Iowa Department of
INSPECTIONS & APPEALS

KIM REYNOLDS, GOVERNOR
ADAM GREGG, LT. GOVERNOR

LARRY JOHNSON, JR., DIRECTOR

MEMO

To: Member of the General Assembly
From: Department of Inspections & Appeals
RE: 2022 Session Department Bill, Health Facilities Division

135C.36(5) Revisions

Background:
Iowa Code section 135C.36(5) was added by legislature in 2009. It provides that if a facility self-identifies a deficient practice prior to an on-site visit inspection, there has been no complaint filed with the department related to that specific deficient practice, and the facility corrects such practice prior to an inspection, no citation shall be issued or fine assessed pursuant to subsection 2 or 3 except for those penalties arising pursuant to statutes/rules specifically enumerated in Section 135C.36(5). The statutes/rules enumerated in Section 135C.36(5) have not been updated since 2009 despite numerous rule changes affecting the citation of such referenced rules.

Intent of the bill:
The revisions provided update 135C.36(5) by referencing current citations to maintain original legislative intent.

Table tracking changes:

Statute/Rules Referenced	2009 Statute/Rule Text	2021 Pertinent Statute/Rule Text	Action Required	Additional Notes
135C.33	135C.33 Employees child or dependent adult abuse information and criminal record checks evaluations application to other providers penalty [text not reproduced]		**No change required**	
57.12(2)(d)	**57.12(2)** *Supervision and staffing.* *d.* Physician's orders shall be implemented by qualified personnel. (II, III)	57.12(2) Personnel policies. Written personnel policies shall include the hours of work and attendance at educational programs. (III) 57.11(7) Orders for medications and treatments. Orders for medications and treatments shall be correctly implemented by qualified personnel. (I, II, III) 57.19(3) Drug administration—authorized personnel. a. A properly trained person shall be charged with the responsibility of administering medications as ordered by a primary care provider. (II, III)	**Update reference to 57.11(7)**	
57.12(3)	**57.12(3)** *Personnel histories.* [detailed criminal history and dependent adult abuse check procedures]	57.12(3) Infection control. [text omitted] 57.11(3) Employee criminal record checks, child abuse checks and dependent adult abuse checks and	**Update reference to 57.11(3)**	

		employment of individuals who have committed a crime or have a founded abuse. The facility shall comply with the requirements found in Iowa Code section 135C.33 as amended by 2014 Iowa Acts, chapter 1040, and rule 481—50.9(135C) related to completion of criminal record checks, child abuse checks, and dependent adult abuse checks and to employment of individuals who have committed a crime or have a founded abuse. (I, II, III)		
57.15(5)	481—57.15(135C) Physical examinations. **57.15(5)** The person in charge shall immediately notify the physician of any accident, injury, or adverse change in the resident's condition. (I, II, III)	57.15(135C) Residency agreement. 57.15(5) – No longer exists 57.16(3) The person in charge shall immediately notify the primary care provider of any accident, injury or adverse change in the resident's condition that has the potential for requiring physician intervention. (I, II, III)	**Update reference to 57.16(3)**	
57.25(1)	**57.25(1)** *Fire safety.* *a.* All residential care facilities shall meet the fire safety rules and regulations as promulgated by the state fire marshal. (I, II) *b.* The size of the facility and needs of the residents shall be taken into consideration in evaluating safety precautions and practices.	57.25(1) Staff shall display respect for residents when speaking with, caring for, or talking about them, as constant affirmation of their individuality and dignity as human beings. (I, II) 57.34(1) Fire safety. a. All residential care facilities shall meet the fire safety rules and	**Update reference to 57.34(1)**	

		regulations as promulgated by the state fire marshal. (I, II) b. The size of the facility and needs of the residents shall be taken into consideration in evaluating safety precautions and practices.		
57.39	481—57.39(135C) Resident abuse prohibited. [text not reproduced]	481—57.39(135C) Supplies. 481—57.32(135C) Resident abuse prohibited. [text not reproduced]	**Update reference to 57.32**	
58.11(3)	**58.11(3)** *Personnel histories.* [detailed criminal history and dependent adult abuse check procedures]	58.11(3) Employee criminal record checks, child abuse checks and dependent adult abuse checks and employment of individuals who have committed a crime or have a founded abuse. The facility shall comply with the requirements found in Iowa Code section 135C.33 and rule 481—50.9(135C) related to completion of criminal record checks, child abuse checks, and dependent adult abuse checks and to employment of individuals who have committed a crime or have a founded abuse. (I, II, III)	**No change required**	
58.14(5)	481—58.14(135C) Medical services. **58.14(5)** The person in charge shall immediately notify the physician of any accident, injury, or adverse change in the resident's condition. (I, II, III)	58.14(5) The person in charge shall immediately notify the physician of any accident, injury, or adverse change in the resident's condition. (I, II, III)	**No change required**	
58.19(2)(a)	**58.19(2)** *Medication and treatment.*	58.19(2) Medication and treatment.	**No change required**	

	a. Administration of all medications as ordered by the physician including oral, instillations, topical, injectable (to be injected by a registered nurse or licensed practical nurse only); (I, II)	a. Administration of all medications as ordered by the physician including oral, instillations, topical, injectable (to be injected by a registered nurse or licensed practical nurse only); (I, II)		
58.19(2)(h)	**58.19(2)** *Medication and treatment.* *h.* Provision of all treatments; (I, II, III)	58.19(2) Medication and treatment h. Provision of all treatments; (I, II, III)	**No change required**	
58.28(1)(a)	**58.28(1)** *Fire safety.* *a.* All nursing facilities shall meet the fire safety rules and regulations as promulgated by the state fire marshal. (I, II)	58.28(1) Fire safety. a. All nursing facilities shall meet the fire safety rules and regulations as promulgated by the state fire marshal. (I, II)	**No change required**	
58.43	481—58.43(135C) Resident abuse prohibited. [text not reproduced]	481—58.43(135C) Resident abuse prohibited. [text not reproduced]	**No change required**	
62.9(5)	**62.9(5)** Personnel histories. [criminal history and dependent adult abuse check procedures]	62.9(5) – No longer exists RCF/PMI subject to the criminal history and dependent adult abuse check procedures set forth in 57.11(3) per 62.1 481—62.1(135C) Applicability. This chapter relates specifically to the licensing and regulation of residential care facilities for persons with mental illness (RCFs/PMI). Refer to 481—Chapter 57 for the licensing and regulation of all residential care facilities, including RCFs/PMI, and to 481—Chapter 60	**Remove reference to 62.9(5)**	

		for minimum physical standards for all residential care facilities.		
62.15(1)(a)	481—62.15(135C) Medication management. **62.15(1)** Medications shall be prescribed on an individual basis by one who is authorized by Iowa law to prescribe. (I, II) *a.* Medication orders shall be correctly implemented by qualified personnel. (II)	62.15 – No longer exists RCF/PMI subject to the medication requirements set forth in chapter 57 per 62.1 57.11(7) Orders for medications and treatments. Orders for medications and treatments shall be correctly implemented by qualified personnel. (I, II, III)	**Remove reference to 62.15**	
62.19(2)(c)	481—62.19(135C) Health and safety. **62.19(2)** *Emergency care.* The facility shall have written policies and procedures for emergency medical or psychiatric care to include: … *c.* Immediate notification by the person in charge to the physician or QMHP, as appropriate, of any accident, injury or adverse change in the resident's condition. (I, II)	481—62.19 – No longer exists RCF/PMI subject to the notification requirements set forth in rule 57.16(3) per 62.1	**Remove reference to 62.19(2)(c)**	
62.19(7)	**62.19(7)** *Safe environment.* The licensee of an RCF/PMI is responsible for the provision and maintenance of a safe environment for residents and personnel. (I, II) The RCF/PMI shall meet the fire and safety rules and regulations as promulgated by the state fire marshal. (I, II)	481—62.19(7) – No longer exists RCF/PMI subject to the notification requirements set forth in rule 57.34(1) per 62.1	**Remove reference to 62.19(7)**	

62.23(23) – (25)	**62.23(23)** Resident abuse prohibited. [text not reproduced] **62.23(24)** Upon a claim of dependent adult abuse of a resident being reported, the administrator of the facility shall separate the victim and accused abuser immediately and maintain the separation until the abuse investigation is completed. (I, II) **62.23(25)** Pursuant to Iowa Code chapter 235B, a mandatory reporter of dependent adult abuse is any person who, in the course of employment, examines, attends, counsels, or treats a dependent adult and reasonably believes the dependent adult has suffered abuse. This includes a member of the staff or employee of a health care facility. (II, III)	62.23(23)–(25) – No longer exists RCF/PMI subject to the DAA prohibition set forth in rule 57.32 per 62.1	**Remove reference to 62.23(23)–(25)**	
63.11(2)(d)	***63.11(2)*** *Supervision and staffing.* *d.* Physician's orders shall be implemented by qualified personnel. (II, III)	No appropriate successor rule to cite to	**Remove reference to 63.11(2)(d)**	Chapter 63 used to apply to "residential care facilities for the mentally retarded." That chapter was rescinded in 2018 and a new chapter 63 was adopted for "residential care facility – 3 to 5 bed specialized license." Since the same general types of rules (fire safety, abuse) were originally included by the legislature for the various types of

				entities, it appears that they would have intended them to apply to the now-independent 3-5 specialized license category, which used to be encompassed within chapter 57.
63.11(3)	**63.11(3)** *Personnel histories.* [criminal history and dependent adult abuse check procedures]	63.8(3) Employee criminal record, child abuse and dependent adult abuse checks and employment of individuals who have committed a crime or have a founded abuse. The facility shall comply with the requirements found in Iowa Code section 135C.33 and rule 481—50.9(135C) related to completion of criminal record checks, child abuse checks, and dependent adult abuse checks and to employment of individuals who have committed a crime or have a founded abuse. (I, II, III)	**Update reference to 63.8(3)**	
63.23(1)(a)	**63.23(1)** *Fire safety.* *a.* All residential care facilities for the mentally retarded shall meet the fire safety rules and regulations as promulgated by the state fire marshal. (I, II)	63.29(1) Fire safety. a. All residential care facilities shall meet the fire safety rules and regulations as promulgated by the state fire marshal. (I, II)	**Update reference to 63.29(1)**	
63.37	481—63.37(135C) Resident abuse prohibited. [text not reproduced]	481—63.27(135C) Resident abuse prohibited. [text not reproduced]	**Update reference to 63.27**	

64.4(9)	**64.4(9)** A properly trained person shall be charged with the responsibility of administering non-parenteral medications. *a.* The individual shall have knowledge of the purpose of the drugs, their dangers, and contraindications. *b.* This person shall be a licensed nurse or physician or shall have successfully completed a department-approved medication aide course or passed a department-approved medication aide challenge examination administered by an area community college. *c.* A person who is a nursing student or a graduate nurse may take the challenge examination in place of taking a medication aide course. This individual shall do all of the following before taking the medication aide challenge examination: (1) Complete a clinical or nursing theory course within six months before taking the challenge examination; (2) Successfully complete a nursing program pharmacology course within one year before taking the challenge examination; (3) Provide to the community college a written statement from the nursing program's pharmacology or clinical instructor indicating the individual is competent in medication administration. (4) Successfully complete a department-approved nurse aide competency evaluation. *d.* A person who has written documentation of certification as a medication aide in another state may become a medication aide in Iowa by successfully completing a	64.4(9) A properly trained person shall be charged with the responsibility of administering non-parenteral medications. a. The individual shall have knowledge of the purpose of the drugs, their dangers, and contraindications. b. This person shall be a licensed nurse or physician or shall have successfully completed a department-approved medication aide course or passed a department-approved medication aide challenge examination administered by an area community college. c. A person who is a nursing student or a graduate nurse may take the challenge examination in place of taking a medication aide course. This individual shall do all of the following before taking the medication aide challenge examination: (1) Complete a clinical or nursing theory course within six months before taking the challenge examination; (2) Successfully complete a nursing program pharmacology course within one year before taking the challenge examination; (3) Provide to the community college a written statement from the nursing program's pharmacology or clinical instructor indicating the individual is competent in medication administration. (4) Successfully complete a department-approved nurse aide competency evaluation.	**No change required**	

	department-approved nurse aide competency examination and a medication aide challenge examination.	d. A person who has written documentation of certification as a medication aide in another state may become a medication aide in Iowa by successfully completing a department-approved nurse aide competency examination and a medication aide challenge examination.		
64.33	**481—64.33(235B) Separation of accused abuser and victim.** Upon a claim of dependent adult abuse of a resident being reported, the administrator of the facility shall separate the victim and accused abuser immediately and maintain the separation until the abuse investigation is completed. (I, II)	481—64.33(135C) Allegations of dependent adult abuse. 64.33(1) Allegations of dependent adult abuse. Allegations of dependent adult abuse shall be reported and investigated pursuant to Iowa Code chapter 235E and 481—Chapter 52. (I, II, III) 64.33(2) Separation of accused abuser and victim. Upon a claim of dependent adult abuse of a resident being reported, the administrator of the facility shall separate the victim and accused abuser immediately and maintain the separation until the department's abuse investigation is completed and an abuse determination is made. (I, II)	**Update reference to 64.33(2)**	
64.34	481—64.34(135C) Personnel histories. [criminal history and dependent adult abuse check procedures]	481—64.34(135C) Personnel histories. [criminal history and dependent adult abuse check procedures]	**No change required**	
65.9(5)	**65.9(5)** Personnel histories. [criminal history and dependent adult abuse check procedures]	65.9(5) Employee criminal record checks, child abuse checks and dependent adult abuse checks and employment of individuals who have committed a crime or have a founded abuse.	**No change required**	

		[criminal history and dependent adult abuse check procedures]		
65.15	**481—65.15(135C) Restraint or seclusion.** [text not reproduced]	**481—65.15(135C) Restraint or seclusion.** [text not reproduced]	**No change required**	
65.25(3) – (5)	**65.25(3)** *Resident abuse prohibited.* Each resident shall receive kind and considerate care at all times and shall be free from physical, sexual, mental and verbal abuse, exploitation, and physical injury. (I, II) **65.25(4)** *Claim of abuse.* Upon a claim of dependent adult abuse of a resident being reported, the administrator of the facility shall separate the victim and accused abuser immediately and maintain the separation until the abuse investigation is completed. (I, II) **65.25(5)** *Report of abuse.* Pursuant to Iowa Code chapter 235B, a mandatory reporter of dependent adult abuse is any person who, in the course of employment, examines, attends, counsels, or treats a dependent adult and reasonably believes the dependent adult has suffered abuse. This includes a member of the staff or employee of a health care facility. (II, III) If a staff member or employee is required to report pursuant to this subrule, the staff member or employee shall immediately notify the person in charge of the facility or the person's designated agent, and the person in charge or the designated agent shall make the report to the department of human services. (II, III)	65.25(3) Resident abuse prohibited. Each resident shall receive kind and considerate care at all times and shall be free from physical, sexual, mental and verbal abuse, exploitation, neglect, and physical injury. (I, II) 65.25(4) Allegations of dependent adult abuse. Allegations of dependent adult abuse shall be reported and investigated pursuant to Iowa Code chapter 235E and 481—Chapter 52. (I, II, III) 65.25(5) Report of abuse. Rescinded IAB 12/11/13, effective 1/15/14.	**Update reference to 65.25(3)-(5)**	

42 C.F.R. § 483.420(d)	(d) Standard: Staff treatment of clients. (1) The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of the client. (i) Staff of the facility must not use physical, verbal, sexual or psychological abuse or punishment. (ii) Staff must not punish a client by withholding food or hydration that contributes to a nutritionally adequate diet. (iii) The facility must prohibit the employment of individuals with a conviction or prior employment history of child or client abuse, neglect or mistreatment. (2) The facility must ensure that all allegations of mistreatment, neglect or abuse, as well as injuries of unknown source, are reported immediately to the administrator or to other officials in accordance with State law through established procedures. (3) The facility must have evidence that all alleged violations are thoroughly investigated and must prevent further potential abuse while the investigation is in progress. (4) The results of all investigations must be reported to the administrator or designated representative or to other officials in accordance with State law within five working days of the incident and, if the alleged violation is verified, appropriate corrective action must be taken.	(d) Standard: Staff treatment of clients. (1) The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect or abuse of the client. (i) Staff of the facility must not use physical, verbal, sexual or psychological abuse or punishment. (ii) Staff must not punish a client by withholding food or hydration that contributes to a nutritionally adequate diet. (iii) The facility must prohibit the employment of individuals with a conviction or prior employment history of child or client abuse, neglect or mistreatment. (2) The facility must ensure that all allegations of mistreatment, neglect or abuse, as well as injuries of unknown source, are reported immediately to the administrator or to other officials in accordance with State law through established procedures. (3) The facility must have evidence that all alleged violations are thoroughly investigated and must prevent further potential abuse while the investigation is in progress. (4) The results of all investigations must be reported to the administrator or designated representative or to other officials in accordance with State law within five working days of the incident and, if the alleged violation is	**No change required**	

		verified, appropriate corrective action must be taken.		
42 C.F.R. § 483.460(c)(4)	(c) Standard: Nursing services. The facility must provide clients with nursing services in accordance with their needs. These services must include— … (4) Other nursing care as prescribed by the physician or as identified by client needs; and	(c) *Standard: Nursing services.* The facility must provide clients with nursing services in accordance with their needs. These services must include— … (4) Other nursing care as prescribed by the physician or as identified by client needs; and	**No change required**	
483.470(j)	(j) Standard: Fire protection— (1) General. Except as otherwise provided in this section— (i) The facility must meet the applicable provisions of either the Health Care Occupancies Chapters or the Residential Board and Care Occupancies Chapter of the 2000 edition of the Life Safety Code of the National Fire Protection Association. The Director of the Office of the Federal Register has approved the NFPA 101 ® 2000 edition of the Life Safety Code, issued January 14, 2000, for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the Code is available for inspection at the CMS Information Resource Center, 7500 Security Boulevard, Baltimore, MD or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: http://www.archives.gov/federallregister/codeloflfederallregulations/ibrllocations.html. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. If any changes in	(j) *Standard: Fire protection*— (1) *General.* Except as otherwise provided in this section— (i) The facility must meet the applicable provisions of either the Health Care Occupancies Chapters or the Residential Board and Care Occupancies Chapter and must proceed in accordance with the Life Safety Code (NFPA 101 and Tentative Interim Amendments TIA 12-1, TIA 12-2, TIA 12-3, and TIA 12-4.) (ii) Notwithstanding paragraph (j)(1)(i) of this section, corridor doors and doors to rooms containing flammable or combustible materials must be provided with positive latching hardware. Roller latches are prohibited on such doors. (iii) Chapters 32.3.2.11.2 and 33.3.2.11.2 of the adopted 2012 Life Safety Code do not apply to a facility. (iv) Beginning July 5, 2019, an ICF-IID must be in compliance with Chapter 33.2.3.5.7.1, Sprinklers in attics, or Chapter 33.2.3.5.7.2, Heat	**No change required**	

	this edition of the Code are incorporated by reference, CMS will publish notice in the FEDERAL REGISTER to announce the changes. (ii) Chapter 19.3.6.3.2, exception number 2 of the adopted LSC does not apply to a facility. (2) The State survey agency may apply a single chapter of the LSC to the entire facility or may apply different chapters to different buildings or parts of buildings as permitted by the LSC. (3) A facility that meets the LSC definition of a residential board and care occupancy must have its evacuation capability evaluated in accordance with the Evacuation Difficulty Index of the Fire Safety Evaluation System for Board and Care facilities (FSES/BC). (4) If CMS finds that the State has a fire and safety code imposed by State law that adequately protects a facility's clients, CMS may allow the State survey agency to apply the State's fire and safety code instead of the LSC. (5) Beginning March 13, 2006, a facility must be in compliance with Chapter 19.2.9, Emergency Lighting. (6) Beginning March 13, 2006, Chapter 19.3.6.3.2, exception number 2 does not apply to a facility. (7) Facilities that meet the LSC definition of a health care occupancy. (i) After consideration of State survey agency recommendations, CMS may waive, for appropriate periods, specific provisions of the	detection systems in attics of the Life Safety Code. (2) The State survey agency may apply a single chapter of the LSC to the entire facility or may apply different chapters to different buildings or parts of buildings as permitted by the LSC. (3) A facility that meets the LSC definition of a residential board and care occupancy must have its evacuation capability evaluated in accordance with the Evacuation Difficulty Index of the Fire Safety Evaluation System for Board and Care facilities (FSES/BC). (4) If CMS finds that the State has a fire and safety code imposed by State law that adequately protects a facility's clients, CMS may allow the State survey agency to apply the State's fire and safety code instead of the LSC. (5) *Facilities that meet the Life Safety Code definition of a health care occupancy.* (i) In consideration of a recommendation by the State survey agency or Accrediting Organization or at the discretion of the Secretary, may waive, for periods deemed appropriate, specific provisions of the Life Safety Code, which would result in unreasonable hardship upon a residential board and care facility, but only if the waiver will not adversely affect the health and safety of the patients.		

	Life Safety Code if the following requirements are met: (A) The waiver would not adversely affect the health and safety of the clients. (B) Rigid application of specific provisions would result in an unreasonable hardship for the facility. (ii) Notwithstanding any provisions of the 2000 edition of the Life Safety Code to the contrary, a facility may install alcohol-based hand rub dispensers if— (A) Use of alcohol-based hand rub dispensers does not conflict with any State or local codes that prohibit or otherwise restrict the placement of alcohol-based hand rub dispensers in health care facilities; (B) The dispensers are installed in a manner that minimizes leaks and spills that could lead to falls; (C) The dispensers are installed in a manner that adequately protects against inappropriate access; (D) The dispensers are installed in accordance with chapter 18.3.2.7 or chapter 19.3.2.7 of the 2000 edition of the Life Safety Code, as amended by NFPA Temporary Interim Amendment 00– 1(101), issued by the Standards Council of the National Fire Protection Association on April 15, 2004. The Director of the Office of the Federal Register has approved NFPA Temporary Interim Amendment 00–1(101) for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the amendment is available for inspection at the CMS Information Resource	(ii) A facility may install alcohol-based hand rub dispensers if the dispensers are installed in a manner that adequately protects against inappropriate access. (iii) When a sprinkler system is shut down for more than 10 hours, the ICF-IID must: (A) Evacuate the building or portion of the building affected by the system outage until the system is back in service, or (B) Establish a fire watch until the system is back in service. (iv) Beginning July 5, 2019, an ICF-IID must be in compliance with Chapter 33.2.3.5.7.1, sprinklers in attics, or Chapter 33.2.3.5.7.2, heat detection systems in attics of the Life Safety Code. (v) Except as otherwise provided in this section, ICF-IIDs must meet the applicable provisions and must proceed in accordance with the Health Care Facilities Code (NFPA 99 and Tentative Interim Amendments TIA 12-2, TIA 12-3, TIA 12-4, TIA 12-5 and TIA 12-6). (A) Chapter 7,8,12 and 13 of the adopted Health Care Facilities Code does not apply to an ICF-IID. (B) If application of the Health Care Facilities Code required under paragraph (j)(5)(iv) of this section would result in unreasonable hardship for the ICF-IID, CMS may waive		

	Center, 7500 Security Boulevard, Baltimore, MD and at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269; and (E) The dispensers are maintained in accordance with dispenser manufacturer guidelines.	specific provisions of the Health Care Facilities Code, but only if the waiver does not adversely affect the health and safety of clients.		