED graphic standards manual for producing licensed products.

e. Licensee shall not imply an endorsement or sponsorship by IDED, division of tourism, or the state of Iowa concerning their licensed product or any other product.

261—103.6(15) Requests for information. Information about the licensing program may be obtained by contacting: Division of Tourism, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

These rules are intended to implement Iowa Code section 15.108(5)*"o."*

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CHAPTERS 104 to 130
Reserved

PART VI
INTERNATIONAL DIVISION

CHAPTER 131
DIVISION RESPONSIBILITIES
[Prior to 9/6/00, see 261—Ch 67]

261—131.1(15) Mission. The mission of the division is to promote Iowa goods and services internationally and to favorably position Iowa as a location for foreign development.

261—131.2(15) Activities. The international division provides services in the following areas:

131.2(1) *Strategic counsel and management support on critical initiatives for Iowa's international business community.* Through broad-based programs in trade promotion, investment attraction and technical assistance, the division provides assistance to Iowa companies.

131.2(2) *Trade promotion programs.* The division coordinates a range of trade promotion programs targeted to Iowa exporters. The programs provide enough flexibility that new-to-market companies as well as experienced exporters are able to access programs to assist them in developing their presence in international markets.

131.2(3) *Technical assistance and educational programming.* The division provides businesses with access to educational programs directed toward business development. Representative topics include business practices in different countries, assistance in documentation, and international finance issues. In-house counseling sessions that are tailored to meet the unique requirements of an individual company are also provided by the division.

131.2(4) *Investment attraction.* The division is actively involved in foreign investment attraction in targeted markets. The department's foreign office directors are Iowa's contact people for networking with prospective investors.

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CHAPTER 132
IOWA EXPORT TRADE ASSISTANCE PROGRAM

[Prior to 11/15/89, see 261—Chapter 56]
[Prior to 7/19/95, see 261—Ch 61]
[Prior to 9/6/00, see 261—Ch 68]

261—132.1(78GA,ch197) Purpose. The purpose of the Iowa export trade assistance program is to promote the development of international trade activities and opportunities for exporters in the state of Iowa through encouraging increased participation in overseas trade shows and trade missions by providing financial assistance to successful applicants.

261—132.2(78GA,ch197) Definitions.

"Department" means Iowa department of economic development.

"Division" means the international division of the department.

"Exporter" means a person or business that sells one of the following outside of the United States:

- A manufactured product.
- A value-added product.
- An agricultural product.
- A service.

"Sales representative" means a contracted representative of an Iowa firm with the authority to consummate a sales transaction.

"Trade mission" means a mission event led by the department of economic development, U.S. Department of Commerce, or the U.S. Department of Agriculture. Qualified trade missions must include each of the following:

- Advanced operational and logistical planning.
- Advanced scheduling of individualized appointments with prequalified prospects interested in participants' product or service being offered.
- Background information on individual prospects prior to appointments.

Trade missions may also include:

- In-depth briefings on market requirements and business practices for targeted country.
- Interpreter services.
- Development of a trade mission directory prior to the event containing individual company data regarding the Iowa company and the products being offered.
- Technical seminars delivered by the mission participants.

261—132.3(78GA,ch197) Eligible applicants. The export trade assistance program is available to Iowa firms either producing or adding value to products, or both, or providing services in the state of Iowa. To be eligible to receive trade assistance, applicants must meet all four of the following criteria:

*1. Be an entity employing fewer than 500 individuals, 75 percent or more of whom are employed within the state of Iowa,

2. Exhibit products or services or samples of Iowa manufactured, processed or value-added products or agricultural commodities in conjunction with a foreign trade show or trade mission (catalog exhibits are permitted if they are used in conjunction with the exhibit of a product or service or in association with the firm's participation in a trade mission),

3. Have at least one full-time employee or sales representative attend the trade show or participate in the trade mission, and

4. Provide proof of deposit or payment of the trade show or trade mission participation fee.

*See Objection at end of this Chapter.

261—132.4(78GA,ch197) Eligible reimbursements. The department's reimbursement to approved applicants for assistance shall not exceed 75 percent of eligible expenses. Total reimbursement shall not exceed $4000 per event. Payments will be made by the department on a reimbursement basis upon submission of proper documentation and approval by the department of paid receipts received by the division. Reimbursement is limited to the following types of expenses:

132.4(1) Trade shows.

a. Space rental.

b. Booth construction at show site.

c. Booth equipment or furniture rental.

d. Freight costs associated with shipment of equipment or exhibit materials to the participant's booth and return.

e. Booth utility costs.

f. Interpreter fees for the duration of the trade show.

g. Per diem (lodging and meals) for the day immediately before the opening day of the trade show through the day immediately after the closing day of the trade show; per diem is calculated at 50 percent of the rate schedules provided by the U.S. Department of State for travel in foreign areas; and per diem will be paid for only one sales representative.

132.4(2) Trade mission.

a. Mission participation fee.

b. Per diem (lodging and meals) for each day identified in the official mission itinerary. Per diem is calculated at 50 percent of the rate schedules provided by the U.S. Department of State for travel in foreign areas and will be paid for only one sales representative.

c. Freight costs associated with shipment of equipment or exhibit materials to the participant's meeting site and return.

d. Presentation equipment at the meeting site.

e. Interpreter fees, if not included in the participation fee, and as needed during the trade mission.

261—132.5(78GA,ch197) Applications for assistance. To access the export trade assistance program, the applicant shall:

132.5(1) Complete the export trade assistance program's application form and return it to the division prior to trade event participation. Successful applicants will be required to enter into a contract for reimbursement with the department prior to trade event participation.

132.5(2) Exhibit products or services or samples of Iowa products in conjunction with a foreign trade show or trade mission (catalog exhibits are permitted if they are used in conjunction with the exhibit of a product or service or in association with the firm's participation in a trade mission).

132.5(3) Have in attendance at the trade show or trade mission at least one full-time employee or sales representative of the applicant.

132.5(4) Pay all expenses related to participation in the trade event and submit for reimbursement from the department for eligible, documented expenses.

132.5(5) Complete the final report form and return it to the division before final reimbursement can be made.

261—132.6(78GA,ch197) Selection process. Applications will be reviewed in the order received by the division. Successful applicants will be funded on a first-come, first-served basis to the extent funds are available. When all funds have been committed, applications shall be held in the order they are received. In the event that committed funds are subsequently available, the applications shall be processed in the order they were received for events that have not yet occurred.

261—132.7(78GA,ch197) Limitations. A participant in the export trade assistance program shall not utilize the program's benefits more than three times during the state's fiscal year. Participants shall not utilize export trade assistance program funds for participation in the same trade show during two consecutive state fiscal years, or for participation in the same trade show more than two times. Participants shall not utilize export trade assistance program funds for participation in multiple trade shows in the same country during the same state fiscal year.

261—132.8(78GA,ch197) Forms. The following forms are available from the department and will be used by the department in the administration of the export trade assistance program:

1. ETAP application form,
2. ETAP final report form,
3. Reimbursement agreement.

These rules are intended to implement 1999 Iowa Acts, chapter 197, section 1, subsection 4.

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CHAPTERS 133 to 162
Reserved

OBJECTION

At its meeting held February 3, 1992, the Administrative Rules Review Committee voted to object to the amendments to rule 261 IAC 61.3"1"* on the grounds those amendments are unreasonable. This rule originally appeared as part of **ARC 2215A**, published in IAB Vol. XIV No. 3 (08-07-91). The previous rule provided export trade assistance to Iowa residents or entities with corporate offices in Iowa. The amendment will provide the assistance to out-of-state entities, as long as they employ fewer than 500 people and 75 percent of those people are employed in Iowa. This rule has now been repromulgated as **ARC 2763A**, but the language of concern to the Committee remains unchanged, and for that reason the objection remains in place.

The Committee believes this amendment is unreasonable because it believes there are ample numbers of Iowa-based corporations that desire to participate in this program and that it is unnecessary to use Iowa-generated revenue to benefit out-of-state corporations.

*Renumbered 68.3"1," IAB 7/19/95; renumbered 132.3"1," IAB 9/6/00.

PART VII
DIVISION OF ADMINISTRATION

CHAPTER 163
DIVISION RESPONSIBILITIES
[Prior to 9/6/00, see 261—Ch 71]

261—163.1(15) Mission. The division's mission is to enhance the capacity of the department and staff to proactively address issues affecting economic development in Iowa and be responsive to customers, and to properly administer the resources available to the department for program operations.

261—163.2(15) Structure. The division is comprised of the director's office, the bureau of communications and technology, the bureau of general administration and the Iowa film office.

163.2(1) *Director's office.* The office of the director provides overall oversight and management of all operations and programs administered by the department as well as providing for the development of strategic and economic development plans for the department and the state of Iowa. The office is the department's primary liaison with other agencies of state government.

163.2(2) *Communications and technology bureau.* The bureau provides support services for the entire department including the application of technology and communications equipment to the functions and responsibilities of each division. The bureau provides for the coordination and preparation of printed materials published by the department. The bureau also is responsible for communications with the public and news media and supports the department's efforts to maintain and utilize information about the state which is relevant to the agency's economic development mission.

163.2(3) *Bureau of general administration.* The bureau provides for the necessary functions associated with the oversight and accounting of state and federal programs administered by the department. The bureau also is responsible for the management of human resources in the department.

163.2(4) *Iowa film office.* The primary functions of the Iowa film office are to market the state of Iowa as a location for the production of entertainment programs, to assist producers and location managers with the logistics associated with production activities in Iowa, to help Iowa communities capitalize on opportunities created by entertainment productions, and to support and encourage the development of entertainment professionals in Iowa.

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CHAPTER 164
USE OF MARKETING LOGO

[Prior to 7/19/95, see 261—Ch 55]
[Prior to 9/6/00, see 261—Ch 72]

261—164.1(15) Purpose and limitation.

164.1(1) *Purpose.* The purpose of the marketing logo program is to aid in the promotion and marketing of Iowa products and services. The IDED board has approved the following logo to market and promote Iowa products and services: A Taste of Iowa. A person shall not use this logo or advertise it or attach it to any promotional literature, manufactured article, or agricultural product without the approval of the department. The department will consult, as appropriate, with the advisory committee concerning program design, promotion and administration.

164.1(2) *Limitation.* By authorizing eligible applicants to use the marketing logo, the department, the IDED board and the state do not provide any guarantee or warranty regarding the product or service or its quality. Businesses that use the marketing logo expressly agree not to represent that the logo suggests any department, IDED board or state approval of the product or service.

261—164.2(15) Definitions.

"Advertisement" means any written, printed, verbal or graphic representation, or combination thereof, of any product with the purpose of influencing consumer opinion as to the characteristics, qualities or image of the commodity, food, feed, or fiber except labeling information as required by any government.

"Advisory committee" means the advisory committee appointed by the director to advise the department on how to promote and administer the A Taste of Iowa program.

"A Taste of Iowa program" or *"program"* means the promotional certification program authorized by these rules.

"Director" means the director of IDED.

"Label" means any written, printed, or graphic design that is placed on, or in near proximity to, any product whether in the natural or processed state or any combination thereof.

"License" means the written agreement through which IDED grants authorization to use the A Taste of Iowa logo.

"Person" means any natural person, corporation, partnership, association, or society.

"Processed" means any significant change in the form or identity of a raw product through, by way of example but not limited to, breaking, milling, shredding, condensing, cutting or tanning.

"Produced in Iowa" means:

1. For processed products, 50 percent or more of the product by weight or wholesale value was grown, raised or processed in Iowa.
2. For raw products, 100 percent of the product by weight, if sold by weight, by measure, if sold by measure, by number, if sold by count, was grown or raised in Iowa.

"Product" means any agricultural commodity, processed food, feed, fiber, or combinations thereof.

"Promotion" or *"promotional"* means any enticements, bonuses, discounts, premiums, giveaways, or similar encouragements that influence consumers' opinions regarding a product.

261—164.3(15) Guidelines. Before an applicant will be granted authorization to use the marketing logo, an applicant shall comply with the following guidelines to demonstrate to the department that the product or service is manufactured, processed or originates in Iowa.

164.3(1) *Eligible applicants.* Eligible applicants are those:

a. Companies whose products are manufactured, processed or originate within the state of Iowa; or

b. Service-oriented firms including, but not limited to, financial, wholesalers and distribution centers whose products qualify under paragraph *"a"* above.

164.3(2) *Criteria.* An applicant shall meet the following criteria to be eligible to use the marketing logo in conjunction with a designated product or service:

a. The company shall have a credible reputation as confirmed by the local chamber of commerce, the better business bureau, the regional coordinating council, or a local economic development group. The department may also contact the consumer protection, farm or other appropriate division of the Iowa attorney general's office or other state or federal agencies for information about the company.

b. The applicant's product or service shall be manufactured or processed or shall originate in Iowa.

c. Any applicant that has participated in the A Taste of Iowa program and whose license to use the logo was terminated by the department is ineligible to reapply for program participation for a period of five years from the date of termination.

d. The company shall furnish a signed and completed application on forms provided by the department. The application shall include, but not be limited to, the following:

(1) A description of the product(s) or service(s) for which the logo is sought.

(2) Information confirming that the applicant's product or service is manufactured or processed or originates in Iowa.

(3) A description of the distribution area for the product or service.

(4) Warranty or guarantee statements covering the product or service, if available.

(5) Copies of promotional literature or brochures, if available.

(6) A statement describing how the logo is to be used and on what product(s) or service(s).

(7) Any other information about the product or service as requested by the department.

261—164.4(15) Review and approval of applications.

164.4(1) Applications shall be reviewed by department staff to determine if the applicant has satisfactorily demonstrated that the product or service meets the eligibility requirements of these rules. Applicants shall, upon request and at no charge to the department, agree to provide product samples.

164.4(2) Following review of the application, department staff shall submit recommendations for approval or denial to the director. The director shall make the final decision to approve or deny an application.

261—164.5(15) Licensing agreement; use of logo.

164.5(1) *Licensing agreement.* An approved applicant shall enter into a licensing agreement with the department as a condition of using the A Taste of Iowa logo. The terms of the agreement shall include, but not be limited to, duration of the license and any renewal options; conditions of logo usage; identification of product(s) or service(s) authorized to use the logo; an agreement to hold harmless and indemnify the department, the state, its officers or employees; an agreement to notify the department of any litigation, product recall, or investigation by a state or federal agency regarding the product or service utilizing the logo; and an acknowledgment that the state is not providing a guarantee or warranty concerning the safety, fitness, merchantability, or use of the applicant's product or service.

164.5(2) *Use of logo.* Upon notification of approval and execution of a licensing agreement with the department, the applicant may use the logo on its product, package or promotional materials until notified by the department to discontinue its use. The department shall furnish the approved applicant with a copy of the "official reproduction sheet" of camera-ready logo copy from which the company can reproduce the logo. The licensee shall follow the graphic standards as provided to the licensee and incorporated in the license agreement.

261—164.6(15) Denial or suspension of use of logo.

164.6(1) *Denial.* The department may deny permission to use the label or trademark if the department reasonably believes that the applicant's planned use (or for licensees, if the planned or actual use) would adversely affect the use of the label or trademark as a marketing tool for Iowa products or its use would be inconsistent with the marketing objectives of the department.

164.6(2) *Suspension.* The department may suspend permission to use the label or trademark for the same reasons stated in subrule 164.6(1), prior to an evidentiary hearing which shall be held within a reasonable period of time following the suspension.

261—164.7(15) Request for hearing.

164.7(1) *Filing deadline.* An applicant who is denied permission to use the marketing logo or a licensee that has received notice of suspension of permission to use the marketing logo may request a hearing concerning the denial or suspension. A request for a hearing shall be filed with the department within 20 days of receipt of the denial or suspension notice. Requests for hearing shall be submitted in writing by personal service or by certified mail, return receipt requested, to: A Taste of Iowa, International Division, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

164.7(2) *Contents of request for hearing.* A request for a hearing shall contain the following information:

a. The date of filing of the request;

b. The name, address and telephone number of the party requesting the hearing and, if represented by counsel, the name, address and telephone number of the petitioner's attorney;

c. A clear statement of the facts, including the reasons the requesting party believes the denial or suspension of permission to use the marketing logo should be reconsidered; and

d. The signature of the requesting party.

164.7(3) *Informal settlement.* Individuals are encouraged to meet informally with department representatives to resolve issues related to a denied application or suspension of authorization to use the logo. If settlement is reached, it shall be in writing and is binding on the agency and the individual.

164.7(4) *Hearing procedures.* If an informal resolution is not reached, the department will follow the procedures outlined in the uniform rules on agency procedure governing contested cases located in the first volume of the Iowa Administrative Code.

261—164.8(15) Requests for information. Information about the logo marketing program may be obtained by contacting: A Taste of Iowa, International Division, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4743.

These rules are intended to implement Iowa Code section 15.108(2)*"b."*

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CHAPTERS 165 to 167
Reserved

CHAPTER 168
ADDITIONAL PROGRAM REQUIREMENTS
[Prior to 9/6/00, see 261—Ch 80]

DIVISION I
COMPREHENSIVE COMMUNITY AND ECONOMIC DEVELOPMENT PLANS

261—168.1(15) Supplementary credit. The department shall award supplementary credit to applications submitted by cities, counties, local and regional government organizations, and local and regional economic development organizations that have developed a comprehensive community and economic development plan.

261—168.2(15) Technical assistance. Subject to the availability of funds for this purpose, the department may provide financial assistance to cities, counties, local and regional government organizations, and local and regional economic development organizations for the purpose of developing comprehensive community and economic development plans.

These rules are intended to implement Iowa Code chapter 15.

261—168.3 to **168.85** Reserved.

DIVISION II
ENVIRONMENTAL CRITERIA

261—168.86(15A) Environmental report. Any individual or business applying for assistance through the department of economic development shall report on the application for assistance any cited violation of federal or state environmental statutes, regulations or rules within the past five years and detail the circumstances of the violation(s). If the individual or business fails to report violations and the department discovers such violations, the application for assistance shall be declared ineligible to receive assistance until such time as the report is submitted.

261—168.87(15A) Ineligibility for assistance. Any individual or business which has been referred by the department of natural resources to the attorney general for environmental violations shall be ineligible to receive assistance from the department until such time as the violations have been determined to be corrected.

261—168.88(15A) In-house audit. If the individual or business generates solid or hazardous waste, that individual or business shall be required to conduct an in-house audit and have management plans to reduce the amount of waste and to safely dispose of the waste.

168.88(1) If the individual or business has conducted an in-house audit and developed a management plan within the last three years, submission of a copy of the audit and management plan will fulfill this requirement.

168.88(2) If the individual or business has not conducted an audit within the past three years, the individual or business must initiate the audit prior to the disbursement of financial assistance and submit a copy of the completed audit within 90 days of disbursement of the financial assistance.

261—168.89(15A) External audit. In lieu of an in-house audit, the individual or business may elect to authorize the department of natural resources or the Iowa waste reduction center established under Iowa Code section 268.4 to conduct the audit. A copy of the authorization for the department of natural resources or the Iowa waste reduction center to conduct the audit shall be submitted to the department prior to the disbursement of financial assistance.

261—168.90(15A) Submission of audit. The individual or business must submit a copy of the completed audit conducted by the department of natural resources or the Iowa waste reduction center within 30 days of receipt.

261—168.91(15A) Annual report. Individuals or businesses receiving assistance from the department shall be required to report annually, according to individual program reporting requirements, progress on energy efficiency and waste reduction, until all conditions of the financial assistance have been satisfied.

These rules are intended to implement Iowa Code section 15A.1(3).

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CHAPTER 169
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
[Prior to 9/6/00, see 261—Ch 100]

The Iowa department of economic development hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

261—169.1(17A,22) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "department of economic development".

261—169.3(17A,22) Requests for access to records.

169.3(1) *Location of record.* In lieu of the words "(insert agency head)", insert "director of the agency". In lieu of the words "(insert agency name and address)", insert "Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; (515)281-3251".

169.3(2) *Office hours.* In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays and legal holidays".

169.3(7) *Fees.*

c. Supervisory fee. In lieu of the words "(specify time period)", insert "one hour".

261—169.9(17A,22) Disclosures without the consent of the subject.

169.9(1) Open records are routinely disclosed without the consent of the subject.

169.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 169.10(17A,22) or in the notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative fiscal bureau under Iowa Code section 2.52.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

261—169.10(17A,22) Routine use.

169.10(1) Defined. "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

169.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer or employee or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

261—169.11(17A,22) Consensual disclosure of confidential records.

169.11(1) *Consent to disclosure by a subject individual.* The subject may consent in writing to agency disclosure of confidential records as provided in rule 169.7(17A,22).

169.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

261—169.12(17A,22) Release to subject.

169.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 169.7(17A,22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18).

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5))

d. As otherwise authorized by law.

169.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

261—169.13(17A,22) Availability of records.

169.13(1) *Open records.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

169.13(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 73.2)

b. Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72)

c. Industrial prospect files. The department maintains records of industrial prospects with whom it is currently negotiating. The list is considered confidential under Iowa Code section 22.7(8).

d. National marketing client database. The department maintains a database of business prospects. This list identifies companies that are seeking new locations for their businesses. This list is considered confidential under Iowa Code sections 22.7(3) and 22.7(6).

e. Records which are exempt from disclosure under Iowa Code section 22.7.

f. Minutes of closed meetings of a government body as permitted under Iowa Code section 21.5(4).

g. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)*"d."*

h. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics on allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of those statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (Iowa Code sections 17A.2 and 17A.3)

i. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

j. Any other records considered confidential by law.

169.13(3) *Authority to release confidential records.* The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 169.5(17A,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 169.4(3).

261—169.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 169.1(17A,22). This rule describes the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. Unless otherwise stated, the authority for this department to maintain the record is provided by Iowa Code chapter 15. The record systems maintained by the agency are:

169.14(1) *Personnel files.* Personnel records of department employees are maintained at the agency. Records of staff include such personally identifiable information as name, address, social security number and employee payroll number. Other data contained in staff personnel records are salary information, seniority date, employee deduction forms, insurance and savings bond contributions, deferred compensation information, current leave information, performance evaluations and performance review dates. Some information may be confidential under Iowa Code section 22.7(11). Data processing systems do not match, collate or compare the personally identifiable information of the staff personnel records with personally identifiable information contained in the records of other agencies.

169.14(2) *Travel records.* The department maintains travel records of agency staff. Personally identifiable information collected includes the name, address, and social security number of the individual. This information is collected pursuant to Iowa Code section 421.39. Data processing systems do not match, collate or compare the personally identifiable information collected with similar information collected by other state agencies.

169.14(3) *Claim vouchers.* Requests for reimbursement from agency staff, contractors, and grantees are maintained by the department. These records contain the name, address and social security number of the individual requesting reimbursement for expenses. This information is collected pursuant to Iowa Code section 421.40. The information is not maintained in a data processing system which matches, collates or compares the information with other systems containing personally identifiable information.

169.14(4) *Contracts and grant records.* Contractual agreements and grant agreements are maintained by the department. These records contain personally identifiable information when the agreement is with a specific individual. In those instances, the records include the name, address and social security number of the contractor/grantee. Other information in these records may include the proposal or work statement of the contractor or grant recipient, budget figures, modifications, correspondence and business information. Personally identifiable information is not contained in a data processing system which collates, matches or compares this information with other systems containing personally identifiable information.

169.14(5) *Payroll records.* Payroll records include time sheets of individuals, listings of prior years' earnings, current listings of deductions, and insurance billings. Personally identifiable information is included in these records. An employee's name, address and social security number are maintained in the payroll record. Personally identifiable information is not contained in a data processing system which collates, matches or compares personally identifiable information.

169.14(6) *Job Training Partnership Act (JTPA) records.* The department does not actually collect participant files, but it does have access to participant files developed and maintained by local JTPA grantees. These files do contain personally identifiable information such as name, address, and social security number of the participant. The agency does maintain records of complaints filed under the department's JTPA complaint procedures. Personally identifiable information such as an individual's name, address and telephone number, is included in the complaint records. Personally identifiable information is collected about JTPA participants pursuant to Iowa Code chapter 7B and 29 U.S.C. § 1501. Data processing systems match, collate, and compare personally identifiable information contained in local grantee data processing systems.

169.14(7) *Grant and loan application records.* The department administers a variety of state and federal grant and loan programs. Records of persons or organizations applying for grants, awards or funds are available through the agency. These records may contain information about individuals collected pursuant to specific federal or state statutes or regulations. Personally identifiable information such as name, address, social security number and telephone number may be included in these records where the applicant is an individual. Many program applicants are political subdivisions or corporations, not individuals.

169.14(8) *Targeted small business certification applications.* The department is authorized to certify targeted small businesses pursuant to Iowa Code section 15.108(7)*"c."* When the applicant is an individual, personally identifiable information, such as the individual's name, address, and social security number, is collected. The following information may be included in the record: tax information, partnership agreements, birth certificate(s), loan agreements, business licenses, financial statements, health records, will(s) and bank signature cards. Some information may be considered confidential.

169.14(9) *Litigation files.* These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney's notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy.

261—169.15(17A,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 169.1(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 169.13(17A,22). The records listed may contain information about individuals. Unless otherwise stated, the authority for the department to maintain the record is provided by Iowa Code chapter 15.

NOTE: The records listed in rules 169.13(17A,22) and 169.14(17A,22) are under review to determine which portions are confidential and which are open to the public.

169.15(1) *Rule making.* Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. Public documents generated during the promulgation of agency rules, including notices and public comments, are available for public inspection. This information is not stored in an automated data processing system.

169.15(2) *IDED board records.* Agendas, minutes, and materials presented to the Iowa department of economic development are available from the agency except confidential records. Those records concerning closed sessions are exempt from disclosure under Iowa Code section 21.5(4). Board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier and is not stored on an automated data processing system.

169.15(3) *Statistical reports.* Periodic reports of various agency programs are available from the department of economic development. Statistical reports do not contain personally identifiable information.

169.15(4) *Appeal decisions and advisory opinions.* All final orders, decisions and opinions are open to the public except for information that is confidential according to rule 169.13(17A,22).

169.15(5) *Publications.* Publications include news releases, annual reports, project reports, agency newsletters, etc., which describe various agency programs and activities. Agency news releases, project reports, and newsletters may contain information about individuals including agency staff or members of agency councils or committees.

169.15(6) *Address lists.* The names and mailing addresses of members of boards and councils, work groups, program grantees and members of the public indicating interest in particular programs and activities of the agency are maintained to generate mailing labels for mass distribution of agency mailings.

169.15(7) *Appeal decisions and advisory opinions.* All final orders, decisions and opinions are open to the public except for information that may be confidential according to rule 169.13(17A,22).

169.15(8) *Published materials.* The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

261—169.16(17A,22) Applicability. This chapter does not:

Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the regulations of another agency.

Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs.

Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

These rules are intended to implement Iowa Code section 22.11.

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CHAPTER 170
DEPARTMENT PROCEDURE FOR RULE MAKING

[Prior to 9/6/00, see 261—Ch 101]

261—170.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the department are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

261—170.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the department may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)*"a,"* solicit comments from the public on a subject matter of possible rule making by the department by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

261—170.3(17A) Public rule-making docket.

170.3(1) *Docket maintained.* The department shall maintain a current public rule-making docket.

170.3(2) *Anticipated rule making.* The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed "anticipated" from the time a draft of proposed rules is distributed for internal discussion within the department. For each anticipated rule-making proceeding, the docket shall contain a listing of the precise subject matter which may be submitted for consideration to the economic development board for subsequent proposal under the provisions of Iowa Code section 17A.4(1)*"a,"* the name and address of department personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the department of that possible rule. The department may also include in the docket other subjects upon which public comment is desired.

170.3(3) *Pending rule-making proceedings.* The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1)*"a,"* to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule's becoming effective. For each rule-making proceeding, the docket shall indicate:

a. The subject matter of the proposed rule.

b. A citation to all published notices relating to the proceeding.

c. Where written submissions on the proposed rule may be inspected.

d. The time during which written submissions may be made.

e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made.

f. Whether a written request for the issuance of a regulatory analysis or a concise statement of reasons has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected.

g. The current status of the proposed rule and any department determinations with respect thereto.

h. Any known timetable for department decisions or other action in the proceeding.

i. The date of the rule's adoption.
j. The date of the rule's filing, indexing, and publication.
k. The date on which the rule will become effective.
l. Where the rule-making record may be inspected.

261—170.4(17A) Notice of proposed rule making.

170.4(1) *Contents.* At least 35 days before the adoption of a rule, the department shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

a. A brief explanation of the purpose of the proposed rule.
b. The specific legal authority for the proposed rule.
c. Except to the extent impracticable, the text of the proposed rule.
d. Where, when, and how persons may present their views on the proposed rule.
e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the department shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the department for the resolution of each of those issues.

170.4(2) *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action must file with the department a written request indicating the name and address (including an E-mail address if electronic transmittal is requested) to which the notices shall be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the department shall mail a copy of that notice to subscribers who have filed a written request for mailing with the department for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price, if any, which covers the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one year. If persons have requested that the department electronically transmit a copy of the notice by E-mail, there shall be no charge for this service.

261—170.5(17A) Public participation.

170.5(1) *Written comments.* For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing or via electronic transmission, on the proposed rule. These submissions should identify the proposed rule to which they relate and should be submitted to the individual identified in the Notice of Intended Action.

170.5(2) *Oral proceedings.* The department may, at any time, schedule an oral proceeding on a proposed rule. The department shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the department by the administrative rules review committee, a governmental subdivision, a state agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.
2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

3. A request by a state agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

The department may waive technical compliance with these procedures.

170.5(3) *Conduct of oral proceedings.*

a. Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)*"b"* as amended by 1998 Iowa Acts, chapter 1202, section 8.

b. Scheduling and notice. An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. Presiding officer. An employee of the department, or another person designated by the department who will be familiar with the substance of the proposed rules, shall preside at the oral proceeding on the proposed rules. If an employee of the department does not preside, the presiding officer shall prepare a memorandum for consideration by the department summarizing the contents of the presentations made at the oral proceeding unless the department determines that such a memorandum is not necessary because the department will personally listen to or read the entire transcript of the oral proceeding.

d. Conduct of proceeding. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at the proceeding are encouraged to notify the department at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the department decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. These submissions become the property of the department.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

170.5(4) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the department may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

The department may send notices of proposed rule making and a request for comments to any agency, organization, or association known to it to have a direct interest or expertise pertaining to the substance of the proposed rule.

170.5(5) *Accessibility.* The department shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the person identified in the Notice of Intended Action in advance to arrange access or other needed services.

261—170.6(17A) Regulatory analysis.

170.6(1) *Definition of small business.* A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10, subsection 7.

170.6(2) *Distribution list.* Small businesses or organizations of small businesses may be registered on the department's small business impact list by making a written application addressed to the Director's Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. The application for registration shall state:

a. The name of the small business or organization of small businesses.

b. Its address.

c. The name of a person authorized to transact business for the applicant.

d. A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact.

e. Whether the registrant desires copies of Notices of Intended Action at cost or via electronic transmission, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The department may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The department may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses shall be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

170.6(3) *Time of distribution.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the department shall mail or electronically transmit to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the department shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

170.6(4) *Qualified requesters for regulatory analysis—economic impact.* The department shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10, subsection 2, paragraph *"a,"* after a proper request from:

a. The administrative rules coordinator.

b. The administrative rules review committee.

170.6(5) *Qualified requesters for regulatory analysis—business impact.* The department shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10, subsection 2, paragraph *"b,"* after a proper request from:

a. The administrative rules review committee.

b. The administrative rules coordinator.

c. At least 25 or more persons who sign the request provided that each represents a different small business.

d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

170.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis, the agency shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10, subsection 4.

170.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the department. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10, subsection 1.

170.6(8) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10, subsections 4 and 5.

170.6(9) *Publication of a concise summary.* The department shall make available, to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10, subsection 5.

170.6(10) *Regulatory analysis contents—rules review committee or rules coordinator.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10, subsection 2, paragraph *"a,"* unless a written request expressly waives one or more of the items listed therein.

170.6(11) *Regulatory analysis contents—substantial impact on small business.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10, subsection 2, paragraph *"b."*

261—170.7(17A,25B) Fiscal impact statement. A rule that mandates additional combined expenditures exceeding $100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

If the department determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the department shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

261—170.8(17A) Time and manner of rule adoption.

170.8(1) *Time of adoption.* The department shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the department shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

170.8(2) *Consideration of public comment.* Before the adoption of a rule, the department shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any written summary of the oral submissions and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

170.8(3) *Reliance on department expertise.* Except as otherwise provided by law, the department may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

261—170.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

170.9(1) *Allowable variances.* The department shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and

b. The differences are a logical outgrowth of the contents of that Notice of Intended Action or the comments submitted in response thereto; and

c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

170.9(2) *Fair warning.* In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the department shall consider the following factors:

a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;

b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and

c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

170.9(3) *Petition for rule making.* The department shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the department finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

170.9(4) *Concurrent rule-making proceedings.* Nothing in this rule disturbs the discretion of the department to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

261—170.10(17A) Exemptions from public rule-making procedures.

170.10(1) *Omission of notice and comment.* To the extent the department for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the department may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

170.10(2) *Categories exempt.* The following narrowly tailored category of rules is exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class: rules mandated by federal law, including federal statutes or regulations establishing conditions for federal funding of departmental programs where the department is not exercising any options under federal law.

170.10(3) *Public proceedings on rules adopted without them.* The department may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 170.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, a state agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the department shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 170.10(1). This petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of the petition. After a standard rule-making proceeding commenced pursuant to this subrule, the department may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 170.10(1) or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

261—170.11(17A) Concise statement of reasons.

170.11(1) *General.* When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the department shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Director's Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests shall be considered made on the date received.

170.11(2) *Contents.* The concise statement of reasons shall contain:

a. The reasons for adopting the rule.

b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any change.

c. The principal reasons urged in the rule-making proceeding for and against the rule, and the department's reasons for overruling the arguments made against the rule.

170.11(3) *Time of issuance.* After a proper request, the department shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

261—170.12(17A) Contents, style, and form of rule.

170.12(1) *Contents.* Each rule adopted by the department shall contain the text of the rule and, in addition:

a. The date the department adopted the rule.

b. A brief explanation of the principal reasons for the rule-making action if the reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the department in its discretion decides to include the reasons.

c. A reference to all rules repealed, amended, or suspended by the rule.

d. A reference to the specific statutory or other authority authorizing adoption of the rule.

e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule.

f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if the reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the department in its discretion decides to include the reasons.

g. The effective date of the rule.

170.12(2) *Documents incorporated by reference.* The department may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the department finds that the incorporation of its text in the department proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the department proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The department may incorporate such matter by reference in a proposed or adopted rule only if the department makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this department, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The department shall retain permanently a copy of any materials incorporated by reference in a rule of the department.

170.12(3) *References to materials not published in full.* When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the department shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the department. The department shall provide a copy of that full text at actual cost upon request and shall make copies of the full text available for review either electronically or at the state law library.

At the request of the administrative code editor, the department shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

170.12(4) *Style and form.* In preparing its rules, the department shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

261—170.13(17A) Department rule-making record.

170.13(1) *Requirement.* The department shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference shall be available for public inspection.

170.13(2) *Contents.* The department rule-making record shall contain:

a. Copies of or citations to all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of department submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based.

b. Copies of any portions of the department's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based.

c. All written petitions, requests, and submissions received by the department, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the department in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the department is authorized by law to keep them confidential; provided, however, that when any materials are deleted because they are authorized by law to be kept confidential, the department shall identify in the record the particular materials deleted and state the reasons for that deletion.

d. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations.

e. A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based.

f. A copy of the rule and any concise statement of reasons prepared for that rule.

g. All petitions for amendment or repeal or suspension of the rule.

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general.

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code subsection 17A.4(4), and any department response to that objection.

j. A copy of any executive order concerning the rule.

170.13(3) *Effect of record.* Except as otherwise required by a provision of law, the department rule-making record required by this rule need not constitute the exclusive basis for department action on that rule.

170.13(4) *Maintenance of record.* The department shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective or the date of the Notice of Intended Action.

261—170.14(17A) Filing of rules. The department shall file each rule it adopts in the office of the administrative rules coordinator. The filing shall be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule shall have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the fiscal impact statement or concise statement is issued. In filing a rule, the department shall use the standard form prescribed by the administrative rules coordinator.

261—170.15(17A) Effectiveness of rules prior to publication.

170.15(1) *Grounds.* The department may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The department shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

170.15(2) *Special notice.* When the department makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3), the department shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the department to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the department of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice, or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of this subrule.

261—170.16(17A) Review by department of rules.

170.16(1) *Request for review.* Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator for the department to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the department shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The department may refuse to conduct a review if it has conducted a review of the specified rule within five years prior to the filing of the written request.

170.16(2) *Conduct of review.* In conducting the formal review, the department shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report shall include a concise statement of the department's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any requests for exceptions to the rule received by the department or granted by the department. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the department's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report shall also be available for public inspection.

261—170.17(17A) Written criticisms of department rules. Any interested person may submit written criticism of a rule adopted by the department.

170.17(1) *Where submitted, form.* Rule criticisms shall be in writing and submitted to the Director's Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. The criticism must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

DEPARTMENT OF ECONOMIC DEVELOPMENT

Criticism of Rule: (specify rule)

Reason(s) for Criticism:

Submitted By: Name:_____

Address:_____

_____

Telephone Number:_____

Signature:_____

Date:_____

170.17(2) *Maintenance.* Written criticisms of department rules will be maintained in a separate record for a period of five years from the date of receipt by the department. This record will be open for public inspection.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code section 25B.6.

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CHAPTER 171
PETITION FOR RULE MAKING

[Prior to 7/19/95, see 261—Ch 2]
[Prior to 9/6/00, see 261—Ch 102]

261—171.1(17A) Petition for rule making. Any person or state agency may file a petition for rule making with the department at the Director's Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. A petition is deemed filed when it is received by that office. The department must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

BEFORE THE DEPARTMENT OF ECONOMIC DEVELOPMENT

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	}	PETITION FOR RULE MAKING

The petition must provide the following information:

1. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the department's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.
6. Any request by petitioner for a meeting provided for by subrule 171.4(1).

171.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

171.1(2) The department may deny a petition because it does not substantially conform to the required form.

261—171.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The department may request a brief from the petitioner or from any other person concerning the substance of the petition.

261—171.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Director's Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel.

261—171.4(17A) Department consideration.

171.4(1) *Forwarding of petition and meeting.* Within five working days after the filing of a petition, the department shall submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by the petitioner in the petition, the department shall schedule a brief and informal meeting between the petitioner and a member of the staff of the department to discuss the petition. The department may request the petitioner to submit additional information or argument concerning the petition. The department may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the department by any person.

171.4(2) *Action on petition.* Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the department shall, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the department mails or delivers the required notification to petitioner.

171.4(3) *Denial of petition for nonconformance with form.* Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the department's rejection of the petition.

These rules are intended to implement Iowa Code section 17A.7 as amended by 1998 Iowa Acts, chapter 1202, section 11.

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CHAPTER 172
PETITION FOR DECLARATORY ORDER

[Prior to 7/19/95, see 261—Ch 3]
[Prior to 9/6/00, see 261—Ch 103]

261—172.1(17A) Petition for declaratory order. Any person may file a petition with the department for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department at the Director's Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. A petition is deemed filed when it is received by that office. The department shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and should substantially conform to the following form:

BEFORE THE DEPARTMENT OF ECONOMIC DEVELOPMENT

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers. A request which seeks to change rather than to declare or determine policy will be denied.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by the petitioner for a meeting provided for by rule 261—172.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

261—172.2(17A) Notice of petition. Within five working days of receipt of a petition for a declaratory order, the department shall give notice of the petition to all persons not served by the petitioner pursuant to rule 261—172.6(17A) to whom notice is required by any provision of law. The department may give notice to any other persons.

261—172.3(17A) Intervention.

172.3(1) *Nondiscretionary intervention.* Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 15 working days of the filing of a petition for declaratory order and before the 30-day time for department action under rule 261—172.8(17A) shall be allowed to intervene in a proceeding for a declaratory order.

172.3(2) *Discretionary intervention.* Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department.

172.3(3) *Filing and form of petition for intervention.* A petition for intervention shall be filed at the Director's Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. A petition is deemed filed when it is received by that office. The department shall provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and should substantially conform to the following form:

BEFORE THE DEPARTMENT OF ECONOMIC DEVELOPMENT

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented by the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and the intervenor's representative, and a statement indicating the person to whom communications should be directed.

261—172.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The department may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

261—172.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Director's Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel.

261—172.6(17A) Service and filing of petitions and other papers.

172.6(1) *Service.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served by mailing or personal delivery upon each of the parties of record to the proceeding, and on all other persons identified as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons. All documents filed shall indicate all parties or other persons served and the date and method of service.

172.6(2) *Filing.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Director's Office, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attn: Legal Counsel. All documents are considered filed upon receipt.

261—172.7(17A) Consideration. Upon request by the petitioner, the department shall schedule a brief and informal meeting between the original petitioner, all intervenors, and a member of the staff of the department to discuss the questions raised. The department may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the department by any person.

261—172.8(17A) Action on petition.

172.8(1) *Time frames for action.* Within 30 days after receipt of a petition for a declaratory order, the director or the director's designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13, subsection 5.

172.8(2) *Date of issuance of order.* The date of issuance of an order or of a refusal to issue an order is the date of mailing of the order or refusal or date of delivery if service is by other means unless another date is specified in the order.

261—172.9(17A) Refusal to issue order.

172.9(1) *Reasons for refusal to issue order.* The department shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13, subsection 1, and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department to issue an order.
3. The department does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other department or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a department decision already made.

9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

10. The petitioner requests the department to determine whether a statute is unconstitutional on its face.

172.9(2) *Action on refusal.* A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final department action on the petition.

172.9(3) *Filing of new petition.* Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the department's refusal to issue an order.

261—172.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

261—172.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

261—172.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the department, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the department. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement 1998 Iowa Acts, chapter 1202, section 13.

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CHAPTER 173
UNIFORM WAIVER AND VARIANCE RULES
[Prior to 9/6/00, see 261—Ch 104]

261—173.1(ExecOrd11) Applicability. This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the department. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the department.

173.1(1) *Definitions.*

"Board" or *"IDED board"* means the Iowa department of economic development board created by Iowa Code chapter 15.

"Department" or *"IDED"* means the Iowa department of economic development authorized by Iowa Code chapter 15.

"Director" means the director of the department of economic development or the director's designee.

"Director/board" means either the director or the board depending on which one has decision-making authority pursuant to rule 173.2(ExecOrd11).

"Person" means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any legal entity.zl

"Waiver or variance" means an agency action which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

173.1(2) *Authority.*

a. A waiver or variance from rules adopted by the department may be granted in accordance with this chapter if (1) the department has exclusive rule-making authority to promulgate the rule from which waiver or variance is requested or has final decision-making authority over a contested case in which a waiver or variance is requested; and (2) no statute or rule otherwise controls the grant of a waiver or variance from the rule from which waiver or variance is requested.

b. No waiver or variance may be granted from a requirement which is imposed by statute. Any waiver or variance must be consistent with statute.

261—173.2(ExecOrd11) Director/board discretion. The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the director upon consideration of all relevant factors, except for the below-listed programs, for which the board shall make the decision, upon consideration of all relevant factors:

1. Community Economic Betterment Account (CEBA) program, 261—Chapter 53.
2. New Jobs and Income Program (NJIP), 261—Chapter 58.
3. Workforce Development Fund, 261—Chapter 8.
4. Accelerated Career Education Program Physical Infrastructure Assistance Program (ACE PIAP), 261—Chapter 20.

173.2(1) *Criteria for waiver or variance.* The director/board may, in response to a completed petition or on its own motion, grant a waiver or variance from a rule, in whole or in part, as applied to the circumstances of a specified situation if the director/board finds each of the following:

a. Application of the rule to the person at issue would result in hardship or injustice to that person; and

b. Waiver or variance on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and

c. Waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and

d. Where applicable, substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

In determining whether waiver or variance should be granted, the director/board shall consider whether the underlying public interest policies and legislative intent of the rules are substantially equivalent to full compliance with the rule. When the rule from which a waiver or variance is sought establishes administrative deadlines, the director/board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all licensees, grantees and constituents.

173.2(2) *Special waiver or variance rules not precluded.* These uniform waiver and variance rules shall not preclude the director/board from granting waivers or variances in other contexts or on the basis of other standards if a statute or other department rule authorizes the director/board to do so, and the director/board deems it appropriate to do so.

261—173.3(ExecOrd11) Requester's responsibilities in filing a waiver or variance petition.

173.3(1) *Application.* All petitions for waiver or variance must be submitted in writing to the Iowa Department of Economic Development, Office of the Director, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attention: Legal Counsel. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

173.3(2) *Content of petition.* A petition for waiver or variance shall include the following information where applicable and known to the requester (for an example of a petition for waiver or variance, see Exhibit A at the end of this chapter):

a. A description and citation of the specific rule from which a waiver or variance is requested.

b. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.

c. The relevant facts that the petitioner believes would justify a waiver or variance.

d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver or variance.

e. A history of any prior contacts between the department and the petitioner relating to the regulated activity, license, grant, loan or other financial assistance affected by the proposed waiver or variance, including a description of each affected license, grant, loan or other financial assistance held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, grant or loan within the last five years.

f. Any information known to the requester regarding the department's treatment of similar cases.

g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver or variance.

h. The name, address, and telephone number of any person or entity who would be adversely affected by the grant of a petition.

i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance.

j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver or variance.

173.3(3) *Burden of persuasion.* When a petition is filed for a waiver or variance from a department rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the director/board should exercise its discretion to grant the petitioner a waiver or variance.

261—173.4(ExecOrd11) Notice. The department shall acknowledge a petition upon receipt. The department shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law, within 30 days of the receipt of the petition. In addition, the department may give notice to other persons. To accomplish this notice provision, the department may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law, and provide a written statement to the department attesting that notice has been provided.

261—173.5(ExecOrd11) Department responsibilities regarding petition for waiver or variance.

173.5(1) *Additional information.* Prior to issuing an order granting or denying a waiver or variance, the director/board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the director/board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the director/board, the director's/board's designee, a committee of the board, or a quorum of the board.

173.5(2) *Hearing procedures.* The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (a) to any petition for a waiver or variance of rule filed within a contested case; (b) when the director/board so provides by rule or order; or (c) when a statute so requires.

173.5(3) *Ruling.* An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

173.5(4) *Conditions.* The director/board may condition the grant of the waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

173.5(5) *Time for ruling.* The director/board shall grant or deny a petition for a waiver or variance as soon as practicable, but in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the director/board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

173.5(6) *When deemed denied.* Failure of the director/board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the director/board.

173.5(7) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

261—173.6(ExecOrd11) Public availability. Subject to the provisions of Iowa Code section 17A.3(1)*"e,"* the department shall maintain a record of all orders granting or denying waivers and variances under this chapter. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the Iowa Department of Economic Development, Office of the Director, 200 East Grand Avenue, Des Moines, Iowa 50309-1819.

261—173.7(ExecOrd11) Voiding or cancellation. A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The director/board may at any time cancel a waiver or variance upon appropriate notice if the director/board finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

261—173.8(ExecOrd11) Violations. Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

261—173.9(ExecOrd11) Defense. After the director/board issues an order granting a waiver or variance, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

261—173.10(ExecOrd11,17A) Appeals. Granting or denying a request for waiver or variance is final agency action under Iowa Code chapter 17A. An appeal to district court shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

Exhibit A
Sample Petition (Request) for Waiver/Variance

BEFORE THE IOWA DEPARTMENT
OF ECONOMIC DEVELOPMENT

Petition by (insert name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter).	}	PETITION FOR WAIVER

Requests for waiver or variance from a department rule shall include the following information in the petition for waiver or variance where applicable and known:

a. Provide the petitioner's (person asking for a waiver or variance) name, address, and telephone number.

b. Describe and cite the specific rule from which a waiver or variance is requested.

c. Describe the specific waiver or variance requested; include the exact scope and time period that the waiver or variance will extend.

d. Explain the important facts that the petitioner believes justify a waiver or variance. Include in your answer why (1) applying the rule will result in hardship or injustice to the petitioner; and (2) granting a waiver or variance to the petitioner is consistent with the public interest; and (3) granting the waiver or variance will not prejudice the substantial legal rights of any person; and (4) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

e. Provide history of prior contacts between the department and petitioner relating to the regulated activity, license, grant, loan or other financial assistance that would be affected by the waiver or variance; include a description of each affected license, grant, loan or other financial assistance held by the petitioner, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, grant or loan within the last five years.

f. Provide information known to the petitioner regarding the department's treatment of similar cases.

g. Provide the name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver or variance.

h. Provide the name, address, and telephone number of any person or entity who would be adversely affected or disadvantaged by the grant of the waiver or variance.

i. Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver or variance.

j. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver or variance.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner's signature Date

Petitioner should note the following when requesting or petitioning for a waiver or variance:

1. The petitioner has the burden of proving, by clear and convincing evidence, the following to the director/board: (a) application of the rule to the petitioner would result in hardship or injustice to the petitioner; and (b) waiver or variance on the basis of the particular circumstances relative to the petitioner would be consistent with the public interest; and (c) waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and (d) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.
2. The department may request additional information from or request an informal meeting with the petitioner prior to issuing a ruling granting or denying a request for waiver or variance.
3. All petitions for waiver or variance must be submitted in writing to the Iowa Department of Economic Development, Office of the Director, 200 East Grand Avenue, Des Moines, Iowa 50309-1819, Attention: Legal Counsel. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

These rules are intended to implement Executive Order Number 11 and 2000 Iowa Acts, House File 2206.

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[Filed without Notice 8/18/00—published 9/6/00, effective 10/11/00]

CHAPTERS 174 to 199
Reserved

PART VIII
VISION IOWA BOARD

CHAPTERS 200 to 210
Reserved

CHAPTER 211
RECREATION, ENVIRONMENT, ART AND CULTURAL HERITAGE INITIATIVE (REACH) — COMMUNITY ATTRACTION AND TOURISM DEVELOPMENT PROGRAM

[Prior to 9/6/00, see 261—Ch 65]

261—211.1(78GA,HF772) Purpose. The community attraction and tourism development program, a component of the recreation, environment, art and cultural heritage initiative (REACH), is designed to assist communities in the development and creation of multiple-purpose attraction and tourism facilities.

261—211.2(78GA,HF772) Definitions. When used in this chapter, unless the context otherwise requires:

"Activity" means one or more specific activities or projects assisted with community attraction and tourism development funds.

"Attraction" means a permanently located recreational, cultural, or entertainment activity, or event that is available to the general public.

"Community" or *"political subdivision"* means a city or county, or an entity established pursuant to Iowa Code chapter 28E.

"Department" or *"IDED"* means the Iowa department of economic development.

"Economic development organization" means an entity organized to position a community to take advantage of economic development opportunities and strengthen a community's competitiveness as a place to work and live.

"Float loan" means a short-term loan (maximum of 30 months) from obligated but unexpended funds.

"Fund" means the community attraction and tourism fund established pursuant to 1999 Iowa Acts, House File 772, section 3(2).

"Loan" means an award of assistance with the requirement that the award be repaid with term, interest rate, and other conditions specified as part of the award. A deferred loan is one for which the payment of principal, interest, or both, is not required for some specified period. A forgivable loan is one for which repayment is eliminated in part or entirely if the borrower satisfies specified conditions.

"Local support" means endorsement by local individuals or entities that have a substantial interest in a project, particularly by those whose opposition or indifference would hinder the activity's success.

"Private organization" means a corporation, partnership, or other organization that is operated for profit.

"Public organization" means a not-for-profit economic development organization or other not-for-profit organization that sponsors or supports community or tourism attractions and activities.

"Recipient" means the entity under contract with IDED to receive community attraction and tourism development funds and undertake the funded activity.

"Subrecipient" means a private organization or other entity operating under an agreement or contract with a recipient to carry out a funded community attraction and tourism development activity.

"Vertical infrastructure" means land acquisition and construction, major renovation and major repair of buildings, all appurtenant structures, utilities, site development, and recreational trails. "Vertical infrastructure" does not include routine, recurring maintenance or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

261—211.3(78GA,HF772) Program components and eligibility requirements. There are three direct components to the community attraction and tourism development program. The first component relates to community attraction, tourism or leisure activities that are sponsored by political subdivisions and public organizations. This component is referred to as the community attraction component. The second component relates to the encouragement and creation of public-private partnerships for exploring the development of new community tourism and attraction activities. This component is referred to as the project development component. A third component provides community attraction and tourism development funds for interim financing for eligible activities under the community attraction component. This component is referred to as the interim financing component.

211.3(1) *Community attraction component.* The objective of the community attraction component is to provide financial assistance for community-sponsored attraction and tourism activities. Community attraction activities may include but are not limited to the following: museums, theme parks, cultural and recreational centers, sports arenas and other attractions.

211.3(2) *Project development component.* The department, at its discretion, may also provide funding for project development related to proposed activities under this program. Project development assistance could be for the purpose of assisting in departmental evaluation of proposals, or could be one of the proposed activities in a funding request whose further project development could reasonably be expected to lead to an eligible community attraction and tourism development activity. Feasibility studies are eligible for assistance under this component.

211.3(3) *Interim financing component.*

a. The objective of the community attraction and tourism development interim financing component is to provide short-term financial assistance for eligible community attraction and tourism activities. Financial assistance may be provided as a float loan. A float loan may be made only for activities that can provide the department with an irrevocable letter of credit or equivalent security instrument from a lending institution rated AA or better, assignable to IDED in an amount equal to or greater than the principal amount of the loan.

b. Applications for float loans shall be processed, reviewed and considered on a first-come, first-served basis to the extent funds are available. Applications that are incomplete or require additional information, investigation or extended negotiation may lose funding priority. Applications for float loans shall meet all other criteria required for the community attraction component.

261—211.4(78GA,HF772) Allocation of funds.

211.4(1) Except as otherwise noted in this rule, all community attraction and tourism development funds shall be awarded for activities as specified in rule 211.3(78GA,HF772).

211.4(2) IDED may retain a portion of community attraction and tourism development funds for administrative costs associated with program implementation and operation. The percent of funds retained for administrative costs shall not exceed 1 percent in any year.

211.4(3) For the fiscal year beginning July 1, 1999, $400,000 is allocated from the fund to be used to provide grants to up to three political subdivisions, in an amount not to exceed $200,000 per grant. The purpose of the three grants is to study the feasibility and viability of developing and creating a multiple-purpose attraction and tourism facility.

261—211.5(78GA,HF772) Eligible applicants. Eligible applicants for community attraction and tourism development funds include political subdivisions and public organizations.

211.5(1) Any eligible applicant may apply directly or on behalf of a subrecipient.

211.5(2) Any eligible applicant may apply individually or jointly with another eligible applicant or other eligible applicants.

261—211.6(78GA,HF772) Eligible activities and forms of assistance—all components.

211.6(1) Eligible activities include those which are related to a community or tourism attraction, and which would position a community to take advantage of economic development opportunities in tourism and strengthen a community's competitiveness as a place to work and live. Eligible activities include building construction or reconstruction, rehabilitation, conversion, acquisition, demolition for the purpose of clearing lots for development, site improvement, equipment purchases, and other activities as may be deemed appropriate by IDED.

211.6(2) Eligible forms of assistance include grants, interest-bearing loans, non-interest-bearing loans, float loans under the interim financing component, interest subsidies, deferred payment loans, forgivable loans, loan guarantees, or other forms of assistance as may be approved by IDED.

211.6(3) Financial assistance for an eligible activity may be provided in the form of a multiyear award to be paid in increments over a period of years, subject to the availability of funds.

211.6(4) IDED reserves the right to negotiate the amount and terms of an award.

211.6(5) Recipients may use community attraction and tourism funds in conjunction with other sources of funding including the local recreation infrastructure grants program administered by the department of natural resources and the Iowa historic site preservation program administered by the department of cultural affairs. IDED may consult with appropriate staff from the department of cultural affairs and the department of natural resources to coordinate the review of applications under the programs.

261—211.7(78GA,HF772) Ineligible projects.

211.7(1) The department shall not approve an application for assistance under this program to refinance an existing loan.

211.7(2) An applicant may not receive more than one award under this program for a single project. However, previously funded projects may receive an additional award(s) if the applicant demonstrates that the funding is to be used for a significant expansion of the project, a new project, or a project that results from previous project-development assistance.

211.7(3) The department shall not approve an application for assistance in which community attraction and tourism development funding would constitute more than 50 percent of the total project costs. A portion of the resources provided by the applicant for project costs may be in the form of in-kind or noncash contributions.

261—211.8(78GA,HF772) Threshold application requirements. To be considered for funding under the community attraction and tourism development program, an application must meet the following threshold requirements:

211.8(1) There must be demonstrated local support for the proposed activity.

211.8(2) A need for community attraction and tourism development program funds must exist after other financial resources have been identified for the proposed activity.

211.8(3) Some portion of the proposed activity must involve the creation or renovation of vertical infrastructure.

261—211.9(78GA,HF772) Application review criteria. Applications meeting the threshold requirements of rule 211.8(78GA,HF772) will be reviewed by IDED staff. IDED staff shall evaluate and rank applications based on the following criteria:

211.9(1) *Feasibility.* The feasibility of the existing or proposed facility to remain a viable enterprise (0-25 points). Rating factors for this criterion include, but are not limited to, the following: initial capitalization, project budget, financial projections, marketing analysis, marketing plan, management team, and operational plan. In order to be eligible for funding, proposals must score at least 15 points on this rating factor.

211.9(2) *Economic impact (0-25 points).* Number of jobs created and other measure of economic impact including long-term tax generation. The evaluation of the economic impact of a proposed activity shall also include a review of the wages, benefits, including health benefits, safety, and other attributes of the activity that would improve the quality of attraction and tourism employment in the community. Additionally, the economic impact of an activity may also be reviewed based on the degree to which the activity enhances the quality of life in a community and contributes to the community's efforts to retain and attract a skilled workforce. In order to be eligible for funding, proposals must score at least 15 points on this rating factor.

211.9(3) *Leveraged activity.* The degree to which the facility will stimulate the development of other community attraction and tourism activities (0-25 points). In order to be eligible for funding, proposals must score at least 15 points on this rating factor.

211.9(4) *Geographic diversity.* The extent to which facilities are located in different regions of the state (0-10 points).

211.9(5) *Local match.* The proportion of local match to be contributed to the project, and the extent of public and private participation (0-15 points).

A minimum score of 65 points is needed for a project to be recommended for funding.

261—211.10(78GA,HF772) Application procedure. Subject to availability of funds, applications are reviewed and rated by IDED staff on an ongoing basis. Applications will be reviewed by staff for completeness and eligibility. If additional information is required, the applicant shall be provided with notice, in writing, to submit additional information. The IDED staff may refer applications to the project development component, subject to the availability of funds. Recommendations from the IDED staff will be submitted to the director of the department for final approval, denial or deferral.

211.10(1) Application forms shall be available upon request from IDED, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4770.

211.10(2) IDED may provide technical assistance to applicants as necessary. IDED staff may conduct on-site evaluations of proposed activities.

211.10(3) A comprehensive business plan must accompany the application and shall include at least the following information: initial capitalization including a description of sources of funding, project budget, financial projections, marketing analysis, marketing plan, management team, and the operational plan including a time line for implementing the activity. Additionally, applicants shall also provide the following information: the number of jobs to be created, and the wages and benefits associated with those jobs; direct measures of economic impact including long-term tax generation, but excluding the use of economic multipliers; a description of the current attraction and tourism employment opportunities in the community including information about wages, benefits and safety; and a description of how the activity will enhance the quality of life in a community and contribute to the community's efforts to retain and attract a skilled workforce.

261—211.11(78GA,HF772) Administration.

211.11(1) *Administration of awards.*

a. A contract shall be executed between the recipient and IDED. These rules and applicable state laws and regulations shall be part of the contract.

b. The recipient must execute and return the contract to IDED within 45 days of transmittal of the final contract from IDED. Failure to do so may be cause for IDED to terminate the award.

c. Certain activities may require that permits or clearances be obtained from other state or local agencies before the activity may proceed. Awards may be conditioned upon the timely completion of these requirements.

d. Awards may be conditioned upon commitment of other sources of funds necessary to complete the activity.

e. Awards may be conditioned upon IDED receipt and approval of an implementation plan for the funded activity.

211.11(2) *Requests for funds.* Recipients shall submit requests for funds in the manner and on forms prescribed by IDED. Individual requests for funds shall be made in an amount equal to or greater than $500 per request, except for the final draw of funds.

211.11(3) *Record keeping and retention.* The recipient shall retain all financial records, supporting documents and all other records pertinent to the community attraction and tourism development activity for three years after contract closeout. Representatives of IDED shall have access to all records belonging to or in use by recipients pertaining to community attraction and tourism development funds.

211.11(4) *Performance reports and reviews.* Recipients shall submit performance reports to IDED in the manner and on forms prescribed by IDED. Reports shall assess the use of funds and progress of activities. IDED may perform any reviews or field inspections necessary to ensure recipient performance.

211.11(5) *Amendments to contracts.* Any substantive change to a contract shall be considered an amendment. Changes include time extensions, budget revisions and significant alteration of the funded activities that change the scope, location, objectives or scale of the approved activity. Amendments must be requested in writing by the recipient and are not considered valid until approved in writing by IDED following the procedure specified in the contract between the recipient and IDED.

211.11(6) *Contract closeout.* Upon contract expiration, IDED shall initiate contract closeout procedures.

211.11(7) *Compliance with state and local laws and regulations.* Recipients shall comply with these rules, with any provisions of the Iowa Code governing activities performed under this program and with applicable local regulations.

211.11(8) *Remedies for noncompliance.* At any time before contract closeout, IDED may, for cause, find that a recipient is not in compliance with the requirements of this program. At IDED's discretion, remedies for noncompliance may include penalties up to and including the return of program funds to IDED. Reasons for a finding of noncompliance include but are not limited to the recipient's use of funds for activities not described in the contract, the recipient's failure to complete funded activities in a timely manner, the recipient's failure to comply with applicable state or local rules or regulations or the lack of a continuing capacity of the recipient to carry out the approved activity in a timely manner.

These rules are intended to implement 1999 Iowa Acts, House File 772, section 3, subsection 2, and sections 23 and 24.

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83.26(249A) Allowable services
83.27(249A) Case plan
83.28(249A) Adverse service actions
83.29(249A) Appeal rights
83.30(249A) Enhanced services
83.31(249A) Conversion to the X-PERT system
83.32 to 83.40 Reserved

75.1(21) *Persons and families ineligible for the family medical assistance program (FMAP) in whole or in part because of child or spousal support.* Medicaid shall be available for an additional four months to persons and families who become ineligible for FMAP because of income from child support, alimony, or contributions from a spouse if the person or family member received FMAP in at least three of the six months immediately preceding the month of cancellation.

a. The four months of extended Medicaid coverage begin the day following termination of FMAP eligibility.

b. When ineligibility is determined to occur retroactively, the extended Medicaid coverage begins with the first month in which FMAP eligibility was erroneously granted.

c. Rescinded IAB 10/11/95, effective 10/1/95.

75.1(22) *Refugee spenddown participants.* Rescinded IAB 10/11/95, effective 10/1/95.

75.1(23) *Persons who would be eligible for supplemental security income or state supplementary assistance but for increases in social security benefits because of elimination of the actuarial reduction formula and cost-of-living increases received.* Medical assistance shall be available to all current social security recipients who meet the following conditions. They:

a. Were eligible for a social security benefit in December of 1983.

b. Were eligible for and received a widow's or widower's disability benefit and supplemental security income or state supplementary assistance for January of 1984.

c. Became ineligible for supplemental security income or state supplementary assistance because of an increase in their widow's or widower's benefit which resulted from the elimination of the reduction factor in the first month in which the increase was paid and in which a retroactive payment of that increase for prior months was not made.

d. Have been continuously eligible for a widow's or widower's benefit from the first month the increase was received.

e. Would be eligible for supplemental security income or state supplementary assistance benefits if the amount of the increase from elimination of the reduction factor and any subsequent cost-of-living adjustments were disregarded.

f. Submit an application prior to July 1, 1988, on Form PA-1107, Application for Medical Assistance or State Supplementary Assistance.

75.1(24) *Postpartum eligibility for pregnant women.* Medicaid shall continue to be available, without an application, for 60 days beginning with the last day of pregnancy and throughout the remaining days of the month in which the 60-day period ends, to a woman who had applied for Medicaid prior to the end of her pregnancy and was subsequently determined eligible for Medicaid for the month in which the pregnancy ended.

a. Postpartum Medicaid shall only be available to a woman who is not eligible for another coverage group after the pregnancy ends.

b. The woman shall not be required to meet any income or resource criteria during the postpartum period.

c. When the sixtieth day is not on the last day of the month the woman shall be eligible for Medicaid for the entire month.

75.1(25) *Persons who would be eligible for supplemental security income or state supplementary assistance except that they receive child's social security benefits based on disability.* Medical assistance shall be available to persons who receive supplemental security income (SSI) or state supplementary assistance (SSA) after their eighteenth birthday because of a disability or blindness which began before age 22 and who would continue to receive SSI or SSA except that they become entitled to or receive an increase in social security benefits from a parent's account.

75.1(26) Rescinded IAB 10/8/97, effective 12/1/97.

75.1(27) *Widows and widowers who are no longer eligible for supplemental security income or state supplementary assistance because of the receipt of social security benefits.* Medicaid shall be available to widows and widowers who meet the following conditions:

a. They have applied for and received or were considered recipients of supplemental security income or state supplementary assistance.

b. They apply for and receive Title II widow's or widower's insurance benefits or any other Title II old age or survivor's benefits, if eligible for widow's or widower's benefits.

c. Rescinded IAB 5/1/91, effective 4/11/91.

d. They were not entitled to Part A Medicare hospital insurance benefits at the time of application and receipt of Title II old age or survivor's benefits. They are not currently entitled to Part A Medicare hospital insurance benefits.

e. They are no longer eligible for supplemental security income or state supplementary assistance solely because of the receipt of their social security benefits.

75.1(28) *Pregnant women, infants and children (Mothers and Children (MAC)).* Medicaid shall be available to all pregnant women, infants (under one year of age) and children who have not attained the age of 19 if the following criteria are met:

a. Income.

(1) Family income shall not exceed 185 percent of the federal poverty level for pregnant women when establishing initial eligibility under these provisions and for infants (under one year of age) when establishing initial and ongoing eligibility. Family income shall not exceed 133 percent of the federal poverty level for children who have attained one year of age but who have not attained 19 years of age. Income to be considered in determining eligibility for pregnant women, infants, and children shall be determined according to family medical assistance program (FMAP) methodologies except that the three-step process for determining initial eligibility and the two-step process for determining ongoing eligibility, as described at rule 441—75.57(249A), shall not apply. Family income is the income remaining after disregards and deductions have been applied in accordance with the provisions of rule 441—75.57(249A).

In determining eligibility for pregnant women and infants, after the aforementioned disregards and deductions have been applied, an additional disregard equal to 15 percent of the applicable federal poverty level shall be applied to the family's income.

(2) Moneys received as a nonrecurring lump sum, except as specified in subrules 75.56(4) and 75.56(7) and paragraphs 75.57(8)*"b"* and *"c,"* shall be treated in accordance with this subparagraph. Nonrecurring lump sum income shall be considered as income in the budget month and considered in the eligibility determination for the benefit month, unless the income is exempt. Nonrecurring lump sum unearned income is defined as a payment in the nature of a windfall, for example, an inheritance, an insurance settlement for pain and suffering, an insurance death benefit, a gift, lottery winnings, or a retroactive payment of benefits, such as social security, job insurance or workers' compensation. The lump sum shall be prorated and considered in the eligibility determination by dividing the nonrecurring lump sum plus other countable income received in the month the lump sum was received by the standard of need in effect for the household size in accordance with subrule 75.58(1). The resulting number of months shall be called the "proration period." Any income remaining after this calculation shall be applied as income to the first month following the proration period and disregarded as income thereafter.

The proration period shall be shortened in accordance with the provisions of subparagraph 75.57(9)*"c"*(2) unless otherwise specified.

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441—78.29(249A) Nurse-midwives. Payment will be made for services provided by nurse-midwives contingent upon the following criteria being met:

78.29(1) The services provided are within the scope of the practice of nurse midwifery, including advanced nursing and physician-delegated functions under a protocol with a collaborating physician.

78.29(2) The women served by a nurse-midwife must be examined by a physician on at least two occasions during the pregnancy: an initial screening review of the women to determine the appropriateness for nurse-midwife care and during the last month of the pregnancy. A joint determination must be made by the nurse-midwife and the physician that the women are obstetrically low-risk and eligible for care by a nurse-midwife.

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).)

78.29(3) The nurse-midwife shall provide for referral for the infant's neonatal examination.

78.29(4) The nurse-midwife shall have promptly available the necessary equipment and personnel to handle emergencies.

78.29(5) The services of the nurse-midwife are provided in birth centers, hospitals, or clinics.

78.29(6) The nurse-midwife providing services in other than a hospital shall negotiate a written agreement with one or more hospitals for the prompt transfer of patients requiring care. The patient record information shall be transmitted with the patient at the time of transfer.

78.29(7) The nurse-midwife shall maintain a current and complete medical record for each patient and shall have the record available for reference.

The record shall have at least the following: admitting diagnosis, physical examination, report of medical history, record of medical consultation where indicated, laboratory tests, X-rays, delivery reports, anesthesia record and discharge summary.

78.29(8) Payment will be made to nurse-midwives directly only if they are not auxiliary personnel as defined in subrule 78.1(13) or if they are not hospital employees.

78.29(9) Nurse-midwives who 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. Nurse-midwives shall receive reimbursement for the administration of vaccines to Medicaid recipients.

This rule is intended to implement Iowa Code section 249A.4 and 1992 Iowa Acts, Second Extraordinary Session, chapter 1001, section 413.

441—78.30(249A) Birth centers. Payment will be made for prenatal, delivery, and postnatal services. 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).)

Birth centers which wish to administer vaccines which are available through the vaccines for children program to Medicaid eligibles 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 eligibles. Birth centers shall receive reimbursement for the administration of vaccines to Medicaid recipients.

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

441—78.31(249A) Hospital outpatient services.

78.31(1) *Covered hospital outpatient services.* Payment will be approved only for the following outpatient hospital services and medical services when provided on the licensed premises of the hospital or pursuant to subrule 78.31(5). Hospitals with alternate sites approved by the department of inspections and appeals are acceptable sites. All outpatient services listed in paragraphs *"g"* to *"m"* are subject to a random sample retrospective review for medical necessity by the Iowa Foundation for Medical Care. All services may also be subject to a more intensive retrospective review if abuse is suspected. Services in paragraphs *"a"* to *"f"* shall be provided in hospitals on an outpatient basis and are subject to no further limitations except medical necessity of the service.

Services listed in paragraphs *"g"* to *"m"* shall be provided by hospitals on an outpatient basis and must be certified by the department before payment may be made. Other limitations apply to these services.

a. Emergency service.
b. Outpatient surgery.
c. Laboratory, X-ray and other diagnostic services.
d. General or family medicine.
e. Follow-up or after-care specialty clinics.
f. Physical medicine and rehabilitation.
g. Alcoholism and substance abuse.
h. Eating disorders.
i. Cardiac rehabilitation.
j. Mental health.
k. Pain management.
l. Diabetic education.
m. Pulmonary rehabilitation.
n. Nutritional counseling for persons aged 20 and under.

78.31(2) *Requirements for all outpatient services.*

a. Need for service. It must be clearly established that the service meets a documented need in the area served by the hospital. There must be documentation of studies completed, consultations with other health care facilities and health care professionals in the area, community leaders, and organizations to determine the need for the service and to tailor the service to meet that particular need.

b. Professional direction. All outpatient services must be provided by or at the direction and under the supervision of a medical doctor or osteopathic physician except for mental health services which may be provided by or at the direction and under the supervision of a medical doctor, osteopathic physician, or certified health service provider in psychology.

c. Goals and objectives. The goals and objectives of the program must be clearly stated. Paragraphs *"d"* and *"f"* and the organization and administration of the program must clearly contribute to the fulfillment of the stated goals and objectives.

d. Treatment modalities used. The service must employ multiple treatment modalities and professional disciplines. The modalities and disciplines employed must be clearly related to the condition or disease being treated.

e. Criteria for selection and continuing treatment of patients. The condition or disease which is proposed to be treated must be clearly stated. Any indications for treatment or contraindications for treatment must be set forth together with criteria for determining the continued medical necessity of treatment.

(3) Program staff. Each person who provides services shall be determined to be competent to provide the services by reason of education, training and experience. Professional disciplines which must be represented on the staff, either through employment by the facility (full-time or part-time), contract or referral, are a physician (M.D. or D.O.), a registered nurse, a registered dietitian and a licensed pharmacist. The number of staff should be appropriate to the patient load of the facility.

(4) Admission criteria. Candidates for the program shall meet the following guidelines:

The person must have Type I or Type II diabetes.

The person must be referred by the attending physician.

The person shall demonstrate an ability to follow through with self-management.

(5) Health assessment. An individualized and documented assessment of needs shall be developed with the patient's participation. Follow-up assessments, planning and identification of problems shall be provided.

(6) Restrictions and limitations on payment. Medicaid will pay for a diabetic self-management education program. Diabetic education programs will include follow-up assessments at 3 and 12 months without charge. A complete diabetic education program is payable once in the lifetime of a recipient.

g. Pulmonary rehabilitation.

(1) General characteristics. Pulmonary rehabilitation is an individually tailored, multidisciplinary program through which accurate diagnosis, therapy, emotional support, and education stabilizes or reverses both the physio- and psychopathology of pulmonary diseases and attempts to return the patient to the highest possible functional capacity allowed by the pulmonary handicap and overall life situation.

(2) Diagnostic and treatment staff. Each person who provides diagnostic or treatment services shall be determined to be competent to provide the services by reason of education, training, and experience.

Professional disciplines which must be represented by the diagnostic and treatment staff, either through employment by the facility (full-time or part-time), contract, or referral, are a physician (doctor of medicine or osteopathy), a respiratory therapist, a licensed physical therapist, and a registered nurse.

(3) Initial assessment. A comprehensive assessment must occur initially, including:

A diagnostic workup which entails proper identification of the patient's specific respiratory ailment, appropriate pulmonary function studies, a chest radiograph, an electrocardiogram and, when indicated, arterial blood gas measurements at rest and during exercise, sputum analysis and blood theophylline measurements.

Behavioral considerations include emotional screening assessments and treatment or counseling when required, estimating the patient's learning skills and adjusting the program to the patient's ability, assessing family and social support, potential employment skills, employment opportunities, and community resources.

(4) Admission criteria. Criteria include a patient's being diagnosed and symptomatic of chronic obstructive pulmonary disease (COPD), having cardiac stability, social, family, and financial resources, ability to tolerate periods of sitting time; and being a nonsmoker for six months, or if a smoker, willingness to quit and a physician's order to participate anyway.

Factors which would make a person ineligible include acute or chronic illness that may interfere with rehabilitation, any illness or disease state that affects comprehension or retention of information, a strong history of medical noncompliance, unstable cardiac or cardiovascular problems, and orthopedic difficulties that would prohibit exercise.

(5) Plan of treatment. Individualized long- and short-term goals will be developed for each patient. The treatment goals will be based on the problems and needs identified in the assessment and specify the regular times at which the plan will be reassessed.

The patients and their families need to help determine and fully understand the goals, so that they realistically approach the treatment phase.

Patients are reassessed to determine current clinical problems, needs, and responses to treatment. Changes in treatment are documented.

Components of pulmonary rehabilitation to be included are physical therapy and relaxation techniques, exercise conditioning or physical conditioning for those with exercise limitations, respiratory therapy, education, an emphasis on the importance of smoking cessation, and nutritional information.

(6) Discharge plan. Ongoing care will generally be the responsibility of the primary care physician. Periodic reassessment will be conducted to evaluate progress and allow for educational reinforcement.

(7) Restrictions and limitations on payment. Medicaid will pay for a maximum of 25 treatment days. Payment beyond 25 days is made when documentation indicates that the patient has not reached an exit level.

h. Nutritional counseling. Payment will be made for persons aged 20 and under for nutritional counseling provided by a licensed dietitian employed by or under contract with a hospital for a nutritional problem or condition of a degree of severity that nutritional counseling beyond that normally expected as part of the standard medical management is warranted. For persons eligible for the WIC program, a WIC referral is required. Medical necessity for nutritional counseling services exceeding those available through WIC shall be documented.

78.31(5) *Services rendered by family or pediatric nurse practitioners employed by a hospital.* Hospitals may be reimbursed for services rendered by family or pediatric nurse practitioners who are employed by the hospital and providing services in a facility or other location that is owned by the hospital, but is not on or part of the hospital's licensed premises, if reimbursement is not otherwise available for the services rendered by these employed nurse practitioners. As a condition of reimbursement, employed family and pediatric nurse practitioners rendering these services must enroll with the Medicaid program, receive a provider number, and designate the employing hospital to receive payment. Claims for services shall be submitted by the employed family or pediatric nurse practitioner. Payment shall be at the same fee-schedule rates as those in effect for independently practicing family or pediatric nurse practitioners under 441—subrule 79.1(2).

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

441—78.32(249A) Area education agencies. Payment will be made for physical therapy, occupational therapy, psychological evaluations and counseling, psychotherapy, speech-language therapy, and audiological, nursing, and vision services provided by an area education agency (AEA). These services shall be provided by personnel who meet standards as set forth in department of education rules 281—41.8(256B,34CFR300) to 281—41.10(256B) to the extent that their certification or license allows them to provide these services. Services shall be provided directly by the AEA or through contractual arrangement with the AEA.

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

441—78.33(249A) Case management services. Payment on a monthly payment per enrollee basis will be approved for the case management functions required in 441—Chapter 24.

78.33(1) Payment will be approved for case management services to:

a. Recipients 18 years of age or over with a primary diagnosis of mental retardation, developmental disabilities, or chronic mental illness as defined in rule 441—22.1(225C). Persons with mental disorders resulting from Alzheimer's disease or substance abuse shall not be considered chronically mentally ill.

j. The frequency or intensity of services shall be indicated in the service plan.

k. Consumer-directed attendant care services may not be simultaneously reimbursed with any other HCBS waiver services.

l. Consumer-directed attendant care services may be provided to a recipient of in-home health-related care services, but not at the same time.

78.43(14) *Interim medical monitoring and treatment services.* Interim medical monitoring and treatment services are monitoring and treatment of a medical nature requiring specially trained caregivers beyond what is normally available in a day care setting. The services must be needed to allow the consumer's usual caregivers to be employed or, for a limited period of time, for academic or vocational training of a usual caregiver; due to the hospitalization, treatment for physical or mental illness, or death of a usual caregiver; or during a search for employment by a usual caregiver.

a. Service requirements. Interim medical monitoring and treatment services shall:

(1) Provide experiences for each consumer's social, emotional, intellectual, and physical development;

(2) Include comprehensive developmental care and any special services for a consumer with special needs; and

(3) Include medical assessment, medical monitoring, and medical intervention as needed on a regular or emergency basis.

b. Interim medical monitoring and treatment services may include supervision to and from school.

c. Limitations.

(1) A maximum of 12 one-hour units of service is available per day.

(2) Covered services do not include a complete nutritional regimen.

(3) Interim medical monitoring and treatment services may not duplicate any regular Medicaid or waiver services provided under the state plan.

(4) Interim medical monitoring and treatment services may be provided only in the consumer's home, in a registered group child care home, in a registered family child care home, in a licensed child care center, or during transportation to and from school.

(5) The staff-to-consumer ratio shall not be less than one to six.

d. A unit of service is one hour.

441—78.44(249A) Lead inspection services. Payment shall be approved for lead inspection services. This service shall be provided for children who have had two venous blood lead levels of 15 to 19 micrograms per deciliter or one venous level greater than or equal to 20 micrograms per deciliter. This service includes, but is not limited to, X-ray fluorescence analyzer (XRF) readings, visual examination of paint, preventive education of the resident and homeowner, health education about lead poisoning, and a written report to the family, homeowner, medical provider, and local childhood lead poisoning prevention program.

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

441—78.45(249A) Teleconsultive services. Rescinded IAB 9/6/00, effective 11/1/00.

441—78.46(249A) Physical disability waiver service. Payment shall be approved for the following services to consumers eligible for the HCBS physical disability waiver established in 441—Chapter 83 when identified in the consumer's service plan. All services shall include the applicable and necessary instructions, supervision, assistance and support as required by the consumer in achieving the goals written specifically in the service plan and those delineated in Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement. The service shall be delivered in the least restrictive environment consistent with the consumer's needs and in conformity with the consumer's service plan.

Reimbursement shall not be available under the waiver for any services that the consumer can obtain through regular Medicaid or from any other funding source.

All services shall be billed in whole units as specified in the following subrules.

78.46(1) *Consumer-directed attendant care service.* Consumer-directed attendant care services are service activities listed below performed by a person to help a consumer with self-care tasks which the consumer would typically do independently if the consumer were otherwise able. The services must be cost-effective and necessary to prevent institutionalization.

Providers must demonstrate proficiency in delivery of the services in the consumer's plan of care. Proficiency must be demonstrated through documentation of prior training or experience or a certificate of formal training. All training or experience will be detailed on Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement, which must be reviewed and approved by the service worker for appropriateness of training or experience prior to the provision of services. Form 470-3372 becomes an attachment to and part of the case plan. Consumers shall give direction and training for activities which are not medical in nature to maintain independence. Licensed registered nurses and therapists must provide on-the-job training and supervision to the provider for skilled activities listed below and described on Form 470-3372. The training and experience must be sufficient to protect the health, welfare and safety of the consumer.

a. Nonskilled service activities covered are:

(1) Help with dressing.

(2) Help with bath, shampoo, hygiene, and grooming.

(3) Help with access to and from bed or a wheelchair, transferring, ambulation, and mobility in general. Certification for this is available through the area community colleges.

(4) Toilet assistance, including bowel, bladder, and catheter assistance which includes emptying the catheter bag, collecting a specimen and cleaning the external area around the catheter. Certification of training which includes demonstration of competence for catheter assistance is available through the area community colleges.

(5) Meal preparation, cooking, eating and feeding assistance but not the cost of meals themselves.

(6) Housekeeping services which are essential to the consumer's health care at home.

(7) Help with medications ordinarily self-administered including those ordered by a physician or other qualified health care provider. Certification of training in a medication aide course is available through the area community colleges.

(8) Minor wound care which does not require skilled nursing care.

(9) Assistance needed to go to, or return from, a place of employment but not assistance to the consumer while the consumer is on the job site.

(10) Cognitive assistance with tasks such as handling money and scheduling.

(11) Fostering communication through interpreting and reading services as well as assistance in use of assistive devices for communication.

(12) Assisting and accompanying a consumer in using transportation essential to the health and welfare of the consumer, but not the cost of the transportation.

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CHAPTER 79
OTHER POLICIES RELATING TO PROVIDERS OF MEDICAL AND REMEDIAL CARE

[Prior to 7/1/83, Social Services[770] Ch 79]

441—79.1(249A) Principles governing reimbursement of providers of medical and health services. The basis of payment for services rendered by providers of services participating in the medical assistance program is either a system based on the provider's allowable costs of operation or a fee schedule. Generally, institutional types of providers such as hospitals and intermediate care facilities are reimbursed on a cost-related basis and practitioners such as physicians, dentists, optometrists, and similar providers are reimbursed on the basis of a fee schedule. Providers of service must accept reimbursement based upon the department's methodology without making any additional charge to the recipient.

79.1(1) *Types of reimbursement.*

a. Prospective cost-related. Providers are reimbursed on the basis of a per diem rate calculated prospectively for each participating provider based on reasonable and proper costs of operation. The rate is determined by establishing a base year per diem rate to which an annual index is applied.

b. Retrospective cost-related. Providers are reimbursed on the basis of a per diem rate calculated retrospectively for each participating provider based on reasonable and proper costs of operation with suitable retroactive adjustments based on submission of financial and statistical reports by the provider. The retroactive adjustment represents the difference between the amount received by the provider during the year for covered services and the amount determined in accordance with an accepted method of cost apportionment (generally the Medicare principles of apportionment) to be the actual cost of service rendered medical assistance recipients.

c. Fee schedules. Fees for the various procedures involved are determined by the department with advice and consultation from the appropriate professional group. The fees are intended to reflect the amount of resources (time, training, experience) involved in each procedure. Individual adjustments will be made periodically to correct any inequity or to add new procedures or eliminate or modify others. If product cost is involved in addition to service, reimbursement is based either on a fixed fee, wholesale cost, or on actual acquisition cost of the product to the provider, or product cost is included as part of the fee schedule. Providers on fee schedules are reimbursed the lower of:

(1) The actual charge made by the provider of service.

(2) The maximum allowance under the fee schedule for the item of service in question.

Payment levels for fee schedule providers of service will be increased on an annual basis by an economic index reflecting overall inflation as well as inflation in office practice expenses of the particular provider category involved to the extent data is available. Annual increases will be made beginning July 1, 1988.

There are some variations in this methodology which are applicable to certain providers. These are set forth below in subrules 79.1(3) to 79.1(9) and 79.1(15).

Copies of fee schedules in effect for the providers covered by fee schedules can be obtained by contacting the department's fiscal agent at the following address: Consultec, Inc., P.O. Box 14422, Des Moines, Iowa 50306-3422.

*d. * Monthly fee for service.* Providers are reimbursed on the basis of a payment for a month's provision of service for each client enrolled in a case management program for any portion of the month based on reasonable and proper costs for service provision. The fee will be determined by the department with advice and consultation from the appropriate professional group and will reflect the amount of resources involved in services provision.

*Effective 1/1/89, IAB 12/14/88

e. Retrospectively limited prospective rates. Providers are reimbursed on the basis of a rate for a unit of service calculated prospectively for each participating provider (and, for supported community living daily rates, for each consumer or site) based on projected or historical costs of operation, subject to the maximums listed in subrule 79.1(2) and to retrospective adjustment based on actual, current costs of operation so as not to exceed reasonable and proper costs by more than 2.5 percent.

The prospective rates for new providers who have not submitted six months of cost reports will be based on a projection of the provider's reasonable and proper costs of operation until the provider has submitted an annual cost report that includes a minimum of six months of actual costs. The prospective rates paid established providers who have submitted an annual report with a minimum of a six-month history are based on reasonable and proper costs in a base period and are adjusted annually for inflation. The prospective rates paid to both new and established providers are subject to the maximums listed in subrule 79.1(2) and to retrospective adjustment based on the provider's actual, current costs of operation as shown by financial and statistical reports submitted by the provider, so as not to exceed reasonable and proper costs actually incurred by more than 2.5 percent.

f. Contractual rate. Providers are reimbursed on a basis of costs incurred pursuant to a contract between the provider and subcontractor.

79.1(2) *Basis of reimbursement of specific provider categories.*

Provider category	Basis of reimbursement	Upper limit
Ambulance	Fee schedule	Ground ambulance: Fee schedule in effect 6/30/00 plus 0.7%. Air ambulance: A base rate of $209.54 plus $7.85 per mile for each mile the patient is carried.
Ambulatory surgical centers	Base rate fee schedule as determined by Medicare. See 79.1(3)	Rate determined by Medicare
Area education agencies	Fee schedule	Fee schedule in effect 6/30/00 plus 0.7%
Audiologists	Fee schedule	Rate in effect on 1/1/00 under the fee schedule established for Iowa under the federal Medicare program, incorporating the resource-based relative value scale (RBRVS) methodology
Birth centers	Fee schedule	Fee schedule in effect 6/30/00 plus 0.7%
Case management providers	Retrospective cost-related	Retrospective rate
Certified registered nurse anesthetists	Fee schedule	Fee schedule in effect 6/30/00 plus 0.7%
Chiropractors	Fee schedule	Rate in effect on 1/1/00 under the fee schedule established for Iowa under the federal Medicare program, incorporating the resource-based relative value scale (RBRVS) methodology

Provider category	Basis of reimbursement	Upper limit
Clinics	Fee schedule	Maximum physician reimbursement rate
Community mental health centers	Fee schedule	Reimbursement rate for center in effect 6/30/00 plus 17.33%
Dentists	Fee schedule	75% of usual and customary rate
Durable medical equipment, prosthetic devices and medical supply dealers	Fee schedule. See 79.1(4)	Fee schedule in effect 6/30/00 plus 0.7%
Family or pediatric nurse practitioner	Fee schedule	Rate in effect on 1/1/00 under the fee schedule established for Iowa under the federal Medicare program, incorporating the resource-based relative value scale (RBRVS) methodology
Family planning clinics	Fee schedule	Fees in effect 6/30/00 plus 0.7%
Federally qualified health centers (FQHC)	Retrospective cost-related	1. Reasonable cost as determined by Medicare cost reimbursement principles 2. In the case of services provided pursuant to a contract between an FQHC and a managed care organization (MCO), reimbursement from the MCO shall be supplemented to achieve "1" above
HCBS AIDS/HIV waiver service providers, including:		
1. Counseling		
Individual:	Fee schedule	$10.07 per unit
Group:	Fee schedule	$40.26 per hour
2. Home health aide	Retrospective cost-related	Maximum Medicare rate
3. Homemaker	Fee schedule	$18.49 per hour
4. Nursing care	Agency's financial and statistical cost report and Medicare percentage rate per visit	Cannot exceed $74.77 per visit

Provider category	Basis of reimbursement	Upper limit
5. Respite care providers, including:		
Home health agency:		
Specialized respite	Rate for nursing services provided by a home health agency (encounter services-intermittent services)	Maximum Medicare rate converted to an hourly rate not to exceed $294 per day
Basic individual respite	Rate for home health aide services provided by a home health agency (encounter services-intermittent services)	Maximum Medicare rate converted to an hourly rate not to exceed $294 per day
Group respite	Retrospectively limited prospective rates. See 79.1(15)	$12.24 per hour not to exceed $294 per day
Home care agency:		
Specialized respite	Retrospectively limited prospective rates. See 79.1(15)	$31.50 per hour not to exceed $294 per day
Basic individual respite	Retrospectively limited prospective rates. See 79.1(15)	$16.80 per hour not to exceed $294 per day
Group respite	Retrospectively limited propsective rates. See 79.1(15)	$12.24 per hour not to exceed $294 per day
Nonfacility care:		
Specialized respite	Retrospectively limited prospective rates. See 79.1(15)	$31.50 per hour not to exceed $294 per day
Basic individual respite	Retrospectively limited prospective rates. See 79.1(15)	$16.80 per hour not to exceed $294 per day
Group respite	Retrospectivly limited prospective rates. See 79.1(15)	$12.24 per hour not to exceed $294 per day
Facility care:		
Hospital or nursing facility providing skilled care	$12.24 per hour	$12.24 per hour not to exceed daily per diem for skilled nursing facility level of care
Nursing facility	$12.24 per hour	$12.24 per hour not to exceed daily per diem for nursing facility level of care
Intermediate care facility for the mentally retarded	$12.24 per hour	$12.24 per hour not to exceed daily per diem for ICF/MR level of care

Provider category	Basis of reimbursement	Upper limit
4. Nursing	Fee schedule as determined by Medicare	Maximum Medicare rate converted to an hourly rate
5. Home health aides	Retrospective cost-related	Maximum Medicare rate converted to an hourly rate
6. Personal emergency response system	Fee schedule	Initial one-time fee of $38.42 Ongoing monthly fee of $26.19
7. Home and vehicle modifications	Contractual rate. See 79.1(15)	Maximum amount of $5,000 per consumer lifetime
8. Consumer-directed attendant care:		
Agency provider	Fee agreed upon by consumer and provider	$18.49 per hour $106.82 per day
Individual provider	Fee agreed upon by consumer and provider	$12.33 per hour $71.90 per day
9. Interim medical monitoring and treatment:		
Home health agency:		
Provided by home health aide	Rate for home health aide services provided by a home health agency (encounter services-intermittent services)	Maximum Medicare rate converted to an hourly rate not to exceed the maximum daily per diem for ICF/MR level of care
Provided by nurse	Rate for nursing services provided by a home health agency (encounter services-intermittent services)	Maximum Medicare rate converted to an hourly rate not to exceed the maximum daily per diem for ICF/MR level of care
Provided by a registered group child care home, registered family child care home, or licensed child care center	Contractual rate. See 441—subrule 170.4(7)	$12.24 per hour not to exceed the maximum daily per diem for ICF/MR level of care
HCBS physical disability waiver service providers, including:		
1. Consumer-directed attendant care:		
Agency provider	Fee agreed upon by consumer and provider	$18.49 per hour $106.82 per day
Individual provider	Fee agreed upon by consumer and provider	$12.33 per hour $71.90 per day
2. Home and vehicle modification providers	Fee schedule	$500 per month, not to exceed $6000 per year

Provider category	Basis of reimbursement	Upper limit
3. Personal emergency response system	Fee schedule	Initial one-time fee of $46.22. Ongoing monthly fee of $35.95.
4. Specialized medical equipment	Fee schedule	$500 per month, not to exceed $6000 per year
5. Transportation	Fee schedule	State per mile rate for regional transit providers, or rate established by area agency on aging. Reimbursement shall be at the lowest cost service rate consistent with the consumer's needs.
Hearing aid dealers	Fee schedule plus product acquisition cost	Fee schedule in effect 6/30/00 plus 0.7%
Home health agencies (Encounter services-intermittent services)	Retrospective cost-related	Maximum Medicare rate
(Private duty nursing or personal care and VFC vaccine administration for persons aged 20 and under)	Interim fee schedule with retrospective cost settling based on Medicare methodology	Retrospective cost settling according to Medicare methodology
Hospices	Fee schedule as determined by Medicare	Medicare cap (See 79.1(14)*"d"*)

Provider category	Basis of reimbursement	Upper limit
Hospitals (Inpatient)	Prospective reimbursement. See 79.1(5)	Reimbursement rate in effect 6/30/00 increased by 3%
Hospitals (Outpatient)	Prospective reimbursement for providers listed at 441—paragraphs 78.31(1)*"a"* to *"f."* See 79.1(16)	Ambulatory patient group rate (plus an evaluation rate) and assessment payment rate in effect on 6/30/00 increased by 3%
	Fee schedule for providers listed at 441—paragraphs 78.31(1)*"g"* to *"n."* See 79.1(16)	Rates in effect on 6/30/00 increased by 3%
Independent laboratories	Fee schedule. See 79.1(6)	Medicare fee schedule. See 79.1(6)
Intermediate care facilities for the mentally retarded	Prospective reimbursement. See 441—82.5(249A)	Eightieth percentile of facility costs as calculated from 12/31/99 cost reports
Lead inspection agency	Fee schedule	Fee schedule in effect 6/30/00 plus 0.7%
Maternal health centers	Reasonable cost per procedure on a prospective basis as determined by the department based on financial and statistical data submitted annually by the provider group	Fee schedule in effect 6/30/00 plus 0.7%
Nurse-midwives	Fee schedule	Rate in effect on 1/1/00 under the fee schedule established for Iowa under the federal Medicare program, incorporating the resource-based relative value scale (RBRVS) methodology
Nursing facilities:		
1. Nursing facility care	Prospective reimbursement. See 441—subrule 81.10(1) and 441—81.6(249A)	Seventieth percentile of facility costs as calculated from all 6/30/00 cost reports
2. Skilled nursing care provided in: Hospital-based facilities	Prospective reimbursement. See 79.1(9)	Facility base rate per diems used on 6/30/99 inflated by 2% subject to a maximum allowable payment rate of $346.20 per day for hospital-based skilled facilities

Provider category	Basis of reimbursement	Upper limit
Freestanding facilities	Prospective reimbursement. See 79.1(9)	Facility base rate per diems used on 6/30/99 inflated by 2% subject to a maximum allowable payment rate of $163.41 per day for freestanding skilled facilities
Opticians	Fee schedule. Fixed fee for lenses and frames; other optical materials at product acquisition cost	Reimbursement rate for provider in effect 6/30/00 plus 0.7%
Optometrists	Fee schedule. Fixed fee for lenses and frames; other optical materials at product acquisition cost	Rate in effect on 1/1/00 under the fee schedule established for Iowa under the federal Medicare program, incorporating the resource-based relative value scale (RBRVS) methodology
Orthopedic shoe dealers	Fee schedule	Reimbursement rate for provider in effect 6/30/00 plus 0.7%
Physical therapists	Fee schedule	Rate in effect on 1/1/00 under the fee schedule established for Iowa under the federal Medicare program, incorporating the resource-based relative value scale (RBRVS) methodology
Physicians (doctors of medicine or osteopathy)	Fee schedule. See 79.1(7)	Rate in effect on 1/1/00 under the fee schedule established for Iowa under the federal Medicare program, incorporating the resource-based relative value scale (RBRVS) methodology, excluding anesthesia services. Anesthesia services will be reimbursed at the Iowa Medicaid fee schedule rate in effect 6/30/00 plus 0.7%.
Podiatrists	Fee schedule	Rate in effect on 1/1/00 under the fee schedule established for Iowa under the federal Medicare program, incorporating the resource-based relative value scale (RBRVS) methodology
Prescribed drugs	See 79.1(8)	$4.13 or $6.42 dispensing fee (See 79.1(8)*"a"* and *"e"*)

Provider category	Basis of reimbursement	Upper limit
Psychiatric medical institutions for children (Inpatient)	Prospective reimbursement	Reimbursement rate for provider based on per diem rates for actual costs on 6/30/00, not to exceed a maximum of $147.20 per day
(Outpatient day treatment)	Fee schedule	Fee schedule in effect 6/30/00 plus 0.7%
Psychologists	Fee schedule	Rate in effect on 1/1/00 under the fee schedule established for Iowa under the federal Medicare program, incorporating the resource-based relative value scale (RBRVS) methodology
Rehabilitation agencies	Retrospective cost-related	Reimbursement rate for agency in effect 6/30/00 plus 0.7%
Rehabilitative treatment services	Reasonable and necessary costs per unit of service based on data included on the Rehabilitative Treatment and Supportive Services Financial and Statistical Report, Form 470-3049. See 441—185.101(234) to 441—185.107(234). A provider who is an individual may choose between the fee schedule in effect November 1, 1993 (See 441—subrule 185.103(7)) and reasonable and necessary costs.	No cap
Rural health clinics (RHC)	Retrospective cost-related	1. Reasonable cost as determined by Medicare cost reimbursement principles 2. In the case of services provided pursuant to a contract between an RHC and a managed care organization (MCO), reimbursement from the MCO shall be supplemented to achieve "1" above
Screening centers	Fee schedule	Reimbursement rate for center in effect 6/30/00 plus 0.7%
State-operated institutions	Retrospective cost-related	

79.1(3) *Ambulatory surgical centers.* Payment is made for facility services on a fee schedule which is determined by Medicare. These fees are grouped into eight categories corresponding to the difficulty or complexity of the surgical procedure involved. Procedures not classified by Medicare shall be included in the category with comparable procedures.

Services of the physician are reimbursed on the basis of a fee schedule (see subrule 79.1(1)*"c"*). This payment is made directly to the physician.

79.1(4) *Durable medical equipment, prosthetic devices, medical supply dealers.* Fees for durable medical appliances, prosthetic devices and medical supplies are developed from several pricing sources and are based on pricing appropriate to the date of service; prices are developed using prior calendar year price information. The average wholesale price from all available sources is averaged to determine the fee for each item. Payment for used equipment will be no more than 80 percent of the purchase allowance. For supplies, equipment, and servicing of standard wheelchairs, standard hospital beds, enteral nutrients, and enteral and parenteral supplies and equipment, the fee for payment shall be the lowest price for which the devices are widely and consistently available in a locality.

79.1(5) *Reimbursement for hospitals.*

a. Definitions.

"Adolescent" shall mean a Medicaid patient 17 years or younger.

"Adult" shall mean a Medicaid patient 18 years or older.

"Average daily rate" shall mean the hospital's final payment rate multiplied by the DRG weight and divided by the statewide average length of stay for a DRG.

"Base year cost report" shall mean the hospital's cost report with fiscal-year-end on or after January 1, 1998, and prior to January 1, 1999, except as noted in 79.1(5)*"x."* Cost reports shall be reviewed using Medicare's cost reporting regulations for cost reporting periods ending on or after January 1, 1998, and prior to January 1, 1999.

"Blended base amount" shall mean the case-mix adjusted, hospital-specific operating cost per discharge associated with treating Medicaid patients, plus the statewide average case-mix adjusted operating cost per Medicaid discharge, divided by two. This base amount is the value to which add-on payments for inflation, capital costs, direct medical education costs, and costs associated with treating a disproportionate share of poor patients and indirect medical education are added to form a final payment rate.

"Capital costs" shall mean an add-on to the blended base amount which shall compensate for Medicaid's portion of capital costs. Capital costs for buildings, fixtures and movable equipment are defined in the hospital's base year cost report, are case-mix adjusted, are adjusted to reflect 80 percent of allowable costs, and are adjusted to be no greater than one standard deviation off the mean Medicaid blended capital rate.

"Case-mix adjusted" shall mean the division of the hospital-specific base amount or other applicable components of the final payment rate by the hospital-specific case-mix index.

"Case-mix index" shall mean an arithmetical index measuring the relative average costliness of cases treated in a hospital compared to the statewide average.

"Cost outlier" shall mean cases which have an extraordinarily high cost as established in 79.1(5)*"f,"* so as to be eligible for additional payments above and beyond the initial DRG payment.

"Diagnosis-related group (DRG)" shall mean a group of similar diagnoses combined based on patient age, procedure coding, comorbidity, and complications.

(5) Allocation for disproportionate share. To determine the total amount of funding that shall be allocated to the graduate medical education and disproportionate share fund for disproportionate share payments, the department shall:

1. Sum all routine disproportionate share payments using paid claims to qualifying providers on or after July 1, 1998, and through June 30, 1999.

2. Sum all routine disproportionate share payments from claims made to qualifying providers when those claims have been used as a basis for the calculation of capitation rates and reimbursement with either an HMO or other prepaid health plan with which the department has entered into a contract effective on or after July 1, 1997.

For each prepaid health plan, divide the total dollar reimbursement from claims by the number of member months applicable to the rate-setting methodology for the per member per month (PMPM) allocation to calculate the amount of reimbursement to be allocated to the fund that represents capitation rate reimbursement allocation for routine disproportionate share. The disproportionate share PMPM allocation shall then be multiplied by the total number of members enrolled in the plan for state fiscal year 1997, allocating that amount of money to the fund.

3. Trend the total allocation for routine disproportionate share (which includes money for both the fee for service population and the capitated risk-based population, calculated under numbers "1" and "2" above) forward using annually appropriated legislative update factors and determine the total amount of money that shall be allocated to the graduate medical education and disproportionate share fund for disproportionate share Medicaid reimbursement. No adjustments shall be made to this fund beyond appropriated updates. The total amount of disproportionate share reimbursement cannot exceed the cap that was implemented under Public Law 102-234.

(6) Distribution of disproportionate share fund. Distribution of the fund for disproportionate share shall be on a monthly basis beginning October 1, 1997, and shall be calculated by taking the previous fiscal year's percentage allocation of direct medical education reimbursement (based upon paid claims to qualifying hospitals) and dividing the total amount of money allocated to the graduate medical education and disproportionate share fund for disproportionate share by each respective hospital's percentage.

If a hospital fails to qualify for reimbursement for disproportionate share under Iowa Medicaid regulations, the amount of money that would otherwise be allocated for that hospital shall be removed from the total fund.

z. Adjustments to the graduate medical education and disproportionate share fund for changes in utilization. Money shall be added to or subtracted from the graduate medical education and disproportionate share fund when the average monthly Medicaid population deviates from the previous year's averages by greater than 5 percent. The average annual population (expressed in a monthly total) shall be determined on June 30 for both the previous and current years by adding the total enrolled population for all respective months from both years' B-1 MARS report and dividing each year's totals by 12. If the average monthly number of enrolled persons for the current year is found to vary more than 5 percent from the previous year, a per member per month (PMPM) amount shall be calculated for each component (using the average number of eligibles for the previous year calculated above) and an annualized PMPM adjustment shall be made for each eligible person that is beyond the 5 percent variance.

79.1(6) *Independent laboratories.* The maximum payment for clinical diagnostic laboratory tests performed by an independent laboratory will be the areawide fee schedule established by the Health Care Financing Administration (HCFA). The fee schedule is based on the definition of laboratory procedures from the Physician's Current Procedural Terminology (CPT) published by the American Medical Association. The fee schedules are adjusted annually by HCFA to reflect changes in the Consumer Price Index for All Urban Consumers.

79.1(7) *Physicians.* The fee schedule is based on the definitions of medical and surgical procedures given in the most recent edition of Physician's Current Procedural Terminology (CPT). Refer to 441—paragraph 78.1(2)*"e"* for the guidelines for immunization replacement.

79.1(8) *Prescribed drugs.* The amount of payment shall be based on several factors in accordance with 42 CFR 447.331—333 as amended to October 28, 1987:

a. *"Estimated acquisition cost (EAC)"* is defined as the average wholesale price as published by First Data Bank less 10 percent.

"Maximum allowable cost (MAC)" is defined as the upper limit for multiple source drugs established in accordance with the methodology of the Health Care Financing Administration (HCFA) as described in 42 CFR 447.332(a)(i) and (ii).

The basis of payment for prescribed drugs for which the MAC has been established shall be the lesser of the MAC plus a professional dispensing fee of $4.13 or the pharmacist's usual and customary charge to the general public.

The basis of payment for drugs for which the MAC has not been established shall be the lesser of the EAC plus a professional dispensing fee of $6.42 or the pharmacist's usual and customary charge to the general public.

If a physician certifies in the physician's handwriting that, in the physician's medical judgment, a specific brand is medically necessary for a particular recipient, the MAC does not apply and the payment equals the average wholesale price of the brand name product less 10 percent. If a physician does not so certify, and a lower cost equivalent product is not substituted by the pharmacist, the payment for the product equals the established MAC.

Equivalent products shall be defined as those products which meet therapeutic equivalent standards as published in the federal Food and Drug Administration document, "Approved Prescription Drug Products With Therapeutic Equivalence Evaluations."

b. The determination of the unit cost component of the drug shall be based on the package size of drugs most frequently purchased by providers.

c. No payment shall be made for sales tax.

d. All hospitals 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. Hospitals receive reimbursement for the administration of vaccines to Medicaid recipients through the DRG reimbursement for inpatients and APG reimbursement for outpatients.

e. The basis of payment for nonprescription drugs shall be the same as specified in paragraph *"a"* except that a maximum allowable reimbursable cost for these drugs shall be established by the department at the median of the average wholesale prices of the chemically equivalent products available. No exceptions for reimbursement for higher cost products will be approved.

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.

j. Freestanding skilled facilities with a case-mix index above the statewide average for the previous reporting period shall receive a case-mix adjustment of $5.20 added to their daily rate for a six-month period. The case-mix index of each facility and the statewide average case-mix index are calculated by the United States Health Care Financing Administration from the minimum data set (MDS) report submitted by each facility pursuant to 441—subrule 81.13(9).

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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CHAPTER 81
NURSING FACILITIES

[Prior to 7/1/83 Social Services[770] Ch 81]
[Prior to 2/11/87, Human Services[498]]

DIVISION I
GENERAL POLICIES

441—81.1(249A) Definitions.

"Abuse" means any of the following which occurs as a result of the willful or negligent acts or omissions of a nursing facility employee:

1. Physical injury to, or injury which is at a variance with the history given of the injury, or unreasonable confinement or unreasonable punishment or assault as defined in Iowa Code section 708.1 of a resident.

2. The commission of a sexual offense under Iowa Code chapter 709 or Iowa Code section 726.2 or 728.12, subsection 1, or sexual exploitation under Iowa Code chapter 235B, as a result of the acts or omissions of the facility employee responsible for the care of the resident with or against a resident.

3. Exploitation of a resident which means the act or process of taking unfair advantage of a resident or the resident's physical or financial resources for one's own personal or pecuniary profit without the informed consent of the resident, including theft, by the use of undue influence, harassment, duress, deception, false representation or false pretenses.

4. The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, or other care necessary to maintain a resident's life or health.

"Advance directive" means a written instruction, such as a living will or durable power of attorney for health care, recognized under state law and related to the provision of health care when the resident is incapacitated.

"Beginning eligibility date" means date of an individual's admission to the facility or date of eligibility for medical assistance, whichever is the later date.

"Case-mix add-on" means additional Medicaid reimbursement based on the acuity and care need level of residents of a nursing facility.

"Civil penalty" shall mean a civil money penalty not to exceed the amount authorized under Iowa Code section 135C.36 for health care facility violations.

"Clinical experience" means application or learned skills for direct resident care in a nursing facility.

"Denial of critical care" is a pattern of care in which the resident's basic needs are denied or ignored to such an extent that there is imminent or potential danger of the resident suffering injury or death, or is a denial of, or a failure to provide the mental health care necessary to adequately treat the resident's serious social maladjustment, or is a gross failure of the facility employee to meet the emotional needs of the resident necessary for normal functioning, or is a failure of the facility employee to provide for the proper supervision of the resident.

"Department" means the Iowa department of human services.

"Department's accounting firm" means the firm on contract with the department to calculate nursing facility rates and provide other accounting services as requested. The current accounting firm is Ryun, Givens, Wenthe & Company, 1601 48th Street, Suite 150, West Des Moines, Iowa 50266-6756.

"Department's fiscal agent" means the firm on contract with the department to enroll providers, process Medicaid claims, calculate skilled nursing facility rates, and perform other related functions. The current fiscal agent is Consultec, 7755 Office Park Drive, West Des Moines, Iowa 50266.

"Discharged resident" means a resident whose accounts and records have been closed out and whose personal effects have been taken from the facility. When a resident is discharged, the facility shall notify the department via Form 470-0042, Case Activity Report.

"Facility" means a licensed nursing facility certified in accordance with the provisions of 42 CFR Part 483, as amended to September 23, 1992, to provide health services and includes skilled nursing facilities and swing-bed hospitals providing care unless stated otherwise.

"Facility-based" means a nurse aide training program which is offered by a nursing facility and taught by facility employees or under the control of the licensee.

"Informed consent" means a resident's agreement to allow something to happen that is based on a full disclosure of known facts and circumstances needed to make the decision intelligently, i.e., with knowledge of the risks involved or alternatives.

"Iowa Foundation for Medical Care (IFMC)" is the peer review organization on contract with the department to provide level of care determinations. The address of IFMC is 6000 Westown Parkway, West Des Moines, Iowa 50266.

"Laboratory experience" means practicing care-giving skills prior to contact in the clinical setting.

"Minimum data set" or *"MDS"* refers to a federally required resident assessment tool. Information from the MDS is used by the federal Health Care Financing Administration to determine the facility's case-mix index for purposes of the case-mix add-on provided by paragraph 81.6(16)*"f."* MDS is described in subrule 81.13(9).

"Minimum food, shelter, clothing, supervision, physical or mental health care, or other care" means that food, shelter, clothing, supervision, physical or mental health care, or other care which, if not provided, would constitute denial of critical care.

"Mistreatment" means any intentional act, or threat of an act, coupled with the apparent ability to execute the act, which causes or puts another person in fear of mental anguish, humiliation, deprivation or physical contact which is or will be painful, insulting or offensive. Actions utilized in providing necessary treatment or care in accordance with accepted standards of practice are not considered mistreatment.

"Non-facility-based" means a nurse aide training program which is offered by an organization which is not licensed to provide nursing facility services.

"Nurse aide" means any individual who is not a licensed health professional or volunteer providing nursing or nursing-related services to residents in a nursing facility.

"Nurse aide registry" means Nurse Aide Registry, Department of Inspections and Appeals, Third Floor, Lucas State Office Building, Des Moines, Iowa 50319.

"Nurse aide training and competency evaluation programs (NATCEP)" are educational programs approved by the department of inspections and appeals for nurse aide training as designated in subrule 81.16(3).

"Physical abuse" means any nonaccidental physical injury, or injury which is at variance with the history given of it, suffered by a resident as the result of the acts or omissions of a person responsible for the care of the resident.

"Physical injury" means damage to any bodily tissue to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition, or damage to any bodily tissue to the extent that the tissue cannot be restored to a sound and healthy condition, or damage to any bodily tissue which results in the death of the person who has sustained the damage.

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 and the established incentive factor, subject to the maximum allowable cost ceiling, plus any applicable case-mix add-on.

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.

e. Effective July 1, 2000, the basis for establishing the maximum reimbursement rate for non-state-owned nursing facilities shall be the seventieth percentile of participating facilities' per diem rates as calculated from the June 30, 2000, report of "unaudited compilation of various costs and statistical data."

f. Notwithstanding paragraph *"e,"* a semiannual case-mix factor shall be calculated and applied to the payment rates for certain facilities as follows:

(1) A case-mix index for each facility and the statewide average case-mix index are calculated by the department from the minimum data set (MDS) report submitted by each facility pursuant to 441—subrule 81.13(9). A patient care cost per patient day is calculated by the department from the facility's most recent financial and statistical cost report by dividing the facility's patient care costs by patient days. This is compared to the statewide average for patient care costs computed as of every June 30 and December 31.

(2) Facilities with a case-mix index derived from MDS reports that exceeds the Iowa nursing facility average and with a patient care service cost that exceeds the average for all participating nursing facilities for the previous reporting period shall receive an addition of $5.20 to their payment rate for a six-month period.

(3) Facilities with a case-mix index that exceeds the Iowa nursing facility average and with a patient care service cost that is less than the average for all participating facilities for the previous reporting period shall receive an addition of $2.60 to their payment rate for a six-month period.

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

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

81.6(17) *Cost report documentation.* All nursing facilities shall submit semiannual cost reports based on the closing date of the facility's fiscal year and the midpoint of the facility's fiscal year, that incorporate documentation as set forth below. The documentation incorporated in the cost reports shall include all of the following information:

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

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

c. An itemization of expenses attributable to the home or principal office or headquarters of the nursing facility included in the administrative cost line item.

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

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

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

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

441—81.9(249A) Records.

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

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

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

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

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

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

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

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

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

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

g. Resident accounts.

h. In-service education program records.

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

j. Residents' personal records.

k. Residents' medical records.

l. Disaster preparedness reports.

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

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

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

441—81.10(249A) Payment procedures.

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

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

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

d. Comprehensive care plans.

(1) The facility shall develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing, and mental and psychosocial needs that are identified in the comprehensive assessment.

The care plan shall describe the following:

1. The services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under subrule 81.13(10).

2. Any services that would otherwise be required under subrule 81.13(10), but are not provided due to the resident's exercise of rights under subrule 81.13(5), including the right to refuse treatment under subrule 81.13(5), paragraph *"b,"* subparagraph (4).

(2) A comprehensive care plan shall be developed within seven days after completion of the comprehensive assessment by an interdisciplinary team and with the participation of the resident, the resident's family or legal representative to the extent practicable, and shall be periodically reviewed and revised by a team of qualified persons after each assessment.

The interdisciplinary team shall include the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs.

(3) The services provided or arranged by the facility shall meet professional standards of quality and be provided by qualified persons in accordance with each resident's written plan of care.

e. Discharge summary. When the facility anticipates discharges, a resident shall have a discharge summary that includes:

(1) A recapitulation of the resident's stay.

(2) A final summary of the resident's status to include items in paragraph *"b,"* subparagraph (2) above, at the time of the discharge that is available for release to authorized persons and agencies, with the consent of the resident or legal representative.

(3) A postdischarge plan of care developed with the participation of the resident and resident's family which will assist the resident to adjust to a new living environment.

f. Preadmission screening for mentally ill individuals and individuals with mental retardation.

(1) A nursing facility shall not admit a new resident with mental illness or mental retardation unless the division of mental health, mental retardation, and developmental disabilities has approved the admission, based on an independent physical and mental health evaluation. This evaluation shall be reviewed by the Iowa Foundation for Medical Care prior to admission to determine whether the individual requires the level of services provided by the facility because of the physical and mental condition of the individual. If the individual requires nursing facility level of services, the individual shall receive specialized services for mental illness or mental retardation.

(2) Definition. For purposes of this rule:

1. An individual is considered to have "mental illness" if the individual has a primary or secondary diagnosis of mental disorder (as defined in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition) and does not have a primary diagnosis of dementia (including Alzheimer's disease or a related disorder).

2. An individual is considered to be "mentally retarded" if the individual is mentally retarded or a person with a related condition as described in 42 CFR 435.1009.

g. Preadmission resident assessment. The facility shall conduct prior to admission a resident assessment of all persons seeking nursing facility placement. The assessment information gathered shall be similar to the data in the minimum data set (MDS) resident assessment tool.

81.13(10) *Quality of care.* Each resident shall receive and the facility shall provide the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

a. Activities of daily living. Based on the comprehensive assessment of a resident, the facility shall ensure that:

(1) A resident's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrate that diminution was unavoidable. This includes the resident's ability to bathe, dress and groom; transfer and ambulate; toilet; eat, and to use speech, language or other functional communication systems.

(2) A resident is given the appropriate treatment and services to maintain or improve the resident's abilities specified in subparagraph (1) above.

(3) A resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

b. Vision and hearing. To ensure that residents receive proper treatment and assistive devices to maintain vision and hearing abilities, the facility shall, if necessary, assist the resident:

(1) In making appointments.

(2) By arranging for transportation to and from the office of a medical practitioner specializing in the treatment of vision or hearing impairment or the office of a professional specializing in the provision of vision or hearing assistive devices.

c. Pressure sores. Based on the comprehensive assessment of a resident, the facility shall ensure that:

(1) A resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable.

(2) A resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing.

d. Urinary incontinence. Based on the resident's comprehensive assessment, the facility shall ensure that:

(1) A resident who enters the facility without an indwelling catheter is not catheterized unless the resident's clinical condition demonstrates that catheterization was necessary.

(2) A resident who is incontinent of bladder receives appropriate treatment and services to prevent urinary tract infections and to restore as much normal bladder function as possible.

e. Range of motion. Based on the comprehensive assessment of a resident, the facility shall ensure that:

(1) A resident who enters the facility without a limited range of motion does not experience reduction in range of motion unless the resident's clinical condition demonstrates that a reduction in range of motion is unavoidable.

(2) A resident with a limited range of motion receives appropriate treatment and services to increase range of motion to prevent further decrease in range of motion.

f. Mental and psychosocial functioning. Based on the comprehensive assessment of a resident, the facility shall ensure that:

(1) A resident who displays mental or psychosocial adjustment difficulty receives appropriate treatment and services to correct the assessed problem.

(2) A resident whose assessment did not reveal a mental or psychosocial adjustment difficulty does not display a pattern of decreased social interaction or increased withdrawn, angry or depressive behaviors, unless the resident's clinical condition demonstrates that such a pattern was unavoidable.

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

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

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

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

OBJECTION

At its September 11, 1989, meeting the committee voted to object to subparagraphs 81.6(11)*"h"*(4) through (6). These provisions appear as part of ARC 82A, published in XII IAB 12 (8-9-89).

In essence these provisions place limits on the income that can be paid to care facility employees who also have an ownership interest in the facility or who are related to an owner. The rules establish a maximum salary which can be used as allowable costs to determine the per diem rate for medicaid purposes. The salaries can be higher than the limit, but only the specified amount can be used in the rate. The purpose of this limitation is to ensure that profits are not hidden away as part of the expense of the facility. It is the committee's opinion that these limitations are unreasonable in that there is no evidence to demonstrate that the specified limits are within the range of salaries paid to facility administrators as a whole. It is the understanding of the committee that the limits were simply set by applying an inflation factor to an earlier set of salary limits. The committee believes that a more accurate method of setting the rate would be to survey the salaries of all facility administrators, categorized by size and set the average of those amounts as the salary limit.

OBJECTION

At its meeting held August 11, 1992, the Administrative Rules Review Committee voted to object to the amendments published in **ARC 3069A** on the grounds the amendments are unreasonable. This filing is published in IAB Vol. XIV No. 253 (06-10-92). It is codified as an amendment to paragraph 441 IAC 81.13(7)*"c"*(1).

In brief, this filing provides that care facilities shall not employ persons who have been found guilty in a court of law of abusing, neglecting or mistreating facility residents, or who have had a "finding" entered into the state nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property. Additionally, the filing eliminates a previous provision which allowed the Department of Inspections and Appeals some discretion in deciding whether the lifetime ban on employment should be applied.

This language originated in the federal government which mandated that the department adopt these provisions or possibly face sanctions. The Committee does not believe these amendments are an improvement to Iowa's system and has the following objection. The Committee believes that the amendments published in **ARC 3069A** are unreasonable because of the inconsistency in the burdens of proof and the levels of procedural safeguards in the two proceedings. A facility employee may either be found guilty in a court of law or have an administrative finding entered into the registry. In either case the result is the same, the employee is permanently banned from further employment in a care facility; however, the two paths to the result are significantly different. The first proceeding is a criminal tribunal in which the burden of proof is "beyond a reasonable doubt." The second proceeding is a simple administrative hearing in which the burden is "preponderance of the evidence." The two proceedings also differ in the level of many other due process protections accorded to the individual. A criminal proceeding provides the accused with the opportunity for a trial by jury, competent legal counsel, strict rules of evidence and many procedural protections not present in administrative hearings. It should also be noted that the penalty in this situation—a lifetime ban on employment—is more serious than is usually imposed in contested cases. In licensee discipline cases, a license can be revoked, but the possibility of reinstatement exists; under this new rule no reinstatement is allowed, the facility employee is banned from employment no matter how serious or minor the offense or how far in the past it occurred. Because of the magnitude of this penalty, the Committee believes that the accused should be provided with greater procedural protections than are generally found in administrative hearings.

The Committee also believes this filing is unreasonable because it eliminates the discretion accorded to the Department of Inspections and Appeals to not apply the lifetime ban on employment. Under the previous rule, the department's discretion in applying the employment ban acted as a safeguard against unjust results. It recognized that a person would make amends for past offenses and earn a second chance. The provision was a genuine improvement in the process; it recognized that flexibility was needed in government decision making and that some decisions should be made on a case-by-case basis. There does not appear to be any rational basis to justify the elimination of this safeguard and, therefore, the Committee believes this action to be unreasonable.

NOTE: The Committee voted to retain this objection at their meeting held February 8, 1993.

TITLE X
SUPPORT RECOVERY

CHAPTER 95
COLLECTIONS

[Prior to 7/1/83, Social Services[770] Ch 95]
[Prior to 2/11/87, Human Services[498]]

441—95.1(252B) Definitions.

"Bureau chief" shall mean the chief of the bureau of collections of the department of human services or the bureau chief's designee.

"Caretaker" shall mean a custodial parent, relative or guardian whose needs are included in an assistance grant paid according to Iowa Code chapter 239B, or who is receiving this assistance on behalf of a dependent child, or who is a recipient of nonassistance child support services.

"Child support recovery unit" shall mean any person, unit, or other agency which is charged with the responsibility for providing or assisting in the provision of child support enforcement services pursuant to Title IV-D of the Social Security Act.

"Consumer reporting agency" shall mean any person or organization which, for monetary fees, dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

"Current support" shall mean those payments received in the amount, manner and frequency as specified by an order for support and which are paid to the clerk of the district court, the public agency designated as the distributor of support payments as in interstate cases, or another designated agency. Payments to persons other than the clerk of the district court or other designated agency do not satisfy the definition of support pursuant to Iowa Code section 598.22. In addition, current support shall include assessments received as specified pursuant to rule 441—156.1(234).

"Date of collection" shall mean the date that a support payment is received by the department or the legal entity of any state or political subdivision actually making the collection, or the date that a support payment is withheld from the income of a responsible person by an employer or other income provider, whichever is earlier.

"Delinquent support" shall mean a payment, or portion of a payment, including interest, not received by the clerk of the district court or other designated agency at the time it was due. In addition, delinquent support shall also include assessments not received as specified pursuant to rule 441—156.1(234).

"Department" shall mean the department of human services.

"Dependent child" shall mean a person who meets the eligibility criteria established in Iowa Code chapter 234 or 239B, and whose support is required by Iowa Code chapter 234, 239B, 252A, 252C, 252F, 252H, 252K, 598 or 600B, and any other comparable chapter.

"Federal nontax payment" shall mean an amount payable by the federal government which is subject to administrative offset for support under the federal Debt Collection Improvement Act, Public Law 104-134.

"Obligee" shall mean any person or entity entitled to child support or medical support for a child.

"Obligor" shall mean a parent, relative or guardian, or any other designated person who is legally liable for the support of a child or a child's caretaker.

"Payor of income" shall have the same meaning provided this term in Iowa Code section 252D.16.

"Prepayment" shall mean payment toward an ongoing support obligation when the payment exceeds the current support obligation and amounts due for past months are fully paid.

"Public assistance" shall mean assistance provided according to Iowa Code chapter 239B or 249A, the cost of foster care provided by the department according to chapter 234, or assistance provided under comparable laws of other states.

"Responsible person" shall mean a parent, relative or guardian, or any other designated person who is or may be declared to be legally liable for the support of a child or a child's caretaker. For the purposes of calculating a support obligation pursuant to the mandatory child support guidelines prescribed by the Iowa Supreme Court in accordance with Iowa Code section 598.21, subsection 4, this shall mean the person from whom support is sought.

"Support" shall mean child support or medical support or both for purposes of establishing, modifying or enforcing orders, and spousal support for purposes of enforcing an order.

This rule is intended to implement Iowa Code chapters 252B, 252C and 252D.

441—95.2(252B) Child support recovery eligibility and services.

95.2(1) *Public assistance cases.* The child support recovery unit shall provide paternity establishment and support establishment, modification and enforcement services, as appropriate, under federal and state laws and rules for children and families referred to the unit who have applied for or are receiving public assistance. Referrals under this subrule may be made by the family investment program, the Medicaid program, the foster care program or agencies of other states providing child support services under Title IV-D of the Social Security Act for recipients of public assistance.

95.2(2) *Nonpublic assistance cases.* The same services provided by the child support recovery unit for public assistance cases shall also be made available to any person not otherwise eligible for public assistance. The services shall be made available to persons upon the completion and filing of an application with the child support recovery unit except that an application shall not be required to provide services to the following persons:

a. Persons not receiving public assistance for whom an agency of another state providing Title IV-D child support recovery services has requested services.

b. Persons for whom a foreign reciprocating country or a foreign country with which this state has an arrangement as provided in 42 U.S.C. §659 has requested services.

c. Persons who are eligible for continued services upon termination of assistance under the family investment program or Medicaid.

95.2(3) *Services available.* Except as provided by separate rule, the child support recovery unit shall provide the same services as the unit provides for public assistance recipients to persons not otherwise eligible for services as public assistance recipients. The child support recovery unit shall determine the appropriate enforcement procedure to be used. The services are limited to the establishment of paternity, the establishment and enforcement of child support obligations and medical support obligations, and the enforcement of spousal support orders if the spouse is the custodial parent of a child for whom the department is enforcing a child support or medical support order.

95.2(4) *Application for services.*

a. A person who is not on public assistance requesting services under this chapter, except for those persons eligible to receive support services under paragraphs 95.2(2)*"a," "b,"* and *"c,"* shall complete and return Form 470-0188, Application for Nonassistance Support Services, to the child support recovery unit serving the county where the person resides. If the person does not live in the state, the application form shall be returned to the county in which the support order is entered or in which the other parent or putative father resides.

b. An individual who is required to complete Form 470-0188, Application for Nonassistance Support Services, shall be charged an application fee in the amount set by statute. The fee shall be charged at the time of initial application and any subsequent application for services. The application fee shall be paid to the local child support recovery unit by the individual prior to services being provided.

This rule is intended to implement Iowa Code sections 252B.3 and 252B.4.

441—95.3(252B) Crediting of current and delinquent support. The amounts received as support from the obligor shall be credited as the required support obligation for the month in which they are collected. Any excess shall be credited as delinquent payments and shall be applied to the immediately preceding month, and then to the next immediately preceding month until all excess has been applied. Funds received as a result of federal tax offsets shall be credited according to rule 441—95.7(252B).

The date of collection shall be determined as follows:

95.3(1) *Payments from income withholding.* Payments collected as the result of income withholding are considered collected in the month in which the income was withheld by the income provider. The date of collection shall be the date on which the income was withheld.

a. For the purpose of reporting the date the income was withheld, the department shall notify income providers of the requirement to report the date income was withheld and shall provide Form 470-3221, "Income Withholding Return Document," to those income providers who manually remit payments. When reported on this form or through other electronic means or multiple account listings, the date of collection shall be used to determine support distributions. When the date of collection is not reported, support distributions shall initially be issued based on the date of the check. If proof of the date of collection is subsequently provided, any additional payments due the recipient shall be issued.

b. When the collection services center (CSC) is notified or otherwise becomes aware that a payment received from an income provider pursuant to 441—Chapter 98, Division II, includes payment amounts such as vacation pay or severance pay, these amounts are considered irrevocably withheld in the months documented by the income provider.

95.3(2) *Payments from state or political subdivisions.* Payments collected from any state or political subdivision are considered collected in the same month the payments were actually received by that legal entity or the month withheld by an income provider, whichever is earlier. Any state or political subdivision transmitting payments to the department shall be responsible for reporting the date the payments were collected. When the date of collection is not reported, support distributions shall be initially issued based on the date of the state's or political subdivision's check. If proof of the date of collection is subsequently provided, any additional payments due the recipient shall be issued.

95.3(3) *Additional payments.* An additional payment in the month which is received within five calendar days prior to the end of the month shall be considered collected in the next month if:

a. CSC is notified or otherwise becomes aware that the payment is for the next month, and

b. Support for the current month is fully paid.

This rule is intended to implement Iowa Code section 252B.15 and section 252D.17 as amended by 2000 Iowa Acts, House File 2135, section 2.

441—95.4(252B) Prepayment of support. Prepayment which is due to the child support obligee shall be sent to the obligee upon receipt by the department, and shall be credited as payment of future months' support. Prepayment which is due the state shall be distributed as if it were received in the month when due. Support is prepaid when amounts have been collected which fully satisfy the ongoing support obligation for the current month and all past months.

441—95.5(252B) Lump sum settlement.

95.5(1) Any lump sum settlement of child support involving an assignment of child support payments shall be negotiated in conjunction with the child support recovery unit. The child support recovery unit shall be responsible for the determination of the amount due the department, including any accrued interest on the support debt computed in accordance with Iowa Code section 535.3 for court judgments. This determination of the amount due shall be made in accordance with Section 302.51, Code of Federal Regulations, Title 45 as amended to August 4, 1989. The bureau chief may waive collection of the accrued interest when negotiating a lump sum settlement of a support debt, if the waiver will facilitate the collection of the support debt.

95.5(2) The child support recovery unit shall be responsible for the determination of the department's entitlement to all or any of the lump sum payment in a paternity action.

This rule is intended to implement Iowa Code chapter 252C.

441—95.6(252B) Setoff against state income tax refund or rebate. A claim against a responsible person's state income tax refund or rebate will be made by the department when a support payment is delinquent as set forth in Iowa Code section 421.17(21). A claim against a responsible person's state income tax refund or rebate shall apply to support which the department is attempting to collect.

95.6(1) The department shall submit to the department of revenue and finance by the first day of each month, a list of responsible persons who are delinquent at least $50 in support payments.

95.6(2) The department shall mail a pre-setoff notice, to a responsible person when:

a. The department is notified by the department of revenue and finance that the responsible person is entitled to a state income tax refund or rebate; and

b. The department makes claim to the responsible person's state income tax refund or rebate. The presetoff notice will inform the responsible person of the amount the department intends to claim and apply to support.

95.6(3) When the responsible person wishes to contest a claim, a written request shall be submitted to the department within 15 days after the pre-setoff notice is mailed. When the request is received within the 15-day limit, a hearing shall be granted pursuant to rules in 441—Chapter 7.

95.6(4) The spouse's proportionate share of a joint return filed with a responsible person, as determined by the department of revenue and finance, shall be released by the department of revenue and finance unless other claims are made on that portion of the joint income tax refund. The request for release of a spouse's proportionate share shall be in writing and received by the department within 15 days after the mailing date of the pre-setoff notice.

95.6(5) Support recovery will make claim to a responsible person's state income tax refund or rebate when all current support payments or regular payments on the delinquent support were not paid for 12 months preceding the month in which the pre-setoff notice was mailed. A regular payment toward delinquent support is defined as making a monthly payment. The state income tax refund of a responsible person may be claimed by the office of the department of inspections and appeals or the college aid program even if no claim for payment of delinquent support has been made by support recovery.

95.6(6) The department shall notify a responsible person of the final decision regarding the claim against the tax refund or rebate by mailing a final disposition of support recovery claim notice to the responsible person.

95.6(7) Application of setoff. Setoffs shall be applied as provided in rule 441—95.3(252B).

This rule is intended to implement Iowa Code sections 252B.3 and 252B.4.

441—95.7(252B) Offset against federal income tax refund and federal nontax payment. A claim against a responsible person's federal income tax refund or federal nontax payment will be made by the department when delinquent support is owed.

95.7(1) Amount of assigned support. If the delinquent support is assigned to the department, the amount of delinquent support shall be at least $150 and the support shall have been delinquent for three months.

95.7(2) Amount of nonassigned support. If delinquent support is not assigned to the department, the claim shall be made if the amount of delinquent support is at least $500.

a. The amount distributed to an obligee shall be the amount remaining following payment of a support delinquency assigned to the department. Prior to receipt of the amount to be distributed, the obligee shall sign Form 470-2084, Repayment Agreement for Federal Tax Refund Offset, agreeing to repay any amount of the offset the Department of the Treasury later requires the department to return. The department shall distribute to an obligee the amount collected from an offset according to subrule 95.7(9) within the following time frames:

441—95.20(252B) Cooperation of public assistance applicants in establishing and obtaining support. If a person who is an applicant of FIP or Medicaid is required to cooperate in establishing paternity, in establishing, modifying, or enforcing child or medical support, or in enforcing spousal support, the requirements in 441—subrule 41.22(6) and rule 441—75.14(249A) shall apply. The appropriate staff in the FIP and Medicaid programs are designees of the child support recovery unit to determine noncooperation and issue notices of that determination.

This rule is intended to implement Iowa Code section 252B.3.

441—95.21(252B) Cooperation in establishing and obtaining support in nonpublic assistance cases.

95.21(1) *Requirements.* The individual receiving nonpublic assistance support services shall cooperate with the child support recovery unit by meeting all the requirements of rule 441—95.19(252B), except that the individual may not claim good cause or other exception for not cooperating.

95.21(2) *Failure to cooperate.* The child support recovery unit shall make the determination of whether or not the nonpublic assistance applicant or recipient of services has cooperated. Noncooperation shall result in termination of support services. An applicant or recipient may also request termination of services under subrule 95.14(3).

This rule is intended to implement Iowa Code section 252B.4.

441—95.22(252B) Charging pass-through fees. Pass-through fees are fees or costs incurred by the department for service of process, genetic testing and court costs if the entity providing the service charges a fee for the services. The child support recovery unit may charge pass-through fees to persons who receive continued services according to rule 441—95.18(252B) and to other persons receiving nonassistance services, except no fees may be charged an obligee residing in a foreign country or the foreign country if the unit is providing services under paragraph 95.2(2)*"b."*

This rule is intended to implement Iowa Code section 252B.4.

441—95.23(252B) Reimbursing assistance with collections of assigned support. For an obligee and child who currently receive assistance under the family investment program, the full amount of any assigned support collection that the department receives shall be distributed according to rule 441—95.3(252B) and retained by the department to reimburse the family investment program assistance.

This rule is intended to implement Iowa Code section 252B.15.

441—95.24(252B) Child support account. The child support recovery unit shall maintain a child support account for each client. The account, representing money due the department, shall cover all periods of time public assistance has been paid, commencing with the date of the assignment. The child support recovery unit will not maintain an interest-bearing account.

This rule is intended to implement Iowa Code chapter 252C.

441—95.25(252B) Emancipation verification. The child support recovery unit (CSRU) may verify whether a child will emancipate according to the provisions established in the court order prior to the child's eighteenth birthday.

95.25(1) *Verification process.* CSRU shall send Form 470-2562, Emancipation Verification, to the obligor and obligee on a case if CSRU has an address.

95.25(2) *Return information.* The obligor and obligee shall be asked to complete and return the form to the unit. CSRU shall use the information provided by the obligor or obligee to determine if the status of the child indicates that any previously ordered adjustments related to the obligation and a child's emancipation are necessary on the case.

95.25(3) *Failure to return information.* If the obligor and obligee fail to return the questionnaire, CSRU shall apply the earliest emancipation date established in the support order to the case and implement changes in support amounts required in the support order.

95.25(4) *Conflicting information returned.* If conflicting information is returned or made known to CSRU, CSRU shall have the right to verify the child's status through sources other than the obligor and obligee.

This rule is intended to implement Iowa Code sections 252B.3 and 252B.4.

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◊Two ARCs
*Effective date of 95.1, definition of "Date of collection," and 95.3 delayed 70 days by the Administrative Rules Review Committee at its meeting held September 15, 1999; delayed until the end of the 2000 Session of the General Assembly at its meeting held October 11, 1999.

b. The block grant service to be provided shall be contained in the pre-expenditure report and listed for the specific district and county. Service available through the department and funded by resources other than the social service block grant is identified in rules for that specific service.

c. Service shall be provided only when funds are available for service delivery.

d. Persons are financially eligible for services when they are in one of the following categories, except for child care services where persons must be income eligible:

(1) Income maintenance status. They are recipients of the family investment program, or those whose income was taken into account in determining the needs of family investment program recipients, or recipients of supplemental security income or state supplementary assistance, or those in the 300 percent group as defined in 441—subrule 75.1(7).

(2) Income eligible status. The monthly gross income according to family size is no more than the following amounts:

Family Size	For Child Care Monthly Gross Income			All Other Services Monthly Gross Income Below
	A	B	C	
1 Member	$ 696	$ 974	$1,219	$ 583
2 Members	938	1,313	1,641	762
3 Members	1,179	1,651	2,064	942
4 Members	1,421	1,989	2,486	1,121
5 Members	1,663	2,328	2,910	1,299
6 Members	1,904	2,666	3,332	1,478
7 Members	2,146	3,004	3,755	1,510
8 Members	2,388	3,343	4,178	1,546
9 Members	2,629	3,681	4,601	1,581
10 Members	2,871	4,019	4,701	1,612

For child care, Column A, add $242 for each additional person over 10 members. For child care, Column B, add $338 for each additional person over 10 members. For child care, Column C, add $100 for each additional person over 10 members. For other services, add $33 for each additional person over 10 members.

Column A is used to determine income eligibility when funds are insufficient to serve additional families beyond those already receiving services or requiring protective child care and applications are being taken from families who are at or below 100 percent of the federal poverty guidelines and in which the parents are employed at least 28 hours per week or are under the age of 21 and participating in an educational program leading to a high school diploma or equivalent or from parents under the age of 21 with a family income at or below 100 percent of the federal poverty guidelines who are participating, at a satisfactory level, in an approved training or education program. (See 441—paragraphs 170.2(3)*"a"* and *"c."*)

Column B is used to determine income eligibility when funds are insufficient to serve additional families beyond those already receiving services or requiring protective child care and applications are being taken from families with an income of more than 100 percent but not more than 140 percent of the federal poverty level whose members are employed at least 28 hours per week (see 441—paragraph 170.2(3)*"d"*) or when there is adequate funding and no waiting lists and applications are being taken from families applying for services, with the exception of families with children with special needs.

Column C is used to determine income eligibility for families with children with special needs.

(3) Foster child status. For a child residing in foster care, the foster child shall be considered a family of one and the child's income shall be the only income considered in determining eligibility for child care services.

(4) A person who is participating in activities approved under the PROMISE JOBS program is eligible for child care assistance without regard to income if there is a need for child care services.

(5) A person who is part of the family investment program, or whose earned income was taken into account in determining the needs of the family investment program recipient, is eligible for child care assistance without regard to income if there is a need for child care services.

e. Certain services are provided without regard to income which means family income is not considered in determining eligibility. The services provided without regard to income are information and referral, child abuse investigation, child abuse treatment, child abuse prevention services, including protective child care services, family-centered services, dependent adult abuse evaluation, dependent adult abuse treatment, dependent adult abuse prevention services, and purchased adoption services to individuals and families referred by the department.

f. In certain cases the department will provide services directed in a court order.

130.3(2) To be eligible for services the person must be living in the state of Iowa. Living in the state shall include those persons living in Iowa for a temporary period, other than for the purpose of vacation.

130.3(3) In determining gross income, all income received by an individual from sources identified by the U.S. Census Bureau in computing median income is considered and includes money wages or salary, net income from nonfarm self-employment, net income from farm self-employment, social security, dividends, interest, income from estates or trusts, net rental income and royalties, public assistance or welfare payments, pensions and annuities, unemployment compensation, worker's compensation, alimony, child support; and veterans pensions. Excluded from the computation of monthly gross income are the following:

a. Per capita payments to or funds held in trust for any individual in satisfaction of a judgment of the Indian claims commission or the court of claims.

b. Payments made pursuant to the Alaska Claims Settlement Act to the extent such payments are exempt from taxation under section 21(a) of the Act.

c. Money received from the sale of property, unless the person was engaged in the business of selling such property.

d. Withdrawals of bank deposits.

e. Money borrowed.

f. Tax refunds.

g. Gifts.

h. Lump sum inheritances or insurance payments or settlements.

i. Capital gains.

j. The value of the coupon allotment under the Food Stamp Act of 1964, as amended, in excess of the amount paid for the coupons.

k. The value of USDA donated foods.

l. The value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food program for children under the National School Lunch Act, as amended.

m. Earnings of a child 14 years of age or under.

n. Loans and grants obtained and used under conditions that preclude their use for current living expenses.

o. Any grant or loan to any undergraduate student for educational purposes made or insured under the Higher Education Act.

p. Home produce utilized for household consumption.

q. Earnings received by any youth under Title III, Part C—Youth Employment Demonstration Program of the Comprehensive Employment and Training Act of 1973.

r. Stipends received by persons for participating in the foster grandparent program.

s. The first $65 plus 50 percent of the remainder of income earned in a sheltered workshop or work activity setting.

t. Payments from the low-income home energy assistance program.

u. In determining eligibility for purchase of local services, one-third of the income of a disabled survivor who is a recipient of child's insurance benefits under the federal old-age, survivors, and disability insurance program established under Title II of the Federal Social Security Act.

v. In determining eligibility for purchase of local services, one-third of the income of a person who receives social security permanent disability benefits.

w. Agent Orange settlement payments.

x. For child care services, the income of the parent(s) with whom the teen parent(s) resides.

y. For child care services for children with special needs, income spent on any regular ongoing cost is specific to that child's disability.

z. Moneys received under the federal Social Security Persons Achieving Self-Sufficiency (PASS) program or the Income-Related Work Expense (IRWE) program.

aa. For child care services, if a recipient of the family investment program, or one whose earned income was taken into account in determining the needs of the family investment program recipient, is excluded from the family investment program due to receiving Supplemental Security Income, the income received from the Supplemental Security Income recipient is excluded in determining gross income. The income of a child who would be in the family investment program eligible group except for the receipt of Supplemental Security Income is also excluded.

130.3(4) Rescinded IAB 8/9/89, effective 10/1/89.

130.3(5) Temporary absence. The composition of the family group does not change when one, or more, of the group members is temporarily absent from the household.

"Temporary absence" means:

a. A medical absence anticipated to be less than three months.

b. An absence for the purpose of education or employment.

c. When a family member is absent and intends to return home within three months.

130.3(6) A person who is deemed to be eligible for state child care assistance program benefits under this chapter is subject to all other state child care assistance requirements including, but not limited to, provider requirements under Iowa Code chapter 237A, provider reimbursement methodology and rates, and any other requirements established by the department.

This rule is intended to implement Iowa Code section 234.6 and 1999 Iowa Acts, House File 761, division III.

441—130.4(234,239B) Fees. The department may set fees to be charged to clients for services received. The fees will be charged to those clients eligible under rule 130.3(234,239B), but not those receiving services without regard to income due to a protective service situation or for rehabilitative treatment services. Nothing in these rules shall preclude a client from voluntarily contributing toward the costs of service.

130.4(1) *Collection.* The provider shall collect fees from clients. The provider shall maintain records of fees collected, and such records shall be available for audit by the department or its representative. When a client does not pay the fee, the provider shall demonstrate that a reasonable effort has been made to collect the fee. Reasonable effort to collect means an original billing and two follow-up notices of nonpayment.

130.4(2) *Monthly income.* Rescinded IAB 1/8/92, effective 3/1/92.

130.4(3) *Child care services.* The monthly income chart and fee schedule for child care services in a licensed child care center, an exempt facility, a registered family or group child care home, a nonregistered family child care home, or in-home care are shown in the following table:

Monthly Income Increment Levels According to Family Size

Income Increment Levels	1	2	3	4	5	6	7	8	9	10	Half-Day Fee
A	661	891	1120	1350	1579	1809	2039	2268	2498	2727	.00
B	696	938	1179	1421	1663	1904	2146	2388	2629	2871	.50
C	735	990	1245	1500	1756	2011	2266	2521	2776	3032	1.00
D	776	1045	1315	1584	1854	2123	2393	2662	2932	3201	1.50
E	819	1104	1389	1673	1958	2242	2527	2811	3096	3381	2.00
F	865	1166	1466	1767	2067	2368	2668	2969	3269	3570	2.50
G	914	1231	1548	1866	2183	2500	2818	3135	3453	3770	3.00
H	965	1300	1635	1970	2305	2641	2976	3311	3646	3981	3.50
I	1019	1373	1727	2081	2434	2788	3142	3496	3850	4204	4.00
J	1076	1450	1823	2197	2571	2945	3318	3692	4066	4439	4.50
K	1136	1531	1926	2320	2715	3109	3504	3899	4293	4688	5.00
L	1200	1617	2033	2450	2867	3284	3700	4117	4534	4950	5.50
M	1267	1707	2147	2587	3027	3467	3908	4348	4788	5228	6.00

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k. Capital asset use allowance (depreciation) schedule. The Capital Asset Use Allowance Schedule shall be prepared using the guidelines for provider reimbursement in the Medicare and Medicaid Guide, December 1981.

l. The following expenses shall not be allowed:

(1) Fees paid directors and nonworking officers' salaries.

(2) Bad debts.

(3) Entertainment expenses.

(4) Memberships in recreational clubs, paid for by an agency (country clubs, dinner clubs, health clubs, or similar places) which are primarily for the benefit of the employees of the agency.

(5) Legal assistance on behalf of clients.

(6) Costs eligible for reimbursement through the medical assistance program.

(7) Food and lodging expenses for personnel incurred in the city or immediate area surrounding the personnel's residence or office of employment, except when the specific expense is required by the agency and documentation is maintained for audit purposes. Food and lodging expenses incurred as part of programmed activities on behalf of clients, their parents, guardians, or consultants are allowable expenses when documentation is available for audit purposes.

(8) Business conferences and conventions. Meeting costs of an agency which are not required in licensure.

(9) Awards and grants to recognize board members and community citizens for achievement. Awards and grants to clients as part of treatment program are reimbursable.

(10) Survey costs when required certification is not attained.

(11) Federal and state income taxes.

m. Limited service—without a ceiling. The following expenses are limited for service without a ceiling established by administrative rule or law for that service. This includes services with maximum rates, with the exception of foster group care and shelter care.

(1) Moving and recruitment are allowed as a reimbursable cost only to the extent allowed for state employees. Expenses incurred for placing advertising for purposes of locating qualified individuals for staff positions are allowed for reimbursement purposes.

(2) and (3) Rescinded IAB 5/18/88, effective May 1, 1988.

(4) Costs for participation in educational conferences are limited to 3 percent of the agency's actual salary costs, less excluded or limited salary costs as recorded on the financial and statistical report.

(5) Costs of reference publications and subscriptions for program-related materials are limited to $500 per year.

(6) Memberships in professional service organizations are allowed to the extent they do not exceed one-half of 1 percent of the total salary costs less excluded salary costs.

(7) In-state travel costs for mileage and per diem expenses are allowable to the extent they do not exceed the maximum mileage and per diem rates for state employees for travel in the state.

(8) Reimbursement for air travel shall not exceed the lesser of the minimum commercial rate or the rate allowed for mileage in subparagraph (7) above.

(9) The maximum reimbursable salary for the agency administrator or executive director charged to purchase of service is $40,000 annually.

(10) Annual meeting costs of an agency which are required in licensure are allowed to the extent required by licensure.

n. Limited service—with a ceiling. The following expenses are limited for services with a ceiling established by administrative rule or law for that service. This includes shelter care.

(1) The maximum reimbursable compensation for the agency administrator or executive director charged to purchase of service annually is $40,000.

(2) Annual meeting costs of an agency which are required for licensure are allowed to the extent required by licensure.

o. Establishment of ceiling and reimbursement rate.

(1) The maximum allowable rate ceiling applicable to each service is found in the rules for that particular service.

(2) When a ceiling exists, the reimbursement rate shall be established by determining on a per unit basis the allowable cost plus the current cost adjustment subject to the maximum allowable cost ceiling.

p. Rate limits. Interruptions in service programs will not affect the rate. If an agency assumes the delivery of service from another agency, the rate shall remain the same as for the former agency.

(1) Unless otherwise provided for in 441—Chapter 156, rates for shelter care shall not exceed $83.69 per day based on a 365-day year.

(2) For the fiscal year beginning July 1, 2000, the maximum reimbursement rates for services provided under a purchase of social service agency contract (adoption; local purchase services including adult day care, adult support, adult residential, community supervised apartment living arrangement, sheltered work, work activity, and transportation; shelter care; family planning; and independent living) shall be the same as the rates in effect on June 30, 2000, except under any of the following circumstances:

1. If a new service was added after June 30, 2000, the initial reimbursement rate for the service shall be based upon actual and allowable costs. A new service does not include a new building or location or other changes in method of service delivery for a service currently provided under the contract.

For adoption, the only time a provider shall be considered to be offering a new service is if the provider adds the adoptive home study, the adoptive home study update, placement services, or postplacement services for the first time. Preparation of the child, preparation of the family and preplacement visits are components of the services listed above.

For local purchase services, a provider shall be considered to be offering a new service when adding a service not currently purchased under the social services contract. For example, the contract currently is for adult support, and the provider adds a residential service.

For shelter care, if the provider is currently offering shelter care under social services contract, the only time the provider shall be considered to be offering a new service is if the provider adds a service other than shelter care.

For family planning, the only time the provider shall be considered to be offering a new service is when a new unit of service is added by administrative rule.

For independent living, the only time a provider shall be considered to be offering a new service is when the agency adds a cluster site or a scattered site for the first time. If, for example, the agency has an independent living cluster site, the addition of a new site does not constitute a new service.

If the department defines, in administrative rule, a new service as a social service that may be purchased, this shall constitute a new service for purposes of establishment of a rate. Once the rate for the new service is established for a provider, the rate will be subject to any limitations established by administrative rule or law.

2. If a social service provider loses a source of income used to determine the reimbursement rate for the provider, the provider's reimbursement rate may be adjusted to reflect the loss of income, provided that the lost income was used to support actual and allowable costs of a service purchased under a purchase of service contract.

3. For the fiscal year beginning July 1, 2000, the combined service and maintenance reimbursement rate paid to a shelter care provider shall be based on the financial and statistical report submitted to the department. The maximum reimbursement rate shall be $83.69 per day. If the department reimburses the provider at less than the maximum rate, but the provider's cost report justifies a rate of at least $83.69, the department shall readjust the provider's reimbursement rate to the actual and allowable cost plus the inflation factor or $83.69, whichever is less.

4. For the fiscal year beginning July 1, 2000, the purchase of service reimbursement rate for adoption, independent living services, and shelter care shall be increased by 5 percent of the rates in effect on June 30, 2000. The 5 percent increase in shelter care rates results in a per diem increase of $3.99. The shelter care provider's actual and allowable cost plus inflation shall be increased by $3.99. For state fiscal year 2001 beginning July 1, 2000, the established statewide average actual and allowable rate shall be increased by $3.99.

5. Rescinded IAB 6/28/00, effective 7/1/00.

q. Related party costs. Direct and indirect costs applicable to services, facilities, equipment, and supplies furnished to the provider by organizations related to the provider are includable in the allowable cost of the provider at the cost to the related organization. All costs allowable at the provider level are also allowable at the related organization level, unless these related organization costs are duplicative of provider costs already subject to reimbursement.

(1) Allowable costs shall be all actual direct and indirect costs applying to any service or item interchanged between related parties, such as capital use allowance (depreciation), interest on borrowed money, insurance, taxes, and maintenance costs.

(2) When the related party's costs are used as the basis for allowable rental or supply costs, the related party shall supply documentation of these costs to the provider. The provider shall complete a schedule displaying amount paid to related parties, related party cost, and total amount allowable. The resulting costs shall be allocated according to policies in 150.3(5)*"a"*(3) to (7).

Financial and statistical records shall be maintained by the related party under the provisions in 150.3(3)*"k."*

(3) Tests for relatedness shall be those specified in rule 441—150.1(234) and 150.3(3)*"o."* The department or the purchase of service fiscal consultant shall have access to the records of the provider and landlord or supplier to determine if relatedness exists. Applicable records may include financial and accounting records, board minutes, articles of incorporation, and list of board members.

r. Day care increase. Rescinded IAB 7/7/93, effective 7/1/93.

s. Interest on unpaid invoices. Any invoice that remains unpaid after 60 days following the receipt of a valid claim is subject to the payment of interest. The rate of interest is 1 percent per month beyond the 60-day period, on a simple interest basis. A separate claim for the interest is to be generated by the agency. If the original claim was paid with both federal and state funds, only that portion of the original claim paid with state funds will be subject to interest charges.

t. Interest as an allowable cost. Necessary and proper interest on both current and capital indebtedness is an allowable cost.

(1) "Interest" is the cost incurred for the use of borrowed funds. Interest on current indebtedness is the cost incurred for funds borrowed for a relatively short term. Interest on capital indebtedness is the cost incurred for funds borrowed for capital purposes.

(2) "Necessary" requires that the interest be incurred on a loan made to satisfy a financial need of the provider, be incurred on a loan made for a purpose reasonably required to operate a program, and be reduced by investment income except where the income is from gifts and grants whether restricted or unrestricted, and which are held separate and not commingled with other funds.

(3) "Proper" requires that interest be incurred at a rate not in excess of what a prudent borrower would have had to pay in the money market on the date the loan was made, and be paid to a lender not related through control or ownership to the borrowing organization.

u. Rate formula. Paragraph 150.3(5)*"p"* notwithstanding, when rates are determined based on cost of providing the service involved, they will be calculated according to the following mathematical formula:

$$\frac{\text{Net allowable expenditures}}{\text{Effective utilization level}} \times \text{Reimbursement factor} = \text{Base Rate}$$

(1) Net allowable expenditures are those expenditures attributable to service to clients which are allowable as set forth in subrule 150.3(5), paragraphs *"a"* to *"t."*

(2) Effective utilization level shall be 80 percent or actual (whichever is greater) of the licensed or staffed capacity (whichever is less) of the program.

(3) Inflation factor is the percentage which will be applied to develop payment rates consistent with current policy and funding of the department. The inflation factor is intended to overcome the time lag between the time period for which costs were reported and the time period during which the rates will be in effect. The inflation factor shall be the amount by which the Consumer Price Index for all urban consumers increased during the preceding calendar year ending December 31.

(4) Base rate is the rate which is developed independent of any limits which are in effect. Actual rates paid are subject to applicable limits or maximums.

v. Rescinded IAB 5/13/92, effective 4/16/92.

150.3(6) *Client eligibility and referral.*

a. Program eligibility. To receive services through the purchase of service system, clients shall be determined eligible and be formally referred by the department. The department shall not make payment for services provided prior to the client's application, eligibility determination, and referral. See *"b"* below for an exception to this rule.

The following forms shall be used by the department to authorize services:

Form 470-0622, Referral of Client for Purchase of Social Services.

Form 470-0719, Placement Agreement: Child Placing or Child Caring Agency (Provider).

b. When a court orders foster care and the department has no responsibility for supervision or placement of the client, the department will pay the rate established by these rules for maintenance and service provided by the facility.

150.3(7) *Client fees.* The provider shall agree not to require any fee for service from departmental clients unless a fee is required by the department and is consistent with federal regulation and state policy. Rules governing client fees are found in 441—130.4(234).

The provider shall collect fees due from clients. The provider shall maintain records of fees collected, and these records shall be available for audit by the department or its representative. When a client does not pay the fee, the provider shall demonstrate that a reasonable effort has been made to collect the fee. Reasonable effort to collect means an original billing and two follow-up notices of nonpayment. When the second notice of nonpayment is sent, the provider shall send a copy of the notice to the department worker.

441—150.8(234) Provider advisory committee. The provider advisory committee serves in an advisory capacity to the department, specifically to the bureau of purchased services. The provider advisory committee is composed of representatives from member provider associations as appointed by the respective associations. Individual representatives from provider agencies having a purchase of service contract but not belonging to an association may become members of the provider advisory committee upon simple majority vote of the committee members at a meeting. A representative of the purchase of service fiscal consultant is a nonvoting member. Departmental representatives from the bureau of purchased services, the office of the deputy director of field operations, the division of adult, children and families services, and the division of mental health and developmental disabilities are also nonvoting members.

441—150.9(234) Public access to contracts. Subject to applicable federal and state laws and regulations on confidentiality including 441—Chapter 9, all material submitted to the department of human services pursuant to this chapter shall be considered public information.

These rules are intended to implement Iowa Code section 234.6 and 2000 Iowa Acts, House File 2555, section 1, subsection 1, paragraph *"d,"* and Senate File 2435, section 31, subsection 7.

441—150.10 to **441—150.20** Reserved.

DIVISION II
PURCHASE OF SOCIAL SERVICES CONTRACTING ON BEHALF OF COUNTIES FOR LOCAL PURCHASE SERVICES FOR ADULTS WITH MENTAL ILLNESS, MENTAL RETARDATION, AND DEVELOPMENTAL DISABILITIES

PREAMBLE

In order for the counties to fulfill their duties pursuant to the approved county management plans, counties must have service agreements with providers of mental health, mental retardation and developmental disabilities services. The Iowa State Association of Counties has requested the assistance of the department in negotiating contracts on behalf of the counties. The following rules set forth the terms and conditions for contracting that will be used by the department when contracting on behalf of counties with providers of local purchase services for adults with mental illness, mental retardation and developmental disabilities.

The department, within the limits of current resources, will negotiate contracts on behalf of counties beginning July 1, 1997. The initial contracts will be negotiated by amending the existing purchase of social service agency contract, using Form 470-0630, Amendment or Renewal of Iowa Purchase of Services Agency Contract, to reflect the contractual relationship between the provider and the counties. The amendment will be effective for the time period ending June 30, 1998.

441—150.21(234) Definitions.

"Accounting year" means a 12-consecutive-month period for which accounting records are maintained. It can be either a calendar year or another designated fiscal year.

"Accrual basis accounting" means the accounting basis which shows all expenses incurred and income earned for a given time even though the expenses may not have been paid or income received in cash during the period.

"Agency" means an organization or organizational unit that provides social services.

1. Public agency means a general or special-purpose unit of government and organizations administered by that unit to deliver social services, for example, county boards of supervisors, community colleges, and state agencies.

2. Private nonprofit agency means a voluntary agency operated under the authority of a board of directors for purposes other than generating profit and incorporated under Iowa Code chapter 504A. An out-of-state agency must meet requirements of similar laws governing nonprofit organizations in its state.

3. Private proprietary agency means a for-profit agency operated by an owner or board for the operator's financial benefit.

"Bureau of purchased services" means a bureau within the division of fiscal management, which is responsible for administering the purchase of service system.

"Cash basis accounting" means the accounting basis which records expenses when bills are paid and income when money is received.

"Ceiling" means the maximum limit for payment for a service which has been established by an administrative rule or by the Iowa Code specifically for that service.

"Client" means an individual or family group who has applied for and been found to be eligible for social services from the Iowa department of human services.

"Common ownership" means that relationship existing when an individual or individuals possess significant ownership or equity in the provider and the institution or organization serving the provider.

"Components of service" means the elements or activities that make up a specific service.

"Contract" means formal written agreement between the Iowa department of human services and another legal entity, except for those government agencies whose services are covered under provision of Iowa Code chapter 28E.

"Contractor" means an institution, organization, facility or individual who is a legal entity and has entered into a contract with the department of human services.

"Control" means that relationship existing where an individual or an organization has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution.

"Department" means the Iowa department of human services.

"Direct cost" means those expenses which can be identified specifically and solely to a particular program.

"Effective date."

1. Contract effective date for agency contracts means the first day of a month on which the contract shall become in force.

2. Effective date of rate means the date specified in a purchase of service contract on which the specified rate of payment for service provided begins.

"Grant" means an award of funds to develop specific programs or achieve specific outcomes.

"Indirect cost" means those expenses which cannot be related directly to a specific program and are, therefore, allocated to more than one program.

"Project manager" means a department employee who is assigned to assist in developing, monitoring and evaluating a contract and to provide related technical assistance.

"Provider" means an institution, organization, facility, or individual who is a legal entity and has entered into a contract with the department to provide social services to clients of the department.

(9) Awards and grants to recognize board members and community citizens for achievement. Awards and grants to clients as part of treatment program are reimbursable.

(10) Survey costs when required certification is not attained.

(11) Federal and state income taxes.

m. Limited service—without a ceiling. The following expenses are limited for service without a ceiling established by administrative rule or law for that service. This includes services with maximum rates, with the exception of foster group care and shelter care.

(1) Moving and recruitment are allowed as a reimbursable cost only to the extent allowed for state employees. Expenses incurred for placing advertising for purposes of locating qualified individuals for staff positions are allowed for reimbursement purposes.

(2) Costs for participation in educational conferences are limited to 3 percent of the agency's actual salary costs, less excluded or limited salary costs as recorded on the financial and statistical report.

(3) Costs of reference publications and subscriptions for program-related materials are limited to $500 per year.

(4) Memberships in professional service organizations are allowed to the extent they do not exceed one-half of 1 percent of the total salary costs less excluded salary costs.

(5) In-state travel costs for mileage and per diem expenses are allowable to the extent they do not exceed the maximum mileage and per diem rates for state employees for travel in the state.

(6) Reimbursement for air travel shall not exceed the lesser of the minimum commercial rate or the rate allowed for mileage in subparagraph (5) above.

(7) The maximum reimbursable salary for the agency administrator or executive director charged to purchase of service is $40,000 annually.

(8) Annual meeting costs of an agency which are required in licensure are allowed to the extent required by licensure.

n. Limited service—with a ceiling. The following expenses are limited for services with a ceiling established by administrative rule or law for that service.

(1) The maximum reimbursable compensation for the agency administrator or executive director charged to purchase of service annually is $40,000.

(2) Annual meeting costs of an agency which are required for licensure are allowed to the extent required by licensure.

o. Establishment of ceiling and reimbursement rate.

(1) The maximum allowable rate ceiling applicable to each service is found in the rules for that particular service.

(2) When a ceiling exists, the reimbursement rate shall be established by determining on a per unit basis the allowable cost plus the current cost adjustment subject to the maximum allowable cost ceiling.

p. Rate limits. Interruptions in service programs will not affect the rate. If an agency assumes the delivery of service from another agency, the rate shall remain the same as for the former agency.

(1) For the fiscal year beginning July 1, 2000, the maximum reimbursement rates for local purchase services, including adult day care, adult support, adult residential, community supervised apartment living arrangement, sheltered work, work activity, and transportation shall be the same as the rates in effect on June 30, 2000, except under any of the following circumstances:

1. If a new service was added after June 30, 2000, the initial reimbursement rate for the service shall be based upon actual and allowable costs. A new service does not include a new building or location or other changes in method of service delivery for a service currently provided under the contract.

For local purchase services, a provider shall be considered to be offering a new service when adding a service not currently purchased under the social services contract. For example, the contract currently is for adult support, and the provider adds a residential service.

If the department defines, in administrative rule, a new service as a social service that may be purchased, this shall constitute a new service for purposes of establishment of a rate. Once the rate for the new service is established for a provider, the rate will be subject to any limitations established by administrative rule or law.

2. If a social service provider loses a source of income used to determine the reimbursement rate for the provider, the provider's reimbursement rate may be adjusted to reflect the loss of income, provided that the lost income was used to support actual and allowable costs of a service purchased under a purchase of service contract.

(2) Rescinded IAB 6/30/99, effective 7/1/99.

q. Related party costs. Direct and indirect costs applicable to services, facilities, equipment, and supplies furnished to the provider by organizations related to the provider are includable in the allowable cost of the provider at the cost to the related organization. All costs allowable at the provider level are also allowable at the related organization level, unless these related organization costs are duplicative of provider costs already subject to reimbursement.

(1) Allowable costs shall be all actual direct and indirect costs applying to any service or item interchanged between related parties, such as capital use allowance (depreciation), interest on borrowed money, insurance, taxes, and maintenance costs.

(2) When the related party's costs are used as the basis for allowable rental or supply costs, the related party shall supply documentation of these costs to the provider. The provider shall complete a schedule displaying amount paid to related parties, related party cost, and total amount allowable. The resulting costs shall be allocated according to policies in subparagraphs 150.22(7)*"a"*(3) to (7).

Financial and statistical records shall be maintained by the related party under the provisions in paragraph 150.22(5)*"k."*

(3) Tests for relatedness shall be those specified in rule 441—150.21(234) and paragraph 150.22(5)*"o."* Authorized department or county personnel, the purchase of service fiscal consultant, and state, county, or federal audit personnel shall have access to the records of the provider and landlord or supplier to determine if relatedness exists. Applicable records may include financial and accounting records, board minutes, articles of incorporation, and list of board members.

r. Interest as an allowable cost. Necessary and proper interest on both current and capital indebtedness is an allowable cost.

(1) "Interest" is the cost incurred for the use of borrowed funds. Interest on current indebtedness is the cost incurred for funds borrowed for a relatively short term. Interest on capital indebtedness is the cost incurred for funds borrowed for capital purposes.

(2) "Necessary" requires that the interest be incurred on a loan made to satisfy a financial need of the provider, be incurred on a loan made for a purpose reasonably required to operate a program, and be reduced by investment income except where the income is from gifts and grants whether restricted or unrestricted, and which are held separate and not commingled with other funds.

(3) "Proper" requires that interest be incurred at a rate not in excess of what a prudent borrower would have had to pay in the money market on the date the loan was made, and be paid to a lender not related through control or ownership to the borrowing organization.

s. Rate formula. Paragraph 150.22(7)*"p"* notwithstanding, when rates are determined based on cost of providing the service involved, they will be calculated according to the following mathematical formula:

$$\frac{\text{Net allowable expenditures}}{\text{Effective utilization level}} \times \text{Reimbursement factor} = \text{Base Rate}$$

(1) Net allowable expenditures are those expenditures attributable to service to clients which are allowable as set forth in subrule 150.22(7), paragraphs *"a"* to *"r."*

(2) Effective utilization level shall be 80 percent or actual (whichever is greater) of the licensed or staffed capacity (whichever is less) of the program.

(3) Inflation factor is the percentage which will be applied to develop payment rates consistent with current policy and funding of the department. The inflation factor is intended to overcome the time lag between the time period for which costs were reported and the time period during which the rates will be in effect. The inflation factor shall be the amount by which the Consumer Price Index for all urban consumers increased during the preceding calendar year ending December 31.

(4) Base rate is the rate which is developed independent of any limits which are in effect. Actual rates paid are subject to applicable limits or maximums.

150.22(8) *Client eligibility and referral.* To receive services through the purchase of service system, clients shall be determined eligible and be formally referred by the county. The county is not obligated to make payment for services provided prior to the client's application, eligibility determination, and referral.

The following forms shall be used by the county to authorize services:

Form 470-0622, Referral of Client for Purchase of Social Services, or the process authorized by the referring county.

150.22(9) *Client fees.* The provider shall agree not to require any fee for service from clients referred pursuant to the contract unless a fee is required by the referring county and is consistent with federal and state regulation.

The provider shall collect fees due from clients, if requested by the referring county. The provider shall maintain records of fees collected, and these records shall be available for audit by the referring county or its representative. When a client does not pay the fee, the provider shall demonstrate that a reasonable effort has been made to collect the fee. Reasonable effort to collect means an original billing and two follow-up notices of nonpayment. When the second notice of nonpayment is sent, the provider shall send a copy of the notice to the central point of coordination or designee.

150.22(10) *Billing procedures.* At the end of each month the provider agency shall prepare Form 470-0020, Purchase of Service Provider Invoice, or the form agreed upon between the provider and the referring county, for contractual services provided by the agency during the month.

Separate invoices shall be prepared for each county from which clients were referred. Complete invoices shall be sent to the county responsible for the client for approval and forwarding for payment. More frequent billings may be permitted on an exception basis by the referring county.

a. Time limit for submitting vouchers, invoices, or claims. The time limit for submission of original vouchers, invoices, or claims shall be three months from the date of service.

b. Resubmittals of rejected claims. Valid claims which were originally submitted within the time limit specified in paragraph *"a"* but were rejected because of an error shall be resubmitted without regard to time frames.

150.22(11) *Review of actions.* A provider who is adversely affected by a departmental decision may request a review by the department. A review request may cause the action to be stopped pending the outcome of the review, except in cases where it can be documented that to do so would be detrimental to the health and welfare of clients. The procedure for review is:

a. The provider shall send a written request for review to the project manager responsible for the contract within 10 days of receipt of the decision in question. This request shall document the specific area in question and the remedy desired. The project manager shall provide a written response within 10 days.

b. When dissatisfied with the response, the provider shall submit to the regional administrator within 10 days the original request, the response received, and any additional information desired. The regional administrator shall study the concerns and the action taken, and render a decision in writing within 14 days. A meeting with the provider may be held to clarify the situation.

c. If still dissatisfied, the provider may within 10 days request a review by the chief of the bureau of purchased services. The request for review should include copies of material from paragraphs *"a"* and *"b"* above. The bureau chief shall review the issues and positions of the parties involved and provide a written decision within 14 days. A meeting may be held with the provider, project manager, and regional administrator or designee.

d. The provider may appeal this decision within 10 days to the director of the department, who shall issue the final department decision within 14 days.

The department shall notify the applicable counties of any request for review and the decision reached in response to the request.

A provider who is adversely affected by a county decision may request a review in accordance with procedures established by the county pursuant to the approved county management plan.

150.22(12) *Review of financial and statistical reports.* The provider's general financial records shall be available for review by authorized department and county personnel, the purchase of service fiscal consultant, and state, county, and federal audit personnel. The purpose of the review is to determine if expenses reported for the purpose of establishing the rate have been handled as required under subrule 150.22(7). Representatives shall provide proper identification and shall use generally accepted auditing principles. The reviews may include an on-site visit to the provider, the provider's central accounting office, the offices of the provider's agents, a combination of these, or, by mutual decision, to other locations.

150.22(13) *Notification of changes.* The provider shall, prior to implementation whenever possible, notify the assigned project manager of any changes in the provider's organization or delivery of service which may affect compliance with any terms and conditions of the contract. If prior notice is not possible, the provider shall notify the project manager within one working day of the change.

These rules are intended to implement Iowa Code section 234.6 and 2000 Iowa Acts, Senate File 2435, section 31, subsection 7.

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"Substance abuse treatment supervisor" means the same as defined in the substance abuse commission rule 643—3.1(125) as treatment supervisor.

"Treatment foster parent" means an individual who is licensed to provide foster care and is trained to provide behavioral management for children in therapeutic foster care.

"Unearned income" means any income which is not earned income and includes supplemental security income (SSI) and other funds available to a child residing in a foster care placement.

This rule is intended to implement Iowa Code section 234.39.

441—156.2(234) Foster care recovery. The department shall recover the cost of foster care provided by the department pursuant to the rules in this chapter and the rules in 441—Chapter 99, Division I, which establishes policies and procedures for the computation and collection of parental liability.

156.2(1) Funds shall be applied to the cost of foster care in the following order and each source exhausted before utilizing the next funding source:

a. Unearned income of the child.

b. Parental liability of the noncustodial parent.

c. Parental liability of custodial parent(s).

156.2(2) The department shall serve as payee to receive the child's unearned income. When a parent or guardian is not available or is unwilling to do so, the department shall be responsible for applying for benefits on behalf of a child placed in the care of the department. Until the department becomes payee, the payee shall forward benefits to the department. For voluntary foster care placements of children aged 18 and over, the child is the payee for the unearned income. The child shall forward these benefits, up to the actual cost of foster care, to the department.

156.2(3) The custodial parent shall assign child support payments to the department on Form CS-3104-0, Assignment of Support Payments-Foster Care.

156.2(4) Unearned income of a child and parental liability of the noncustodial parent shall be placed in an account from whence it shall be applied toward the cost of the child's current foster care and the remainder placed in an escrow account.

156.2(5) When a child has funds in escrow these funds may be used by the department to meet the current needs of the child not covered by the foster care payments and not prohibited by the source of the funds.

156.2(6) When the child leaves foster care, funds in escrow shall be paid to the custodial parent(s) or guardian or to the child when the child has attained the age of majority, unless a guardian has been appointed.

156.2(7) When a child who has unearned income returns home after the first day of a month, the remaining portion of the unearned income (based on the number of days in the particular month) shall be made available to the child and the child's parents, guardian or custodian, if the child is eligible for the unearned income while in the home of a parent, guardian or custodian.

This rule is intended to implement Iowa Code section 234.39.

441—156.3(252C) Computation and assessment of parental liability. Rescinded IAB 3/13/96, effective 5/1/96.

441—156.4(252C) Redetermination of liability. Rescinded IAB 3/13/96, effective 5/1/96.

441—156.5(252C) Voluntary payment. Rescinded IAB 3/13/96, effective 5/1/96.

441—156.6(234) Rate of maintenance payment for foster family care.

156.6(1) *Basic rate.* A monthly payment for care in a foster family home licensed in Iowa shall be made to the foster family based on the following schedule:

Age of child	Daily rate
0 through 5	$14.00
6 through 11	14.78
12 through 15	16.53
16 and over	16.53

156.6(2) *Out-of-state rate.* A monthly payment for care in a foster family home licensed or approved in another state shall be made to the foster family based on the rate schedule in effect in Iowa, except that the regional administrator or designee may authorize a payment to the foster family at the rate in effect in the other state if the child's family lives in that state and the goal is to reunite the child with the family.

156.6(3) *Mother and child in foster care.* When the child in foster care is a mother whose young child is in placement with her, the rate paid to the foster family shall be based on the daily rate for the mother according to the rate schedule in subrules 156.6(1) and 156.6(4) and for the child according to the rate schedule in subrule 156.6(1). The foster parents shall provide a portion of the young child's rate to the mother to meet the partial maintenance needs of the young child as defined in the case permanency plan.

156.6(4) *Difficulty of care payment.*

a. When foster parents provide care to a special needs child, the foster family shall be paid the basic maintenance rate plus $4.94 per day for extra expenses associated with the child's special needs.

b. When a foster family provides care to a sibling group of three or more children, an additional payment of $1 per day per child may be authorized for each nonspecial needs child in the sibling group.

c. When the foster family's responsibilities in the case permanency plan include providing transportation related to family or preplacement visits outside the community in which the foster family lives, the department worker may authorize an additional maintenance payment of $1 per day. Expenses over the monthly amount may be reimbursed with prior approval by the worker. Eligible expenses shall include the actual cost of the most reasonable passenger fare or gas.

d. When a treatment foster family provides care to a child receiving behavioral management services for children in therapeutic foster care pursuant to 441—subrule 185.62(3), the foster family shall be paid the basic maintenance rate plus $14.80 per day.

e. When a human services area administrator determines that a foster family is providing care comparable to behavioral management services for children in therapeutic foster care pursuant to 441—subrule 185.62(3), except that the placement is supervised by the department and the child's treatment plan is supervised by a physician, mental health professional, or mental retardation professional, the foster family shall be paid the basic maintenance rate plus $14.80 per day. Foster families receiving this difficulty of care payment shall meet the requirements as found in 441—paragraph 185.10(8)"*b.*" If the human services area administrator determines that a foster family has been providing this level of care prior to November 1, 1993, and the department has been paying the foster family difficulty of care payments in excess of $14.80 per day, the foster family shall continue to receive the higher payment for the duration of the time the human services area administrator determines that the foster family is providing care comparable to that provided to a child receiving behavioral management services for children in therapeutic foster care.

If the review organization determines that the child has been receiving family foster care core three services prior to November 1, 1993, and if the foster family has been receiving difficulty of care payments in excess of $14.80 per day, the department shall continue to pay the foster family the higher payment for the duration of the time the review organization authorizes family foster care core three services.

f. The difficulty of care maintenance payment shall be reviewed every six months or earlier if the child's situation changes.

g. All maintenance payments, including difficulty of care payments, shall be documented on Form SS-2605-0, Foster Family Placement Contract.

156.6(5) *Payment method.* All maintenance payments to foster families supervised by the department or a licensed private child caring agency shall be made directly to the foster family by the department.

156.6(6) *Compliance transition period.* Rescinded IAB 6/9/93, effective 8/1/93.

This rule is intended to implement Iowa Code section 234.38 and 2000 Iowa Acts, Senate File 2435, section 31, subsection 6.

441—156.7(234) Purchase of family foster care services.

156.7(1) *Types of services.* The department may develop a contract pursuant to 441—Chapter 152 with a child-placing agency licensed pursuant to rule 441—108.7(234) for any of the following family foster care services:

a. Family foster care supervision.

b. Family foster care treatment services.

c. Foster family home studies.

156.7(2) *Family foster care supervision.* Purchased family foster care supervision shall meet the following requirements:

a. Services shall be provided in accordance with rule 441—108.7(234) and shall include visits with the child and foster family at a minimum frequency of not less than one visit every 35 days.

b. Services shall:

(1) Occur on a face-to-face basis.

(2) Be directed toward the child and shall include the child or the foster family.

(3) Be delivered in whatever locations the referral worker's social casework findings indicate are appropriate to ensure that all reasonable efforts are being made to meet the child's needs.

c. The department shall determine when to refer a child to a private agency for family foster care supervision, and shall specify the maximum number of units and the duration of services authorized on Form 470-3055, Referral of Client for Rehabilitative Treatment and Supportive Services.

d. Units of service shall be provided in one-half hour increments.

e. Services shall be reimbursed for each billable unit of family foster care supervision authorized and delivered. The unit rate shall be determined according to the policies in rules 441—185.101(234) to 441—185.108(234).

f. The provider shall develop a service plan which meets the following requirements:

(1) The provider shall develop a service plan for each child receiving supervision services. The service plan shall be developed in collaboration with the referral worker, family, child, and foster parents unless the service plan contains documentation of the rationale for not involving one of these parties.

(2) Service plans shall be developed within 30 calendar days of initiating services. The provider shall document the dates and content of any collaboration on the service plan.

(3) Service plans shall describe the supervision service goals and objectives, the supervision services to be provided, and persons responsible for providing the supervision services.

(4) Each service plan shall identify the individual who will monitor the supervision services being provided to ensure that they continue to be necessary and consistent with the case permanency plan developed or modified by the referral worker.

(5) Each service plan shall be reviewed 90 calendar days from the initiation of services and every 90 calendar days thereafter for the duration of supervision services or when any changes to the case permanency plan are made. The person reviewing the plan shall sign and date each review. If the review determines that the service plan is inconsistent with the case permanency plan, the provider's service plan shall be revised to reflect case permanency plan expectations.

(6) The provider shall provide a copy of all service plans and plan reviews to the family and referral worker, unless otherwise ordered by the court.

g. The provider shall receive approval from the referral worker on Form 470-3055, Referral of Client for Rehabilitative and Supportive Services, before increasing the amount or duration of services beyond what was previously approved. Based on their ongoing assessment activities, providers may communicate family service needs they believe are not adequately addressed in the department case permanency plan at any time during their provision of services.

h. The provider shall prepare a written report of termination activities which identifies the reason for termination, date of termination, and the recommended action or referrals upon termination.

i. The provider shall maintain a confidential individual record for each child receiving supervision services. The record shall include the following:

(1) Case permanency plan as supplied by the referral worker.

(2) Documentation of billed services which shall include: the specific services rendered, the date and amount of time services were rendered, who rendered the services, the setting in which services were rendered, and updates describing the client's progress.

(3) All service plans and service plan reviews developed by the agency.

(4) Correspondence with the referral worker regarding changes in the case permanency plan or service plan or requests for approval of additional services and any relevant evaluation activities.

(5) Progress reports 90 calendar days after initiating services and every 90 calendar days thereafter which summarize progress and problems in achieving the goals and objectives of the service plan. The progress report shall be written in conjunction with the service plan review and shall be completed no more than 15 calendar days before the report is due or 15 calendar days after the report is due. The provider shall provide a copy of all detailed progress reports to the family and referral worker, unless otherwise ordered by the court.

(6) Termination reports.

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CHAPTER 161
IOWA SENIOR LIVING TRUST FUND

PREAMBLE

These rules describe the Iowa senior living trust fund created by 2000 Iowa Acts, Senate File 2193, and explain how public nursing facilities can participate in a program for funding of the senior living trust fund.

441—161.1(78GA,SF2193) Definitions.

"Department" means the Iowa department of human services.

"Senior living coordinating unit" means the senior living coordinating unit created within the Iowa department of elder affairs pursuant to Iowa Code section 231.58 as amended by 2000 Iowa Acts, Senate File 2193, section 13.

"Senior living program" means the Iowa senior living program established by 2000 Iowa Acts, Senate File 2193.

"Senior living trust fund" or *"trust fund"* means the Iowa senior living trust fund created by 2000 Iowa Acts, Senate File 2193, section 4, in the state treasury under the authority of the department.

441—161.2(78GA,SF2193) Funding and operation of trust fund.

161.2(1) *Moneys from intergovernmental agreements and other sources.* Moneys received by the department through intergovernmental agreements for the senior living program and moneys received by the department from other sources for the senior living trust fund, including grants, contributions, and participant payments, shall be deposited in the senior living trust fund.

161.2(2) *Use of moneys.* Moneys deposited in the trust fund shall be used only for the purposes of the senior living program as specified in 2000 Iowa Acts, Senate File 2193, and in rule 441—161.3(78GA,SF2193).

441—161.3(78GA,SF2193) Allocations from the senior living trust fund. Moneys deposited in the senior living trust fund shall be used only as provided in appropriations from the trust fund to the department of human services and the department of elder affairs and for purposes, including the awarding of grants, as specified in 2000 Iowa Acts, Senate File 2193, section 6, and in 441—Chapter 162.

441—161.4(78GA,SF2193) Participation by government-owned nursing facilities.

161.4(1) *Participation agreement.* Iowa government-owned nursing facilities participating in the Iowa Medicaid program and wishing to participate in the funding of the senior living trust fund shall contact the Department of Human Services, Division of Medical Services, Fifth Floor, 1305 E. Walnut, Des Moines, Iowa 50319-0114, for information regarding the conditions of participation. Upon acceptance of the conditions of participation, the facility shall sign Form 470-3763, Participation Agreement.

161.4(2) *Reimbursement.* Upon acceptance of the participation agreement, the department shall authorize increased reimbursement to the participating facility for nursing facilities services provided under the Medicaid program. The facility shall retain $5,000 of the additional reimbursement received per agreement as a processing payment and shall refund the remainder of the additional reimbursement through intergovernmental transfer to the department for deposit of the federal share (less the $5,000 retained by the facility) in the Iowa senior living trust fund and the nonfederal share of money in the medical assistance appropriation.

These rules are intended to implement 2000 Iowa Acts, Senate File 2193, sections 4 and 5.

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CHAPTER 162
NURSING FACILITY CONVERSION AND LONG-TERM CARE SERVICES DEVELOPMENT GRANTS

PREAMBLE

These rules define and structure grants to be made from the Iowa senior living trust fund, hereafter referred to as the trust fund.

Grants are available to nursing facilities for capital or other one-time expenditure costs incurred for conversion of all or a portion of the facility to an assisted living facility or other alternatives to nursing facility care, and to noninstitutional providers of long-term care for development of other needed long-term care alternatives.

These rules implement provisions of 2000 Iowa Acts, Senate File 2193, which establishes an overall goal of moving toward a balanced, comprehensive, affordable, high quality long-term care system.

441—162.1(78GA,SF2193) Definitions.

"Adult day care" means structured social, habilitation, and health activities provided in a congregate setting to alleviate deteriorating effects of isolation; to aid in transition from one living arrangement to another; to provide a supervised environment while the regular caregiver is working or otherwise unavailable; or to provide a setting for receipt of multiple health services in a coordinated setting.

"Affordable" means rates for payment of services that do not exceed the rates established for providers of medical and health services under the medical assistance program. In relation to services provided by a home- and community-based waiver services provider, "affordable" means that the total monthly cost of the home- and community-based waiver services provided do not exceed the maximum cost for that level of care as established by rule by the department.

In relation to assisted living, "affordable" means rates for the costs not paid by medical assistance are less than or equal to 110 percent of the maximum prevailing fair market rent for the same size apartment under guidelines of the applicable United States Department of Housing and Urban Development (HUD) low-rent housing program in the area where the assisted living program is located, plus 185 percent of the maximum federal supplemental security income benefit for an individual or couple (as applicable). Rates for the costs paid by medical assistance may not exceed the rates established for payment under the medical assistance home- and community-based services (HCBS) elderly waiver program.

"Assisted living program" means an assisted living program certified or voluntarily accredited by the Iowa department of elder affairs under Iowa Code chapter 231C as amended by 2000 Iowa Acts, Senate File 2193, section 14.

"Child care for children with special needs" means physical, emotional, and social care delivered up to ten hours a day to children under the age of 18 by a service provider approved for participation in the medical assistance waivers in lieu of care by the parent or legal guardian.

"Department" means the Iowa department of human services.

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

"Distinct portion of a nursing facility" means a clearly identifiable area or section within a nursing facility, consisting of at least a living unit, wing, floor, or building containing contiguous rooms.

"Efficient and economical care" means services provided within the reimbursement limits for the services under 441—subrule 79.1(2) for Medicaid home- and community-based services (HCBS) waivers and for less than the cost of comparable services provided in a nursing facility.

"Grantee" means the recipient of a grant.

"HCBS waivers" means Medicaid home- and community-based services waivers under 441—Chapter 83, which provide service funding for specific eligible consumer populations in Iowa.

"Long-term care alternatives" means those services specified under HCBS waivers as available services for elderly persons or adults with disabilities; elder group homes certified under Iowa Code chapter 231B; assisted living programs certified or voluntarily accredited under Iowa Code chapter 231C as amended by 2000 Iowa Acts, Senate File 2193, section 14; and the PACE program. These are services other than nursing facility care provided to the elderly and persons with disabilities.

"Long-term care service development" means either of the following:

1. The remodeling of existing space and, if necessary, the construction of additional space required to accommodate development of long-term care alternatives, excluding the development of assisted living programs or elder group home alternatives.

2. New construction for long-term care alternatives, excluding new construction of assisted living programs or elder group homes, if the senior living coordinating unit determines that new construction is more cost-effective for the grant program than the conversion of existing space.

"Medical assistance program" means the program established in Iowa Code chapter 249A and otherwise referred to as Medicaid or Title XIX.

"Nursing facility" means a licensed nursing facility as defined in Iowa Code section 135C.1 or a licensed hospital as defined in Iowa Code section 135B.1, a distinct part of which provides long-term care nursing facility beds.

"Nursing facility conversion" means either of the following:

1. The remodeling of nursing facility space existing on July 1, 1999, and certified for medical assistance nursing facility reimbursement and, if necessary, the construction of additional space required to accommodate an assisted living program.

2. New construction of an assisted living program if existing nursing facility beds are no longer licensed and the senior living coordinating unit determines that new construction is more cost-effective for the grant program than the conversion of existing space.

"PACE program" means a program of all-inclusive care for the elderly established pursuant to 42 U.S.C. Section 1396u-4 that provides delivery of comprehensive health and social services to seniors by integrating acute and long-term care services, and that is operated by a public, private, nonprofit, or proprietary entity. "Pre-PACE program" means a PACE program in the initial start-up phase that provides the same scope of services as a PACE program.

"Persons with disabilities" means persons 18 years of age or older with disabilities as disability is defined in Iowa Code section 225B.2.

"Respite care" means temporary care of an aged adult, or an adult or child with disabilities, to relieve the usual caregiver from continuous support and care responsibilities. Components of respite care services are supervision, tasks related to the individual's physical needs, tasks related to the individual's psychological needs, and social and recreational activities. A facility providing respite care must provide some respite care in the facility, but may also provide in-home respite.

"Safe shelter for victims of dependent adult abuse" means board, room, and services provided to persons identified by a department dependent adult abuse investigator as victims of dependent adult abuse.

"Senior" means elder as defined in Iowa Code section 231.4.

"Senior living coordinating unit" means the planning group established in Iowa Code section 231.58 as amended by 2000 Iowa Acts, Senate File 2193, section 13, or its designee.

"Senior living program" means the senior living program created by 2000 Iowa Acts, Senate File 2193, to provide for long-term care alternatives, long-term care service development, and nursing facility conversion.

"Trust fund" means the Iowa long-term care trust fund established by 2000 Iowa Acts, Senate File 2193, section 4.

"Underserved area" means a county in which the number of currently licensed nursing facility beds and certified or accredited assisted living units is less than or equal to 4.4 percent of the number of individuals 65 years of age or older according to the most current census data. In addition, the department, in determining if a county is underserved, may consider additional information gathered through its own research or submitted by an applicant including, but not limited to, any of the following:

1. Availability of and access to long-term care alternatives relative to individuals eligible for medical assistance.
2. The current number of seniors and persons with disabilities and the projected number of these individuals.
3. The current number of seniors and persons with disabilities requiring professional nursing care and the projected number of these individuals.
4. The current availability of long-term care alternatives and any anticipated changes in the availability of these alternatives.

441—162.2(78GA,SF2193) Availability of grants. In any year in which funds are available for new nursing facility conversion or long-term care services development grants, the department shall issue a request for applications for grants. The amount of money granted shall be contingent upon the funds available. The use of funds appropriated to award grants shall be in compliance with legislation and at the direction of the senior living coordinating unit.

There is no entitlement to any funds available for grants awarded pursuant to this chapter. The department may award grants to the extent funds are available and, within its discretion, to the extent that applications are approved.

441—162.3(78GA,SF2193) Grant eligibility.

162.3(1) *Eligible applicants.* A grant applicant shall be:

a. A licensed nursing facility that has been an approved provider under the medical assistance program under the same ownership for the three-year period prior to application for the grant.

b. A provider of long-term care services, including one not covered by the medical assistance program, that has been in business for at least three years under the same owner.

162.3(2) *Types and amounts of grants.*

a. Architectural and financial feasibility study allowance. An architectural and financial feasibility study allowance may be awarded solely for costs directly attributable to development of the architectural and financial review documentation associated with conversion or service development. Architectural and financial feasibility study allowances for conversion or service development grants are limited to $15,000, not to exceed actual costs for each project.

b. Conversion grants. A conversion grant may be awarded to convert all or a portion of a licensed nursing facility to affordable certified assisted living units (limited to $45,000 per unit) and for capital or one-time expenditures including, but not limited to, start-up expenses, training expenses, and operating losses for the first year of operation following conversion.

Conversion grants are limited to a total of $1,000,000 per facility, with an additional $100,000 if the provider agrees to also provide adult day care, child care for children with special needs, safe shelter for victims of dependent adult abuse, or respite care.

A grant application which expands resident capacity of an existing nursing facility shall not be considered. A grant that requires additional space to accommodate supportive services related to the functioning of the long-term care alternative, such as dining rooms, kitchen and recreation areas, or other community-use areas, may be considered.

c. Long-term care services development grant. A long-term care services development grant may be awarded for capital or one-time expenditures to develop needed long-term care services covered under a Medicaid HCBS waiver or to develop a PACE program. Expenditures may include, but are not limited to, start-up expenses, training expenses, and operating losses for the first year of operation. Service development grants are limited to $1,000,000 per PACE program, and $150,000 for HCBS waiver services.

162.3(3) *Criteria for grant applicants.* A grant shall be awarded only to an applicant meeting all of the following criteria:

a. The applicant is located in an area determined by the senior living coordinating unit to be underserved with respect to a particular long-term care alternative service.

b. The applicant is able to provide a minimum matching contribution of 20 percent of the total cost of any conversion, remodeling, or construction. Costs used by grantees to match grant funds shall be directly attributable to the costs of conversion or service development.

c. Grant applications from nursing facilities shall be considered only from facilities with an established history of providing quality long-term care services. Facilities shall be in substantial compliance with federal Medicaid participation requirements as evidenced at a minimum by all of the following:

(1) No identified deficiencies which pose a significant risk to resident health and safety at the time of application.

(2) No more than one isolated event resulting in actual harm to residents during the current Medicaid certification period.

(3) No citations for a pattern of events resulting in actual harm to residents for three years prior to application.

d. Grants to applicants other than nursing facilities shall be considered from applicants only when:

(1) There is substantial compliance with Medicare and Medicaid participation requirements or other applicable provider certification requirements at the time of application.

(2) Compliance exists with Medicare and Medicaid requirements, if applicable, for a three-year period prior to application.

(3) Compliance exists with the criminal background check system, if applicable.

e. The applicant agrees to do all of the following as applicable to the type of grant:

(1) Participate in the medical assistance program and maintain a medical assistance client participation rate of at least 40 percent, subject to the demand for participation by persons eligible for medical assistance. Applicants shall also agree that persons able to pay the costs of assisted living shall not be discharged from their living unit due to a change in payment source.

(2) Provide a service delivery package that is affordable for those persons eligible for services under the medical assistance home- and community-based services waiver program.

(3) Provide a refund of the grant to the senior living trust fund on a prorated basis if the applicant or the applicant's successor in interest: ceases to operate an affordable long-term care alternative within the first ten-year period of operation following the awarding of the grant; fails to maintain a participation rate of 40 percent in accordance with subparagraph (1) within the first ten-year period of operation following the awarding of the grant; or discharges persons able to pay the costs of assisted living from their living unit due to a change in payment source.

f. The applicant must demonstrate that the proposed method of construction, whether new or remodeling, is the most cost-effective for the grant program and, when developing assisted living units, must agree that a specified number of existing nursing facility beds will not continue to be licensed.

162.3(4) *Allowable and nonallowable costs.*

a. Examples of allowable costs include:

(1) Professional fees incurred specifically for conversion of facility or service development, including architectural, financial, legal, human resources, research, and marketing fees.

(2) Construction costs for the remodeling of existing space and, if necessary, the construction of additional space required to accommodate assisted living program services or other alternatives to nursing facility care or new construction of an assisted living facility or other alternative to nursing facility care if existing nursing facility beds are no longer licensed and the department determines that new construction is more cost-effective for the grant program than the conversion of existing space.

(3) Start-up and training expenses and operating losses for the first year.

b. Examples of nonallowable costs include:

(1) Costs of travel, personal benefits, and other facility programs or investments.

(2) Construction costs to remodel nursing facility space that will remain in use for nursing facility care.

(3) Any costs associated with operation and maintenance of a non-grant-related facility or service.

(4) Any costs incurred above per-unit grant amounts.

441—162.4(78GA,SF2193) Grant application process.

162.4(1) *Public notice of grant availability.* When funds are available for new grants, the department shall announce through public notice the opening of a competitive application period. The announcement shall include information on how agencies may obtain an application package and the deadlines for submitting an application.

162.4(2) *Request for applications.* The department shall distribute grant application packages for nursing facility conversion and long-term care service development grants upon request. Applicants desiring to apply for a grant shall submit Form 470-3759, Application for Nursing Facility Conversion Grant, or Form 470-3760, Application for Long-Term Care Service Development Grant, with accompanying documentation to the department by the date established in the application package. If an application does not include the information specified in the grant application package or if it is late, it will be disapproved.

The application must be submitted by the legal owner of the nursing facility or long-term care provider. In cases in which the provider licensee does not hold title to the real property in which the service is operated, both the licensee and the owner of the real property must submit a joint application. Form 470-3759 or Form 470-3760 must be signed by an individual authorized to bind the applicant to perform legal obligations. The title of the individual must be stated.

162.4(3) *Application requirements.*

a. Prior to submission of an application, the applicant must arrange and conduct a community assessment and solicit public comment on the plans proposed in the grant application. In soliciting public comment the applicant must at a minimum:

(1) Publish an announcement in a local or regional newspaper of the date, time, and location of a public meeting regarding the proposed project, with a brief description of the proposed project.

(2) Post notice of the meeting at the nursing facility or applicant's offices and at other prominent civic locations.

(3) Notify potentially affected clients and their families of the proposed project, of the potential impact on them, and of the public meeting at least two weeks prior to the public meeting.

(4) Advise the department of the public meeting date at least two weeks before the scheduled meeting.

(5) Address the following topics at the public meeting: a summary of the proposed project, the rationale for the project, and resident retention and relocation issues.

(6) Receive written and oral comments at the meeting and provide for a seven-day written comment period following the meeting.

(7) Summarize all comments received at the meeting or within the seven-day written comment period and submit the summary to the department as part of the application package.

b. Grant applications shall contain, at a minimum, the following information:

(1) Applicant identification and a description of the agency and its resources, which will demonstrate the ability of the applicant to carry out the proposed plan.

(2) Information to indicate the nursing facility applicant's extent of conversion of all or a portion of its facility to an assisted living program or development of other long-term care alternatives. Current and proposed bed capacity shall be given as well as the number of beds to be used for special services. Nursing facility and noninstitutional providers shall describe outpatient services they wish to develop.

(3) A request for an architectural and financial feasibility study allowance, if desired.

(4) Demonstration at a minimum of the following:

1. Public support for the proposal exists. Evidence of public support shall include, but not be limited to, the following: the summary of all comments received at the public meeting or within the seven-day written comment period and letters of support from the area agency on aging; the local board of health; local provider or consumer organizations such as the local case management program for frail elders, resident advocate committee or Alzheimer's chapter; and consumers eligible to receive services from the developed long-term care alternative.

2. The proposed conversion or service development will have a positive impact on the overall goal of moving toward a balanced, comprehensive, high-quality long-term care system.

3. Conversion of the nursing facility or a distinct portion of the nursing facility to an assisted living program or development of an alternative service will offer efficient and economical long-term care services in the service area described by the applicant.

4. The assisted living program or other alternative services are otherwise not likely to be available in the service area described by the applicant for individuals eligible for services under the medical assistance program.

5. If applicable, a resulting reduction in the availability of nursing facility services will not cause undue hardship to those individuals requiring nursing facility services for a period of at least ten years.

6. Conversion to an assisted living program or development of other alternative services will result in a lower per-client reimbursement to the grant applicant under the medical assistance program.

7. The service delivery package will be affordable for individuals eligible for services under the medical assistance home- and community-based services waiver program.

8. Long-term care alternatives will be available and accessible to individuals eligible for medical assistance and other individuals with low or moderate income.

9. Long-term care alternative services are needed based on the current and projected numbers of seniors and persons with disabilities, including those requiring assistance with activities of daily living in the service area described by the applicant.

10. Long-term care alternatives in the service area are needed based on the community needs assessment and upon current availability and any anticipated changes in availability.

162.4(4) *Selection of grantees.* All applications received by the department within the designated time frames and meeting the criteria set forth in rule 441—162.3(78GA, SF2193) and subrule 162.4(3) shall be reviewed by the department under the direction of the senior living coordinating unit.

If grant applications that meet the minimum criteria exceed the amount of available funds, scoring criteria shall be used to determine which applicants shall receive a grant. Scoring shall be based on the following:

1. The degree to which the county or counties in the service area described by the grant applicant are underserved - up to 20 points. If more than one county is in the service area, a weighted average shall be used.

2. The level of community support as identified by the community-based assessment, public meeting comments, and letters of support and the degree of collaboration among local service providers - up to 20 points.

3. For conversion grants, the number of licensed beds eliminated or converted to special needs beds, with evidence that the resulting reduction in licensed beds will not cause a hardship for persons requiring nursing services - up to 20 points.

4. The number of added services to fill a service need gap - up to 20 points.

5. Evidence of an adequate plan to carry out the requirements of this chapter and regulations pertaining to the long-term care alternative service - up to 20 points.

6. Costs of long-term care alternative services to consumers - up to 30 points.

7. Evidence of the ability and commitment to make proposed alternatives accessible to low- and moderate-income persons - up to 20 points.

162.4(5) *Notification of applicants.* Applicants shall be notified whether the grant proposal is approved or denied. Denial of an application in one year does not preclude submission of an application in a subsequent year.

441—162.5(78GA,SF2193) Grant dispersal stages. Following approval of an applicant's grant proposal by the department, the grant process shall proceed through the following stages:

162.5(1) *Completion of architectural and financial feasibility study.*

a. An architectural and financial feasibility study shall be completed pursuant to the guidelines included in the applicable grant application package and applicable service regulations.

(1) For facility conversion, construction, or remodeling, the architectural plan shall provide schematic drawings at a minimum of one-eighth scale consisting of the building site plan, foundation plan, floor plan, cross section, wall sections, and exterior elevations.

(2) The grantee shall comply with all local, state and national codes pertaining to construction; and certification, licensure, or accreditation requirements applicable to the long-term care alternative.

(3) Construction documents, budget cost estimates, and related services must be rendered by a professional architect or engineer registered in Iowa.

b. Payment of up to $15,000 may be issued to each approved applicant to proceed with the architectural and financial feasibility study if requested in the original application. By making a request for an architectural and financial feasibility study allowance, the applicant agrees that the funds will be used solely for costs directly attributable to development of the architectural and financial review documentation associated with conversion or service development.

c. All grantees must submit the completed study documents within the time frame identified in the request for application together with an itemized accounting of the expenditure of any allowance funds. Any unexpended architectural and financial review allowance funds shall be returned to the department.

162.5(2) *Review of architectural and financial feasibility study.* The department shall review the architectural and financial feasibility study materials and shall grant or deny approval to develop or obtain final budget estimates for the proposed project. Approval to proceed shall be granted only if the architectural and financial feasibility study supports the ability of the grantee to meet the minimum grant criteria and to complete the proposed project as set forth in the original application.

162.5(3) *Completion of final budget estimate.* Grantees approved to proceed with the final budget estimate shall submit the final budget estimates, any revisions to previously submitted materials, and a request for a grant in a specific amount. The matching fund amount to be paid by the grantee must be stated in the request.

162.5(4) *Review of final budget estimate.* The department shall review the final budget estimate and issue a notice of award for a grant in a specific amount if the final budget estimate supports the ability of the grantee to meet the minimum grant criteria and to complete the proposed project as set forth in the original application.

441—162.6(78GA,SF2193) Project contracts. The funds for approved applications shall be awarded through a contract entered into by the department and the applicant.

441—162.7(78GA,SF2193) Grantee responsibilities.

162.7(1) *Records and reports.*

a. The grantee shall maintain the following records:

(1) Consumer participation records that identify persons by payment source.

(2) Complete and separate records regarding the expenditure of senior living trust funds for the grant amounts received.

b. Recipients of grants shall submit a bimonthly progress report to the department and senior living coordinating unit beginning the second month following project approval through project completion.

c. Recipients shall submit annual cost reports to the department, in conformance with policies and procedures established by the department, regarding the project for a period of ten years after the date the grantee begins operation of its facility as an assisted living facility or other long-term care alternative.

162.7(2) *Reasonable access.* The grantee shall allow access to records at reasonable times by duly authorized representatives of the department for the purpose of conducting audits and examinations and for preparing excerpts and transcripts. This access to records shall continue for a period of ten years from the date the grantee begins operation as an assisted living facility or other long-term care alternative.

162.7(3) *Relinquishment of license.* The grantee shall relinquish the nursing facility bed license for any facility space converted to assisted living or alternatives to nursing facility care for a ten-year period.

162.7(4) *Acceptance of financial responsibility.* The grantee shall accept financial responsibility for all costs over and above the grant amount which are related to project completion.

162.7(5) *Participation in the medical assistance program.* The grantee shall participate in the medical assistance program as a provider of nursing facility services if the grantee continues to provide any nursing facility services.

162.7(6) *Segregation of medical assistance residents forbidden.* The grantee shall not segregate medical assistance residents in an area, section, or portion of an assisted living program or long-term care alternative service. Grantees shall allow a resident who is converting from private-pay to medical assistance to remain in the resident's living unit if the resident is able to pay the rate and shall not relocate the resident solely due to a change in payment source.

441—162.8(78GA,SF2193) Offset. The department may deduct the amount of any refund due from a grantee from any money owed by the department to the grantee or the grantee's successor in interest.

441—162.9(78GA,SF2193) Appeals. Applicants dissatisfied with the department's actions regarding applications for grants and grantees dissatisfied with actions regarding a grant may file an appeal with the director. The letter of appeal must be received by the director within five working days of the date of the notice and must include a request for the director to review the action and the reasons for dissatisfaction. Within ten working days of the receipt of the appeal, the director shall review the appeal request and issue a final decision.

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

These rules are intended to implement 2000 Iowa Acts, Senate File 2193, section 6.

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CHAPTER 163
ADOLESCENT PREGNANCY PREVENTION AND SERVICES TO PREGNANT AND PARENTING ADOLESCENTS PROGRAMS

PREAMBLE

These rules define and structure the grant programs for adolescent pregnancy prevention statewide campaign, adolescent pregnancy evaluation, adolescent pregnancy state coalition, and community adolescent pregnancy prevention and services programs. The services are to be provided to adolescents and their parents for the purpose of preventing adolescent pregnancy; to adolescents who are either pregnant or parenting to prevent subsequent pregnancies, promote self-sufficiency and physical and emotional well-being; and to communities to assist them in addressing issues of adolescent pregnancy.

441—163.1(234) Definitions.

"Adolescent" means a person under 18 years of age or a person 18 years of age or older who is attending an accredited high school or pursuing a course of study which will lead to a high school diploma or its equivalent.

"Community" means a defined service area no smaller than a neighborhood and no larger than a region of the state.

"Department" means the Iowa department of human services.

"Director" means the director of the department of human services or successor agency.

"Grant designation committee" means the body which is responsible for designating and awarding grants.

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

"Percentage of pregnancies" means the total number of births to mothers aged 13 years of age and older but younger than 18 years of age in the service area for the most recent year for which data is available divided by the total number of births statewide for the same age group and the same year.

"Pregnancy prevention" means activities to avoid initial pregnancies.

"Prevention of subsequent pregnancy" means activities to avoid additional pregnancies during the adolescent years.

"Region" means one of the five department regions in the state.

441—163.2(234) Availability of grants for projects. In any year in which funds are available for adolescent pregnancy prevention statewide campaign, evaluation, coalition or community teen pregnancy prevention and services programs, the department shall administer grants to eligible applicants for projects that serve residents of Iowa. The amount of money granted shall be contingent upon the funds available and shall be made on an annual basis. The allocation of funds shall be in compliance with legislation and approved by the grant designation committee and the administrator of the division of adult, children, and family services.

441—163.3(234) Project eligibility.

163.3(1) Grants will be awarded to eligible applicants for specifically designed projects. Preference in awarding grants shall be given to projects which use a variety of community resources and agencies. Priority in awarding of points for community grants shall be given to programs that serve areas of the state which demonstrate the highest percentage of pregnancies of females aged 13 years of age or older but younger than the age of 18 within the geographic area to be served by the grant. Projects selected for the adolescent pregnancy prevention statewide campaign, adolescent pregnancy evaluation grant, and state coalition grants will be eligible for noncompetitive funding for up to three years, pending availability of funds and based upon satisfactory progress toward program goals. Projects which do not make satisfactory progress toward program goals shall be required to competitively bid for refunding. After three years, all projects must competitively bid for refunding.

Projects funded prior to July 2000 under the community adolescent pregnancy prevention and services grants are eligible for funding for up to nine years, pending availability of funds if the programs are comprehensive in scope and have demonstrated positive outcomes. Grants awarded after July 2000 must be comprehensive in scope and be based on existing models that have demonstrated positive outcomes.

An increasing grantee match will be required. A 5 percent grantee match will be required in year one. The match will increase by 5 percent each subsequent year a project receives funding. In-kind matches may be applied toward the grantee match. Projects which do not make satisfactory progress toward program goals shall be required to competitively bid for refunding.

163.3(2) A grantee may not use grant funds to serve residents of states other than Iowa. An exception to this would be a media campaign in which radio or television messages may "reach" audiences outside of Iowa.

163.3(3) Rescinded IAB 7/6/94, effective 7/1/94.

163.3(4) Projects must serve adolescents. Persons who were served prior to age 18 may continue to be served even though they are not currently pursuing a high school diploma.

163.3(5) Rescinded IAB 7/6/94, effective 7/1/94.

163.3(6) Eligible applicants for the statewide campaign are public or private agencies or individuals. Eligible applicants for the evaluation program are organizations or individuals affiliated with institutions under the authority of the state board of regents or other organizations or individuals experienced in evaluation techniques. Applications for the state coalition program will be accepted from groups or networks with statewide representation focusing on issues of adolescent pregnancy prevention, parenting and community collaboration. Applications for the community adolescent pregnancy prevention and services program will be accepted from community or regional boards or committees with broad-based representation or a single agency representing a broad-based group.

163.3(7) Rescinded IAB 11/4/98, effective 1/1/99.

163.3(8) Rescinded IAB 11/4/98, effective 1/1/99.

163.3(9) An adolescent pregnancy prevention statewide campaign grant will be awarded for a project providing a statewide campaign which encourages abstinence and provides information which will emphasize prevention of adolescent pregnancies.

163.3(10) An adolescent pregnancy prevention evaluation grant will be awarded to provide technical assistance to grantees in assessing their project and developing an evaluation tool for ongoing use. The evaluation grantee will provide an annual written report to the department.

163.3(11) A state coalition grant will be awarded to provide assistance to an existing coalition or network focusing on the issues of adolescent pregnancy prevention and services and coalition building in the state.

163.3(12) Community adolescent pregnancy prevention grants will be awarded to projects providing:

a. Broad-based representation from community or regional representatives including, but not limited to, schools, churches, human service-related organizations, and businesses.

b. Comprehensive programming focusing on the prevention of initial pregnancies during the adolescent years. Projects may provide one or more of the following services:

(1) Workshops and informational programs for adolescents and parents of adolescents to improve communication between children and parents regarding human sexuality issues.

(2) Programs that focus on the prevention of initial pregnancies through responsible decision making in relationships. These programs should be comprehensive with emphasis on, but not limited to, abstinence, risks associated with drug and alcohol use, contraceptives and associated failure rates, sexually transmitted diseases, and AIDS.

(3) Programs which use peer counseling or peer education techniques for the prevention of adolescent pregnancies.

(4) Development and distribution of informational material designed to discourage adolescent sexual activity, to provide information regarding acquired immune deficiency syndrome and sexually transmitted diseases, and to encourage male and female adolescents to assume responsibility for their sexual activity and parenting.

c. Services to pregnant and parenting adolescents. Not more than 25 percent of a community grant may be used for these services. Projects may provide one or more of the following services:

(1) Programs intended to prevent an additional pregnancy by a parent who is less than 19 years of age. Preference in grant awards will be given to programs providing incentives to clients for their program participation and success in avoiding a subsequent pregnancy.

(2) Programs for pregnant or parenting teens intended to educate adolescents concerning the risks associated with alcohol and other drug use during pregnancy, improve parenting skills, and plan for the future.

(3) Programs for young fathers.

(4) Development and distribution of informational material designed to encourage male and female adolescents to assume responsibility for their sexual activity and parenting.

441—163.4(234) Request for proposals for pilot project grants.

163.4(1) The department will announce through public notice the opening of an application period for each of the grant programs. Applicants for grants shall request an Adolescent Pregnancy Prevention Application Kit for any or all of the open categories and shall submit grant proposals by the deadline specified in the announcement.

163.4(2) Requirements for project proposals are specified in the "Adolescent Pregnancy Prevention Grant Application Kit." If a proposal does not contain the information specified in the application package or if it is late, it will be disapproved. Proposals shall contain the following information:

a. General information.

b. Proposal checklist.

c. Proposal summary.

d. Statement of problem and need, including information demonstrating the percentage of pregnancies of females aged 13 years of age or older but younger than the age of 18 within the geographic area to be served.

e. Community or regional background information and demonstrated effectiveness at collaboration.

f. Project goals, objectives and methods.

g. Project monitoring and evaluation.

h. Budget information.

i. Explanation of grantee share of budget.

j. Future funding.
k. Cooperative agencies agreement.
l. Applicant assurances and certification.
m. Letters of support.
n. Project advisory committee.

441—163.5(234) Selection of proposals.

163.5(1) All proposals received will be evaluated by the grant designation committee to determine which applicants will be awarded grants.

163.5(2) The following factors will be considered in selecting proposals:

a. The demonstrated need for the service in the program area(s) selected and assurance that the proposed project does not duplicate other services in the community.

b. The community support demonstrated and the coordination with other existing agencies and organizations providing services to the targeted population.

c. The general program structure including, but not limited to, how well goals can be met, how realistic the objectives are, services offered and likelihood of anticipated impact on the problem, experience serving similar populations, the administration of funds, stability of the requesting entity and the overall quality of the proposal in comparison to other proposals.

d. The plan for using the funds. Funds may not be used for construction, capital improvement or purchase of real estate.

e. Rescinded IAB 11/4/98, effective 1/1/99.

163.5(3) Weighted scoring criteria will be used to determine grant awards. The maximum number of points possible is 125. Determination of final point awards will be based on the following:

a. Proposal summary—10 points.
b. Statement of problem and need—15 points.
c. Community or regional background information and demonstrated effectiveness with coalition building—10 points.
d. Project goals, objectives and methods—15 points.
e. Project monitoring and evaluation—10 points.
f. Budget information, explanation of grantee share of budget, and cooperative agencies agreement—15 points.
g. Future funding and applicant assurances and certification—5 points.
h. Project advisory committee—10 points.
i. Overall quality and impact of program—10 points.
j. Letters of support—10 points.
k. Consideration of legislative priority area—15 points.

441—163.6(234) Project contracts. The funds for approved applications will be awarded through a contract entered into by the director and the applicant. The contract period shall not exceed the state fiscal year in which the contract is awarded. The state fiscal year is from July 1 to June 30. Expenditures shall be reimbursed monthly pursuant to regular reimbursement procedures of the state of Iowa. Grantees will submit a projected yearly expenditure on April 15. Those projects expecting to spend more than 10 percent less than their granted amount shall free the excess for the purpose of providing supplemental funding to those grantees who wish to apply.

441—163.7(234) Records. Providers shall keep client and specific fiscal records of services provided and any other records as required by the department and specified in the contract.

441—163.8(234) Evaluation. The department shall evaluate the provider at least once prior to the end of the contract year to determine how well the purposes and goals are being met and shall provide ongoing feedback to the provider. Funds are to be spent to meet program goals as provided in the contract.

Grantees shall be required to submit quarterly reports. All grantees shall cooperate with the statewide evaluation grantee and provide all requested information. The evaluation grantee shall provide a written yearly report to the department.

441—163.9(234) Termination of contract. The contract may be terminated by either party at any time during the contract period by giving 30 days' notice to the other party.

163.9(1) The department may terminate a contract upon ten days' notice when the provider or any of its subcontractors fail to comply with the grant award stipulations, standards, or conditions.

163.9(2) Within 45 days of the termination, the provider shall supply the department with a financial statement detailing all costs up to the effective date of the termination.

163.9(3) The department shall administer the funds for this program contingent upon their availability. If the department lacks the funds necessary to fulfill its fiscal responsibility under this program, the contracts shall be terminated or renegotiated.

441—163.10(234) Appeals. Applicants dissatisfied with the grant designation committee's decision may file an appeal with the director. The letter of appeal must be received within ten working days of the date of the notice of decision; must be based on a contention that the process was conducted outside of statutory authority, violated state or federal law, policy or rule, did not provide adequate public notice, was altered without adequate public notice, or involved conflict of interest by staff or committee members; and must include a request for the director to review the decision and the reasons for dissatisfaction. Within ten working days of the receipt of the appeal the director will review the appeal request and issue a final decision.

No disbursements will be made to any applicant for a period of ten calendar days following the notice of decision. If an appeal is filed within the ten days, all disbursements will be held pending a final decision on the appeal. All applicants involved will be notified if an appeal is filed and given the opportunity to be included as a party in the appeal.

These rules are intended to implement Iowa Code section 234.6.

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CHAPTER 164
FOSTER CARE PROJECT GRANTS
Rescinded IAB 9/8/99, effective 11/1/99

a. Licensed child care center. A child care center shall be licensed by the department to meet the requirements set forth in 441—Chapter 109 and shall have a current Certificate of License, Form SS-1203-3.

b. Registered group child care home. A group child care home shall meet the requirements for registration set forth in 441—Chapter 110 and shall have a current Certificate of Registration, Form 470-3498.

c. Registered family child care home. A family child care home shall meet the requirements for registration set forth in 441—Chapter 110 and shall have a current Certificate of Registration, Form 470-3498.

d. Relative care. An adult relative who provides care in the relative's own home solely for a related child may receive payment for child care services when selected by the parent.

e. In-home care. The adult caretaker selected by the parent to provide care in the child's own home shall be sent the pamphlet Comm. 95, Minimum Health and Safety Requirements for Nonregistered Care Home Providers, and Form 470-2890, Payment Application for Nonregistered Providers. Form 470-2890 shall be signed by the provider and returned to the department within 15 days before payment may be made. Signature on the form certifies the provider's understanding of and compliance with the conditions and requirements for nonregistered providers that include: minimum health and safety requirements, limits on the number of children for whom care may be provided, unlimited parental access to the child or children during hours when care is provided, unless prohibited by court order, and conditions that warrant nonpayment.

f. Nonregistered family child care home. The adult caretaker selected by the parent to provide care in a nonregistered family child care home shall be sent the pamphlet Comm. 95, Minimum Health and Safety Requirements for Nonregistered Child Care Home Providers, and Form 470-2890, Payment Application for Nonregistered Providers. Form 470-2890 shall be signed by the provider and returned to the department within 15 days before payment may be made. Signature on the form certifies the provider's understanding of and compliance with the conditions and requirements for nonregistered providers that include: minimum health and safety requirements, limits on the number of children for whom care may be provided, unlimited parental access to the child or children during hours when care is provided, unless prohibited by court order, and conditions that warrant nonpayment.

g. Exempt facilities. Child care facilities which are exempt from licensing or registration as defined in Iowa Code section 237A.1 may receive payment for child care services when selected by a parent.

h. Record checks for nonregistered family child care homes. If a nonregistered child care provider, including a relative, wishes to receive public funds as reimbursement for providing child care for eligible clients, the provider shall complete Form 470-0643, Request for Child Abuse Information, and Form 595-1489, State of Iowa Non-Law Enforcement Record Check Request, Form A, for the provider as though the provider either is being considered for registration or is registered to provide child care, for anyone having access to a child when the child is alone, and anyone living in the home. The county office worker or the PROMISE JOBS worker shall provide the individual with the necessary forms. The provider shall return the forms to the county office or PROMISE JOBS worker for submittal to the division of adult, children and family services.

If there is a record of founded child abuse naming a nonregistered child care provider, anyone having access to a child when the child is alone, or any individual living in the home of the nonregistered child care provider as being a perpetrator of child abuse, or a criminal conviction for any of the same individuals, the division shall notify the regional office to perform an evaluation following the process defined at 441—subrule 110.7(3) or rule 441—110.31(237A). If any of the individuals would be prohibited from registration, employment, or residence, the person shall not provide child care and is not eligible to receive public funds to do so. The regional administrator or designee shall notify the applicant, and a copy of that notification shall be forwarded to the county attorney, the county office, and the PROMISE JOBS worker, if applicable. A person who continues to provide child care in violation of this law is subject to penalty and injunction under Iowa Code chapter 237A.

170.4(4) *Components of service program.* Every child eligible for child care services shall receive supervision, food services, and program and activities, and may receive transportation.

170.4(5) *Levels of service according to age.* Rescinded IAB 9/30/92, effective 10/1/92.

170.4(6) *Provider's individual program plan.* An individual program plan shall be developed by the child care provider for each child within 30 days after placement when the need for service was established under 170.2(3)*"d."* The program plan shall be supportive of the service worker's case plan. The program plan shall contain goals, objectives, services to be provided, and time frames for review.

170.4(7) *Payment.*

a. Rate of payment. The rate of payment for child care services, except for in-home care which shall be paid in accordance with 170.4(7)*"d,"* shall be the actual rate charged by the provider for a private individual, not to exceed the maximum rates shown below. When a provider does not have a half-day rate in effect, a rate is established by dividing the provider's declared full-day rate by 2. When a provider has neither a half-day nor a full-day rate, a rate is established by multiplying the provider's declared hourly rate by 4.5. Payment shall not exceed the rate applicable to the provider and age group in Table I, except for special needs care which shall not exceed the rate applicable to the provider and age group in Table II. To be eligible for the special needs rate, the provider must submit documentation to the child's service worker that the child needing services has been assessed by a qualified professional and meets the definition for "child with special needs," and a description of the child's special needs, including, but not limited to, adaptive equipment, more careful supervision, or special staff training.

Table I
Half-Day Rate Ceilings for Basic Care

Age Group	Day Care Center	Registered Family Home	Registered Group Home	Nonregistered Family Home
Infant and Toddler	$12.45	$10.00	$9.00	$8.19
Preschool	$10.50	$ 9.00	$8.55	$7.19
School Age	$ 9.00	$ 9.00	$8.33	$7.36

Table II
Half-Day Rate Ceilings for Special Needs Care

Age Group	Day Care Center	Registered Family Home	Registered Group Home	Nonregistered Family Home
Infant and Toddler	$48.00	$15.75	$12.38	$10.24
Preschool	$28.13	$14.63	$12.38	$ 8.99
School Age	$28.04	$13.50	$11.25	$ 9.20

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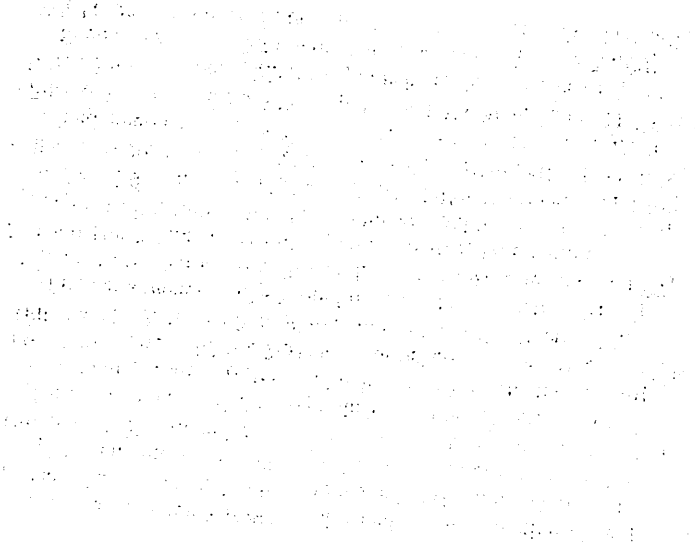

(3) The effective date of the rate for a new service shall be the effective date of a new contract or the effective date of the contract amendment adding that new service to an existing contract unless a later effective date is agreed to by both parties.

(4) The effective date of the rate for an existing service shall be the first of the month following the month in which the Rehabilitative Treatment and Supportive Services Negotiated Rate Establishment Amendment, Form 470-3404, and all necessary supportive documentation and disclosures are received by the bureau of purchased services by the fifteenth of the month.

k. Once a negotiated rate is established based on the provisions of this subrule, it shall not be changed or renegotiated during the time period of this rule except in the following circumstances:

(1) By mutual consent of the provider and the regional administrator of the host region based upon the factors delineated at paragraph 185.112(1)*"f,"* except that rates shall not be changed or renegotiated for the period of July 1, 2000, through June 30, 2001.

(2) In accordance with paragraph 185.112(6)*"b,"* except that rates shall not be changed or renegotiated for services not assumed by a new provider for the period of July 1, 2000, through June 30, 2001.

(3) Rates may be changed when funds are appropriated for an across-the-board increase. Effective July 1, 2000, a 5 percent across-the-board cost-of-living adjustment will be applied.

185.112(2) *New services.* When a new provider contracts to provide a rehabilitative treatment or supportive service or an existing provider adds a new rehabilitative treatment or supportive service on or after January 1, 1998, the rate for the new service shall be established based on a payment rate negotiated in accordance with subrule 185.112(1) using the weighted average rate for that service in lieu of an existing rate as the starting point for negotiations.

a. If an existing provider already has a rate for a similar service and wishes to establish a second rate for that service, the starting point for rate negotiations for the second rate shall be the starting point used in negotiations for the provider's already established rate for that similar service.

b. If an existing provider has more than one rate for a similar service and wishes to establish an additional rate for that service, the starting point for rate negotiations shall be established by the regional administrator of the host region and shall be one of the following: the starting point of that provider's established rate for the similar service most closely resembling the proposed service, or the simple average of the starting points of all of the provider's established rates for similar services.

c. The weighted average rate is the weighted average rate for each service as of July 1, 1997, as previously established in accordance with subrule 185.109(1).

d. For those services where no weighted average rate has been established because there are less than four rates existing for that service or for newly developed rehabilitative treatment and supportive services, the department shall determine the cost of that service by requiring financial and statistical reports reflecting the costs for the new service to be submitted in accordance with rules 441—185.102(234) to 441—185.107(234). Initial projected rates established in accordance with this subrule shall become effective in accordance with subrule 185.107(2).

The report of actual costs pursuant to paragraph 185.103(1)*"b"* shall be used only to establish the historical costs of the new service which shall be used as the starting point in the rate negotiation process. The negotiated rate established in accordance with subrule 185.112(1) based upon the actual cost report shall become effective in accordance with paragraph 185.112(1)*"j."*

185.112(3) *Rate resolution process.* The rate resolution process may be used when the department and a provider are unable to agree upon a rate for a service within 60 days of initiating rate negotiations.

a. This process involves obtaining an independent mediator who is agreeable to both parties.

b. The cost of the mediator shall be borne equally by the provider and the department. Neither party to the mediation shall be liable for paying for more than that party's share of the cost for eight hours of mediation unless this is mutually agreed upon prior to initiation of the mediation process.

c. The rate resolution process must be concluded within 60 days of its initiation.

d. The mediator shall not make rate-setting decisions. The role of the mediator is to facilitate discussions between the parties in an effort to help the parties reach a mutual agreement.

185.112(4) *Failure to reach agreement on rates.* In the event the department and the provider are unable to reach agreement on a rate, the following procedures apply:

a. If the department and an existing provider are unable to reach agreement on a negotiated rate for an existing service with a published rate within 60 days of initiating negotiations or by June 30, 1998, whichever comes first, the rate resolution process may be used.

(1) Whether or not the rate resolution process is used, if agreement is not reached by September 30, 1998, the service shall be deleted from the provider's rehabilitative treatment and supportive services contract no later than November 30, 1998.

(2) If agreement is reached, the rate shall become effective in accordance with the provisions of paragraph 185.112(1)*"i."*

b. In the event the department and an existing provider are unable to reach agreement on a rate for a new service or an existing service without a published rate within 60 days of initiating rate negotiations, the rate resolution process may be used.

(1) If the rate resolution process is not used, and agreement is not reached within 120 days of initiating negotiations, no rate shall be established.

1. For new services, any contract amendment associated with that rate shall be denied.
2. For existing services without a rate, the contract shall be amended to delete this service from the contract.

(2) If the rate resolution process is used and no rate is agreed upon within 60 days of referral to the rate resolution process, no rate shall be established.

1. For new services, any contract amendment associated with that rate shall be denied.
2. For existing services without a rate, the contract shall be amended to delete this service from the contract.
3. If agreement is reached within the required time frames in either of the above situations, the rate shall become effective in accordance with the provisions of paragraph 185.112(1)*"i."*

c. In the event the department and a new provider are unable to reach agreement on a rate for a service within 60 days of initiating rate negotiations, the rate resolution process may be used. If no rate is agreed upon within 60 days of initiation of the rate resolution process, no rate shall be established and the services in question shall not be a part of any approved contract for rehabilitative treatment and supportive services. In the event that the department and a new provider cannot reach agreement on any rates, the contract shall be denied.

d. In all cases, a service for which a negotiated rate has not been established in accordance with subrule 185.112(1), except as provided for at subrule 185.112(12), on or before September 30, 1998, shall be terminated from the provider's contract for rehabilitative treatment and supportive services no later than November 30, 1998.

e. The department shall not be liable for payment for any rehabilitative treatment or supportive service that does not have a rate established in accordance with subrule 185.112(1), except as provided for at subrule 185.112(12), that is provided after November 30, 1998.

185.112(5) *Public agencies.* Public agencies shall be required to demonstrate their compliance with paragraph 185.106(3)*"d."*

185.112(6) *Interruptions in a program.*

a. If a provider assumes the delivery of a program from a related party provider as defined at paragraph 185.105(11)*"c"* or 441—subrule 152.2(18), the rate for the new provider shall remain the same as the rate established for the former provider. The rate for the new provider shall also remain the same as for the former provider if the difference between the former and the new provider is a change in name or a change in the legal form of ownership (i.e., a change from sole proprietorship to corporation).

DIVISION VII
BILLING AND PAYMENT PROCEDURES

441—185.121(234) Billing procedures. At the end of each month the provider agency shall prepare Form AA–2241–0, Purchase of Service Provider Invoice, for contractual services provided by the agency during the month.

Separate invoices shall be prepared for each county from which clients were referred and each program. Complete invoices shall be sent to the department county office responsible for the client for approval and forwarding for payment.

Providers shall never bill for more than one month of service. A separate invoice is required for each separate month of service, even if the service span overlaps one month.

185.121(1) *Time limit for submitting invoices.* The time limit for submission of original invoices shall be 90 days from the date of service, except at the end of the state fiscal year when claims for services through June 30 are to be submitted by August 10.

185.121(2) *Resubmittals of rejected claims.* Valid claims which were originally submitted within the time limit specified in 185.121(1) but were rejected because of an error shall be resubmitted as soon as corrections can be made.

185.121(3) *Payment.* Within 60 days of the date of receipt of a valid invoice, the department shall make payment in full of all invoices concerning rehabilitative treatment and supportive services rendered to clients, provided the invoices shall be subject to audit and adjustment by the department.

441—185.122(234) Recoupment procedures. Public agencies that are reimbursed more than their actual costs are required to refund any excess to the department within four months of the end of their fiscal year. No provision for profit or other increment above cost is intended in OMB Circular A–87 for public agencies. Those public providers subject to this provision who fail to comply with this requirement shall be considered to be in violation of 185.12(1)"*r*" and subject to sanctions. Providers who do not refund any excess payments within six months of the end of their fiscal year shall be given notice in accordance with 185.12(6) and have any and all payments suspended or withheld in accordance with 185.12(7).

These rules are intended to implement Iowa Code sections 234.6 and 234.38.

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CHAPTERS 186 to 199
Reserved

*Rule 185.4(234), subrule 185.8(4) and rule 185.9(234), effective 8/12/93.
**Effective date of 185.22(1)"*d*,"(2)"*d*," and (3)"*d*," 185.42(3), 185.62(1)"*d*,"(2)"*d*," and (3)"*d*," and 441—185.82(234) delayed 70 days by the Administrative Rules Review Committee at its meeting held July 11, 1995.

(7) Attorney fees and court costs necessary to finalize the adoption, limited to the usual and customary fee for the area.

(8) Funeral benefits at the amount allowed for a foster child in accordance with 441—subrule 156.8(5).

b. The need for special services shall be established by a report in the child's record from the private or public agency which had guardianship of the child, and substantiating information from specialists as defined in rule 441—201.2(600).

c. Any single special service and any special service delivered over a 12-month period costing $500 or more shall have prior approval from the central office adoption program manager prior to expending program funds.

d. For all Medicaid covered services the department shall reimburse at the same rate and duration as Medicaid as set forth in rule 441—79.1(249A).

201.6(2) *Maintenance only.* A monthly payment to assist with room, board, clothing and spending money may be provided, as determined under 201.5(600). The child will also be eligible for medical assistance pursuant to 441—Chapter 75.

201.6(3) *Maintenance and special services.* For special needs children, a special services subsidy may also be included when a maintenance subsidy is provided.

441—201.7(600) Termination of subsidy. Subsidy will terminate when any of the following occur:

201.7(1) The adoptive child no longer meets the definition of child in rule 441—201.1(600).

201.7(2) The child marries.

201.7(3) The adoptive parents are no longer using the maintenance payments to support the child.

201.7(4) Death of the child, or death of the parents of the child (one in a single-parent family and both in a two-parent family).

201.7(5) Upon conclusion of the terms of the agreement.

201.7(6) Upon request of the adoptive parents.

201.7(7) The adoptive parents are no longer legally responsible for the child.

201.7(8) The family fails to participate in the renewal process.

441—201.8(600) Reinstatement of subsidy. Reinstatement of subsidy will be made when the subsidy was terminated because of reasons in 201.7(3) or 201.7(6) to 201.7(8) and the reason for termination no longer exists.

441—201.9(600) New application. New applications will be taken at any time, but processed only so long as funds are available. Maintenance and special services already approved will continue.

441—201.10(600) Medical assistance based on residency. Special needs children eligible for any type of subsidy are entitled to medical assistance as defined in 441—Chapter 75. The funding source for medical assistance is based on the following criteria:

201.10(1) IV-E-eligible children:

a. IV-E-eligible children residing in Iowa from Iowa and from other states shall receive medical assistance from Iowa.

b. IV-E-eligible children from Iowa residing in another state shall receive medical assistance from the family's state of residence, even though medical assistance available in the family's state of residence may vary from Iowa's medical assistance.

201.10(2) Non-IV-E-eligible children:

a. Non-IV-E children from Iowa residing in Iowa shall be covered by Iowa's medical assistance.

b. Non-IV-E children from Iowa residing in another state shall receive medical assistance from the state of residence when the state has adopted the adoption assistance interstate compact and a contract between Iowa and the family's state of residence is completed. Medical assistance available in the family's state of residence may vary from Iowa's medical assistance.

c. Non-IV-E-eligible children from another state residing in Iowa shall continue to be covered by the other state's medical assistance unless the state has adopted the adoption assistance interstate compact and a contract between Iowa and the other state exists.

201.10(3) When an Iowa child receives medical assistance from another state, Iowa shall discontinue paying any medical costs the month following the move unless additional time is necessary for a timely notice of decision to be provided to the family. An exception shall be made when the initial Iowa subsidy agreement provides for services not covered by the other states.

441—201.11(600) Presubsidy recovery. The department shall recover the cost of presubsidy maintenance and special services provided by the department as follows:

201.11(1) Funds shall be applied to the cost of presubsidy maintenance and special services from the unearned income of the child.

201.11(2) The department shall serve as payee to receive the child's unearned income. The income shall be placed in an account from whence it shall be applied toward the cost of the child's current care and the remainder placed in an escrow account.

201.11(3) When a child has funds in escrow these funds may be used by the department to meet the current needs of the child not covered by the presubsidy payments and not prohibited by the source of the funds.

201.11(4) When the child leaves presubsidy care, funds in the escrow shall be paid to the adoptive parents, or to the child if the child has attained the age of majority.

These rules are intended to implement Iowa Code sections 600.17 to 600.21 and 600.23; and 2000 Iowa Acts, Senate File 2435, section 31, subsection 6.

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RACING AND GAMING COMMISSION[491]

[Prior to 11/19/86, Chs 1 to 10, see Racing Commission[693]; Renamed Racing and Gaming Division [195] under the "umbrella" of Commerce, Department of [181], 11/19/86]
[Prior to 12/17/86, Chs 20 to 25, see Revenue Department[730] Chs 91 to 96]
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CHAPTER 1
ORGANIZATION AND OPERATION

[Prior to 11/19/86, Racing Commission[693]]
[Prior to 11/18/87, Racing and Gaming Division[195]]
[Prior to 8/9/00, see also 491—Chs 6, 20 and 21]

491—1.1(99D,99F) Function. The racing and gaming commission was created by Iowa Code chapter 99D and is charged with the administration of the Iowa pari-mutuel wagering Act and excursion boat gambling Act. Iowa Code chapters 99D and 99F mandate that the commission shall have full jurisdiction over and shall supervise all race meetings and gambling operations governed by Iowa Code chapters 99D and 99F.

491—1.2(99D,99F) Organization and operations.

1.2(1) The racing and gaming commission is located at 717 E. Court, Suite B, Des Moines, Iowa 50309; telephone (515)281-7352. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday.

1.2(2) The racing and gaming commission consists of five members. The membership shall elect a chairperson and vice-chairperson in July of each year. No chairperson shall serve more than two consecutive one-year full terms.

1.2(3) The commission meets periodically throughout the year and shall meet in July of each year. Notice of a meeting is published on the commission's Web site at www3.state.ia.us/irgc/ at least five days in advance of the meeting or will be mailed to interested persons upon request. The notice shall contain the specific date, time, and place of the meeting. Agendas are available to any interested persons not less than five days in advance of the meeting. All meetings shall be open to the public unless a closed session is voted by four members or all members present for the reasons specified in Iowa Code section 21.5. The operation of commission meetings shall be governed by the following rules of procedure:

a. A quorum shall consist of three members.

b. When a quorum is present, a position is carried by an affirmative vote of the majority of the entire membership of the commission.

c. Persons wishing to appear before the commission should submit a written request to the commission office not less than ten working days prior to the meeting. The administrator or commission may place a time limit on presentations after taking into consideration the number of presentations requested.

d. Special or electronic meetings may be called by the chair only upon a finding of good cause and shall be held in strict accordance with Iowa Code section 21.4 or 21.8.

e. The presiding officer may exclude any person from the meeting for behavior that disrupts or obstructs the meeting.

f. Cases not covered by this rule shall be governed by the 1990 edition of Robert's Rules of Order Newly Revised.

491—1.3(99D,99F) Administration of the commission. The commission shall appoint an administrator for the racing and gaming commission who is responsible for the day-to-day administration of the commission's activities.

491—1.4(17A,22,99F) Open records. Except as provided in Iowa Code sections 17A.2(11)"*f*" and 22.7, all public records of the commission shall be available for public inspection during business hours. Requests to obtain records may be made either by mail, telephone, or in person. Minutes of commission meetings, forms, and other records routinely requested by the public may be obtained without charge or viewed on the commission's Web site. Other records requiring more than ten copies may be obtained upon payment of the actual cost for copying. This charge may be waived by the administrator.

491—1.5(17A,99D,99F) Forms. All forms utilized in the conduct of business with the racing and gaming commission shall be available from the commission upon request. These forms include but are not limited to:

1.5(1) *Racetrack or excursion boat license application.* This form shall contain at a minimum the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, location and physical plant of the facility, and description of proposed operation. The form may include other information the commission deems necessary to make a decision on the license application. The qualified nonprofit corporation and the boat operator, if different than the qualified nonprofit corporation, shall pay a nonrefundable application fee to offset the commission's cost for processing the application in the amount of $25,000. The fee shall be $5,000 for each subsequent application involving the same operator and the same qualified sponsoring organization. Additionally, the applicant shall remit an investigative fee of $15,000 to the department of public safety to do background investigations as required by the commission. The department of public safety shall bill the applicant/licensee for additional fees as appropriate and refund any unused portion of the investigative fee within 90 days after the denial or operation begins.

1.5(2) *Renewal application for racing license.* This form shall contain, at a minimum, the full name of the applicant, racing dates, simulcast proposal, feasibility of racing facility, distribution to qualified sponsoring organizations, table of organization, management agreement, articles of incorporation and bylaws, lease agreements, financial statements, information on the gambling treatment program, and description of racetrack operations. The form may include other information the commission deems necessary to make a decision on the license application.

1.5(3) *Renewal application for excursion boat license.* This form shall contain, at a minimum, the full name of the applicant, annual fee, distribution to qualified sponsoring organizations, table of organization, internal controls, operating agreement, hours of operation, casino operations, Iowa resources, contracts, guarantee bond, notarized certification of truthfulness, and gambling treatment program. The form may include other information the commission deems necessary to make a decision on the license application. An annual fee to operate an excursion gambling boat shall be based on the passenger-carrying capacity including crew. The fee shall be $5 per person capacity and accompany this application.

1.5(4) *Renewal application for racetrack enclosure license.* This form shall contain, at a minimum, the full name of the applicant, annual fee, casino operations, internal controls, Iowa resources, guarantee bond, and notarized certification of truthfulness. The form may include other information the commission deems necessary to make a decision on the license application. A $1,000 application fee must accompany this license application.

1.5(5) *Occupational license application.* This form shall contain, at a minimum, the applicant's full name, social security number, residence, date of birth, and other personal identifying information that the commission deems necessary. A fee set by the commission shall apply to this application. (Refer to 491—Chapter 6 for additional information.)

1.5(6) *Application for season approvals.* This form shall contain, at a minimum, a listing of the department heads and racing officials, minimum purse, purse supplements for Iowa-breds, grading system (greyhound racing only), schedule and wagering format, equipment, security plan, certification, and any other information the commission deems necessary for approval. This request must be submitted 45 days prior to the meet. Any changes to the items approved by the commission shall be requested in writing by the licensee and subject to the written approval of the administrator or commission representative before the change occurs.

c. An applicant for an occupational license may appeal a decision denying the application. An appeal must be made in writing to the office of the stewards or the commission's office in Des Moines. The appeal must be received within 72 hours of service of the decision. The appeal must contain numbered paragraphs and set forth the name of the person seeking review, the decision to be reviewed, separate assignments of error, clear and concise statement of relevant facts, reference to applicable statutes, rules or other authority, prayer setting forth relief sought and signature, name, address, and telephone number of the person seeking review or that person's representative, or shall be on a form prescribed by the commission.

d. Upon the filing of a timely and perfected appeal, the applicant has the right to a contested case proceeding, as set forth supra in these rules.

4.6(2) The stewards shall monitor, supervise, and regulate the activities of occupational and parimutuel racetrack licensees. A steward may investigate any questionable conduct by a licensee for any violation of the rules or statutes. Any steward may refer an investigation to the board of stewards upon suspicion that a licensee or nonlicensee has committed a violation of the rules or statutes.

4.6(3) A steward shall summarily suspend an occupational license when a licensee has been formally arrested or charged with a crime that would disqualify the person from a license if convicted. The steward shall take one the following courses of action upon resolution of the criminal action:

a. The steward shall reinstate the licensee if the charges are dismissed or the licensee is acquitted of the charges.

b. The steward shall deny the license.

c. If convicted of a lesser charge, it is at the discretion of the steward whether to reinstate or deny the license.

4.6(4) A steward may summarily suspend an occupational licensee in accordance with rule 491—4.47(17A).

4.6(5) Hearings before the board of stewards intended to implement Iowa Code section 99D.7(13) shall be conducted under the following parameters:

a. Upon finding of reasonable cause, the board shall schedule a hearing to which the license holder shall be summoned for the purpose of investigating suspected or alleged misconduct by the license holder. The license holder may request a continuance in writing for good cause not less than 24 hours prior to the hearing except in cases of unanticipated emergencies. The continuance need not necessarily stay any intermediate sanctions.

b. The notice of hearing given to the license holder shall give adequate notice of the time, place and purpose of the board's hearing, and shall specify by number the statutes or rules allegedly violated. Delivery of the notice of hearing may be executed by either personal service or certified mail with return receipt requested to the last-known address listed in the application. If a license holder, after receiving adequate notice of a board meeting, fails to appear as summoned, the license holder will be deemed to have waived any right to appear and present evidence to the board.

c. The board has complete and total authority to decide the process of the hearing. The board shall recognize witnesses and either question the witnesses or allow them to give a narrative account of the facts relevant to the case. The board may request additional documents or witnesses before making a decision. The licensee has no right to present testimony, cross-examine witnesses, make objections, or present argument, unless specifically authorized by the board.

d. It is the duty and obligation of every licensee to make full disclosure at a hearing before the board of any knowledge possessed regarding the violation of any rule, regulation or law concerning racing and gaming in Iowa. No person may refuse to testify before the board at any hearing on any relevant matter within the authority of the board, except in the proper exercise of a legal privilege. No person shall falsely testify before the board.

e. Persons who are not holders of a license or occupational license and who have allegedly violated commission rules or statute, or whose presence at a track is allegedly undesirable, are subject to the authority of the board and to any penalties, as set forth in rule 491—4.7(99D,99F).

f. The board of stewards has the power to interpret the rules and to decide all questions not specifically covered by them. The board of stewards has the power to determine all questions arising with reference to the conduct of racing, and the authority to decide any question or dispute relating to racing in compliance with rules promulgated by the commission or policies approved for licensees, and persons participating in licensed racing or gaming agree in so doing to recognize and accept that authority. The board may also suspend the license of any license holder when the board has reasonable cause to believe that a violation of law or rule has been committed and that the continued performance of that individual in a licensed capacity would be injurious to the best interests of racing or gaming.

g. The board of stewards shall enter a written decision after each hearing. The decision shall state whether there is a violation of the rules or statutes and, if so, shall briefly set forth the legal and factual basis for the finding. The decision shall also establish a penalty for any violation. The board of stewards has the authority to impose any penalty, as set forth in these rules.

h. A licensee may appeal a board of stewards' decision. An appeal must be made in writing to the office of the stewards or the commission's office in Des Moines. The appeal must be received within 72 hours of service of the decision. The appeal shall be on a form prescribed by the commission or must contain numbered paragraphs and set forth the name of the person seeking the review, the decision to be reviewed, separate assignments of error, clear and concise statement of relevant facts, reference to applicable statutes, rules or other authority, prayer setting forth relief sought and signature, and the name, address, and telephone number of the person seeking the review or that person's representative. If a licensee is granted a stay of a suspension, pursuant to 491—4.45(17A), and the ruling is upheld in a contested case proceeding, then the board of stewards may reassign the dates of suspension so that the suspension dates are served in the state of Iowa.

i. Upon the filing of a timely and perfected appeal, the licensee has the right to a contested case proceeding, as set forth supra in these rules.

4.6(6) A steward may eject and exclude any person from the premises of a pari-mutuel racetrack or excursion gambling boat for any reason justified by the rules or statutes. The steward may provide notice of ejection or exclusion orally or in writing. The steward may define the scope of the exclusion to any degree necessary to protect the integrity of racing and gaming in Iowa. The steward may exclude the person for a certain or indefinite period of time.

4.6(7) The stewards shall have other powers and duties set forth in the statutes and rules, and as assigned by the administrator.

491—4.7(99D,99F) Penalties (gaming board and board of stewards). The board may remove the license holder, either from any racetrack or riverboat, under its jurisdiction, revoke the license of, or suspend the license of the holder for up to 365 days from the date of the original suspension, or impose a fine of up to $1000, or both. The board may set the dates in which the suspension must be served. In addition, the board may order a redistribution of a racing purse or the payment of or the withholding of a gaming payout. The board may also suspend the license of any person currently under suspension or in bad standing in any other state or jurisdiction by the state racing and gaming commission. If the punishment so imposed is not sufficient, in the opinion of the board, the board shall so report to the commission. All fines and suspensions imposed will be promptly reported to the riverboat or racetrack licensee and commission in writing.

4.7(1) Fines shall be paid within ten calendar days of receipt of the ruling, by the end of business hours at any commission office. Nonpayment or late payment may result in an immediate license suspension. All fines are to be paid by the individual assessed the fine.

4.7(2) If the fine is appealed to the board, the appeals process will not stay the fine. The fine will be due as defined in subrule 4.7(1).

4.7(3) If the party is successful in the appeal, the amount of the fine will be refunded to the party as soon as possible after the date the decision is rendered.

(1) Personal delivery;
(2) Certified mail, return receipt requested, to the last address on file with the commission;
(3) Certified mail to the last address on file with the commission;
(4) First-class mail to the last address on file with the commission; 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 commission orders be sent by fax and has provided a fax number for that purpose.

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

4.47(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the commission shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

4.47(4) *Completion of proceedings.* Issuance of a written emergency adjudicative order shall include notification of the date on which commission proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further commission proceedings to a later date will be granted only in compelling circumstances upon application in writing.

These rules are intended to implement Iowa Code chapters 99D and 99F and Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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◊Two ARCs

c. Notification. If an excursion is not completed due to reasons specified in paragraph 5.6(2)*"b,"* a commission representative shall be notified as soon as is practical.

These rules are intended to implement Iowa Code chapters 99D and 99F.

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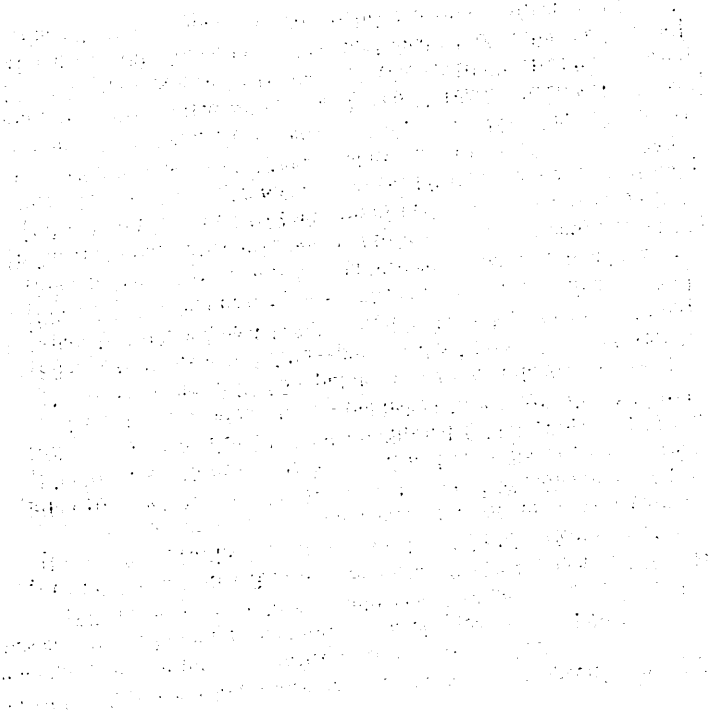
Effective date of 5.1(5)"c"* delayed until the end of the 1999 Session of the General Assembly by the Administrative Rules Review Committee at its meeting held December 8, 1998.



CHAPTER 6
OCCUPATIONAL AND VENDOR LICENSING

[Prior to 11/19/86, Racing Commission[693]]
[Prior to 11/18/87, Racing and Gaming Division[195]]

491—6.1(99D,99F) Definitions.

"Applicant" means an individual applying for an occupational license.

"Beneficial interest" means any and all direct and indirect forms of ownership or control, voting power, or investment power held through any contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise.

"Board" means either the board of stewards or the gaming board, as appointed by the administrator, whichever is appropriate. The administrator may serve as a board of one.

"Commission" means the Iowa racing and gaming commission.

"Commission representative" means a gaming representative, steward, or any person designated by the commission or commission administrator.

"Deceptive practice" means any deception or misrepresentation made by the person with the knowledge that the deception or misrepresentation could result in some benefit to the person or some other person.

"Facility" means an entity licensed by the commission to conduct pari-mutuel wagering or gaming operations in Iowa.

"Jockey" means a person licensed to ride a horse in a race.

"Kennel/stable name " means any type of name other than the legal name or names used by an owner or lessee and registered with the commission.

"Licensee" means a person licensed by the commission to perform an occupation which the commission has identified as requiring a license to engage in pari-mutuel, racetrack enclosure, or excursion boat gambling in Iowa.

"Owner" means a person or entity that holds any title, right or interest, whole or partial, in a racing animal.

"Rules" means the rules promulgated by the commission to regulate the racing and gaming industries.

"Theft" includes, but is not limited to:

1. The act of taking possession or control of either facility property or the property of another without the express authorization of the owner;
2. The use, disposition, or destruction of property in a manner which is inconsistent with or contrary to the owner's rights in such property;
3. Misappropriation or misuse of property the person holds in trust for another; or
4. Any act which constitutes theft as defined by Iowa Code chapter 714. No specific intent requirement is imposed by rule 6.5(99D,99F) nor is it required that there be any showing that the licensee received personal gain from any act of theft.

"Year" means a calendar year.

491—6.2(99D,99F,252J) Occupational licensing.

6.2(1) All persons participating in any capacity at a racing or gaming facility, with the exception of certified law enforcement officers while they are working for the facility as uniformed officers, are required to be properly licensed by the commission.

a. License applicants under 70 years of age may be required to furnish to the commission a set of fingerprints and may be required to be refingerprinted or rephotographed periodically.

b. License applicants must supply current photo identification and proof of their social security number and date of birth.

c. License applicants must complete and sign the application form prescribed and published by the commission. The application shall state the full name, social security number, residence, date of birth, and other personal identifying information of the applicant that the commission deems necessary. The application shall include, in part, whether the applicant has any of the following:

(1) A record of conviction of a felony or misdemeanor;
(2) An addiction to alcohol or a controlled substance;
(3) A history of mental illness or repeated acts of violence;
(4) Military convictions;
(5) Adjudication of delinquency; or
(6) Overdue income taxes, fines, court-ordered legal obligations, or judgments.

d. License applicants for designated positions of higher responsibility may be required to complete a division of criminal investigation (DCI) background form.

e. A fee set by the commission shall be assessed to each license applicant. Once a license is issued, the fee cannot be refunded.

f. License applicants must pay an additional fee set by the Federal Bureau of Investigation (FBI) and by the department of public safety (DCI and bureau of identification) to cover the cost associated with the search and classification of fingerprints.

g. All racing and gaming commission fees for applications or license renewals must be paid by applicants or licensees before a license will be issued or renewed or, if the applicant is an employee of a facility, the commission fees will be directly billed to the facility.

h. An applicant who knowingly makes a false statement on the application is guilty of an aggravated misdemeanor.

i. Participation in racing and gaming in the state of Iowa is a privilege and not a right. The burden of proving qualifications to be issued any license is on the applicant at all times. An applicant must accept any risk of adverse public notice, embarrassment, criticism, or other action, as well as any financial loss that may result from action with respect to an application.

j. All licenses are conditional until completion of a necessary background investigation including, but not limited to, fingerprint processing through the DCI and the FBI and review of records on file with the Association of Racing Commissioners International, courts, law enforcement agencies, and the commission.

k. Any licensee who allows another person use of the licensee's license badge for the purpose of transferring any of the benefits conferred by the license may be fined, have the license suspended or revoked, or be subject to any combination of the above-mentioned sanctions. No license shall be transferable and no duplicate licenses shall be issued except upon submission of an application form and payment of the license fee.

l. It shall be the affirmative responsibility and continuing duty of each applicant to provide all information, documentation, and assurances pertaining to qualifications required or requested by the commission or commission representatives and to cooperate with commission representatives in the performance of their duties. A refusal by any person to comply with a request for information from a commission representative shall be a basis for fine, suspension, denial, revocation, or disqualification.

m. Non-U.S. citizens must also supply a work permit allowing them to work in the United States.

n. Portions of all completed applications accepted by the commission are confidential. The following persons have the explicit right to review all information contained on the application: the applicant, all commission officials and employees, the track steward, and DCI agents or other law enforcement officers serving in their official capacity.

o. A license may not be issued or held by an applicant who is unqualified, by experience or otherwise, to perform the duties required.

p. A license may not be issued to applicants who have not previously been licensed in the following categories except upon recommendation by the commission representative: trainers, assistant trainers, jockeys, apprentice jockeys, exercise persons, and other occupations the commission may designate. The commission representative may, for the purpose of determining a recommendation under this subrule, consult a representative of the facility, horsemen, or jockeys.

6.2(2) All facility board members shall undergo a background investigation and be licensed immediately upon appointment.

6.2(3) Multiple license restrictions.

a. A person may work outside the licensed occupation as long as the person is licensed in an equal or higher class.

b. In horse racing only, the following restrictions apply:

(1) A person licensed as a jockey, veterinarian, or farrier may not be licensed in another capacity.

(2) A person may not be licensed as an owner and a jockey agent.

(3) No racing official may serve or act in another capacity at a race meeting at which that person is licensed as an official except if there is no conflict of interest or duties as determined by the commission representative.

6.2(4) Application endorsements. The responsibility of licensing an employee rests with the employer. Therefore, a license may not be issued to any employee unless the application includes prior endorsement of the facility's authorized representative. All facilities must submit a list of representatives authorized to sign applications. This list shall not exceed six names. This authorization list shall be sent to the commission licensing office associated with each facility.

6.2(5) An employee of a facility who has not been licensed during the previous calendar year shall be considered a new applicant.

6.2(6) An employee hired during a time that the commission licensing office is closed may be issued and may work using a fee free pass as defined in 491—subparagraph 5.4(10)*"b"*(3). The fee free pass used for this purpose shall be effective only until the licensing office's next day of business.

491—6.3(99D,99F) Waiver of privilege. An applicant may claim a privilege afforded by the Constitution of the United States or of the state of Iowa in refusing to answer questions of the commission. However, a claim of privilege with respect to any testimony or evidence pertaining to an application may constitute sufficient grounds for denial.

491—6.4(99D,99F) License acceptance.

6.4(1) *Occupational license (license).* The license shall be displayed in a conspicuous manner on the licensee's clothing at all times while the licensee is on duty unless otherwise permitted by the commission representative. A licensee is prohibited from defacing, altering, or modifying a license.

6.4(2) *Knowledge of rules.* By acceptance of a license from the commission, the licensee agrees to follow and comply with the rules of the commission, and Iowa statutes pertaining to racing and gaming, to report immediately to the commission representative any known irregularities or wrongdoing involving racing or gaming and to cooperate in subsequent investigations. Commission rules are available on the commission's Web site at www3.state.ia.us/irgc/.

6.4(3) *Search and seizure.* Acceptance of a license from the commission by any licensee is deemed consent to search and inspection by a commission or DCI representative and to the seizure of any prohibited medication, drugs, paraphernalia or devices.

6.4(4) *Misuse of license.* No person shall exercise or attempt to exercise any of the powers, privileges, or prerogatives of a license unless and until the appropriate licensing form has been executed and filed with the commission except under subrule 6.2(6). The commission shall exercise the power to regulate the conduct of all persons holding licenses or participating in racing or gaming.

491—6.5(99D,99F) Grounds for denial, suspension, or revocation of a license or issuance of a fine. The commission or commission representative shall deny an applicant a license or, if already issued, a licensee shall be subject to probation, fine, suspension, revocation, or other disciplinary measures, if the applicant or licensee:

6.5(1) Does not qualify under the following screening policy:

a. Applicants must be at least 18 years of age to work in areas where gaming or wagering is conducted.

b. Applicants must be at least 16 years of age to be eligible to be licensed to work for a trainer of racing animals.

c. A license shall be denied if an alias was used in connection with fraud within the last five years.

d. A license shall be denied if, within the last five years, an applicant has had a conviction of:

(1) A felony.

(2) A drug-related offense.

(3) An offense involving possession of drug paraphernalia.

(4) An offense involving theft or fraudulent practice in excess of $100.

If the conviction did not occur within the last five years, a license shall not be issued unless the commission representative determines that sufficient evidence of rehabilitation exists.

e. A license shall be denied if an applicant has a conviction of a serious or aggravated misdemeanor or the equivalent unless the commission representative determines that sufficient evidence of rehabilitation exists.

f. A license shall be denied if an applicant has multiple convictions of simple misdemeanors or alcohol-related offenses unless the commission representative determines that sufficient evidence of rehabilitation exists. In making that determination, the number of violations shall be considered.

g. A license may be denied if the applicant has been guilty of multiple offenses. The commission representative shall use the representative's judgment in making such a determination.

h. A license shall be temporarily denied or suspended until the outcome of any pending charges is known if conviction of those charges would disqualify the applicant.

i. A license shall be denied if the applicant has a current addiction to alcohol or a controlled substance, has a history of mental illness without sufficient evidence of rehabilitation, or has a history of repeated acts of violence without sufficient evidence of rehabilitation.

j. A license may be temporarily denied or a probationary license may be issued until outstanding, overdue court-ordered obligations are satisfied. These include, but are not limited to, criminal or civil fines, state or federal taxes, or conditions imposed upon a person by a court of law that the applicant has failed to meet in a timely manner.

k. A license shall be denied if an applicant owns, operates, or has an interest in any bookmaking or other illegal enterprise, or is or has been connected with or associated with any illegal enterprise within the past five years. If the applicant's association with the illegal enterprise occurred more than five years prior to the application, a license may be issued only if the commission representative determines that sufficient evidence of rehabilitation exists.

l. A license may be denied if an applicant is ineligible to participate in gaming in another state and it would not be in the best interest of racing or gaming to license the applicant in Iowa. A license shall be denied if an applicant is ineligible to participate in racing in another state whose regulatory agency is recognized by and reciprocates in the actions of this state.

m. A license shall be denied if an applicant has been denied patron privileges by order of this commission and not reinstated.

n. A license shall be denied if the applicant falsifies the application form and would be ineligible for licensure under paragraphs "*a*" through "*m*" above. In other cases of falsification, a license may be issued and the applicant shall be subject to a fine.

o. A license shall be denied if an applicant is not of good repute and moral character. Any evidence concerning a licensee's current or past conduct, dealings, habits, or associations relevant to that individual's character and reputation may be considered. The commission representative shall decide what weight and effect evidence shall have in the determination of whether there is substantial evidence that the individual is not of good reputation and character. Applicants who hold positions of higher responsibility may be held to a more stringent standard of conduct and reputation than others with a less significant interest or role.

6.5(2) Has not demonstrated financial responsibility or has failed to meet any monetary obligation in the following circumstances connected with racing or gaming:

a. Issuance or passing of bad checks. No person shall write, issue, make, or present any check in payment for any license fee, nomination fee, entry fee, starting fee, or purse payment when that person knows or should reasonably know that the check will be refused for payment by the bank upon which it is written, or that the account upon which it is written does not contain sufficient funds for payment of the check, or that the check is written on a closed or nonexistent account.

b. Judgments. Whenever any person licensed to engage in racing suffers a final judgment entered against that person in any court of competent jurisdiction within the United States, when that judgment is based wholly upon an indebtedness incurred by that person for supplies, equipment, or services furnished in connection with racing, the commission representatives shall schedule a hearing at which the licensee shall be required to show cause as to why the license should not be suspended.

c. Timely payment. Should an owner fail to make timely payment of any jockey fee, nomination fee, entry fee, starting fee, or any other reasonable charge normally payable to the facility, the facility shall notify the commission representatives who shall in turn give notice to the owner that a hearing will be held where the owner will be required to show cause why the license should not be suspended for failure to make the required payments.

6.5(3) Has been involved in any fraudulent or corrupt practices, including, but not limited to:

a. Offering, promising, giving, accepting, or soliciting a bribe in any form, directly or indirectly, to or by a person licensed by the commission to violate these rules or the laws of the state related to racing or gaming.

b. Failing to report any bribe or solicitation as in 6.5(3)*"a"* above.

c. Soliciting by any licensee, except the facility, of bets by the public.

d. Violation of any law of the state or rule of the commission, or aiding or abetting any person in the violation of any such law or rule.

e. Theft or deceptive practice of any nature on the grounds of a facility.

f. Giving under oath any false statement or refusing to testify, after proper notice, to the commission representative about any matter regulated by the commission, except in the exercise of a lawful legal privilege.

g. Failing to comply with any request for information or any order or ruling issued by the commission representative pertaining to a racing or gaming matter.

h. Disorderly or offensive conduct; use of profane, abusive, or insulting language to, or interference with, commission representatives or racing or gaming officials while they are discharging their duties.

i. Conduct in Iowa or elsewhere has been dishonest, undesirable, detrimental to, or reflects negatively on, the integrity or best interests of racing and gaming.

j. Illegal sale, possession, receipt, or use of a controlled substance or drug paraphernalia; intoxication; use of profanity; fighting; making threatening or intimidating statements; engaging in threatening or intimidating behavior; or any conduct of a disorderly nature on facility grounds.

k. Discontinuance of or ineligibility for activity for which the license was issued.

l. Possessing a firearm on facility property without written permission from the commission representative.

m. Improperly influencing or attempting to improperly influence the results of a race or a gambling game, singularly or in combination with any person.

n. Failing to report any attempt to improperly influence the result of a race or a gambling game as in 6.5(3)"*m*" above.

o. Having had two rulings related to attempts to affect a race result or odds (rulings for electrical devices, serious positives, for example) in a lifetime or one ruling within the last three years. A license may be issued if one ruling has occurred outside of three years if sufficient evidence of rehabilitation exists. A license may be denied if a lengthy record of rulings from other jurisdictions exists.

p. Possessing any equipment for hypodermic injection, any substance for hypodermic administration, or any container designed to hold an injectable substance (narcotics, medications, drugs, or substances which could be used to alter the speed of racing animals) by anyone other than a veterinarian licensed by the commission. Notwithstanding the provisions of this subrule, any person may have possession of any chemical or biological substance for the person's own treatment within a restricted area, provided that, if the chemical substance is prohibited from being dispensed without a prescription by any federal law or law of this state, the person is in possession of documentary evidence that a valid prescription has been issued to the person. Notwithstanding the provisions of this subrule, any person may have in possession within any restricted area any hypodermic syringe or needle for the purpose of self-administering to the person a chemical or biological substance, provided that the person has notified the commission representatives of the possession of the device, the size of the device, and the chemical substance to be administered and has obtained written permission for possession and use from the commission representative. A restricted area is a designated area for sample collection, paddock, racetrack, or any other area where officials carry out the duties of their positions.

q. Subjecting a racing animal to cruel and inhumane treatment by failing to supply it with adequate food, water, medical treatment, exercise, bedding, sanitation, and shelter; or by neglect or intentional act causing a racing animal to suffer unnecessary pain.

r. Offering or receiving money or other benefit for withdrawing a racing animal from a race.

s. Making a wager for a jockey by any person other than the owner or trainer of the horse ridden by the jockey.

t. Making a wager for a jockey on a horse by an owner or trainer other than that ridden by the jockey. This shall not be construed to include bets on another horse in combination with the horse ridden by the jockey in multiple wagering bets.

u. Offering or giving a jockey money or other benefit concerning a race, except by the owner or trainer of the horse to be ridden.

v. Entering or starting a racing animal known or believed to be ineligible or disqualified.

w. Possessing any device designed to increase or decrease the speed of a racing animal during a race other than an ordinary riding whip without written permission from the commission representative.

491—6.6(99D, 99F) Applications for license after denial, revocation, or suspension.

6.6(1) Any person whose license was denied or revoked may reapply for a license in accordance with the commission's rules governing applications. However, the applicant must satisfy the following conditions:

a. The applicant shall bear the burden of proof of establishing satisfaction with all license criteria and shall provide proof of satisfaction of any terms or conditions imposed as a part of the commission's order denying or revoking the license;

b. The applicant shall allege facts and circumstances establishing, to the commission's satisfaction, sufficient evidence of rehabilitation and that the basis for the denial or revocation no longer exists;

c. The applicant shall establish that the public interest and the integrity of racing and gaming would not be adversely affected if a license is granted; and

d. If the license was revoked, a new application shall not be filed until five years have elapsed from the date of the order of revocation.

6.6(2) Any person whose license was suspended for 365 days may file a new application for a license upon the expiration of the period of suspension but must satisfy all of the conditions set out in 6.6(1) above.

491—6.7(99D,99F) Probationary license. The commission representative or the board may grant a probationary license. The terms of a probationary license shall include any conditions placed on the licensee and any penalty for failure to follow those conditions, including fine, suspension, denial, or revocation.

491—6.8(99D,99F) Duration of license. A license issued by the commission is valid until the end of the calendar year in which it was issued unless an extension is granted by the administrator.

491—6.9(99D,99F) Licensed employees moving from one location to another.

6.9(1) Once an applicant obtains an occupational license from the commission and is in good standing, the applicant is eligible to work at any of the facilities in the state of Iowa.

6.9(2) When a facility hires a person who is already in possession of a current occupational license, a list of the person(s) hired must be filed weekly with the local commission office. The list should contain the license number, name, social security number, and birth date of each person hired.

491—6.10(99D,99F) Required report of discharge of licensed employee. Upon discharge of any licensed employee by any licensed employer for violation of rules or laws within the jurisdiction of the commission, the employer must report that fact in writing, within 72 hours, to the local commission office including the name and occupation of the discharged licensee.

491—6.11(99D,99F,252J) Receipt of certificate of noncompliance from the child support recovery unit.

6.11(1) Upon the commission's receipt of a certificate of noncompliance, a commission representative shall initiate procedures for the suspension, revocation, or denial of issuance or renewal of licensure to an individual. A notice of intended action shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure 56.1.

6.11(2) The effective date of suspension or revocation, or denial of the issuance or renewal of a license, as specified in the notice, shall be no sooner than 30 days following service of the notice upon the licensee or applicant.

6.11(3) The filing of a district court action by a licensee or applicant challenging the issuance of a certificate of noncompliance shall automatically stay any administrative action. Upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the commission, the intended action will proceed as described in the notice. For purposes of determining the effective date of suspension or revocation, or denial of the issuance or renewal of a license, only the number of days before the action was filed and the number of days after the action was disposed of by the court will be counted.

6.11(4) Upon receipt of a withdrawal of a certificate of noncompliance from the child support recovery unit, the commission representative shall immediately reinstate, renew, or issue a license if the individual is otherwise in compliance with licensing requirements.

6.11(5) All commission fees for applications or license renewals must be paid by licensees or applicants before a license will be issued or renewed.

491—6.12(99D,99F,261) Receipt of a certificate of noncompliance from the college student aid commission.

6.12(1) Upon the commission's receipt of a certificate of noncompliance, a commission representative shall initiate procedures for the suspension, revocation, or denial of issuance or renewal of licensure to an individual. A notice of intended action shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure 56.1.

6.12(2) The effective date of the suspension or revocation, or denial of the issuance or renewal of a license, shall be no sooner than 30 days following service of the notice upon the licensee or applicant.

6.12(3) The filing of a district court action by a licensee or applicant challenging the issuance of a certificate of noncompliance shall automatically stay any administrative action. Upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the commission, the intended action will proceed as described in the notice. For purposes of determining the effective date of suspension or revocation, or denial of the issuance or renewal of a license, only the number of days before the action was filed and the number of days after the action was disposed of by the court will be counted.

6.12(4) Upon receipt of a withdrawal of a certificate of noncompliance from the college student aid commission, the commission representative shall immediately reinstate, renew, or issue a license if the individual is otherwise in compliance with licensing requirements.

6.12(5) All commission fees for applications or license renewals must be paid by licensees or applicants before a license will be issued or renewed.

491—6.13(99D,99F) Vendor's license.

6.13(1) A vendor's license is required of any entity not licensed as a manufacturer or distributor that conducts operations on site at a facility.

6.13(2) An applicant for a vendor's license must complete the appropriate commission form. An authorized representative from the facility for which the vendor wishes to do continuous business must sign the form. A letter from the facility authorizing the vendor to do business shall replace a signature on the application form.

6.13(3) Any employee who works for a licensed vendor and will be supplying the goods or services to the facility must have a vendor employee license. A vendor license must be issued before a vendor employee can be issued a license to represent that company. The authorized signature on the vendor employee's application must be the signature of the person authorized by the vendor application to sign vendor employee applications.

6.13(4) Vendors not meeting the above specifications but who do require entrance to the facility for their employees, such as for deliveries, shall utilize the fee free passes.

491—6.14(99D,99F) Applicability of rules—exceptions. Rules pertaining to and rulings against licensees shall apply in like force to the spouse and members of the immediate family or household of the licensee if the continuation of participation in racing or gaming by the affected person circumvents the intent of the rule or affects the ruling by permitting a person under the control or direction of the licensee to serve in essence as a substitute for a suspended licensee, or a person ineligible to participate in a particular activity.

491—6.15(99D) Disclosure of ownership of racing animals. All entities of ownership (individual, lessee, lessor, general partnership, or corporation) and all trainers are responsible for making full and accurate disclosure of the ownership of all racing animals registered or entered for racing. Disclosure shall identify in writing all individuals or entities that, directly or indirectly, through a contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise hold any interest in a racing animal, and those individuals or entities who by virtue of any form of interest might exercise control over the racing animal or may benefit from the racing of the animal. The degree and type of ownership held by each individual person shall be designated.

491—6.16(99D) Owners of racing animals.

6.16(1) Each owner must obtain an owner's license from the commission to enter an animal in a purse race at an Iowa racetrack.

6.16(2) Each owner is subject to the laws of Iowa and the rules promulgated by the commission immediately upon acceptance and occupancy of accommodations from or approved by a facility or upon making entry to run on its track. Owners shall accept the decision of the commission representative on any and all questions, subject to the owner's right of appeal to the commission.

6.16(3) An owner who is under the age of 18 must have a parent or guardian cosign any contractual agreements.

6.16(4) No person or entity that is not the owner of record of a properly registered racing animal that is in the care of a licensed trainer may be licensed as an owner.

6.16(5) Temporary horse owner license.

a. A temporary horse owner license may be issued at the discretion of the commission representative.

b. Any temporary horse owner license shall be effective for 15 calendar days from the date of issuance and shall be valid for a maximum of one start per horse in an official race.

c. Failure to obtain a permanent license within the designated 15 calendar days may result in the automatic revocation of license eligibility and may result in a fine or suspension for the licensee that has failed to comply.

d. Purses shall not be paid to the owner of any racing animal holding a temporary horse owner license. Payments shall be permitted only after the individual has obtained a permanent license.

e. The owner and trainer of a horse must be licensed at least one hour before post time of the race in which the horse is entered. In the case of absentee owners, the trainer must submit a properly executed temporary horse owner license application on behalf of the absentee owner(s) at least one hour before post time of the race in which the horse is entered.

491—6.17(99D) Kennel/stable name.

6.17(1) Licensed owners and lessees wishing to race under a kennel/stable name may do so by applying for a license with the commission on forms furnished by the commission.

6.17(2) A kennel/stable name license is only necessary if the kennel/stable name is a name other than the licensed owner's legal name (full name or last name only), the owner's full name followed by the word "kennel" or "stable," or a licensed partnership or corporation.

6.17(3) In applying to race under a kennel/stable name, the applicant must disclose the identities behind the name and, if applicable, comply with partnership and corporation rules. The application form must appoint one person to act as the agent for the kennel/stable name.

6.17(4) Changes in identities involved in a kennel/stable name must be reported immediately to and approved by the commission representative.

6.17(5) A licensed owner who has registered under a kennel/stable name may at any time cancel the kennel/stable name after giving written notice to the commission.

6.17(6) A kennel/stable name may be changed by registering a new name.

6.17(7) A licensed owner may not register a kennel/stable name that the commission determines to be either misleading to the public or unbecoming to the sport.

6.17(8) Neither sole owners nor partners, after adopting use of a kennel/stable name, may use their real names to reflect ownership that is reflected in the kennel/stable name.

6.17(9) A fee set by the commission shall be assessed for each application for a kennel/stable name license.

6.17(10) No person may register with any racing authority a stable name which has already been registered by another person, or which is the real name of another owner of race horses, or which is the real or stable name of any prominent person who does not own race horses, or which is not plainly distinguishable from that of another registered stable name.

6.17(11) Contract kennels must be licensed with the commission, on forms furnished by the commission, in the name of the kennel booking contract entered into between the contract kennel and the facility; this name shall be listed in the official program as "kennel."

6.17(12) A licensed kennel owner shall not be a party to more than one kennel name at the same facility.

491—6.18(99D) Leases (horse racing only).

6.18(1) No licensee shall lease a racing animal for the purpose of racing at facilities in this state without prior approval of the commission representatives.

6.18(2) Both lessor and lessee must be licensed as owners.

6.18(3) Each licensee who leases a racing animal must submit a copy of that lease to the commission representatives. The lease must contain the conditions of the lease arrangement and the names of all parties and racing animals related to the lease. Failure to submit accurate and complete information under this rule is a violation of these rules.

6.18(4) Both seller and purchaser, or their agents or representatives, of a racing animal that is sold after being registered for racing with a racing association shall immediately notify the commission representatives of the sale and transfer. The commission representatives may require a declaration of the facts of the sale and transfer under oath and penalty of perjury.

491—6.19(99D) Partnerships owning racing animals.

6.19(1) A partnership is defined as a formal or informal arrangement between two or more persons to own a racing animal. All partnerships, excluding husband and wife, must be licensed with the commission on forms furnished by the commission.

6.19(2) The managing partner(s) listed on the application and all parties owning 5 percent or more must be licensed as individual owners.

a. The commission representative may request a partnership to have on file with the commission an agreement whereby the managing partner(s) is designated to be responsible for each racing animal. This agreement must be notarized and must be signed by all partners. A copy of this agreement must be attached to the registration certificate on file in the racing secretary's office.

b. It will be the responsibility of the managing partner(s) to make sure that all parties are eligible for licensure. The commission representative shall deny, suspend, or revoke the license of any partnership in which a member (either qualified or limited by rights or interests held, or controlled by any individual or entity) would be ineligible to be licensed as an owner or to participate in racing.

c. Any owner who is a member of a partnership may be required to list all racing animals that the owner intends to race in Iowa in which an interest is owned (either in whole or in part).

d. All parties to a partnership shall be jointly and severally liable for all stakes, forfeits, and other obligations.

e. An authorized agent may be appointed to represent the partnership in all matters and be responsible for all stakes, forfeits, entries, scratches, signing of claim slips, and other obligations in lieu of the managing partner(s).

6.19(3) A partnership name under which a racing animal races shall be considered a kennel/stable name for purposes of these rules. It will not be necessary for the partnership to obtain a kennel/stable name license.

6.19(4) Any partner's share or partial share of a partnership that owns a racing animal shall not be assigned without the written consent of the other partner(s), the commission representative's approval, and filing with the racing secretary. Any alteration in a partnership structure or percentages must be reported promptly in writing, notarized, signed by all members of the partnership, and filed with the commission.

6.19(5) The commission representative may review the ownership of each racing animal entered to race and shall ensure that each registration certificate or eligibility certificate is properly endorsed by the transferor to the present owner(s). The commission representative may determine the validity for racing purposes of all liens, transfers and agreements pertaining to ownership of a racing animal and may call for adequate evidence of ownership at any time. The commission representative may declare any animal ineligible to race if its ownership, or control of its ownership, is in question.

6.19(6) A fee set by the commission shall be assessed for each application for a partnership license.

491—6.20(99D) Corporations owning racing animals.

6.20(1) All corporations must be duly licensed by the commission on forms furnished by the commission. In addition, any stockholder owning a beneficial interest of 5 percent or more of the corporation must be licensed as an owner. The corporation must submit a complete list of stockholders owning a beneficial interest of 5 percent or more.

6.20(2) The corporation stockholders owning less than 5 percent of the stock of a corporation need not be licensed; however, the commission may request a list of these stockholders. The list shall include names, percentages owned, addresses, social security numbers, and dates of birth. These stockholders shall not have access to the backstretch, to the paddock area, or to the winner's circle other than as guests of a facility, commission representatives, or designated licensees and may be required to submit additional information as requested by the commission representative, which may include a release for confidential information and submission of fingerprint cards; and the commission may assess costs, as required, for criminal history checks. This information shall be supplied to the commission representative within 30 days of the date of the request.

6.20(3) Any and all changes in either the corporation structure or the respective interest of stockholders as described above must be notarized and promptly filed with the commission representatives.

6.20(4) The corporate name under which the corporation does business in Iowa shall be considered a kennel/stable name for purposes of these rules. It shall not be necessary for the corporation to obtain a kennel/stable name license.

6.20(5) A corporation, in lieu of an executive officer, may appoint a racing manager or an authorized agent for the purposes of entry, scratches and the signing of claim slips, among other obligations.

6.20(6) The commission representative may deny, suspend, or revoke the license of a corporation for which a beneficial interest includes or involves any person or entity that is ineligible (through character, moral fitness or any other criteria employed by the commission) to be licensed as an owner or to participate in racing, regardless of the percentage of ownership interest involved.

6.20(7) Any stockholder holding a beneficial interest of 5 percent or more of a corporation must, in addition to being licensed, list any interest owned in all racing animals in which any beneficial interest is owned.

6.20(8) The corporation must pay a prescribed fee to the commission.

491—6.21(99D) Authorized agents for owner entities of racing animals.

6.21(1) Any persons represented by a kennel name, stable name, corporation, partnership, or single person entity may assign an agent for the kennel name, stable name, corporation, partnership, or single person entity. The assigned agent is then authorized to handle matters pertaining to racing, which may include authorization to collect all purses or other moneys.

6.21(2) The application for a license as an authorized agent must be signed by the principal and clearly set forth the powers of the agent, including whether the agent is empowered to collect money from the facility. The application must be notarized and a copy must be filed with the facility.

6.21(3) Changes in an agent's powers or revocation of an agent's authority must be in writing, notarized, and filed with the commission's licensing office and the facility.

6.21(4) The authorized agent must pay a prescribed fee to the commission.

491—6.22(99D) Trainers and assistant trainers of racing animals.

6.22(1) All trainers and assistant trainers of racing animals and their employees are subject to the laws of Iowa and the rules promulgated by the commission immediately upon acceptance and occupancy of accommodations from or approved by the facility or upon making entry to run on its track. Trainers, assistant trainers, and their employees shall accept the decision of the commission representative on any and all questions, subject to their right of appeal to the commission.

6.22(2) Licensing of trainers and assistant trainers. Eligibility:

a. An applicant must be at least 18 years of age to be licensed by the commission as a trainer or assistant trainer.

b. An applicant must be qualified, as determined by the commission representative, by reason of experience, background, and knowledge of racing. A trainer's license from another jurisdiction may be accepted as evidence of experience and qualifications. Evidence of qualifications may require passing one or more of the following:

(1) A written examination.

(2) An interview or oral examination.

(3) A demonstration of practical skills in a "barn test" (horse racing only).

c. An applicant must have a racing animal eligible to race and registered to race at the current race meeting.

491—6.23(99D) Jockeys and apprentice jockeys.

6.23(1) *Eligibility.*

a. An applicant must be at least 18 years of age to be licensed by the commission as a jockey.

b. A jockey shall pass a physical examination given within the previous 12 months by a licensed physician affirming fitness to participate as a jockey. The commission representatives may require that any jockey be reexamined and may refuse to allow any jockey to ride pending completion of such examination.

c. An applicant shall show competence by prior licensing, demonstration of riding ability, or temporary participation in races. An applicant may participate in a race or races, with the commission representative's prior approval for each race, not to exceed five races.

d. A jockey shall not be an owner or trainer of any horse competing at the race meeting where the jockey is riding.

e. A person who has never ridden in a race at a recognized meeting shall not be granted a license as jockey or apprentice jockey.

6.23(2) *Apprentice jockeys.*

a. The conditions of an apprentice jockey license do not apply to quarter horse racing. A jockey's performance in quarter horse racing does not apply to the conditions of an apprentice jockey license.

b. An applicant with an approved apprentice certificate may be licensed as an apprentice jockey.

c. An applicant for an apprentice jockey license must be at least 16 years of age, and if under 18 years of age, the applicant must have written consent of parent or guardian. Before such license is granted, the gaming representative shall ascertain that the applicant has suitable qualifications and aptitude to hold an apprentice jockey's license and that the applicant has not been previously licensed as a jockey under any jurisdiction.

d. Upon compliance with these requirements, the gaming representative may issue an apprentice jockey certificate allowing the holder to claim this allowance only in overnight races.

(1) An apprentice jockey shall ride with a five-pound weight allowance beginning with the first mount and for one full year from the date of the jockey's fifth winning mount.

(2) If, after riding one full year from the date of the fifth winning mount, the apprentice jockey has not ridden 40 winners, the applicable weight allowance shall continue for one more year or until the fortieth winner, whichever comes first. In no event shall a weight allowance be claimed for more than two years from the date of the fifth winning mount, unless an extension has been granted.

(3) The gaming representative may extend the weight allowance of an apprentice jockey when, in the discretion of the gaming representative, the apprentice provides proof of incapacitation for a period of seven or more consecutive days. The allowance may be claimed for a period not to exceed the period such apprentice was unable to ride.

(4) The apprentice jockey must have the apprentice certificate with the jockey at all times and must keep an updated record of the first 40 winners. Prior to riding, the jockey must submit the certificate to the clerk of scales, who will record the apprentice's winning mounts.

6.23(3) *Jockeys from foreign countries.* Upon making application for a license in this jurisdiction, jockeys from a foreign country shall declare that they are holders of valid licenses in their countries, not under suspension, and bound by the rules and laws of this state. To facilitate this process, the jockey shall present a declaration sheet to the commission representative in a language recognized in this jurisdiction.

491—6.24(99D) Jockey agent.

6.24(1) An applicant for a license as a jockey agent shall:

a. Provide written proof of agency with at least one jockey licensed by the commission; and

b. Be qualified, as determined by the commission representative, by reason of experience, background, and knowledge. A jockey agent's license from another jurisdiction may be accepted as evidence of experience and qualifications. Evidence of qualifications may require passing one or both of the following:

(1) A written examination.

(2) An interview or oral examination.

c. An applicant not previously licensed as a jockey agent shall be required to pass a written and oral examination.

6.24(2) A jockey agent may serve as agent for no more than two jockeys and one apprentice jockey.

491—6.25(99D) Driver. In determining eligibility for a driver's license, the board shall consider:

1. Whether the applicant has obtained the required U.S.T.A. license.
2. Evidence of driving experience and ability to drive in a race.
3. The age of the applicant. No person under 18 years of age shall be licensed by the commission as a driver.
4. Evidence of physical and mental ability.
5. Results of a written examination to determine qualifications to drive and knowledge of commission rules.
6. Record of rule violations.

491—6.26(99D) Practicing veterinarians. Every veterinarian practicing on facility premises must have an unrestricted and current license to practice veterinary science issued by the state of Iowa veterinary regulatory authority and shall be licensed by the commission in accordance with the commission rules governing occupational licensing.

491—6.27(99D,99F) Alcohol and drug testing.

6.27(1) *Alcohol prohibition/preliminary breath test.* Licensees whose duties require them to be in a restricted area of a racing facility shall not have present within their systems an amount of alcohol of 0.05 percent or more. A restricted area is a designated area for sample collection, paddock, racetrack, or other area where racing officials carry out the duties of their positions.

Acting with reasonable cause, a commission representative may direct the above licensees to submit to a preliminary breath test. A licensee shall, when so directed, submit to examination.

If the results show a reading of 0.05 percent alcohol content or more, the licensee shall not be permitted to continue duties for that day. For a second violation, the licensee shall not be permitted to continue duties for that day and then shall be subject to fine or suspension by the board or commission representative. For a subsequent violation the licensee may be subject to procedures following positive chemical analysis (see 6.27(3)).

If the results show a reading of 0.10 percent alcohol content or more, the licensee is subject to fine or suspension by the board or commission representative. For a subsequent violation the licensee may be subject to procedures following positive chemical analysis (see 6.27(3)).

6.27(2) *Drug prohibition/body fluid test.* Licensees whose duties require them to be in a restricted area, as defined in subrule 6.27(1), of a racing facility shall not have present within their systems any controlled substance as listed in Schedules I to V of U.S.C. Title 21 (Food and Drug Section 812), Iowa Code chapter 124 or any prescription drug unless it was obtained directly or pursuant to valid prescription or order from a duly licensed physician who is acting in the course of professional practice. Acting with reasonable cause, a commission representative may direct the above licensees to deliver a specimen of urine or subject themselves to the taking of a blood sample or other body fluids at a collection site approved by the commission. In these cases, the commission representative may prohibit the licensee from participating in racing until the licensee evidences a negative test result. Sufficient sample should be collected to ensure a quantity for a split sample when possible. A licensee who refuses to provide the samples herein described shall be in violation of these rules and shall be immediately suspended and subject to disciplinary action by the board or commission representative. All confirmed positive test costs and any related expenses shall be paid for by the licensee. Negative tests shall be at the expense of the commission.

With reasonable cause noted, an on-duty commission representative may direct a licensee to deliver a test. The commission representative shall call the approved laboratory or hospital and provide information regarding the person who will be coming; that the licensee will have a photo ID; the name and number to call when the licensee arrives; to whom and where to mail the results; and who should be called with the results. The licensee will be directed to immediately leave the work area and proceed to an approved laboratory or hospital for testing with the following directions:

1. If under impairment, the licensee must have another person drive the licensee to the laboratory or hospital.
2. On arrival at the laboratory or hospital, the licensee must show the license to the admitting personnel for verification.
3. On arrival at the laboratory or hospital, the licensee shall be required to sign a consent for the release of information of the results to a commission representative.

6.27(3) *Procedures following positive chemical analysis.*

a. After professional evaluation, if the licensee's condition proves nonaddictive and not detrimental to the best interest of racing, and the licensee can produce a negative test result and agrees to further testing at the discretion of the commission representative to ensure unimpairment, the licensee may be allowed to participate in racing.

b. After professional evaluation, should the licensee's condition prove addictive or detrimental to the best interest of racing, the licensee shall not be allowed to participate in racing until the licensee can produce a negative test result and show documented proof of successful completion of a certified alcohol/drug rehabilitation program approved by the commission. The licensee must also agree to further testing at the discretion of the commission representative to ensure unimpairment.

c. For a second violation, a licensee shall be suspended and allowed to enroll in a certified alcohol/drug rehabilitation program approved by the administrator and to apply for reinstatement only at the discretion of the administrator.

These rules are intended to implement Iowa Code chapters 99D and 99F.

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CHAPTER 8
WAGERING AND SIMULCASTING

[Prior to 11/19/86, Racing Commission[693]]
[Prior to 11/18/87, Racing and Gaming Division[195]]

491—8.1(99D) Definitions.

"Administrator" means the administrator or administrator's designee of the Iowa racing and gaming commission.

"Association" means anyone conducting a licensed meet in Iowa.

"Authorized receiver" means a receiver that conducts and operates a pari-mutuel wagering system on the results of contests being held or conducted and simulcast from the enclosures of one or more host associations.

"Betting interest" means a number assigned to a single runner, an entry or a field for wagering purposes.

"Board" means the board of judges or the board of stewards.

"Breakage" means the odd cents by which the amount payable on each dollar wagered in a pari-mutuel pool exceeds a multiple of ten cents. "Breakage" is the net pool minus payoff.

"Commission" means the Iowa racing and gaming commission.

"Commission representative" means an employee of the commission designated to represent them in matters pertaining to the operation of the mutuel department. In the absence of a specifically appointed representative, a commission steward will perform the functions and duties of the commission representative.

"Contest" means a race on which wagers are placed.

"Dead heat" means that two or more runners have tied at the finish line for the same position in the order of finish.

"Double" means a wager to select the winners of two consecutive races and is not a parlay and has no connection with or relation to any other pool conducted by the association and shall not be construed as a "quinella double."

"Entry" means two or more runners are coupled in a contest because of common ties and a wager on one of them shall be a wager on all of them.

"Exacta" (may also be known as "perfecta" or "correcta") means a wager selecting the exact order of finish for first and second in that contest and is not a parlay and has no connection with or relation to any other pool conducted by the association.

"Field" is when the individual runners competing in a contest exceed the numbering capacity of the totalizator and all runners of the higher number shall be grouped together. A wager on one in the field shall be a wager on all. (No "fields" shall be allowed in greyhound racing.)

"Guest association" means an association which offers licensed pari-mutuel wagering on contests conducted by another association (the host) in either the same state or another jurisdiction.

"Host association" means the association conducting a licensed pari-mutuel meeting from which authorized contests or entire performances are simulcast.

"Interstate simulcasting" means the telecast of live audio and visual signals of pari-mutuel racing sent to or received from a state outside the state of Iowa to an authorized racing or gaming facility for the purpose of wagering.

"Intrastate simulcasting" means the telecast of live audio and visual signals of pari-mutuel racing conducted on a licensed pari-mutuel track within Iowa sent to or received from an authorized pari-mutuel facility within Iowa for the purpose of pari-mutuel wagering.

"Law" or *"laws"* means the Iowa Code.

"Minus pool" is when the total amount of money to be returned to the public exceeds what is in the pool because of commission being deducted and the rule stipulation that no mutuel tickets shall be paid at less than $1.10 for each $1.00 wagered.

"Mutuel department" means that area of a racetrack where wagers are made and winning tickets are cashed; where the totalizator is installed and any area used directly in the operation of pari-mutuel wagering.

"Mutuel manager" means an employee of the association who manages the mutuel department.

"Net pool" means the amount remaining in each separate pari-mutuel pool after the takeout percentage, as provided for by Iowa Code section 99D.11, has been deducted.

"No contest" means that a specific race has been declared "no contest" by the stewards in accordance with the pari-mutuel rules and rules of racing for that breed and that certain pools shall be refunded.

"Odds" means the approximate payoffs per dollar based on win pool wagering only on each betting interest for finishing first without a dead heat with another betting interest.

"Official" means that the order of finish for the race is "official" and that payoff prices based upon the "official" order of finish shall be posted.

"Order of finish" means the finishing order of each runner from first place to last place in each race. For horse racing only, the order of finish may be changed by the stewards for a rule infraction prior to posting the "official order of finish."

"Overpayment" is when the payoff to the public resulting from errors in calculating pools and errors occurring in the communication of payoffs results in more money returned to the public than is actually due.

"Pari-mutuel output data" means the data provided by the totalizator other than sales transaction data including, but not limited to, the odds, will pays, race results, and payoff prices.

"Pari-mutuel pool" means the total amount wagered on each separate pari-mutuel pool for payoff purposes.

"Payoff" means the amount distributed to holders of valid winning pari-mutuel tickets in each pool as determined by the official order of finish and includes the amount wagered and profit.

"Pick (n)" means a betting transaction in which a purchaser selects winner(s) of (x) number of contests designated by the association during one racing card.

"Pick three" means a wager to select the winners of three consecutive races and is not a parlay and has no connection with or relation to any other pool conducted by the association.

"Place" means a runner finishing second.

"Place pick (n) pools" means a wager to select the first- or second-place finisher in each of a designated number of contests.

"Place pool" means the total amount of money wagered on all betting interests in each race to finish first or second.

"Post time" is the scheduled starting time for a contest.

"Profit split" is a division of profit among separate winning betting interests or winning betting combinations resulting in two or more payoff prices.

"Quinella" means a wager selecting two runners to finish first and second, regardless of the order of finish, and is not a parlay and has no connection with or relation to any other pool conducted by the association.

"Quinella double" means a wager which consists of selecting the quinella in each of two designated contests and is an entirely separate pool from all other pools and has no connection with or relation to any other pool conducted by the association.

"Runner" means each entrant in a contest, designated by a number as a betting interest.

"Sales transaction data" means the data between totalizator ticket-issuing machines and the totalizator central processing unit for the purpose of accepting wagers and generating, canceling and cashing pari-mutuel tickets and the financial information resulting from processing sales transaction data, such as handle.

"Show" means a runner finishing third.

"Show pool" is the total amount of money wagered on all betting interests in each contest to finish either first, second or third.

"State" means the state of Iowa.

"Stewards" means the board of stewards or board of judges.

"Superfecta" means a wager selecting the exact order of finish for first, second, third, and fourth in that contest and is not a parlay and has no connection with or relation to any other pool conducted by the association.

"Takeout percentage" means the amount authorized by Iowa Code section 99D.11 to be deducted from each separate pari-mutuel pool.

"Totalizator" is a machine for registering wagers, computing odds and payoffs based upon data supplied by each pari-mutuel ticket-issuing machine.

"Tote board" means the board that is used to display to the public the winning approximate odds or approximate payoffs on runner, payoffs, and other pertinent information directly related to a contest.

"Trifecta" means a wager selecting the exact order of finish for first, second, and third in that race and is not a parlay and has no connection with or relation to any other pool conducted by the association.

"Tri-superfecta" means a wager selecting the exact order of finish for first, second and third in the first designated tri-super contest combined with selecting the exact order of finish for first, second, third and fourth in the second designated tri-super contest.

"Twin quinella" means a wager in which the bettor selects the first two finishers, regardless of order, in each of two designated contests. Each winning ticket for the twin quinella must be exchanged for a free ticket on the second twin quinella contest in order to remain eligible for the second-half twin quinella pool.

"Twin superfecta" means a wager in which the bettor selects the first four finishers, in their exact order, in each of two designated contests. Each winning ticket for the first twin superfecta contest must be exchanged for a free ticket on the second twin superfecta contest in order to remain eligible for the second-half twin superfecta pool.

"Twin trifecta" means a wager in which the bettor selects the three runners that will finish first, second, and third in the exact order as officially posted in each of the two designated twin trifecta races.

"Underpayment" is when the payoff to the public resulting from errors in calculating pools and errors occurring in the communication in payoffs results in less money returned to the public than is actually due.

"Win" means a runner finishing first.

"Win pool" means the total amount wagered on all betting interests in each contest to finish first.

491—8.2(99D) General.

8.2(1) *Wagering.* Each association shall conduct wagering in accordance with applicable laws and these rules. Such wagering shall employ a pari-mutuel system approved by the commission. The totalizator shall be tested prior to and during the meeting as required by the commission. All systems of wagering other than pari-mutuel, such as bookmaking and auction-pool selling, are prohibited and any person attempting to participate in prohibited wagering shall be ejected or excluded from association grounds.

8.2(2) *Records.* The association shall maintain records of all wagering so the commission may review such records for any contest including the opening line, subsequent odds fluctuation, the amount and at which window wagers were placed on any betting interest and such other information as may be required. Such wagering records shall be retained by each association and safeguarded for a period of time specified by the commission. The commission may require that certain of these records be made available to the wagering public at the completion of each contest.

The association shall provide the commission with a list of the licensed individuals afforded access to pari-mutuel records and equipment at the wagering facility.

8.2(3) *Pari-mutuel tickets.* A pari-mutuel ticket is evidence of a contribution to the pari-mutuel pool operated by the association and is evidence of the obligation of the association to pay to the holder thereof such portion of the distributable amount of the pari-mutuel pool as is represented by such valid pari-mutuel ticket. The association shall cash all valid winning tickets when such are presented for payment during the course of the meeting where sold, and for a specified period after the last day of the meeting, as provided in paragraph 8.2(4)*"g."*

a. To be deemed a valid pari-mutuel ticket, such ticket shall have been issued by a pari-mutuel ticket machine operated by the association and recorded as a ticket entitled to a share of the pari-mutuel pool, and contain imprinted information as to:

(1) The name of the association operating the meeting.
(2) A unique identifying number or code.
(3) Identification of the terminal at which the ticket was issued.
(4) A designation of the performance for which the wagering transaction was issued.
(5) The contest number for which the pool is conducted.
(6) The type(s) of wagers represented.
(7) The number(s) representing the betting interests for which the wager is recorded.
(8) The amount(s) of the contributions to the pari-mutuel pool or pools for which the ticket is evidence.

b. No pari-mutuel ticket recorded or reported as previously paid, canceled, or nonexistent shall be deemed a valid pari-mutuel ticket by the association. The association may withhold payment and refuse to cash any pari-mutuel ticket deemed not valid, except as provided in paragraph 8.2(4)*"e."*

8.2(4) *Pari-mutuel ticket sales.*

a. Pari-mutuel tickets shall not be sold by anyone other than an association licensed to conduct pari-mutuel wagering.

b. No pari-mutuel ticket may be sold on a contest for which wagering has already been closed and no association shall be responsible for ticket sales entered into but not completed by issuance of a ticket before the totalizator is closed for wagering on such contest.

c. Claims pertaining to a mistake on an issued or unissued ticket must be made by the bettor prior to leaving the seller's window.

d. Payment on winning pari-mutuel wagers shall be made on the basis of the order of finish as purposely posted and declared "official." Any subsequent change in the order of finish or award of purse money(s) as may result from a subsequent ruling by the stewards or administrator shall in no way affect the pari-mutuel payoff. If an error in the posted order of finish or payoff figures is discovered, the official order of finish or payoff prices may be corrected and an announcement concerning the change shall be made to the public.

e. The association shall not satisfy claims on lost, mutilated, or altered pari-mutuel tickets without authorization from the administrator.

f. The association shall have no obligation to enter a wager into a betting pool if unable to do so due to equipment failure.

g. Payment on valid pari-mutuel tickets shall be made only upon presentation and surrender to the association where the wager was made within 60 days following the close of the meet during which the wager was made. Failure to present any such ticket within 60 days shall constitute a waiver of the right to receive payment.

8.2(5) *Advance performance wagering.* No association shall permit wagering to begin more than one hour before scheduled post time of the first contest of a performance unless it has first obtained the authorization of the administrator.

8.2(6) *Claims for payment from pari-mutuel pool.* At a designated location, a written, verified claim for payment from a pari-mutuel pool shall be accepted by the association in any case where the association has withheld payment or has refused to cash a pari-mutuel wager. The claim shall be made on such form as approved by the administrator, and the claimant shall make such claim under penalty of perjury. The original of such claim shall be forwarded to the administrator within 48 hours.

a. In the case of a claim made for payment of a mutilated pari-mutuel ticket which does not contain the total imprinted elements required in paragraph 8.2(3)*"a"* of these general provisions, the association shall make a recommendation to accompany the claim forwarded to the administrator as to whether or not the mutilated ticket has sufficient elements to be positively identified as a winning ticket.

b. In the case of a claim made for payment on a pari-mutuel wager, the administrator shall adjudicate the claim and may order payment thereon from the pari-mutuel pool or by the association, or may deny the claim, or may make such other order as the administrator may deem proper.

8.2(7) *Payment for errors.* If an error occurs in the payment amounts for pari-mutuel wagers which are cashed or entitled to be cashed; and as a result of such error the pari-mutuel pool involved in the error is not correctly distributed among winning ticket holders, the following shall apply:

g. Coupled entries and mutuel fields shall be prohibited in twin superfecta contests.

h. Should a betting interest in the first half of the twin superfecta be scratched, those twin superfecta tickets including the scratched betting interest shall be refunded.

i. Should a betting interest in the second half of the twin superfecta be scratched, an announcement concerning the scratch shall be made and a reasonable amount of time shall be provided for exchange of tickets that include the scratched betting interest. If tickets have not been exchanged prior to the close of betting for the second twin superfecta contest, the ticket holder forfeits all rights to the second-half twin superfecta pool.

j. If, due to a late scratch, the number of betting interests in the second half of the twin superfecta is reduced to fewer than the minimum, all exchange tickets and outstanding first-half winning tickets shall be entitled to the second-half twin superfecta pool for that contest as a single-price pool, but not the twin superfecta carryover.

k. If there is a dead heat or multiple dead heats in either the first or second half of the twin superfecta, all twin superfecta tickets selecting the correct order of finish, counting a betting interest involved in a dead heat as finishing in any dead-heated position, shall be a winner. In the case of a dead heat occurring in:

(1) The first half of the twin superfecta, the payoff shall be calculated as a profit split.

(2) The second half of the twin superfecta, the payoff shall be calculated as a single-price pool.

l. If either of the twin superfecta contests are canceled prior to the first twin superfecta contest, or the first twin superfecta contest is declared "no contest," the entire twin superfecta pool shall be refunded on twin superfecta wagers for that contest and the second half shall be canceled.

m. If the second-half twin superfecta contest is canceled or declared "no contest," all exchange tickets and outstanding first-half winning twin superfecta tickets shall be entitled to the net twin superfecta pool for that contest as a single-price pool, but not the twin superfecta carryover. If there are no such tickets, the net twin superfecta pool shall be distributed as described in 8.3(17)*"c"* of the twin superfecta rules.

n. The twin superfecta carryover may be capped at a designated level approved by the administrator so that if, at the close of any performance, the amount in the twin superfecta carryover equals or exceeds the designated cap, the twin superfecta carryover will be frozen until it is won or distributed under other provisions of this subrule. After the second-half twin superfecta carryover is frozen, 100 percent of the net twin superfecta pool for each individual contest shall be distributed to winners of the first half of the twin superfecta pool.

o. A written request for permission to distribute the twin superfecta carryover on a specific performance may be submitted to the administrator. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

p. Should the twin superfecta carryover be designated for distribution of a specified date and performance, the following precedence will be followed in determining winning tickets for the second half of the twin superfecta after completion of the first half of the twin superfecta:

(1) As a single-price pool to those whose combination finished in correct sequence as the first four betting interests; but if there are no such wagers, then

(2) As a single-price pool to those whose combination included, in correct sequence, the first three betting interests; but if there are no such wagers, then

(3) As a single-price pool to those whose combination included, in correct sequence, the first two betting interests; but if there are no such wagers, then

(4) As a single-price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then

(5) As a single-price pool to holders of valid exchange tickets.

(6) As a single-price pool to holders of outstanding first-half winning tickets.

q. Contrary to 8.3(17)*"d"* of the twin superfecta rules, during a performance designated to distribute the twin superfecta carryover, exchange tickets will be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first half of the twin superfecta. If there are no wagers correctly selecting the first-, second-, third-, and fourth-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first-, second-, and third-place betting interests. If there are no wagers correctly selecting the first-, second-, and third-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first- and second-place betting interests. If there are no wagers correctly selecting the first- and second-place finishers, in their exact order, then exchange tickets shall be issued for combinations correctly selecting the first-place betting interest only. If there are no wagers selecting the first-place betting interest only in the first half of the twin superfecta, all first-half tickets will become winners and will receive 100 percent of that day's net twin superfecta pool and any existing twin superfecta carryover as a single-price pool.

r. The twin superfecta carryover shall be designated for distribution on a specified date and performance only under the following circumstances:

(1) Upon written approval from the administrator as provided in 8.3(17)*"o"* of the twin superfecta rules.

(2) Upon written approval from the administrator when there is a change in the carryover cap or when the twin superfecta is discontinued.

(3) On the closing performance of the meet or split meet.

s. If, for any reason, the twin superfecta carryover must be carried over to the corresponding twin superfecta pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the administrator. The twin superfecta carryover plus accrued interest shall then be added to the second-half twin superfecta pool of the following meet on a date and performance so designated by the administrator.

t. Providing information to any person regarding covered combinations, amount wagered on specific combinations, number of tickets sold, or number of valid exchange tickets is prohibited, unless permission has been granted by the administrator. This shall not prohibit necessary communication between totalizator and pari-mutuel department employees for processing of pool data.

u. The association must obtain written approval from the administrator concerning the scheduling of twin superfecta contests, the percentages of the net pool added to the first-half pool and second-half pool, and the designated amount of any cap to be set on the carryover. Any subsequent changes to the twin superfecta rules require prior approval from the administrator.

491—8.4(99D) Simulcast wagering.

8.4(1) *General.*

a. Rules. All simulcasting must be transmitted live and all wagering on simulcasting shall be made in accordance with the commission rules on pari-mutuel wagering. Commission rules in effect during live racing shall remain in effect during simulcasting where applicable.

b. Transmission. The method used to transmit sales transaction and pari-mutuel output data must be approved by the commission, based upon the determination that provisions to secure the system and transmission are satisfactory.

c. Communication. A communication system between the host track and the receiving facility must be provided which will allow the totalizator operator and the commission representatives at the host track to communicate with the facility receiving the signal. The association is responsible during the racing program's operating hours for reporting any problems or delays to the public.

d. Approval.

(1) All simulcasting, both interstate and intrastate, must be preapproved by the commission or commission representative. Each association conducting simulcasting shall submit an annual written simulcast proposal to the commission with the application for license renewal required by 491—Chapter 1.

(2) The commission representative, upon written request, may grant modifications to the annual simulcast proposal. The commission representative may approve or disapprove simulcast requests at the representative's discretion. Factors that may be considered include, but are not limited to: economic conditions of an association, impact on other associations, impact on the Iowa breeding industry, other gambling in the state, and any other considerations the commission representative deems appropriate.

(3) Once simulcast authority has been granted by the commission or commission representative, it shall be the affirmative responsibility of the association granted simulcast authority to obtain all necessary permission from other states and tracks to simulcast the pari-mutuel races. In addition, the burden of adhering to state and federal laws concerning simulcasting rests on the association at all times.

8.4(2) *Simulcast host.*

a. Every host association, if requested, may contract with an authorized receiver for the purpose of providing authorized users its simulcast. All contracts governing participation in interstate or intrastate pools shall be submitted to the commission representative for prior approval. Contracts shall be of such content and in such format as required by the commission representative.

b. A host association is responsible for the content of the simulcast and shall use all reasonable effort to present a simulcast which offers the viewers an exemplary depiction of each performance.

c. Unless otherwise permitted by the commission representative, every simulcast will contain in its video content a digital display of actual time of day, the name of the host facility from which it emanates, the number of the contest being displayed, and any other relevant information available to patrons at the host facility.

d. The host association shall maintain such security controls, including encryption over its uplink and communications systems, as directed or approved by the commission or commission representative.

e. Financial reports shall be submitted daily or as otherwise directed by the commission representative. Reports shall be of such content and in such format as required by the commission representative.

8.4(3) *Authorized receiver.*

a. An authorized receiver shall provide:

(1) Adequate transmitting and receiving equipment of acceptable broadcast quality which shall not interfere with the closed circuit TV system of the host association for providing any host facility patron information.

(2) Pari-mutuel terminals, pari-mutuel odds displays, modems and switching units enabling pari-mutuel data transmissions, and data communications between the host and guest associations.

(3) A voice communication system between each guest association and the host association providing timely voice contact among the commission representative, placing judges, and pari-mutuel departments.

b. The guest association and all authorized receivers shall conduct pari-mutuel wagering pursuant to the applicable commission rules.

c. Not less than 30 minutes prior to the commencement of transmission of the performance of pari-mutuel contests, the guest association shall initiate a test program of its transmitter, encryption and decoding, and data communication to ensure proper operation of the system.

d. The guest association shall, in conjunction with the host association(s) for which it operates pari-mutuel wagering, provide the commission representative with a certified report of its pari-mutuel operations as directed by the commission representative.

e. Every authorized receiver shall file with the commission an annual report of its simulcast operations and an audited financial statement.

f. The mutuel manager shall notify the commission representative when the transfer of pools, pool totals, or calculations are in question, or if partial or total cancellations occur, and shall suggest alternatives for continued operation. Should loss of video signal occur, wagering may continue with approval from the commission representative.

491—8.5(99D) Interstate common-pool wagering.

8.5(1) *General.*

a. All contracts governing participation in interstate common pools shall be submitted to the commission representative for prior approval. Financial reports shall be submitted daily or as otherwise directed by the commission representative. Contracts and reports shall be of such content and in such format as required by the commission representative.

b. Individual wagering transactions are made at the point of sale in the state where placed. Pari-mutuel pools are combined for computing odds and calculating payoffs but will be held separate for auditing and all other purposes.

c. Any surcharges or withholdings in addition to the takeout shall be applied only in the jurisdiction otherwise imposing such surcharges or withholdings.

d. In determining whether to approve an interstate common pool which does not include the host association or which includes contests from more than one association, the commission representative shall consider and may approve use of a bet type which is not utilized at the host association, application of a takeout rate not in effect at the host association, or other factors which are presented to the commission representative.

e. The content and format of the visual display of racing and wagering information at facilities in other jurisdictions where wagering is permitted in the interstate common pool need not be identical to the similar information permitted or required to be displayed under these rules.

8.5(2) *Guest state participation in interstate common pools.*

a. With the prior approval of the commission representative, pari-mutuel wagering pools may be combined with corresponding wagering pools in the host state, or with corresponding pools established by one or more other jurisdictions.

b. The commission representative may permit adjustment of the takeout from the pari-mutuel pool so that the takeout rate in this jurisdiction is identical to that of the host association, or identical to that of other jurisdictions participating in a merged pool.

c. When takeout rates in the merged pools are not identical, the net-price calculation shall be the method by which the differing takeout rates are applied.

d. Rules established in the state of the host association designated for a pari-mutuel pool shall apply.

e. The commission representative shall approve agreements made between the association and other participants in interstate common pools governing the distribution of breakage between the jurisdictions.

f. If, for any reason, it becomes impossible to successfully merge the bets placed into the interstate common pool, the association shall make payoffs in accordance with payoff prices that would have been in effect if prices for the pool of bets were calculated without regard to wagers placed elsewhere; except that, with the permission of the commission representative, the association may alternatively determine either to pay winning tickets at the payoff prices at the host association, or to declare such accepted bets void and make refunds in accordance with the applicable rules.

8.5(3) *Host state participation in merged pools.*

a. With the prior approval of the commission representative, an association licensed to conduct pari-mutuel wagering may determine that one or more of its contests be utilized for pari-mutuel wagering at guest facilities in other states and may also determine that pari-mutuel pools in guest states be combined with corresponding wagering pools established by it as the host association or comparable wagering pools established by two or more states.

b. When takeout rates in the merged pool are identical, the net-price calculation shall be the method by which the differing takeout rates are applied.

c. Rules of racing established for races held in this state shall also apply to interstate common pools unless the commission representative shall specifically determine otherwise.

d. The commission representative shall approve agreements made between the association and other participants in interstate common pools governing the distribution of breakage between the jurisdictions.

e. Any contract for interstate common pools entered into by the association shall contain a provision to the effect that if, for any reason, it becomes impossible to successfully merge the bets placed in another state into the interstate common pool formed by the association or if, for any reason, the commission representative or association determines that attempting to effect transfer of pool data from the guest state may endanger the association's wagering pool, the association shall have no liability for any measure taken which may result in the guest's wagers not being accepted into the pool.

8.5(4) *Takeout rates in interstate common pools.*

a. With the prior approval of the commission representative, an association wishing to participate in an interstate common pool may change its takeout rate so as to achieve a common takeout rate with all other participants in the interstate common pool.

b. An association wishing to participate in an interstate common pool may request that the commission representative approve a methodology whereby host association and guest association states with different takeout rates for corresponding pari-mutuel pools may effectively and equitably combine wagers from the different states into an interstate common pool.

These rules are intended to implement Iowa Code chapter 99D.

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(18) Representing an owner in making entries and scratches and in all other matters pertaining to racing;

(19) Horses entered as to eligibility and weight or other allowance claimed;

(20) Ensuring the fitness of a horse to perform creditably at the distance entered;

(21) Ensuring that their horses are properly shod, bandaged and equipped;

(22) Presenting their horse in the paddock at least 20 minutes before post time or at a time otherwise appointed before the race in which the horse is entered;

(23) Personally attending to their horses in the paddock and supervising the saddling thereof, unless excused by the stewards;

(24) Instructing the jockey to give their best effort during a race and that each horse shall be ridden to win;

(25) Attending the collection of a urine or blood sample from the horse in their charge or delegating a licensed employee or the owner of the horse to do so; and

(26) Notifying horse owners upon the revocation or suspension of their trainer's license. Upon application by the owner, the stewards may approve the transfer of such horses to the care of another licensed trainer, and upon such approved transfer, such horses may be entered to race.

c. Restrictions on wagering. A trainer with a horse(s) entered in a race shall only be allowed to wager on that horse(s) or that horse(s) in combination with other horses.

d. Assistant trainers.

(1) Upon the demonstration of a valid need, a trainer may employ an assistant trainer as approved by the stewards. The assistant trainer shall be licensed prior to acting in such capacity on behalf of the trainer.

(2) Qualifications for obtaining an assistant trainer's license shall be prescribed by the stewards and the commission and may include those requirements prescribed above.

(3) An assistant trainer may substitute for and shall assume the same duties, responsibilities and restrictions as imposed on the licensed trainer. In which case, the trainer shall be jointly responsible for the assistant trainer's compliance with the rules governing racing.

e. Substitute trainers.

(1) A trainer absent for more than five days from responsibility as a licensed trainer, or on a day in which the trainer has a horse in a race, shall obtain another licensed trainer to substitute.

(2) A substitute trainer shall accept responsibility for the horses in writing and be approved by the stewards.

(3) A substitute trainer and the absent trainer shall be jointly responsible as absolute insurers of the condition of their horses entered in an official workout or race.

10.4(2) *Jockey.*

a. Responsibility.

(1) A jockey shall give a best effort during a race, and each horse shall be ridden to win.

(2) A jockey shall not have a valet attendant except one provided and compensated by the association.

(3) No person other than the licensed contract employer or a licensed jockey agent, may make riding engagements for a rider, except that a jockey not represented by a jockey agent may make their own riding engagements.

(4) A jockey shall have no more than one jockey agent.

(5) No revocation of a jockey agent's authority is effective until the jockey notifies the stewards in writing of the revocation of the jockey agent's authority.

b. Jockey betting.

(1) A jockey shall only be allowed to wager on a race in which the jockey is riding. A jockey shall only be allowed to wager if:

1. The owner or trainer of the horse which the jockey is riding makes the wager for the jockey;
2. The jockey only wagers on the jockey's own mount to win or finish first in combination with other horses in multiple-type wagers; and
3. Records of such wagers are kept and available for presentation upon request by the stewards.

c. Jockey's spouse. A jockey shall not compete in any race against a horse which is trained or owned by the jockey's spouse.

d. Jockey fees.

(1) Schedule. In the absence of a specific contract of special agreement, the following jockey mount fees apply:

Purse	Win	2nd	3rd	Unplaced
$599 and under	$33	$33	$33	$33
$600-$699	36	33	33	33
$700-$999	10% Win Purse	33	33	33
$1,000-$1,499	10% Win Purse	33	33	33
$1,500-$1,999	10% Win Purse	35	33	33
$2,000-$3,499	10% Win Purse	45	40	38
$3,500-$4,999	10% Win Purse	55	45	40
$5,000-$9,999	10% Win Purse	65	50	45
$10,000-$14,999	10% Win Purse	5% Place Purse	5% Show Purse	50
$15,000-$24,999	10% Win Purse	5% Place Purse	5% Show Purse	55
$25,000-$49,999	10% Win Purse	5% Place Purse	5% Show Purse	65
$50,000-$99,999	10% Win Purse	5% Place Purse	5% Show Purse	80
$100,000 and up	10% Win Purse	5% Place Purse	5% Show Purse	105

(2) Entitlement. Any apprentice or contract rider shall be entitled to the regular jockey fees, except when riding a horse owned in part or solely by the contract holder. An interest in the winnings only (such as trainer's percent) shall not constitute ownership.

(3) Fee earned. A jockey's fee shall be considered earned when the jockey is weighed out by the clerk of scales. The fee shall not be considered earned when jockeys, of their own free will, take themselves off their mounts, where injury to the horse or rider is not involved. Any conditions or considerations not covered by the above ruling shall be at the discretion of the stewards.

(4) Multiple engagements. If any owner or trainer engages two or more jockeys for the same race the owner or trainer shall be required to pay each of the jockeys whether the jockey rides in the race or not.

(5) Dead heats. Jockeys finishing a race in a dead heat shall divide equally the totals they individually would have received had one jockey won the race alone. The owners of the horses finishing in the dead heat shall pay equal shares of the jockey fees.

e. Apprentices subject to jockey rules. Unless excepted under these rules, apprentices are subject to all commission rules governing the conduct of jockeys and racing.

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CHAPTER 11
APPLICATION FOR TAX CREDIT BY HORSE RACING LICENSEES
Rescinded IAB 8/17/94, effective 9/21/94

CHAPTER 12
SIMULCASTING
Rescinded IAB 9/6/00, effective 10/11/00

CHAPTER 13
OCCUPATIONAL AND VENDOR LICENSING
[This chapter is intended to incorporate all the licensing rules from 491—Chapters 7, 9, 10 and 22 into one chapter]
[Prior to 11/19/86, Racing Commission[693]]
[Prior to 11/18/87, Racing and Gaming Division[195]]
[491—Chapters 20 to 25, relating to Games of Skill, Chance, Raffles and Bingo, transferred to 481—Chapters 100 to 105, 6/14/89 IAB]
Rescinded IAB 9/6/00, effective 10/11/00

CHAPTERS 14 to 17
Reserved

CHAPTER 18
PRACTICE AND PROCEDURE BEFORE THE DEPARTMENT OF INSPECTIONS AND APPEALS DIVISION OF RACING AND GAMING
[Prior to 11/18/87, Racing and Gaming Division[195]]
Rescinded IAB 12/25/91, effective 1/29/92

CHAPTER 19
PROCEDURE FOR RULE MAKING
[Prior to 11/18/87, see Racing and Gaming Division[195]]
Rescinded IAB 12/25/91, effective 1/29/92

CHAPTER 20
APPLICATION PROCESS FOR EXCURSION BOATS AND RACETRACK ENCLOSURE GAMING LICENSE
[491—Chapters 20 to 25, relating to Games of Skill, Chance, Raffles and Bingo, transferred to 481—Chapters 100 to 105, 6/14/89 IAB]
Rescinded IAB 8/9/00, effective 9/13/00

CHAPTER 21
CRITERIA FOR GRANTING AN EXCURSION BOAT AND RACETRACK ENCLOSURE GAMING LICENSE
[491—Chapters 20 to 25, relating to Games of Skill, Chance, Raffles and Bingo, transferred to 481—Chapters 100 to 105, 6/14/89 IAB]
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Pikes Peak (McGregor Area) ..... Clayton
Pikes Point ..... Dickinson
Pillsbury Point ..... Dickinson
Pilot Grove ..... Iowa
Pilot Knob ..... Hancock
Pine Lake ..... Hardin
Pioneer ..... Mitchell
Plum Grove ..... Johnson
Point Ann ..... Clayton
Prairie Rose ..... Shelby
Preparation Canyon ..... Monona
Red Haw Hill ..... Lucas
Rice Lake ..... Worth-Winnebago
Rock Creek ..... Jasper
Sharon Bluffs ..... Appanoose
Silver Lake ..... Delaware
Spring Lake ..... Greene
Springbrook ..... Guthrie

1. That portion of the recreation area enclosed within the following described boundary: beginning at the southeasternmost corner of the property boundary and following that boundary west to the Raccoon River; then northwesterly along the river to the mouth of Springbrook Creek; then northeasterly along the east bank of Springbrook Creek to a point directly north of the water tower; then southeast to the trail east of the water tower; then along the northern and easternmost portion of that trail system to a point near the pond dam located in the southeasternmost corner of the park; then southeast to the point of beginning.

2. That portion of the recreation area enclosed within the following described boundary: beginning at the easterly southeast boundary corner and proceeding both north and west along County Highway F25 for a distance of 200 yards; then on a straight northeast/southwest line between the two points described above.

3. That portion of the recreation area bounded on the north by the property boundary, on the east by the dirt road known as Oak Avenue intersecting with State Highway 384 and on the southwest by State Highway 384.

4. That portion of the recreation area located on and west of a line approximately 100 yards east of the west property boundary which is east of the dirt road known as Oak Avenue from State Highway 384 north to the north property boundary.

All above areas are posted with "closed to hunting" boundary signs.

Starr's Cave ..... Des Moines
Steamboat Rock ..... Hardin
Stone Park ..... Woodbury
Strasser Woods ..... Polk
Trappers Bay ..... Dickinson
Turkey River Mounds ..... Clayton
Twin Lakes ..... Calhoun
Union Grove ..... Tama
Viking Lake ..... Montgomery

1. That portion of the recreation area enclosed within the following described boundary: on the north, the boundary of the refuge is described as the main entrance road to its "T" intersection with the road to the north boat ramp; thence northeasterly along the boat ramp road to the northwest corner of the boat ramp area to the lake water line.

2. On the south, the boundary is described as a line beginning at the north/south-east/west boundary corner south of the entrance road east to the road leading to the south picnic area parking lot and along that road to the easterly corner of that parking area; thence east to the lake water line.

3. All of the above area is posted with "closed to hunting" boundary signs.

Walnut Woods ..... Polk
Wanata ..... Clay
Wapsipinicon ..... Jones

1. All of the property within the state ownership boundary lines except the portion locally known as the "Oler Property" located in the southeast portion of the property line the boundary of which is marked with wildlife refuge signs.

2. Within the above described area, a circular shaped parcel approximately 400 yards in diameter centered on the enclosed rental shelter.

Waubonsie ..... Fremont
Wildcat Den ..... Muscatine
Woodman Hollow ..... Webster

52.1(2) *Wildlife refuges.*

a. Restrictions. The following areas under the jurisdiction of the department of natural resources are established as game refuges where posted. It shall be unlawful to hunt, pursue, kill, trap, or take any wild animal, bird, or game on these areas at any time, and no one shall carry firearms thereon, except where and when specifically authorized by the department of natural resources. It shall also be unlawful to trespass in any manner on the following areas, where posted, between the dates of September 10 and December 31 of each year, both dates inclusive, except that department personnel and law enforcement officials may enter the area at any time in performance of their duties, and hunters, under the supervision of department staff, may enter when specifically authorized by the department of natural resources.

Area	County
Lake Icaria	Adams
Rathbun Area	Appanoose
Wildlife Exhibit Area	Boone
Sweet Marsh	Bremer
Storm Lake Islands	Buena Vista
Big Marsh	Butler
South Twin Lake	Calhoun
Round Lake	Clay
Little River Recreation Area	Decatur
Allen Green Refuge	Des Moines
Henderson	Dickinson
Kettleson Area	Dickinson
Spring Run	Dickinson
Ingham Lake	Emmet
Forney Lake	Fremont
Riverton Area	Fremont
Dunbar Slough	Greene
Bays Branch	Guthrie
Iowa River Corridor Wildlife Area	Iowa
Green Island Area	Jackson

Hawkeye Wildlife Area	Johnson
Muskrat Slough	Jones
Colyn Area	Lucas
Red Rock Area	Marion, Polk, Warren
Badger Lake	Monona
Tieville/Decatur Bend	Monona
Five Island Lake	Palo Alto
Big Creek-Saylorville Complex	Polk
Chichaqua Area	Polk
Cottonwood Area	Polk
I-35 Area	Polk
Smith Area	Pottawattamie
Lake View Area	Sac
McCausland	Scott
Princeton Area	Scott
Prairie Rose Lake	Shelby
Otter Creek Marsh	Tama
Green Valley Lake	Union
Three Mile Lake	Union
Lake Sugema	Van Buren
Rice Lake Area	Winnebago
Snyder Lake	Woodbury
Elk Creek Marsh	Worth
Lake Cornelia	Wright

b. Pool Slough Wildlife Area in Allamakee County. Rescinded IAB 9/2/92, effective 10/7/92.

52.1(3) *Open water refuges.* Rescinded 6/17/98, effective 7/22/98.

This rule is intended to implement Iowa Code sections 481A.5, 481A.6, 481A.8 and 481A.39.

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TITLE VIII
SEASONS, LIMITS, METHODS OF TAKE

CHAPTER 76
UNPROTECTED NONGAME
[Prior to 12/31/86, Conservation Commission[290] Ch 16]

571—76.1(481A) Species. Certain species of nongame shall not be protected.

76.1(1) *Birds.* The European starling and the house sparrow shall not be protected.

76.1(2) *Reptiles.* Rescinded IAB 9/6/00, effective 10/11/00.

This rule is intended to implement Iowa Code sections 481A.38, 481A.39, and 481A.42.

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CHAPTER 91
WATERFOWL AND COOT HUNTING SEASONS
[Prior to 12/31/86, Conservation Commission[290] Ch 107]

571—91.1(481A) Ducks (split seasons). Open season for hunting ducks shall be September 23 to September 27, 2000; October 14 to December 7, 2000, in that portion of the state lying north of a line beginning on the Nebraska-Iowa border at State Highway 175, southeast to State Highway 37, east to U.S. Highway 59, south to I-80 and along I-80 east to the Iowa-Illinois border; and September 23 to September 27, 2000; October 14 to December 7, 2000, in that portion of the state lying south of a line beginning on the Nebraska-Iowa border at State Highway 175, southeast to State Highway 37, east to U.S. Highway 59, south to I-80 and along I-80 east to the Iowa-Illinois border. Shooting hours are one-half hour before sunrise to sunset each day.

91.1(1) *Bag limit.* The daily bag limit of ducks is 6, and may include no more than 4 mallards (no more than 2 of which may be females), 1 black duck, 2 wood ducks, 1 pintail, 3 scaup, 3 mottled ducks, 2 redhead and 1 canvasback. The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

91.1(2) *Possession limit.* The possession limit is twice the daily bag limit.

571—91.2(481A) Coots (split season). Same as duck season dates and shooting hours.

91.2(1) *Bag and possession limits.* Daily bag limit is 15 and possession limit is 30.

91.2(2) Reserved.

571—91.3(481A) Geese. The north goose hunting zone is that part of Iowa north of a line beginning on the Nebraska-Iowa border at State Highway 175, east to State Highway 37, southeast to U.S. Highway 59, south to I-80 and along I-80 to the Iowa-Illinois border. The south goose hunting zone is the remainder of the state. The open season for hunting Canada geese only is September 9 and 10, 2000, west of State Highway 63 in the north goose hunting zone only, except on the Big Marsh Wildlife Area where the season will remain closed. The open season for hunting Canada geese, white-fronted geese and brant, collectively referred to as dark geese, is September 30 to December 8, 2000, in the north goose hunting zone and September 30 to October 15 and November 4 to December 27, 2000, in the south goose hunting zone. The open season for hunting white- and blue-phase snow geese and Ross' geese, collectively referred to as light geese, is September 30, 2000, to January 14, 2001, statewide. Light geese may also be taken under the conservation order from the U.S. Fish and Wildlife Service from February 15, 2001, through April 15, 2001. Shooting hours are one-half hour before sunrise to sunset, except that during the conservation order shooting hours will be extended to one-half hour after sunset each day.

91.3(1) *Bag limit.* Daily bag limit is 2 Canada geese, 2 white-fronted geese, 2 brant and 20 light geese.

91.3(2) *Possession limit.* Possession limit is twice the daily bag limit and no possession limit on light geese.

571—91.4(481A) Closed areas. Waterfowl and coots may be hunted statewide except in specific areas.

91.4(1) *Waterfowl and coots.* There shall be no open season for ducks, coots and geese on the east and west county road running through sections 21 and 22, township 70 north, range 43 west, Fremont County; three miles of U.S. Highway 30, located on the south section lines of sections 14, 15, and 16, township 78 north, range 45 west, Harrison County; on the county roads immediately adjacent to, or through, Union Slough National Wildlife Refuge, Kossuth County; Louisa County Road X61 from the E-W centerline of section 29, township 74 north, range 2 west, on the south, to the point where it crosses Michael Creek in section 6, township 74 north, range 2 west on the north, and also all roads through or adjacent to sections 7, 18, and 19 of this same township and roads through or adjacent to sections 12 and 13, township 74 north, range 3 west; the levee protecting the Green Island Wildlife Area from the Mississippi River in Jackson County wherever the levee is on property owned by the United States or the state of Iowa; certain dikes at Otter Creek Marsh, Tama County, where posted as such; and the NE¼, section 23 and the N½, section 24, all in township 70 north, range 19 west, Appanoose County, including county roads immediately adjacent thereto; and all privately owned lands in the S½, section 30, township 71 north, range 20 west, Lucas County, including the county road immediately adjacent thereto; Cerro Gordo County Road S14 and its right-of-way, between its junction with U.S. Highway 18 and County Road B-35, and portions of Clear Lake and Ventura Marsh; where posted as such in Cerro Gordo County. That portion of Summit Lake located south of State Highway 25 in the west ½ of the NW¼ of section 2 (22 acres), and the west ½ of section 3 (100 acres), T72N, R31W in Union County.

91.4(2) *Canada geese.* There shall be no open season on Canada geese in certain areas described as follows:

a. Area one. Portions of Emmet County bounded as follows: Beginning at the northwest corner of section 3, township 98 north, range 33 west; thence east on the county road a distance of five miles; thence south on the county road a distance of three and one-half miles; thence west on the county road a distance of four miles; then continuing west one mile to the southwest corner of the northwest one-quarter of section 22, township 98 north, range 33 west; thence north on the county road to the point of beginning.

b. Area two. Portions of Clay and Palo Alto Counties bounded as follows: Beginning at the junction of County Roads N14 and B17 in Clay County, thence south four miles on N14 (including the road right-of-way), thence east one-half mile, thence east one mile on a county road, thence north one mile on a county road, thence east one mile on a county road to County Road N18, thence south and east approximately one mile on N18, thence east one and one-half miles on a Palo Alto County Road, thence north two miles on a county road, thence east approximately one and one-half miles on a county road, thence north two miles on a county road to County Road B17, thence west six miles to the point of beginning.

c. Area three. A portion of Dickinson County bounded as follows: Beginning at a point four and one-half miles west of the east junction of Highways 9 and 71; thence north along a county road to its junction with Dickinson County Road A15; thence generally north about three miles along A15 to its junction with Dickinson County Road M56; thence east along A15 about one and one-half miles; thence north along county roads to the Iowa-Minnesota state line; thence west along the state line seven and one-half miles; thence south along Highway 86 five miles to Highway 9; thence east along Highways 9 and 71 to the point of beginning.

d. Area four. Portions of Winnebago and Worth Counties bounded as follows: Beginning at a point two and one-half miles east of Lake Mills, Iowa, at the junction of State Highway 105 and County Road S10 (also named Bluebill Ave.); thence south along County Road S10 (including the right-of-way), i.e., Bluebill Ave., three-fourths mile to 448th St.; thence east three-fourths mile on 448th St. to Cardinal Ave.; thence south one-fourth mile to 445th St.; thence east one-fourth mile to Cedar Ave.; thence south one-half mile on Cedar Ave. to 440th St.; thence east three-fourths mile on 440th St. to Dove Ave.; thence south on Dove Ave. one-half mile to 435th St.; thence east one-fourth mile on 435th St. to Dove Ave.; thence south on Dove Ave. to County Road A34; thence east one mile on County Road A34 (including the right-of-way) to Evergreen Ave.; thence south two miles to County Road A38 (also named 410th St.); thence west eight and one-half miles along County Road A38 including the right-of-way; thence north four miles along County Road R72 (also named 210th Ave.) (including the right-of-way); thence east along State Highway 69 approximately one mile (including the right-of-way) to the intersection with State Highway 105; thence east along State Highway 105 (including the right-of-way) five miles to the point of beginning.

e. Area five. On any federal or state-owned lands or waters of the Rathbun Reservoir Project west of State Highway 142 in Appanoose, Lucas, Monroe, and Wayne Counties, including all federal, state, and county roads through or immediately adjacent thereto.

f. Area six. On Brown's Slough and the Colyn Area in Lucas County.

g. Area seven. Portions of Guthrie and Dallas Counties bounded as follows: Beginning at the junction of State Highways 4 and 44 in Panora; thence north along State Highway 4 (including the right-of-way) to County Road F25; thence east along County Road F25 (including the right-of-way) to York Avenue; thence south along York Avenue 1 mile (including the right-of-way) to 170th Street; thence east one-half mile (including the right-of-way) to A Avenue in Dallas County; thence south on A Avenue 5 miles (including the right-of-way) to State Highway 44; thence west along State Highway 44 (including the right-of-way) to the point of beginning.

h. Area eight. A portion of Adams County bounded as follows: Beginning at the intersection of State Highway 148 and Adams County Road N53 in Corning; thence east and north along Adams County Road N53 approximately 9.5 miles to Adams County Road H24 (including the right-of-way); thence west along Adams County Road H24 (including the right-of-way) about 8 miles; thence south along Elm Avenue about 6 miles to Adams County Road H34; thence east along Adams County Road H34 (including the right-of-way) to State Highway 148; thence north along Highway 148 about three-fourths mile to the point of beginning.

i. Area nine. Portions of Monona and Woodbury Counties bounded as follows: Beginning at the Iowa-Nebraska state line along the Missouri River in Monona County at the southwest corner of the NW¼ of section 18, township 82 north, range 45 west; extending one and one-half miles east along an unnumbered county road to the center of section 17, township 82 north, range 45 west; then north one mile along county road to the center of section 8, township 82 north, range 45 west; thence east one mile along county road to the intersection of Monona County Roads K45 and E60; thence north and northwest approximately 20 miles along Monona County Road K45 to the junction with State Highway 970 in Woodbury County; thence continuing northwest along State Highway 970 (including the right-of-way) approximately 13 miles to the intersection with 220th Street; thence west approximately 3 miles along the Sergeant Bluff Drainage Ditch to the Iowa-Nebraska state line along the Missouri River; thence southerly along the state line approximately 43 miles to the point of beginning.

j. Area ten. Portions of Winnebago and Hancock Counties bounded as follows: On all lands and waters managed by the Winnebago County Conservation Board at Thorpe Park, the Thorpe Recreation Area and the Russ Wildlife Area in Winnebago and Hancock Counties.

k. Area eleven. Starting at the junction of the navigation channel of the Mississippi River and the mouth of the Maquoketa River in Jackson County, proceeding southwesterly along the high-water line on the west side of the Maquoketa River to U.S. Highway 52, south along U.S. Highway 52 (including the right-of-way) to the intersection with County Road Z-40, south on County Road Z-40 (including the right-of-way) to the junction with U.S. Highway 64, east on U.S. Highway 64 to the Sioux Line Railroad at Sabula, north and west along the Sioux Line Railroad to the east edge of section 27, township 85N, range 6 east, north to the intersection of sections 27 and 22, west along the common boundary of sections 27 and 22 and sections 28 and 21, township 85N, range 6 east, to the Green Island levee, northeast along a line following the Green Island levee to the center of the navigational channel of the Mississippi River, north along the center of the navigational channel to the point of beginning.

l. Area twelve. Portions of Polk, Warren, Jasper, and Marion Counties bounded as follows: Beginning at the junction of County Road G40 and Iowa Highway 14 in Marion County; thence north along Highway 14 to Iowa Highway 163 in Jasper County; thence north and west along Highway 163 to State Highway 316; thence south and east along Highway 316 (including the right-of-way) to Iowa Highway 5; thence south and east along Highway 5 to County Road G40 in Marion County; thence east along County Road G40 to the point of beginning.

m. Area thirteen. Portions of Van Buren and Davis Counties bounded as follows: Beginning at the junction of Iowa Highway 16 and Iowa Highway 98 in Van Buren County; thence east and south along Highway 16 (including the right-of-way) to Iowa Highway 1 in Van Buren County; thence south along Iowa Highway 1 (including the right-of-way) to County Road J40; thence east along County Road J40 (including the right-of-way) to Iowa Highway 2 in Van Buren County; thence south and east along Highway 2 (including the right-of-way) to Iowa Highway 81 in Van Buren County; thence south and west along Highway 81 (including the right-of-way) to the Iowa-Missouri border; thence west along the Iowa-Missouri border to Iowa Highway 15 in Van Buren County; thence north along Highway 15 (including the right-of-way) to Iowa Highway 2 in Van Buren County; thence west along Iowa Highway 2 (including the right-of-way) to County Road V42 in Davis County; thence north along County Road V42 (including the right-of-way) to County Road J40 in Davis County; thence east and south along County Road J40 (including the right-of-way) to County Road V64 in Van Buren County; thence north along County Road V64 (including the right-of-way) to Iowa Highway 98 in Van Buren County; thence north along Highway 98 (including the right-of-way) to the point of beginning.

n. Area fourteen. Portions of Bremer County bounded as follows: Beginning at the northeast corner of section 4, township 93 north, range 11 west; thence south 16 miles, then east one-half mile, then south one mile along Bremer County Road V56; thence west 4½ miles along a county road right-of-way to Bremer County Road V49; thence north 4 miles along Bremer County Road V49 to Iowa Highway 3; thence west 2 miles along Iowa Highway 3 to Bremer County Road V43; thence north 4 miles along Bremer County Road V43 to Bremer County Road C33; thence west 4 miles along Bremer County Road C33 to U.S. Highway 63; thence north 9 miles along U.S. Highway 63 to the Bremer-Chickasaw County line; thence east 10 miles along the Bremer-Chickasaw County line to the point of beginning.

o. Area fifteen. Portions of Butler County bounded as follows: Beginning at the junction of Iowa Highway 3 and County Road T16, thence south 8 miles on County Road T16 (including the right-of-way) to its intersection with County Road C55, thence east 9 miles on County Road C55 (including the right-of-way) to its intersection with Iowa Highway 14, thence north 8 miles on Iowa Highway 14 (including the right-of-way) to its intersection with Iowa Highway 3, thence west 9 miles on Iowa Highway 3 (including the right-of-way) to the point of beginning; but, excluding those lands within this bounded area east of Jay Avenue managed by the department of natural resources as Big Marsh Management Area that are not posted as closed to Canada goose hunting.

p. Area sixteen. A portion of Union County bounded as follows: Beginning at the intersection of U.S. Highways 34 and 169 near Thayer; thence west along U.S. Highway 34 (including the right-of-way) approximately nine miles to Union County Road P43 (also named Twelve Mile Lake Road); thence north along Union County Road P43 (including the right-of-way) approximately seven miles, thence east on an unnumbered county road approximately four and one-half miles; thence south on an unnumbered county road to Union County Road H17, thence east along Union County Road H17 (including the right-of-way) to U.S. Highway 169; thence south along U.S. Highway 169 (including the right-of-way) to the point of beginning.

q. Area seventeen. Portions of Fremont and Mills Counties bounded as follows: Beginning at the Iowa-Nebraska state line along the Missouri River in Fremont County at the southwest corner of the SE ¼ of section 23, township 69 north, range 44 west; extending east approximately one-half mile to Fremont County Road J-26, thence six and one-half miles east on Fremont County Road J-26 (including the right-of-way) to the intersection with Fremont County Road L-44; thence northerly approximately ten miles on Fremont County Road L-44 (including the right-of-way) to the intersection with Fremont County Road J-10, thence approximately three miles northwest along the base of the Loess Hills to Mills County Road H-36 in the NW ¼ of section 27, township 71 north, range 43 west, thence northerly approximately seven miles along Mills County Road H-36 (including the right-of-way) to the intersection with Iowa Highway 385; thence approximately two and one-fourth miles southwesterly along Iowa Highway 385 (including the right-of-way) to the intersection with U.S. Highway 34, thence approximately three miles west on U.S. Highway 34 (including the right-of-way) to the Iowa-Nebraska state line along the Missouri River, thence southerly along the state line approximately 20 miles to the point of beginning.

91.4(3) *Forney Lake.* The entire Forney Lake area, in Fremont County, north of the east-west county road, shall be closed to waterfowl hunting prior to the opening date for taking geese on the area each year.

571—91.5(481A) Canada goose hunting within closed areas.

91.5(1) *Ruthven, Kettleson-Hogsback, Ingham Lake and Rice Lake closed areas.*

a. Purpose. The hunting of Canada geese in closed areas is being undertaken to allow landowners or tenants who farm in these closed areas to hunt Canada geese on land they own or farm in the closed area.

b. Criteria.

(1) Landowners and tenants who own or farm land in the closed areas will be permitted to hunt Canada geese in the closed areas for three years. This experimental hunting opportunity will be evaluated by the landowners and the DNR following each season, at which time changes may be made.

(2) Landowners and those individuals named on the permit according to the criteria specified in paragraph (9) of this subrule will be permitted to hunt in the closed area. Tenants may obtain a permit instead of the landowner if the landowner transfers this privilege to the tenant. Landowners may choose, at their discretion, to include the tenant and those individuals of the tenant's family specified in paragraph (9) of this subrule on their permit. Landowners may assign the permit for their land to any landowner or tenant who owns or farms at least eight acres inside the closed area. Assigned permits must be signed by both the permittee and the landowner assigning the permit.

(3) Landowners must hold title to, or tenants must farm by a rent/share/lease arrangement, at least eight acres inside the closed area to qualify for a permit.

(4) No more than one permit will be issued to corporations, estates, or other legal associations that jointly own land in the closed area. No individual may obtain more than two permits nor may an individual be named as a participant on more than two permits.

(5) Persons holding a permit can hunt with those individuals named on their permit as specified in paragraph (9) of this subrule on any property they own (or rent/share/lease in the case of tenants) in the closed area provided their activity complies with all other regulations governing hunting. Nothing herein shall permit the hunting of Canada geese on public property within the closed area.

(6) Persons hunting under this permit must adhere to all municipal, county, state and federal regulations that are applicable to hunting and specifically applicable to Canada goose hunting including, but not limited to: daily limits, possession limits, shooting hours, methods of take, and transportation. Hunting as authorized by this rule shall not be used to stir or rally waterfowl.

(7) Hunting within the closed area will be allowed through October 15.

(8) Permit holders will be allowed to take eight Canada geese per year in the closed area.

(9) Permits will be issued only to individual landowners or tenants; however, permit holders must specify, when requesting a permit, the names of all other individuals qualified to hunt on the permit. Individuals qualified to hunt on the permit shall include the landowners or tenants and their spouses, children, children's spouses, grandchildren, siblings and siblings' spouses only.

c. Procedures.

(1) Permits can be obtained from the local conservation officer at the wildlife unit headquarters within the closed area at announced times, but no later than 48 hours before the first Canada goose season opens. The permit will be issued to an individual landowner or tenant and must list the names of all individuals that may hunt with the permittee. The permit will also contain a description of the property covered by the permit. The permit must be carried by a member of the hunting party whose name is listed on the permit. Conservation officers will keep a record of permittees and locations of properties that are covered by permits.

(2) Eight consecutively numbered tags will be issued with each permit. Geese will be tagged around the leg immediately upon being reduced to possession and will remain tagged until delivered to the person's abode. Within one week of the close of hunting within the closed area during at least the first three years the hunt is permitted, unused tags must be turned in at the wildlife unit headquarters within the closed area or the permittee must report the number of geese killed. Failure to turn in unused tags or report the number of geese killed within the specified time period may result in the permittee's forfeiting the opportunity to hunt within the closed area the following year.

(3) No one may attempt to take Canada geese under this permit unless the person possesses an unused tag for the current year.

(4) No landowner or tenant shall be responsible or liable for violations committed by other individuals listed on the permit issued to the landowner or tenant.

91.5(2) Reserved.

571—91.6(481A) Youth waterfowl hunt. A special youth waterfowl hunt will be held statewide on October 7 and 8, 2000. Youth hunters must be 15 years old or younger. Each youth hunter must be accompanied by an adult 18 years old or older. The youth hunter does not need to have a hunting license or stamps. The adult must have a valid hunting license and habitat stamp if normally required to have them to hunt and a state waterfowl stamp. Only the youth hunter may shoot ducks, coots and Canada geese. The adult may hunt for any other game birds for which the season is open. The daily bag limits are the same as for the regular waterfowl season, as defined in subrule 91.1(1), except the season for light geese will not be open. The possession limit is the same as the daily bag limit. All other hunting regulations in effect for the regular waterfowl season apply to the youth hunt.

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, and 481A.48.

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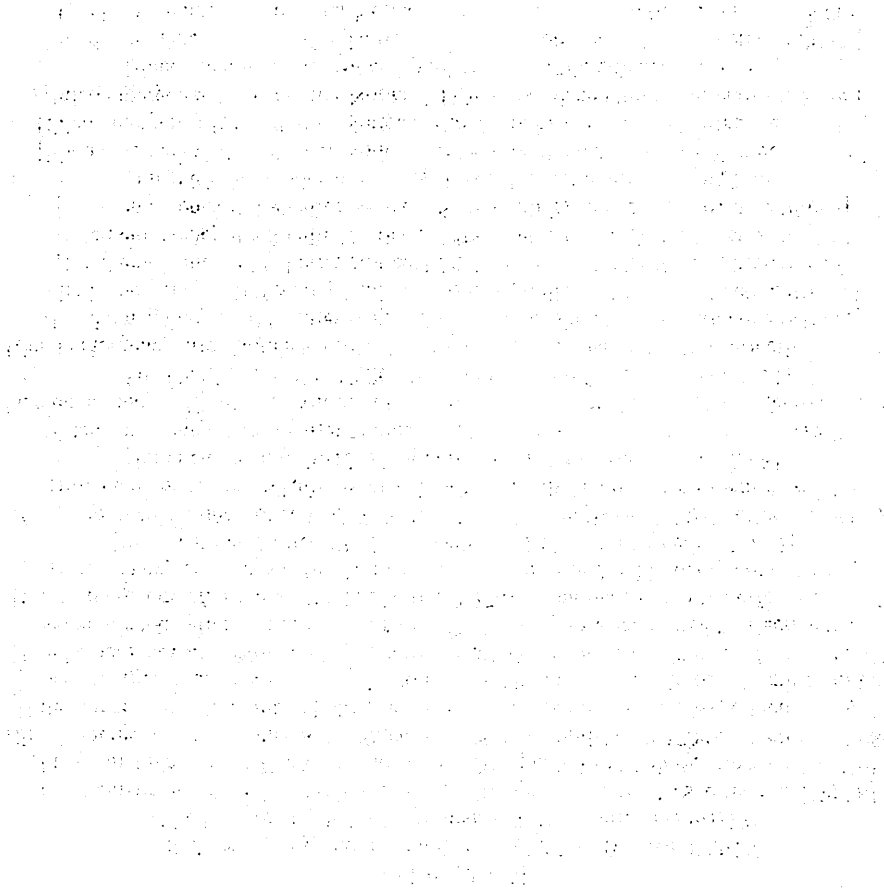

j. Zone 10. Beginning at the point where U.S. Highway 63 crosses the Minnesota-Iowa state line; thence along U.S. Highway 63 to state Highway 3; thence along state Highway 3 to U.S. Highway 169; thence along U.S. Highway 169 to the Minnesota-Iowa state line; thence along the Minnesota-Iowa state line to the point of beginning.

94.5(2) *Bow season.* Bow and arrow deer licenses will be valid only in the zone designated on the license.

94.5(3) *Regular gun season.* Regular gun season deer licenses will be valid only in the zone designated on the license.

94.5(4) *Special muzzleloader season.* Special muzzleloader deer licenses will be valid only in the zone designated on the license.

94.5(5) *Closed areas.* There shall be no open season for hunting deer on the county roads immediately adjacent to or through Union Slough National Wildlife Refuge, Kossuth County, where posted accordingly.

571—94.6(483A) License quotas. A limited number of deer licenses will be issued in zones as follows:

94.6(1) *Zone license quotas.* Nonresident license quotas are as follows:

	Any Sex		Antlerless
	All Methods	Bow	
Zone 1.	240	84	
Zone 2.	240	84	
Zone 3.	600	210	
Zone 4.	1200	420	
Zone 5.	1500	525	
Zone 6.	780	273	
Zone 7.	360	126	
Zone 8.	240	84	
Zone 9.	600	210	
Zone 10.	240	84	
Total	6000	2100	1500 statewide

94.6(2) *Quota applicability.* The license quota issued for each zone will be the quota for all bow, regular gun and special muzzleloader licenses combined. No more than 6,000 any sex licenses will be issued for all methods of take combined, for the entire state. Of the 6,000 licenses, no more than 35 percent in any zone can be bow licenses. A maximum of 1,500 antlerless-only licenses, regardless of weapon, will be issued for the entire state.

571—94.7(483A) Method of take. Permitted weapons and devices vary according to the type of season.

94.7(1) *Bow season.* Except as provided in 571—15.5(481A), only recurve, compound or longbows with broadhead arrows will be permitted in taking deer during the bow season. Arrows with chemical or explosive pods are not permitted.

94.7(2) *Regular gun season.* Only 10-, 12-, 16-, or 20-gauge shotguns, shooting single slugs only, and flintlock or percussion cap lock muzzleloaded rifles or muskets of not less than .44 nor larger than .775 caliber, shooting single projectiles only, and handguns as described in 571—subrule 106.7(3), will be permitted in taking deer during the regular gun season.

94.7(3) *Special muzzleloader season.* Flintlock or percussion cap lock muzzleloaded rifles or muskets of not less than .44 nor larger than .775 caliber, shooting single projectiles only, bows as described in 94.7(1), and handguns as described in 106.7(3), will be permitted in taking deer during the special muzzleloader seasons.

94.7(4) *Prohibited weapons and devices.* The use of dogs, domestic animals, salt or bait, rifles other than muzzleloaded, handguns except as provided in 94.7(3), crossbows except as otherwise provided, automobiles, aircraft, or any mechanical conveyances or device including electronic calls is prohibited except that paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. "Bait" means grain, fruit, vegetables, nuts, hay, salt or mineral blocks or any other natural food materials, or by-products of such materials transported to or placed in an area for the intent of attracting wildlife. Bait does not include food placed during normal agricultural activities. "Paraplegic" means an individual with paralysis of the lower half of the body with involvement of both legs, usually due to disease of or injury to the spinal cord.

It shall be unlawful for a person, while hunting deer, to have on their person a rifle other than a muzzleloading rifle that meets the requirements of 571—subrule 106.7(3).

94.7(5) *Discharge of firearms from highway.* No person shall discharge a shotgun shooting slugs or muzzleloader from a highway during the regular gun seasons in all counties and parts of counties north of Highway 30 and west of Highway 63. A "highway" means the way between property lines open to the public for vehicle traffic as defined in Iowa Code section 321.1(78).

571—94.8(483A) Application procedures. All applications for nonresident deer hunting licenses shall be made on forms provided by the department of natural resources and returned to the department of natural resources office in Des Moines, Iowa. No one shall submit more than one application. Applications for nonresident deer hunting licenses must be accompanied by the appropriate license fee. The nonresident license fee shall be $150.50. Party applications with no more than four individuals will be accepted. Applications received in the natural resources office in Des Moines, Iowa, by 4:30 p.m. on the second Friday in June will be processed. If applications received are in excess of the license quota for any hunting zone, a drawing will be conducted to determine which applicants shall receive licenses. If licenses are still available in any zone, licenses will be issued as applications are received until quotas are filled or the last Friday in September, whichever occurs first. Any incomplete or improperly completed application or any application not meeting the above conditions will not be considered as a valid application.

Applicants who are unsuccessful in the drawing for a nonresident deer license will be given preference in the next year's application process. Applicants who fail to apply in the second year cannot carry their preference into future years. Applicants with preference may apply for any zone in the second year. Licenses for each zone will be drawn first from among applicants with preference. If licenses are still available after the preference drawing, a second drawing will be held from all other applicants. Preference does not guarantee a license.

The department may develop media/telecommunication options that would allow for additional methods of obtaining a deer license. Methods and deadlines may be determined by the department as a part of the alternative methods developed.

571—94.9(483A) Transportation tag. A transportation tag bearing the license number of the licensee, year of issuance, and date of kill properly shown shall be visibly attached to the carcass of each deer, in such a manner that the tag cannot be removed without mutilating or destroying the tag, within 15 minutes of the time the deer is killed or before the carcass of the deer is moved in any manner, whichever first occurs. This tag shall be proof of possession and shall remain affixed to the carcass until such time as the animal is processed for consumption. The head, and antlers if any, shall remain attached to all deer while being transported by any means whatsoever from the place where taken to the processor or commercial preservation facility, or until the deer has been processed for consumption.

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.1 and 483A.8.

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CHAPTER 95
NONRESIDENT WILD TURKEY FALL HUNTING

Rescinded, IAB 5/30/90, effective 7/4/90
See 571—Chapter 99

101.212(272C) Grounds for discipline
101.213(272C) Method of discipline: licensed funeral establishments and licensed cremation establishments
101.214(272C) Disciplinary proceedings for funeral and cremation establishments
101.215(272C) Peer review committees
101.216 to 101.299 Reserved

PROCEDURES FOR USE OF CAMERAS AND RECORDING DEVICES AT OPEN MEETINGS
101.300(21) Conduct of persons attending meetings

CHAPTERS 102 to 119
Reserved

HEARING AID DEALERS

CHAPTER 120
BOARD OF EXAMINERS FOR THE LICENSING AND REGULATION OF HEARING AID DEALERS
120.1(154A) General information
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120.8(154A) Filing and investigation of charges
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CHAPTER 121
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121.4(154A) Approval of sponsors, programs, and activities for continuing education
121.5(154A) Reporting continuing education by licensee
121.6(154A) Reinstatement of lapsed license
121.7(154A,272C) Continuing education waiver for active practitioners
121.8(154A,272C) Continuing education waiver for inactive practitioners
121.9(154A,272C) Continuing education waiver for disability or illness
121.10(154A,272C) Reinstatement of inactive practitioners
121.11(272C) Hearings

CHAPTERS 122 to 129
Reserved

MASSAGE THERAPISTS

CHAPTER 130
MASSAGE THERAPISTS

130.1(152C) Definitions
130.2 Reserved
130.3(152C) Examination and licensure requirements
130.4(152C) Reciprocal license
130.5(152C) Requirements for approval of massage therapy education curriculum
130.6(152C) License renewal
130.7(152C) Inactive practitioners
130.8(152C) Reinstatement of inactive practitioners
130.9(152C) Reinstatement of lapsed licenses
130.10(152C) License fees

CHAPTER 131
CONTINUING EDUCATION AND DISCIPLINARY PROCEDURES

131.1(152C) Continuing education requirements
131.2(152C) Standards for approval
131.3(152C) Reporting continuing education credits
131.4(152C) Hearings
131.5(152C) Disability or illness
131.6 to 131.16 Reserved
131.17(152C) Discipline
131.18(152C) Civil penalty for employment of person not licensed
131.19(152C) Civil penalty for use of title

CHAPTERS 132 to 139
Reserved

HEARING AID DEALERS

CHAPTER 120
BOARD OF EXAMINERS FOR THE LICENSING AND REGULATION OF HEARING AID DEALERS

[Prior to 5/18/88, see Health Department[470], Ch 145]

645—120.1(154A) General information.

120.1(1) All information regarding rules, forms, time and place of meetings, minutes of meetings, records of hearings, and examination results are available to the public between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

120.1(2) Information may be obtained by writing to the Board of Examiners for the Licensing and Regulation of Hearing Aid Dealers, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

120.1(3) Definitions. The board adopts herein by reference the definitions set out in Iowa Code chapter 154A.

120.1(4) Incomplete applications that have been on file for two years shall be considered invalid and be destroyed. The application fee is nonrefundable.

120.1(5) The board hereby adopts by reference the Code of Ethics of the International Hearing Society as published by the International Hearing Society, 20361 Middlebelt Road, Livonia, Michigan 48152, revised October 1996.

645—120.2(154A) Rules for examinations.

120.2(1) All applicants for examination shall apply to the Board of Examiners for the Licensing and Regulation of Hearing Aid Dealers, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075 for application forms.

120.2(2) The forms properly filled in shall be filed with the division of professional licensure at least 30 days prior to the examination together with a check or money order in the amount specified in the application for the application fee and made payable to the Iowa Board of Examiners for Hearing Aid Dealers and with a check or money order in the amount specified in the application for the examination fee and made payable to the International Hearing Society. All fees are nonrefundable.

120.2(3) The date of the examinations may be obtained by writing to the Board of Examiners for the Licensing and Regulation of Hearing Aid Dealers, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

120.2(4) Any person furnishing false information or omitting pertinent information in such application shall be denied the right to take the examination. If the applicant has already been licensed before the falseness of such information has been made known to the board of examiners for the licensing and regulation of hearing aid dealers, such license shall be subject to suspension or revocation.

120.2(5) The passing grade on the examination shall be determined by the board of examiners for the licensing and regulation of hearing aid dealers.

120.2(6) Applicants must obtain either 70 percent on each section of the national examination or an overall score of 75 percent.

120.2(7) Applicants who fail the national examination one time may retake the examination to achieve either a passing grade for the failed section(s) or an overall passing grade. If an applicant does not achieve a passing grade upon retaking the section(s) failed, the applicant must retake the entire examination.

645—120.3(154A) Licensure by reciprocity. Applicants for licensure to practice as a hearing aid dealer in the state of Iowa who hold valid certificates or licenses to deal in and fit hearing aids in a state or jurisdiction which the board determines has requirements equivalent to or higher than those provided in Iowa Code chapter 154A may be issued an Iowa license by reciprocity.

645—120.4(154A) Temporary permits.

120.4(1) An application for a temporary permit must be accompanied by a statement of the employer setting forth the type of supervision which shall be given the trainee together with an outline of the training program to be followed in preparing the trainee for examination. The statement shall also show a list of the subjects to be covered and the books and other training material to be used. The employer shall be licensed as a hearing aid dealer in the state of Iowa.

120.4(2) The licensed hearing aid dealer employing the holder of a temporary permit shall be responsible for the training of the temporary permit holder.

120.4(3) The licensed hearing aid dealer who employs a temporary permit holder shall notify the board of examiners for the licensing and regulation of hearing aid dealers within 15 days from the termination of the employer and employee relationship.

120.4(4) The licensed hearing aid dealer who employs the holder of a temporary permit shall evaluate the audiograms and determine which hearing aid and ear mold would best compensate for hearing loss of a particular person.

645—120.5(154A) Renewal of license.

120.5(1) Beginning January 1, 1983, initial and renewal licenses as a hearing aid dealer shall be issued for a biennial period from January 1 of the odd-numbered year to December 31 of the next even-numbered year.

120.5(2) A renewal fee as prescribed on the renewal form shall be paid by each license holder to the state department of public health.

120.5(3) Each license holder shall also submit satisfactory evidence that educational requirements as stipulated in 120.6(2) have been completed with the required fee.

120.5(4) Hearing aid dealers who have not fulfilled the requirements for license renewal or an exemption by March 1 (odd year) of the licensure biennium will have a lapsed license and shall not engage in the practice of hearing aid dealer.

120.5(5) A late renewal fee will be assessed for failure to renew license by January 31 of the odd-numbered year.

This rule is intended to implement Iowa Code sections 147.80, 154A.15 and 272C.2.

645—120.6(154A) Display of license.

120.6(1) On the application to the board of examiners for the licensing and regulation of hearing aid dealers, each hearing aid dealer shall state the name and location of the office or place of business where his license will be regularly displayed. Such office shall be accessible to the public during business hours and shall contain adequate equipment and supplies for serving the needs of the licensee's clientele. If an applicant for a license as a hearing aid dealer or a person licensed as a hearing aid dealer does not intend to practice as a hearing aid dealer and signs a statement stating that the applicant or the licensee will not practice as a hearing aid dealer without notifying the board of examiners for the licensing and regulation of hearing aid dealers, the applicant or the licensee is exempt from complying with the requirements of this rule relating to display of license, office, and equipment until such time as the person does intend to sell hearing aids.

120.6(2) If the office is a part of a building, normally used as a residence, it shall be in a space set aside for this purpose only and have an entrance by which the public may have access to the office without going through any part of the residence.

120.6(3) If any case where the office of a license holder is to be removed from the address shown in the files of the board of examiners for the licensing and regulation of hearing aid dealers, notice of such change must be filed with the board of examiners for the licensing and regulation of hearing aid dealers together with the new address within 30 working days of such removal.

120.6(4) At the time a license is issued and on each renewal thereof, an identification card, bearing the expiration date of the license or renewal, will be issued to each license holder which shall be required to be kept in the possession of the licensee at all times during the performance of duties. On the request of any client or prospective client, a board of examiners for the licensing and regulation of hearing aid dealers member, state health department employee, or any peace officer, the licensee shall permit the identification card to be inspected for the purpose of identification or as proof that all current fees have been paid.

645—120.7(154A) Establish procedures and instrumentation. Except in cases of selling replacement hearing aids of the same make or model within one year of the original sale, a hearing aid shall not be sold without adequate diagnostic testing and evaluation using established procedures. Instruments shall be calibrated at least annually or more often if necessary to current standards. The dealer shall keep with the instruments a certificate indicating the date of calibration. Established procedures means use of pure tone air conduction and bone conduction and speech audiometry.

645—120.8(154A)* Filing and investigation of charges. Persons making a complaint before the board of examiners for the licensing and regulation of hearing aid dealers against any licensed or unlicensed hearing aid dealer must do so by filing with the board of examiners for the licensing and regulation of hearing aid dealers a writing setting forth the name of the hearing aid dealer, the nature of the acts complained of, and the time and place where the violation(s) occurred. The person making the complaint shall file the statement with the board of examiners within 12 months from the date of the action upon which the complaint is based.

645—120.9(154A) License fees. All fees are nonrefundable.

120.9(1) The application fee for a license to practice as a hearing aid dealer issued upon the basis of an examination or reciprocity is $130. Check or money order should be made payable to the Iowa Board of Examiners for Hearing Aid Dealers. For those persons who are required to take the examination, the examination fee is an additional $35 and check or money order should be made payable to the International Hearing Society. Both fees should be mailed with the application.

120.9(2) Fee for a renewal of a license to practice as a hearing aid dealer is $130.

120.9(3) Fee for a temporary permit is $35.

120.9(4) Fee for a certified statement that a is licensed in this state is $10.

120.9(5) Fee for a duplicate license if the original is lost or stolen is $10.

120.9(6) Fee for reinstatement of an inactive or lapsed license is $100.

120.9(7) Fee for failure to renew license by January 31 of the odd-numbered year is $50.

120.9(8) Fee for failure to obtain continuing education within the compliance period is $100.

This rule is intended to implement Iowa Code sections 154A.15 and 154A.17.

*Objection, see filed rule published IAC Supp. 12/29/75.

645—120.10(154A) Supervision of temporary permit holders.

120.10(1) Any licensed hearing aid dealer acting as a supervisor of persons who are trainees with temporary permits shall have a current hearing aid dealer license that has been valid for the immediately preceding 12 months and one year of actual experience in testing, fitting, and dispensing of hearing aids.

120.10(2) Any licensed hearing aid dealer acting as a supervisor of persons who are trainees with temporary permits shall supervise not more than three trainees with temporary permits at the same time.

120.10(3) A trainee with a temporary permit shall have a minimum of ten hours of direct supervision, in sight and on-site, in the physical presence of the supervisor, per week for the first 90 days of supervised experience.

120.10(4) A trainee with a temporary permit shall not, independent of the supervisor, do any client evaluation or selection, fitting or selling of hearing aids before the completion of the first 30 days of supervised experience. All audiometric evaluations and contracts processed by the trainee shall be cosigned by the supervisor of the trainee for the duration of the temporary permit.

120.10(5) A trainee with a temporary permit is responsible for notifying the board within ten days in the event of an interruption of training by loss of supervision. The trainee is responsible for obtaining a replacement supervisor for continuance of the training period. In order to maintain the present training program, a statement signed by the replacement supervisor which states that the training program will be maintained shall be submitted to the board. If a statement by the replacement supervisor is not submitted, the trainee shall revert to new trainee status.

This rule is intended to implement Iowa Code section 154A.13.

645—120.11(272C) Suspension, revocation or probation. The board may revoke or suspend a license or temporary permit permanently or for a fixed period, or impose a civil penalty which shall not exceed $1000 for any of the following causes:

120.11(1) Willful or repeated violations of the provisions of Iowa Code chapter 154.

120.11(2) Violation of the rules promulgated by the board.

120.11(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

120.11(4) Fraud in representations as to skill or ability.

120.11(5) Personal disqualifications:

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

b. Involuntary commitment for treatment of mental illness, drug addiction or alcoholism.

120.11(6) Practicing the profession while license is suspended or lapsed.

120.11(7) Violating the terms of probation, settlement or decision and order.

120.11(8) Suspension or revocation of license by another state.

120.11(9) Negligence by the licensee in the practice of the profession, which is a failure to exercise due care including negligent delegation to or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

120.11(10) Prohibited acts consisting of the following:

a. Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

b. Permitting another person to use the person's license for any purpose.

c. Practice outside the scope of a license.

d. Obtaining, possessing, or attempting to obtain or possess a controlled substance without lawful authority; or selling, prescribing, giving away, or administering controlled substances.

e. Verbally or physically abusing clients.

120.11(11) Unethical business practices, consisting of any of the following:

a. Betrayal of a professional confidence.

b. Falsifying clients' records.

c. Advertising that hearing testing or hearing screening is for the purpose of detection of or diagnosis of medical problems or medical screening for referral to a physician.

d. Failure to place in an advertisement relating to hearing aids the hearing aid dealer's name, office address, and telephone number.

120.11(12) Failure to report a change of name or address within 30 days after it occurs.

120.11(13) Submission of a false report of continuing education or failure to submit the biannual report of continuing education.

120.11(14) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

120.11(15) Failure to comply with a subpoena issued by the board.

120.11(16) Failure to report to the board as provided in 645—Chapter 9 any violation by another licensee of the reasons for disciplinary action as listed in this rule.

This rule is intended to implement Iowa Code section 154A.24.

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CHAPTER 121
CONTINUING EDUCATION FOR HEARING AID DEALERS

645—121.1(154A) Definitions. For the purpose of these rules, the following definitions shall apply:

"Active license" means the license of a person who is acting, practicing, functioning, and working in compliance with license requirements.

"Administrator" means the administrator of the board of examiners for the licensing and regulation of hearing aid dealers.

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules, which has received approval by the board pursuant to these rules.

"Approved sponsor" means a person or an organization sponsoring continuing education activities that has been approved by the board as a sponsor pursuant to these rules. During the time an organization, educational institution, or person is an approved sponsor, all continuing education activities of such organization, educational institution, or person shall be deemed automatically approved.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period or the selection of providers for verification of adherence to continuing provider requirements during a specified time period.

"Board" means the board of examiners for the licensing and regulation of hearing aid dealers.

"Continuing education" means planned, organized learning acts acquired during initial licensure designed to maintain, improve, or expand a licensee's knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

"Hour of continuing education" means a clock hour spent by a licensee in actual attendance at and completion of approved continuing education activity.

"Inactive license" means the license of a person who is not engaged in practice in the state of Iowa.

"Lapsed license" means a license that a person has failed to renew as required, or the license of a person who has failed to meet stated obligations for renewal within a stated time.

"License" means license to practice.

"Licensee" means any person licensed to practice as a hearing aid dealer in the state of Iowa.

645—121.2(154A) Continuing education requirements.

121.2(1) The biennial continuing education compliance period shall extend for a two-year period beginning on January 1 of each odd-numbered year and ending on December 31 of the next even-numbered year. Each biennium, each person who is licensed to practice as a hearing aid dealer in this state shall be required to complete a minimum of 32 hours of continuing education approved by the board.

121.2(2) Requirements for new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 32 hours of continuing education per biennium for each subsequent license renewal.

121.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be approved by the board or otherwise meet the requirements herein pursuant to statutory provisions and the rules that implement them.

121.2(4) No hours of continuing education shall be carried over into the next biennium except as stated for the second renewal.

121.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

645—121.3(154A) Standards for approval.

121.3(1) *General criteria.* A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if it is determined by the board that the continuing education activity:

a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;

b. Pertains to subject matters which integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. An application must be accompanied by a paper, manual or outline which substantively pertains to the subject matter of the program and reflects program schedule, goals and objectives. The board may request the qualifications of the presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date, place, course title, presenter(s);

(2) Number of program contact hours (One contact hour equals one hour of continuing education credit.); and

(3) Official signature or verification by program sponsor.

121.3(2) *Specific criteria.*

a. Continuing education hours of credit may be obtained by completing the following:

(1) Academic coursework if the coursework is offered by an accredited postsecondary educational institution;

(2) Self-study telnet courses only when an on-site monitor is present;

(3) Continuing education activities of an approved sponsor;

(4) Continuing education activities that have prior approval.

b. The maximum number of continuing education hours of credit for academic coursework per biennium is:

(1) Twelve hours of credit for academic coursework:

1 academic semester hour = 15 continuing education hours

1 academic quarter hour = 10 continuing education hours

(2) Eight hours of credit for participation in technical, business, or professional seminars, workshops or symposiums which enhance a licensee's ability to provide quality hearing health care services.

(3) Four hours of credit for telnet courses.

645—121.4(154A) Approval of sponsors, programs, and activities for continuing education.

121.4(1) *Approval of sponsors.* An applicant who desires approval as a sponsor of courses, programs, or other continuing education activities shall, unless exempted elsewhere in these rules, apply for approval to the board on the form designated by the board stating the applicant's educational history for the preceding two years or proposed plan for the next two years.

a. The form shall include the following:

(1) Date(s), location, course title(s) offered and outline of content;

(2) Total hours of instruction presented;

(3) Names and qualifications of instructors, including résumés or vitae; and

(4) Evaluation form(s).

b. Records shall be retained by the sponsor for four years.

c. Attendance record report. The person or organization sponsoring an approved continuing education activity shall provide a certificate of attendance or verification to the licensee providing the following information:

(1) Program date(s);

(2) Course title and presenter;

(3) Location;
(4) Number of clock hours attended and continuing education hours earned;
(5) Name of sponsor and sponsor number;
(6) Licensee's name; and
(7) Method of presentation.

d. All approved, accredited sponsors shall maintain a copy of the following:
(1) The continuing education activity;
(2) List of enrolled licensees' names and license numbers; and
(3) Number of continuing education clock hours awarded for a minimum of four years from the date of the continuing education activity.

e. The sponsor shall submit a report of all continuing education programs conducted in the previous year during the assigned month for reporting designated by the board. The report shall include:
(1) Date(s), location, course title(s) offered and outline of content;
(2) Total hours of instruction presented;
(3) Names and qualifications of instructors including résumés or vitae;
(4) Evaluation form(s); and
(5) A summary of the evaluations completed by the licensees.

121.4(2) *Prior approval of programs/activities.* An organization or person other than an approved sponsor that desires prior approval of a course, program or other education activity or that desires to establish approval of such activity prior to attendance shall apply for approval to the board on a form provided by the board at least 60 days in advance of the commencement of the activity. The board shall approve or deny such application in writing within 30 days of receipt of such application. The application shall state:
a. The date(s);
b. Course(s) offered;
c. Course outline;
d. Total hours of instruction; and
e. Names and qualifications of speakers and other pertinent information.
The organization or person shall be notified of approval or denial by ordinary mail.

121.4(3) *Review of programs.* Sponsors shall report continuing education programs every year at a time designated by the board. The board may at any time reevaluate an approved sponsor. If, after reevaluation, the board finds there is cause for revocation of the approval of an approved sponsor, the board shall give notice of the revocation to that sponsor by certified mail. The sponsor shall have the right to hearing regarding the revocation. The request for hearing must be sent within 20 days after the receipt of the notice of revocation. The hearing shall be held within 90 days after the receipt of the request for hearing. The board shall give notice by certified mail to the sponsor of the date set for the hearing at least 30 days prior to the hearing. The board shall conduct the hearing in compliance with rule 645—11.9(17A).

121.4(4) *Postapproval of activities.* A licensee seeking credit for attendance and participation in an education activity which was not conducted by an approved sponsor or otherwise approved shall submit to the board, within 60 days after completion of such activity, the following:
a. The date(s);
b. Course(s) offered;
c. Course outline;
d. Total hours of instruction and credit hours requested;
e. Names and qualifications of speakers and other pertinent information;
f. Request for credit which includes a brief summary of the activity; and
g. Certificate of attendance or verification.

Within 90 days after receipt of such application, the board shall advise the licensee in writing by ordinary mail whether the activity is approved and the number of hours allowed. A licensee not complying with the requirements of this subrule may be denied credit for such activity.

121.4(5) *Voluntary relinquishment.* The approved sponsor may voluntarily relinquish sponsorship by notifying the board office in writing.

645—121.5(154A) Reporting continuing education by licensee. At the time of license renewal, each licensee shall be required to submit a report on continuing education to the board on a board-approved form.

121.5(1) The information on the form shall include:

a. Title of continuing education activity;

b. Date(s);

c. Sponsor of the activity;

d. Board-approved sponsor number;

e. Number of continuing education hours earned; and

f. Teaching method used.

121.5(2) Audit of continuing education report. After each educational biennium, the board will audit a percentage of the continuing education reports before granting the renewal of licenses to those being audited.

a. The board will select licensees to be audited.

b. The licensee shall make available to the board for auditing purposes a copy of the certificate of attendance or verification for all reported activities that includes the following information:

(1) Date, location, course title, schedule (brochure, pamphlet, program, presenter(s)), and method of presentation;

(2) Number of contact hours for program attended; and

(3) Copy of official transcript of college courses.

(4) For activities not provided by an approved sponsor, the licensee shall submit a description of the program content which indicates that the content is integrally related to the practice and contributes directly to the provision of services to the public.

c. For auditing purposes, the licensee must retain the above information for two years after the biennium has ended.

d. Submission of a false report of continuing education or failure to meet continuing education requirements may cause the license to lapse and may result in formal disciplinary action.

e. All renewal license applications that are submitted late (after the end of the compliance period) may be subject to audit of the continuing education report.

f. Failure to receive the renewal application shall not relieve the licensee of responsibility of meeting continuing education requirements and submitting the renewal fee by the end of the compliance period.

645—121.6(154A) Reinstatement of lapsed license. Failure of the licensee to renew within 30 days after expiration date shall cause the license to lapse. A person who allows the license to lapse cannot engage in practice in Iowa without first complying with all regulations governing reinstatement as outlined in the board rules. A person who allows the license to lapse may apply to the board for reinstatement of the license. Reinstatement of the lapsed license may be granted by the board if the applicant:

1. Submits a written application for reinstatement to the board;
2. Pays all of the renewal fees then due, up to a maximum of five bienniums;
3. Pays all penalty fees which have been assessed by the board for failure to renew;
4. Pays reinstatement fees; and

5. Provides evidence of satisfactory completion of Iowa continuing education requirements during the period since the license lapsed. The total number of continuing education hours required for license reinstatement is computed by multiplying 32 by the number of bienniums since the license lapsed. If the license has lapsed for three bienniums or less, the applicant for reinstatement may, in lieu of submitting the required continuing education, furnish evidence of successful completion, with a passing grade, of the Iowa license examinations conducted within one year immediately prior to the submission of the application for reinstatement. If the license has lapsed for more than three bienniums, the applicant shall complete 96 hours of approved continuing education.

6. If the applicant for reinstatement holds a current valid hearing aid dealer's license in another state whose requirements meet or exceed the requirements of Iowa, the applicant shall submit:

- A written application on a form provided by that state's board;
- Proof of current valid hearing aid dealer's license;
- The current renewal fee;
- The fee for failure to renew; and
- Proof of continuing education hours obtained equivalent to continuing education required in Iowa.

645—121.7(154A,272C) Continuing education waiver for active practitioners. A hearing aid dealer licensed to practice shall be deemed to have complied with the continuing education requirements of this state during the period that the licensee serves honorably on active duty in the military services or as a government employee outside the United States as a practicing hearing aid dealer.

645—121.8(154A,272C) Continuing education waiver for inactive practitioners. A licensee who is not engaged in practice in the state of Iowa may be granted a waiver of continuing education compliance and obtain a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not engage in practice as a hearing aid dealer in Iowa without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon forms provided by the board.

645—121.9(154A,272C) Continuing education waiver for disability or illness. The board may, in individual cases involving disability or illness, grant waivers of the minimum education requirements or extension of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor is made on forms provided by the board and signed by the licensee and appropriate licensed health care practitioners. The board may grant a waiver of the minimum educational requirements for any period of time not to exceed one calendar year from the onset of disability or illness. In the event that the disability or illness upon which a waiver has been granted continues beyond the period of waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such methods as may be prescribed by the board.

645—121.10(154A,272C) Reinstatement of inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with these rules and obtained a certificate of waiver shall, prior to engaging in practice as a hearing aid dealer in the state of Iowa, satisfy the following requirements for reinstatement.

121.10(1) Submit written application for reinstatement to the board upon forms provided by the board with appropriate reinstatement fee and the current renewal fee.

121.10(2) Furnish evidence of completion of 32 hours of approved continuing education per biennium up to a maximum of 64 hours of continuing education. The continuing education hours must be completed within the prior two bienniums of date of application for reinstatement.

121.10(3) Furnish in the application evidence of one of the following:

a. Proof of current valid hearing aid dealer's license in another state of the United States or the District of Columbia and completion of continuing education for each year of inactive status substantially equivalent in the opinion of the board to that required under these rules; or

b. Proof of successful completion, with a passing grade, of the Iowa state license examination conducted within one year immediately prior to the submission of the application for reinstatement.

645—121.11(272C) Hearings. In the event of denial, in whole or part, of any application for approval of a continuing education program or credit for continuing education activity, the applicant, licensee or program provider shall have the right within 20 days after the sending of the notification of denial by ordinary mail to request a hearing which shall be held within 90 days after receipt of the request for hearing. The hearing shall be conducted by the board or an administrative law judge designated by the board, in substantial compliance with the hearing procedure set forth in rule 645—11.9(17A).

These rules are intended to implement Iowa Code section 272C.2 and chapter 154A.

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CHAPTER 122
PETITIONS FOR RULE MAKING
Rescinded IAB 8/25/99, effective 9/29/99

CHAPTER 123
AGENCY PROCEDURE FOR RULE MAKING
Rescinded IAB 8/25/99, effective 9/29/99

CHAPTER 124
CHILD SUPPORT NONCOMPLIANCE
Rescinded IAB 8/25/99, effective 9/29/99

CHAPTER 125
IMPAIRED PRACTITIONER REVIEW COMMITTEE
Rescinded IAB 8/25/99, effective 9/29/99

CHAPTERS 126 to 128
Reserved

CHAPTER 129
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
Rescinded IAB 8/25/99, effective 9/29/99

CHAPTER 8
SUBSTANTIVE AND INTERPRETIVE RULES

[Prior to 9/24/86 see Industrial Commissioner[500]]
[Prior to 1/29/97 see Industrial Services Division[343]]
[Prior to 7/29/98 see Industrial Services Division[873]Ch 8]

876—8.1(85) Transportation expense. Transportation expense as provided in Iowa Code sections 85.27 and 85.39 shall include but not be limited to the following:

1. The cost of public transportation if tendered by the employer or insurance carrier.
2. All mileage incident to the use of a private auto. The per-mile rate for use of a private auto shall be 29 cents per mile.
3. Meals and lodging if reasonably incident to the examination.
4. Taxi fares or other forms of local transportation if incident to the use of public transportation.
5. Ambulance service or other special means of transportation if deemed necessary by competent medical evidence or by agreement of the parties.

Transportation expense in the form of reimbursement for mileage which is incurred in the course of treatment or an examination, except under Iowa Code section 85.39, shall be payable at such time as 50 miles or more have accumulated or upon completion of medical care, whichever occurs first. Reimbursement for mileage incurred under Iowa Code section 85.39 shall be paid within a reasonable time after the examination.

The workers' compensation commissioner or a deputy commissioner may order transportation expense to be paid in advance of an examination or treatment. The parties may agree to the advance payment of transportation expense.

This rule is intended to implement Iowa Code sections 85.27 and 85.39.

876—8.2(85) Overtime. The word "overtime" as used in Iowa Code section 85.61 means amounts due in excess of the straight time rate for overtime hours worked. Such excess amounts shall not be considered in determining gross weekly wages within Iowa Code section 85.36. Overtime hours at the straight time rate are included in determining gross weekly earnings.

This rule is intended to implement Iowa Code sections 85.36 and 85.61.

876—8.3 Rescinded, effective July 1, 1982.

876—8.4(85) Salary in lieu of compensation. The excess payment made by an employer in lieu of compensation which exceeds the applicable weekly compensation rate shall not be construed as advance payment with respect to either future temporary disability, healing period, permanent partial disability, permanent total disability or death.

This rule is intended to implement Iowa Code sections 85.31, 85.34, 85.36, 85.37 and 85.61.

876—8.5(85) Appliances. Appliances are defined as hearing aids, corrective lenses, orthodontic devices, dentures, orthopedic braces, or any other artificial device used to provide function or for therapeutic purposes.

Appliances which are for the correction of a condition resulting from an injury or appliances which are damaged or made unusable as a result of an injury or avoidance of an injury are compensable under Iowa Code section 85.27.

876—8.6(85,85A) Calendar days—decimal equivalent. Weekly compensation benefits payable under Iowa Code chapters 85 and 85A are based upon a seven-day calendar week. Each day of weekly compensation benefits due may be paid by multiplying the employee's weekly compensation benefit rate by the decimal equivalents of the number of days as follows:

1 day = .143 × weekly rate
2 days = .286 × weekly rate
3 days = .429 × weekly rate
4 days = .571 × weekly rate
5 days = .714 × weekly rate
6 days = .857 × weekly rate

This rule is intended to implement Iowa Code sections 85.31, 85.33 and 85.34.

876—8.7(86) Short paper. All filings before the workers' compensation commissioner shall be on white paper measuring 8½ inches by 11 inches.

This rule is intended to implement Iowa Code section 86.18.

876—8.8(85,17A) Payroll tax tables. Tables for determining payroll taxes to be used for the period July 1, 2000, through June 30, 2001, are the tables in effect on July 1, 2000, for computation of:

1. Federal income tax withholding according to the percentage method of withholding for weekly payroll period. (Internal Revenue Service, Circular E, Employer's Tax Guide, Publication 15 [Rev. January 2000].)
2. Iowa income tax withholding computer formula for weekly payroll period. (Iowa Department of Revenue and Finance Iowa Withholding Tax Guide, Publication 44-001 [Rev. January 1998], for all wages paid on or after January 1, 1998.)
3. Social Security and Medicare withholding (FICA) at the rate of 7.65 percent. (Internal Revenue Service, Employer's Supplemental Tax Guide, Publication 15-A [Rev. January 2000].)

This rule is intended to implement Iowa Code section 85.61(6).

876—8.9(85,86) Exchange of records. Whether or not a contested case has been commenced, upon the written request of an employee or the representative of an employee who has alleged an injury arising out of and in the course of employment, an employer or insurance carrier shall provide the claimant a copy of all records and reports in its possession generated by a medical provider.

Whether or not a contested case has been commenced, upon the written request of the employer or insurance carrier against which an employee has alleged an injury arising out of and in the course of employment, the employee shall provide the employer or insurance carrier with a patient's waiver. See rules 876—3.1(17A) and 876—4.6(85,86,17A) for the waiver form used in contested cases. Claimant shall cooperate with the employer and insurance carrier to provide patients' waivers in other forms and to update patients' waivers where requested by a medical practitioner or institution.

A medical provider or its agent shall furnish an employer or insurance carrier copies of the initial as well as final clinical assessment without cost when the assessments are requested as supporting documentation to determine liability or for payment of a medical provider's bill for medical services. When requested, a medical provider or its agent shall furnish a legible duplicate of additional records or reports. Except as otherwise provided in this rule, the amount to be paid for furnishing duplicates of records or reports shall be the actual expense to prepare duplicates not to exceed: $20 for 1 to 20 pages; $20 plus $1 per page for 21 to 30 pages; $30 plus $.50 per page for 31 to 100 pages; $65 plus $.25 per page for 101 to 200 pages; $90 plus $.10 per page for more than 200 pages, and the actual expense of postage. No other expenses shall be allowed.

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◊Two ARCs

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